

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.634 OF 2018

DISTRICT : MUMBAI

1. Shri Uday Dinkar Kharat.)
Age : 60 Yrs., Occu.: Retired as)
Entertainment Inspector, Office of)
Collector, Mumbai Suburban)
District, Bandra (E),)
Mumbai 0 400 051 and residing at)
601, Vedant Complex Building No.3,)
CHS, Near P & T Colony, Nandivli,)
Dombivli (E) – 421 204.)
2. Shri Sunil Anant Kadwadkar.)
Age : 59 Yrs., Occu.: Retired as)
Awal Karkun, Office of Collector,)
Mumbai Suburban District,)
Bandra (E), Mumbai – 400 051 and)
Residing at Vedhic Height, B Wing,)
Room No.1603, Wadar Pada,)
Hanuman Nagar, Kandivli (E),)
Mumbai – 400 101.)
3. Smt. Rajashri R. Chipkar.)
Age : 60 Yrs., Occu.: Retired as)
Clerk, Office of Dy. Collector,)
Encroachment Removal, Andheri-1,)
Gruh Nirman Bhavan, Ground Floor,)
R.No.65, Bandra (E),)
Mumbai – 400 051 and residing at)
J.K. Tower, 'A' Wing, 13th Floor,)
Room No.1303, H.G. Marg, Gamdevi,)
Grant Road (W), Mumbai – 400 007.)
4. Shri Damodar K. Kadam.)
Age : 61 Yrs., Occu.: Retired as)
Awal Karkun, Tahsildar, Andheri (W))
Mumbai – 400 058 and residing at)
B-17, R-201, B Wing, Anand CHS,)
Gokul Dham, Gen. A.K. Vaidya)
Road, Goregaon (E),)
Mumbai – 400 063.)

5. Shri Vinod S. Kadam.)
 Age : 59 Yrs., Occu.: Retired as)
 Awal Karkun, Collector & Competent)
 Authority, Greater Mumbai (ULC),)
 Administrative Building, 5th Floor,)
 Bandra (E), Mumbai – 400 051 and)
 residing at 302, Shriji Residency,)
 Plot No.228, Sector 21, Kamothe,)
 Panvel – 410 209.)...**Applicants**

Versus

1. The Collector.)
 Mumbai Suburban District,)
 Bandra (E), Mumbai – 400 051.)
2. The Addl. Chief Secretary,)
 Revenue & Forest Department,)
 Mantralaya, Mumbai – 400 032.)
3. The Addl. Chief Secretary,)
 General Administration Department,)
 Mantralaya, Mumbai – 400 032.)
4. The Deputy Collector,)
 (Encroachment Removal) Andheri-1,)
 Gruh Nirman Bhavan, Ground Floor,)
 Room No.65, Bandra (E),)
 Mumbai – 400 051.)
5. The Tahsildar-Andheri,)
 D.N. Nagar, Andheri (W),)
 Mumbai – 400 058.)
- 5(a) The District Treasury Officer, Thane,)
 Court Naka, Thane (W) – 400 601.)
- 5(b) Pay & Accounts Officer.)
 Lekha Kosh Bhavan, Bandra-Kurla)
 Complex, Bandra, Mumbai – 400 051.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicants.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 20.01.2022

JUDGMENT

1. In this Original Application, the retired Government servants have challenged the communications issued by Respondents dated 24.08.2017, 04.06.2018, 20.03.2017 and 05.01.2018 and also challenged further communication dated 05.10.2018, 16.10.2018 and 04.10.2018 issued during the pendency of O.A. thereby challenging the orders of withdrawal of benefit of 1st Time Bound Promotion (TBP) affecting grant of 2nd TBP and recovery sought to be made from retiral benefits invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

2. Following are the admitted facts giving rise to this application.

(i) In view of massive strike of Government servants throughout Maharashtra for a period of near about two months, the entire administrative was collapsed and on that background, the Applicants were appointed on the post of Junior Clerk in 1986 as Strike Recruits.

(ii) Later Applicants' services were regularized in terms of policy decision taken by Government vide G.R. dated 01.12.1994.

(iii) Respondent No.1 – Collector, Mumbai Suburb by order dated 12.09.2003 and 31.12.2003 granted benefit of 1st TBP to the Applicants w.e.f 01.10.1999, 01.10.2000 and 01.10.2001 which was little later than completion of 12 years' service (Page Nos.57 and 59 of Paper Book).

(iv) While issuing orders dated 12.09.2003 and 31.12.2003, Collector specifically imposed stipulation in the order that Applicants will have to pass Revenue Qualifying Examination within three years from the date of orders.

(v) Since Applicants have not granted the benefit of 1st TBP by counting their initial date of temporary appointment, they have filed O.A.No.763/2014 before this Tribunal for grant of said benefit considering their initial date of appointment.

(vi) O.A.No.763/2014 was decided along with connected O.A. by this Tribunal on 08.06.2016 and directions were issued to extend the benefit of TBP to the Applicants on the basis of decision of Hon'ble High Court in ***Writ Petition No.905/2013 [State of Maharashtra Vs. Meena Kuwalekar] decided on 20th April, 2016*** counting their services from the date of their initial appointment and compliance was to be reported within eight weeks from the date of order.

(vii) The decision in ***Meena Kuwalekar's*** case was confirmed by Hon'ble Supreme Court in ***SLP No.14070/2012 by order dated 28.09.2012.***

(viii) In view of above, the Government of Maharashtra issued G.R. dated 07.10.2016 for counting initial temporary appointment for grant of benefit of 1st TBP.

(ix) Respondent No.1 – Collector, Mumbai, however, found that the benefit of TBP was to be given subject to eligibility criteria for next promotional post (passing of Revenue Qualifying Examination) and therefore, by order dated 19.10.2016, he cancelled earlier orders dated 12.09.2003 and 31.12.2003 thereby stating that the benefit will be granted subject to fulfillment of requirement of passing Revenue Qualifying Examination and accordingly granted the benefit from the date of passing the said examination.

(x) The Applicants filed Contempt Application NO.77/2016 alleging contempt of the order passed by the Tribunal in O.A.No.763/2014. However, Contempt Application came to be

disposed on 23.11.2016 of in view of order passed by the Collector dated 19.10.2016.

(xi) The Applicants then again made representation dated 25.10.2016 for considering initial date of appointment for grant of benefit of TBP (Page No.77 of P.B.).

(xii) The Collector again reconsidered the issue and granted benefit of 1st TBP considering their initial date of appointment and passed orders on 08.05.2017, 30.11.2016, November, 2016 (Page Nos.82 88, 94 and 100 of P.B.).

(xiii) However, later again Respondent No.1 – Collector withdrew his earlier orders and by passing fresh orders dated 24.08.2017, 04.06.2018, 20.03.2017 and 05.01.2018 thereby maintaining his earlier order dated 19.10.2016 and benefit was extended from the date of passing Revenue Qualifying Examination, which are challenged in the present O.A.

(xiv) During the pendency of O.A, the Respondent No.1 – Collector again passed orders dated 05.10.2018, 16.10.2018 and 04.10.2018 directing recovery of excess payment from retiral benefits, which are again challenged by the Applicants by way of amendment.

3. Following Chart depicts dates of appointment, passing of examinations, retirement, etc.

Sr.No.	Name	Date of Appointment as on post	Date of Passing Department S.S.D. Examination or Exemption	Date of Passing Department R.Q. Examination or Exemption	Date of Retirement
1)	Shri Uday Dinkar Kharat, Design : Awal Karkun	15 th July, 2011	Sept. 1989	Octo. 2000	31 st October, 2015
2)	Smt. Rajeshri	7 th March,	Sept. 1987	Apr. 2001	31 st May,

	Rajaram Chipkar, Design : Awal Karkun	1986				2015
3)	Shri Sunil Anant Kadwadkar, Design : Awal Karkun	16 th April, 1986	Sept. 1987	Octo. 2002		31 st January, 2017
4)	Shri Damodar Keshav Kadam, Design : Awal Karkun	6 th March, 1986	Sept. 1987	18 th July, 2002 [Exempted]		31 st July, 2015
5)	Shri Vinod Suryakant Kadam, Design : Awal Karkun	03 October, 1986	Sept. 1989	09 September, 2004 [Exempted]		30 September, 2017

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicants sought to assail impugned orders *inter-alia* contending that Respondents were required to count 12 years' period from the date of initial appointment for grant of benefit of TBP and rightly so, initially, the Collector rectified his mistake by issuing orders dated 08.05.2017, 30.11.2016 and in the month of November, 2016 (Page Nos.82, 88, 94 and 100 of Paper Book, thereby granting the benefit considering initial date of appointment. However, Collector withdrew his earlier orders and has withdrawn the benefit already granted and availed by the Applicants without issuing any notice to the Applicants as required under Rule No.134-A of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules of 1982' for brevity). He has further pointed out that once Government by G.R. dated 07.10.2016 has taken policy decision to count temporary service for grant of benefit of TBP, the benefit already granted could not have been withdrawn. As regard passing of examinations, he has pointed out that Applicants have already passed Sub-service Departmental Examinations within their temporary period of service and later also passed Revenue Qualifying Examination much before the order of Collector dated 12.09.2003 and 31.12.2003. On this line of submission, he submits that the impugned action is totally bad in law.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer sought to contend that though initially Collector had granted the benefit considering 12 years' service from the date of initial appointment having found that Applicants have not passed Revenue Qualifying Examination which was essential for the promotional post to grant the benefit of non-functional promotion in terms of TBP Scheme, rightly withdrawn the same. She submits that the benefit was rightly granted from the date of passing of date of Revenue Qualifying Examination. She fairly concedes that before cancellation of benefit, no notice was given to the Applicants. However, she sought to justify absence of notice contending that since it was wrongly granted, prior notice was not required.

6. In view of submissions advanced at the Bar, the crux of the matter is whether Applicants are entitled to count 12 years' service from the date of initial appointment, so as to hold them eligible for the benefit of TBP Scheme. This is the only issue involved in the present matter.

7. Indisputably, the Applicants were appointed as strike recruits in the year 1986 as shown in the Chart in view of massive strike of Government servants throughout Maharashtra. They accordingly worked as Junior Clerks and helped the Government to run administration in strike period. Later, Government has taken policy decision by G.R. dated 1st December, 1994 and their services were regularized subject to fulfillment of educational eligibility criteria. I have gone through G.R. dated 1st December, 1994 whereby their services were regularized. Indisputably, Applicants fulfilled necessary educational qualification. The Government later issued G.R. dated 07.10.2016 (Page No.110 of P.B.) for counting even temporary continuous service for grant of benefit of TBP. This policy decision was taken to extend the benefit of previous service to a Government servant in view of decision of Hon'ble Supreme Court maintaining the Judgment in **Meena Kuwalekar's** case. On representation made by the Applicant, the Respondent No.1 –

Collector accordingly extended the said benefit, as seen from orders at Page Nos.82, 88, 94 and 100 of P.B.

8. In so far as issue of passing Sub-service Departmental Examinations are concerned, material to note that Applicants have already passed examination within the period of their temporary service itself, as seen from the Chart.

9. As regard Revenue Qualifying Examination, pertinent to note that while granting the benefit of 1st TBP by orders dated 12.09.2003 and 31.12.2003, the Respondent No.1 – Collector stipulated condition that the candidates including Applicants will have to pass Revenue Qualifying Examination within 3 years from the date of order. As such, Respondent No.1 – Collector himself allowed the Applicants to clear the examinations within 3 years from the date of order. However, here material to note that Applicant Nos.1 to 3 passed the examination much before the order of Collector whereas Applicant Nos.4 & 5 were exempted on attaining the age of 50 years. This being the position, now Respondents cannot be allowed to turn around and to contend that Applicants were not eligible for grant of benefit of TBP on account of non-passing of Revenue Qualifying Examination within 12 years from initial date of appointment.

10. Indeed, though specific query was raised to learned P.O. during the course of hearing about Recruitment Rules or requirement of passing Revenue Qualifying Examination, nothing was produced to indicate as to what was the conditions at the time of initial appointment of the Applicants in service in 1986. True, as per Scheme of benefit of TBP, a candidate is required to fulfill eligibility for the next promotional post. The Applicants were Junior Clerks and next promotional post was Awal Karkun. For Awal Karkun, they were required to pass Sub-service Departmental Examination as well as Revenue Qualifying Examination. However, Applicants being in temporary service, they could not have been allowed to appear for Revenue Qualifying Examination before their

regularization in terms of G.R. dated 01.12.1994. Therefore, refusal of benefit on the ground that Applicants have not passed Revenue Qualifying Examination within 12 years from the date of initial appointment is accepted, it would amount to denial to count their previous service for TBP though specifically protected in terms of G.R. dated 07.10.2016.

11. Material to note, during the course of final arguments, the learned P.O. has tendered copy of Maharashtra Revenue Qualifying Examination for promotion to the Post of Awal Karkun from the cadre of Clerk-Typists Rules of 1999 (hereinafter referred to as 'Clerk-Typists Rules of 1999' for brevity). Interestingly, as per these Rules itself, Clerk-Typists were required to pass examination within three chances and within 9 years of his continuous service. These Rules were framed in exercise of powers conferred by Article 309 of Constitution of India in supersession of all existing Rules or instruments issued in that behalf by the State. As such, by 'Clerk-Typists Rules of 1999', nine years' period was provided for passing Revenue Qualifying Examination. Admittedly, Applicant Nos.1 to 3 passed the examination within the stipulated period and Applicant Nos.4 & 5 were exempted in terms of Rules itself. This being the factual position, the Applicants cannot be denied the benefits of 'Rules of 1999'. I, therefore, see no logic or rational in the stand taken by the Respondents that Applicants were not entitled for the benefit of TBP Scheme for non-passing Revenue Qualifying Examination within 12 years from the date of initial appointment. As such, suffice to say, the impugned action of withdrawing the benefit of TBP is contrary to 'Rules of 1999'.

12. Apart, once the benefit was granted and it was availed by the Applicants, it should not have been withdrawn and recovery could not have been imposed by orders dated 05.10.2018, 16.10.2018 and 04.10.2018 after retirement of the Applicants without giving opportunity of hearing, as mandatory under Rule 134-A of 'Pension Rules of 1982'.

By these orders, the recovery was sought to be made from retiral benefits of the Applicants in defiance of proviso to Rule 134-A of 'Pension Rules of 1982', which is as under :-

“134-A. - Recovery and adjustment of excess amount paid.-

If in the case of a Government servant, who has retired or has been allowed to retired, it is found that due to any reason whatsoever an excess amount has been paid to him during the period of his service including service rendered upon re-employment after retirement or any amount is found to be payable by the pensioner during such period and which has not been paid by, or recovered from him, then the excess amount so paid or the amount so found payable shall be recovered from the amount pension sanctioned to him :

Provided that, the Government shall give a reasonable opportunity to the pensioner to show cause as to why the amount due should not be recovered from him :

Provided further that, the amount found due may be recovered from the pensioner in instalments so that the amount of pension is not reduced below the minimum fixed by Government.”

13. The submission advanced by the learned P.O. that the benefit was wrongly granted, and therefore, issuance of notice before withdrawal of benefit was not required is totally unacceptable in view of mandatory provision of issuance of notice to the pensioner as contemplated in 1st proviso of Rule 134-A of 'Pension Rules of 1982'. Now, recovery is being sought by the impugned orders passed during the pendency of O.A. from retiral benefits which is clearly in contravention of 'Pension Rules of 1982' for want of notice and opportunity of hearing.

14. Moreover, recovery is hit and totally impermissible in view of decision of Hon'ble Supreme Court in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))** wherein it has been held that there should be no recovery of Group 'C' employee after retirement or within one year before retirement. Indeed, in the present case, as concluded above, the Applicants were entitled to count their initial period of service for grant of benefit of TBP in view of passing of

Revenue Qualifying Examination within 9 years in terms of 'Rules of 1999'.

15. The totality of aforesaid discussion leads me to sum-up that the impugned orders are totally indefensible in law and facts and liable to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned orders of withdrawal of benefit of 1st TBP are quashed and set aside.
- (C) Recovery orders dated 05.10.2018, 16.10.2018 and 04.10.2018 during the pendency of O.A. are also quashed and set aside.
- (D) The amount recovered from the Applicants in pursuance of impugned orders be refunded to them within a month from today, failing which the amount shall carry interest at the rate 8% p.a. from the date of default till actual payment.
- (E) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 20.01.2022
Dictation taken by :
S.K. Wamanse.

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