

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.730 OF 2018**

**DISTRICT: Ratnagiri  
SUBJECT : ACPS**

Shri Bashir Ismail Fulari )  
Age:- Adult , Occ. Retired, )  
R/at Kanjivara Devrukh, Dist. Ratnagiri. )... **Applicant**

**Versus**

1. Sub-Executive Engineer, Ratnagiri )  
Pathbandhare Division (South), Dist. )  
Ratnagiri. )
2. Assistant Engineer, Ratnagiri Pathbandhare )  
Division (South), Dist. Ratnagiri. )
3. Pension Department, Ratnagiri (South), )  
District Ratnagiri. )
4. The State of Maharashtra. ).. **Respondents**

Shri Deokar holding for Shri S. C. Mangle, learned Advocate for the Applicant.

Smt. Kranti Gaikwad, learned Presenting Officer for the Respondent.

**CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)**

**DATE : 20.03.2023.**

**ORDER**

1. The Applicant has challenged communication dated 18.05.2011 whereby 2nd benefit of ACPS Scheme was rejected on the ground that the gradation in ACR is not in terms of G.R. dated 05.07.2010.

2. Shortly stated facts giving rise to O.A. are as under:-

The Applicant was appointed on the post of Road Roller Driver on 02.11.1984 which is admittedly isolated post. He was given 1st benefit of Time Bound Promotion in terms of G.R. dated 08.06.1995 w.e.f. 02.11.1996 on completion of 12 years' service. The Applicant contends that he had completed further 12 years of service on 02.11.2008 and was entitled to 2nd benefit of Time Bound Promotion scheme which was later changed as ACPS Scheme. He made representation for 2<sup>nd</sup> benefit on 05.03.2011 but it came to be rejected by communication dated 18.05.2011 which he has challenged in the present O.A.

3. Heard Shri Deokar holding for Shri S. C. Mangle, learned Counsel for the Applicant and Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

4. Indisputably, the Applicant's post as Road Roller Driver was isolated post and was granted 1st benefit w.e.f. 02.11.1996 on completion of 12 years services. Insofar as 2<sup>nd</sup> benefit is concerned, the Government had issued G.R. on 05.07.2010 stating out the terms and conditions of 2<sup>nd</sup> benefit for isolated post. G.R. dated 05.07.2010 is at page no.20 to 23 of PB. As per this G.R. for 2<sup>nd</sup> benefit, conditions are set out in clause no.4(d) are as under :-

- (ड) योजनेच्या दुस-या लाभासाठी पात्रतेच्या अटी व शर्ती :-
- (१) पहिल्या लाभानंतर १२ वर्षांची नियमित सेवा पूर्ण होणे आवश्यक राहिल.
- (२) पहिल्या लाभाच्या प्रयोजनार्थ लागू असलेल्या अटी व शर्ती दुस-या लाभासाठीही लागू राहतील. मात्र, गोपनीय अहवालाची सरासरी प्रतवारी "ब+" (निश्चित चांगली) प्राप्त करणे आवश्यक राहिल."

5. Thus, in terms of G.R. dated 05.07.2010, the candidate must have 'B+' gradation in ACR. Insofar as gradation given to the Applicant in ACR are concerned, admittedly, it is as under :-

Sr. No.	Concerned Year	Remarks obtain
1	2002-2003	B(Good)
2	2003-2004	B- (Average)
3	2004-2005	B(Good)
4	2005-2006	B+ (Positively good)
5	2006-2007	B- (Average)
6	2007-2008	B- (Average)
7	2008-2009	B(Good)
8	2009-2010	B(Good)
9	2010-2011	A (very Good)
10	2011-2012	B+ (Positively Good)

6. There is absolutely no dispute about gradation given to the Applicant in ACR from 2002 - 2003 to 2011 -2012 as reproduced above. The Applicant had completed 2<sup>nd</sup> period of 12 years of service on 02.11.2008. As such, his ACR of preceding 5 years ought to have been 'B+' However, admittedly, his ACR for 2003-2004 as well as for 2007-2008 was 'B- (Average)'. It is on this ground that ACR is not 'B+' as required in terms of G.R. dated 05.07.2010, he was not granted 2<sup>nd</sup> benefit of isolated post.

7. Learned Counsel for the Applicant, however, sought to contend that since the Applicant had completed 12 years' service on 2008, the conditions set out by Government in G.R. dated 05.07.2010 could not have been applied retrospectively. According to him, it may apply prospectively but not retrospectively so as to deprive of the Applicant of 2<sup>nd</sup> benefit of ACPS Scheme.

8. Per contra, Smt. Kranti Gaikwad, learned Presenting Officer submits that for isolated post, the G.R. dated 05.07.2010 was the only G.R. issued by the Government setting out terms and conditions and it

is in light of the terms and conditions mentioned in G.R. the Applicant's case was examined and his case was found not in conformity for 2<sup>nd</sup> benefit of ACPS Scheme.

9. True, when completed 12 years' service in 2008, that time there was no policy decision by the Government for grant of 2<sup>nd</sup> benefit of ACPS Scheme to Government servant holding isolated post. It is on 05.07.2010 only, the Government had come out with the policy decision setting out terms and conditions. As such, this is not a case that in 2008, when Applicant completed 12 years' service, that time terms and conditions were already in place but those were later changed to prejudice of the Applicant. In 2008, there was no such scheme in place for isolated post and for the 1<sup>st</sup> time by G.R. dated 05.07.2010, the Government had taken policy decision for 2<sup>nd</sup> benefit of isolated post and laid down necessary terms and conditions for grant of 2<sup>nd</sup> benefit. This being so, even if the Applicant had completed 12 years in 2008, his case was to be examined on touchstone of terms and conditions in G.R. dated 05.07.2010. It is procedural rule which can be applied with retrospective operation. Had there been different requirement in 2008 and later it was changed, in that event only, there could be a question of taking away the right accrued to a person. However, in present case, it is not so.

10. Suffice to say, the submission advanced by learned Counsel for the Applicant that terms and conditions mentioned in G.R. dated 05.10.2010 should not have been applied retrospectively holds no water.

11. Needless to mention the object of ACPS scheme to take care of stagnation and give monetary benefits of promotional post where a Government servant is eligible to hold promotional post. It is known as non-functional promotion. As such, for such benefit, the Government servant must be shown eligible for promotion on the post of which he is claiming benefit. The Applicant's post being isolated, the Government has come out special G.R. dated 05.07.2010 so as to give them monetary benefits subject to fulfillment of terms and conditions set out in G.R. To have such benefit, the ACR must be of 'B+'. Whereas in present case,

the Applicant's ACR of 2003-2004 and 2007-2008 are 'B-(Average)' as well as 2004-2005 is only 'B (Good). He got 'B+' in 2005-2006 and 2006-2007. This being so, I see illegality in impugned order rejecting Applicant's claim for 2<sup>nd</sup> benefit of ACPS Scheme.

11. The totality of the aforesaid discussion leads me to sum up that challenge to the communication dated 18.05.2011 holds not water and O.A. is liable to be dismissed. Hence, the following order :-

**ORDER**

The Original Application is dismissed with no order as to costs.

Sd/-

**(A.P. Kurhekar)**  
**Member (J)**

*Place: Mumbai*

*Date: 20.03.2023*

*Dictation taken by: Vaishali Santosh Mane*

*D:\VSM\VSO\2023\ORder & Judgment\March\ACPS Scheme\O.A.730 of 2018.doc*