

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.825 OF 2021**

**SUBJECT : Time Bound Promotion**

Shri Ganpat S. Karanje, Age:- 61 yrs, )  
Occ. Rtd. as Vehicle Supervisor, )  
R/o. Sr.No.16, Nakshtra Building, Flat No.1, )  
Ambegaon Pathar, Pune 411 046. )... **Applicant**

**Versus**

- 1) The State of Maharashtra, )  
through the Secretary, Agriculture, )  
Animal Husbandry, Dairy Development )  
Dept., Mantralaya, Mumbai 400 032. )
- 2) The Commissioner, Dairy Development, )  
M.S. Worli, Mumbai 400 018. )
- 3) The Regional Dairy Development Officer, )  
Pune, Commonwealth Building, 3rd floor, )  
Laxmi Road, Pune 411 030. )
- 4) The General Manager, Government Milk )  
Scheme, near Ambedkar Garden, Miraj, )  
Dist. Sangali. )...**Respondents**

Smt. Punam Mahajan, learned Counsel for the Applicant

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

**CORAM : A.P. Kurhekar, Member (J)**

**DATE : 09.06.2023**

**ORDER**

1. The Applicant has challenged the communications dated 16.04.2019, 09.07.2019, 23.12.2019 and 25.02.2021 whereby after his retirement the benefit of 1st Time Bound Promotion Scheme (non-functional promotion) for the post of Transport Foreman granted by

order dated 17.04.2012 was withdrawn and recovery of Rs.3,81,037/- is sought and his pay has been downgraded resulting in less pension.

2. Shortly stated facts giving rise to Original Application are as under:-

The Applicant joined service as Technician on 10.12.1983 at Satara in Pune Division on the establishment of Respondent No.3-Regional Dairy Development Officer, Pune. He was promoted as Vehicle Supervisor on 14.08.1995 in view of the order passed by the Respondent No.3. Later, the Respondent No.3 by order dated 19.05.2007 transferred him from Pune to Miraj. While Applicant was serving at Miraj, the Respondent No.3 by order dated 17.04.2012 granted 1st benefit of Time Bound Promotion Scheme for the promotional post of Transport Foreman w.e.f. 17.08.2007 having completed 12 years on the post of Vehicle Supervisor. Later, he was again sent back to Pune office by order dated 11.06.2012 and was relieved from Miraj on 19.06.2012. He accordingly joined at Pune and stands retired on 31.07.2017, while he was enjoying the benefit of 1st Time Bound Promotion for the post of Transport Foreman by way of non-functional promotion. It is only after his retirement, the Respondent No.3 issued orders dated 16.04.2019, 09.07.2019, 23.12.2019 and 25.02.2021 thereby withdrawing the benefit of Time Bound Promotion granted by order dated 17.04.2012 on the ground that the post of Transport Foreman amongst others was declared surplus by Government in terms of G.R. dated 10.09.2001 and 09.01.2003 and, therefore, he was not entitled to the benefit of promotion for the post of Transport Foreman and downgraded his pay and allowances which was getting at the time of retirement which has resulting into reduction in pension. The Applicant has, therefore, challenged the orders dated 16.04.2019, 09.07.2019, 23.12.2019 and 25.02.2021 by filing present O.A.

3. The Respondents in Affidavit in Rely all that submits that though the benefit of 1st Time Bound Promotion for the post of Transport Foreman by order dated 17.04.2012 was wrongly granted since the said post of Transport Foreman from Pune division was already declared surplus by the Government in terms of G.R. dated 10.09.2001 and 09.01.2003 and, therefore, having noticed the same, it was withdrawn and pay and allowances are refixed/downgraded and recovery was sought.

5. Smt. Punam Mahajan, learned Counsel for the Applicant sought to assail the impugned orders *inter-alia* contending that impugned action is in violation of principle of natural justice since no opportunity of hearing was given before issuance of impugned orders of withdrawing the benefit of Time Bound Promotion and downgrading the pay and allowances. Secondly, even if, the post of Transport Foreman amongst others were declared surplus, no such timely action was taken by the department. On the contrary, he was given non-functional promotion benefit for the post of Transport Foreman and, therefore, now it cannot be taken away after retirement. Thirdly, even if the post of Transport Foreman was declared surplus from Pune division, he ought to have been accommodated by transferring him to another division where the post existed as directed by Government in G.R. dated 10.09.2001.

6. In view of submissions, the issue posed for consideration is whether the impugned action of withdrawing the benefit of Time Bound Promotion recovery and downgrading pay and allowances is sustainable in law.

7. The factual aspects narrated above are not in dispute. Admittedly, the Respondent No.3 granted the benefit of Time Bound Promotion for the post of Transport Foreman to the Applicant by order dated 17.04.2012 and Applicant had availed the said benefit till his retirement

up to 31.08.2017. In first place, if the post of Transport Foreman was declared surplus and was not in existence in 2012 that time itself the Respondent No.3 should not have granted the benefit of Time Bound Promotion. Be that as it may, the fact remains that the Applicant was entitled to the benefit of Time Bound Promotion for the post of Transport Foreman and accordingly he was given the benefit by order dated 17.04.2012 and availed the said benefit till his retirement up to 31.08.2017.

8. It is only after retirement, the Respondent No.3 woke up and issued impugned orders for withdrawal of benefit of Time Bound Promotion and sought recovery by downgrading his pay and allowances. True, as per G.R. dated 09.01.2003, total 1719 posts including the post of Transport Foreman from Pune division was declared surplus and they were required to be absorbed in some other departments. However, instead of absorbing the Applicant in other department on equivalent post, he was continued in Pune Division till his retirement. Notably, this is not a case that the post of Transport Foreman was declared surplus from entire State of Maharashtra. The said post amongst others existed in Pune Division only declared surplus. This being so, the Applicant ought to have been transferred on equivalent post anywhere in Maharashtra. Admittedly, the post of Transport Foreman in other divisions were not declared surplus. In this behalf, Clause No.7 of Appendix 3 of G.R. dated 10.09.2001 which is the main G.R. about terms and conditions for accommodating surplus employees. Clause No.7 is material which is as under :-

" ७. अतिरिक्त घोषित केलेल्या कर्मचा-यांना राज्यातील कोणत्याही विभागात किंवा कार्यालयात सामावून घेण्यात येईल. मात्र गट-ड कर्मचा-यांच्या बाबतीत पर्यायी नेमणूक शक्यतो त्याच जिल्ह्यात देण्याचा प्रयत्न करण्यात येईल. तसेच गट "क" कर्मचा-यांच्या बाबतीत पर्यायी नेमणूक शक्यतो त्याच महसून विभागात देण्याचा प्रयत्न करण्यात येईल. असे शक्य न झाल्यास संबंधित कर्मचा-याची राज्यात कोठेही नेमणूक करण्यात येईल."

9. Thus, as per Clause 7 of G.R. dated 10.09.2001, the Applicant ought to have been transferred in other division so that his service conditions are protected. However, no such steps were taken by the Respondent No.3 when the post from Pune Division was declared surplus. Indeed, it was incumbent on the part of Respondent No.3 to take necessary steps to accommodate and transfer the Applicant in other division so that his pay and allowances are protected. Thus, this is not a case where no such posts were available in other divisions so as to justify the withdrawal of benefits which was already granted to the Applicant. This being so, the impugned action of Respondent No.3 withdrawing the benefit of Time Bound Promotion after retirement of the Applicant is totally arbitrary and unsustainable in law.

10. Apart, the impugned action is also in violation of principle of natural justice. The Applicant was given the benefit of Time Bound Promotion by order dated 17.04.2012 which he availed after his retirement till 31.08.2017. He was to get retirement benefits on the basis of last drawn pay inclusive of benefit of Time Bound Promotion Scheme. By impugned action, pay and allowances were sought to be downgraded resulting into reduction in pension and recovery was sought. In such situation, it was incumbent on the part of Respondents to issue notice before taking any such action as mandated in Section 134 (A) of Maharashtra Civil Services (Pension) Rules, 1982. Admittedly, in present case, no such notice was issued before the impugned action.

11. For the aforesaid reasons, I have no hesitation to sum up that impugned action of withdrawal of benefit of Time Bound Promotion is totally arbitrary and unsustainable in law. These orders are totally indefensible and liable to be quashed. Hence, the following order :-

**ORDER**

- (A) The Original Application is allowed.
- (B) The impugned orders dated 16.04.2019, 09.07.2019, 13.12.2019 and 25.02.2021 are quashed and set aside.

(C) The Respondents are directed to release remaining retiral benefits if not paid and also to take necessary steps for the benefit of 7th Pay Commission and consequential monetary benefits within two months from today.

(D) No order as to costs.

Sd/-

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

*Place: Mumbai*

*Date: 09.06.2023*

*Dictation taken by: Vaishali Santosh Mane*

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