

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 88/2012.

- 1) Chandrakant Gangaram Pimpalkar,
Aged about 50 years,
Occ-Service,
R/o Near Sangh Building, Mahal, Nagpur.
- 2) Chandrasekhar Bhaskarrao Tiwari,
Aged about 50 years,
Occ-Service,
R/o Reshimbag, Nagpur.

Applicants.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Water Resources,
Mantralaya, Mumbai-440 001.
- 2) The State of Maharashtra,
Through its Secretary,
Department of Finance,
Mantralaya, Mumbai-440 001.
- 3) The Superintending Engineer and Administrator,
Command Area Development Authority,
Wainganga Nagar, Ajni, Nagpur.
- 4) The Executive Engineer,
Minor Irrigation Division,
Wainganga Nagar, Ajni, Nagpur.
- 5) The Project Officer,
Soil and Water Management Pilot Project Division,
Wainganga Nagar, Ajni, Nagpur.

Respondents

Shri J.L. Bhoot, Advocate for the applicant.

Shri A.M. Ghogre, learned P.O. for the respondents.

**Coram:- Hon'ble Shri R.B. Malik,
Member (Judicial)**

Dated: - 22nd February 2017.

Oral order

The two applicants being Junior Engineers hereby raise a dispute about the fixation of pay post 2nd benefit of Assured Career Progression Scheme (ACP). They have been given the pay scale of Sectional Engineers by the respondents treating that as a promotional post while according to the applicants, the next promotional post for them the pay scale of which they would be entitled to is Sub-Divisional Engineer.

2. I have perused the record and proceedings and heard Mr. J.L. Bhoot, the learned Advocate for the applicants and Shri A.M. Ghogre, the learned P.O. for the respondents.

3. There are some facts which have become indisputable. The initial appointments of the applicants was by the order dated 9.1.1984 as Technical Assistants (TA) in the pay scale of Rs. 975-1540. A cadre of Civil Engineering Assistants (CEA) was created under the G.R. of the Government of Maharashtra in Irrigation Department dated 31.1.1989 (Exh.R-1 Page 73 of the paper book

(P.B.). Several lower grade technical employees including the applicants came to be absorbed in that cadre of CEA.

4. 20% of the posts of Junior Engineers are filled up by promotion from the cadre of CEA and the remaining posts are filled up by nomination from engineering degree or diploma holders. The applicants fell in the former category. They appeared at and cleared the required examination and were appointed as Junior Engineers. That was done apparently under Rule 3 of Junior Engineer (Civil) Group-B non gazetted in the Public Works Department and Irrigation Department (Recruitment) Rules, 1998. In what has been described as returns submitted by the respondents No.4 Executive Engineer, Minor Irrigation Division paras 6, 7 and 8 need to be fully reproduced.

6. The Civil Engineering Assistants who have been selected for the post of Junior Engineer and have passed Departmental Examination of Sub-Overseer / Surveyor's course / one year course of Civil Engineering Assistants / five months training etc., such qualification is not equivalent to the Diploma / Degree in Civil Engineering for the reason the Junior Engineers appointed from Civil Engineering Assistants are called as unqualified Junior Engineer.

7. In the cadre of Junior Engineer, there are three categories as,

(i) Junior Engineers holding Diploma or higher qualification,

(ii) Junior Engineers holding two years Diploma,

(iii) Junior Engineers appointed except form 1 & 2 (from above said Civil Engineering Assistants called unqualified Junior Engineers.

8. Thus the next promotional post for the cadre of CEA is Junior Engineer (Civil) (Group-B non gazetted) as per the provisions of Rule 3 (a) (1) & (2). So the Civil Engineering Assistants (5200-20200+GP 2400) otherwise eligible are entitled to get promotional pay scale of Junior Engineer (9300-34800+GP4300) as first benefit under Assured Career Progressive Scheme.+

5. There is no serious dispute about the facts set out in the above quoted paragraphs. On 8.6.1995, the State of Maharashtra vide a G.R. of that date brought into force a Time Bound Promotion scheme w.e.f. 1.10.1994. In common parlance, it is also called first ACP. By an order dated 13.4.1998, and it is an admitted position, the applicants were granted first T.B.P. w.e.f. 23.1.1996. From the pay scale of Rs. 1200-30-1440-E.B.-30-1800 (Pre 1st T.B.P.) they were fixed at Rs. 1640-60-2600-EB-75-2900 (Post 1st T.B.P.). It is common ground that first T.B.P. scheme was replaced by another scheme w.e.f. 1.8.2001 vide the G.R. dated 20.7.2001. A modification to and improvement upon the 2001 scheme was brought by the G.R. of 1st

April 2010 by the Government of Maharashtra in Finance Department (Annex.5 Page 37 of the P.B.).

6. At this stage, I would read 2010 G.R. just referred. The scheme became effective from 1.10.2006. While discontinued scheme of 1994 applied to a particular group of employees, the 2010 scheme was modified and improved upon. The 2001 scheme was made applicable on the basis of pay band. In the entire career of an employee he would get two such benefits. But those who had been actually given three or more promotions would not be entitled thereto. The first benefit would be given after twelve years.

7. I am herein more concerned with the second benefit. It would be appropriate in my view to quote in Marathi first para of the said second benefit scheme.

%क) योजनेचा दुसरा लाभ:

(१) पहिल्या लाभानंतर १२ वर्षांची ज्येष्ठता सेवा पूर्ण केलेल्या कमळ्याच्या पदोन्नतीच्या पदाची वेतनसंरचना दुसरा लाभ म्हणून मंजूर करण्यात येईल. तथापि या योजनेतील पहिला लाभ म्हणून या पदाची वेतनसंरचना मंजूर करण्यात आले आहे या पदाला प्रवृत्त सेवाकालावधीनंतर या पदाच्या कतऱ्या व जबाबदार्यात वाढ न होता अकायामक वा तसम उच्च वेतनसंरचना मंजूर करण्यात येत असेल तर ती अकायामक वा तसम उच्च वेतनसंरचना दुसरा लाभ म्हणून मंजूर करण्यात येईल.”

8. There is a clear reference to non functional posts in relation to the promotion. This aspect of the matter may need some elaboration as the discussion progresses. But it needs to be mentioned that according to Mr. Bhoot, learned Advocate for the applicants the pay scale of next promotional post has got to be given to the concerned employees. That may be one aspect of the matter, but in my opinion, other aspects of the matter will have to be taken into consideration and, therefore, concepts of promotion, promotional posts and salary etc. in the context of the relevant instruments would assume significance. The other terms and conditions as far as this scheme is concerned, *inter alia* include that the concerned employee should be eligible in all respects to be promoted to the next post. There is a reference to the requirement of meritorious ACRs. Clause 3 of the G.R. also needs to be reproduced (in Marathi).

१३. एक ँय ँदोँनती ँळँयँनंतर या योजनेखँल ँदोँनतीँया पदाँया वेतनसंरचनेचा पहला लाभ ँळँला असेल ँँण ँयँनंतर पदोँनती साखळीत (Hierarchy) पुढँल पदँँँचा संवगँँपलँध नसेल ँँवा

या योजनेखँल एक लाभ ँळँयँनंतर एक ँयँ पदोँनँ ँलँलँ असेल ँँण ँयँनंतर पदोँनँ साखळीत (Hierarchy) पुढँल पदोँनतीचा संवगँँपलँध नसेल, ँँवा

कमँारयास या योजनेखँल ँदोँनतीँया पदाँया वेतनसंरचनेचा पहला लाभ ँळँला ँहे व ँयँनंतर पदोँनती साखळीत (Hierarchy) पुढँल पदँँँचा संवगँँपलँध नसेल तर या ँँहँ ँँरणी -तो ँया पदाँया वेतनसंरचनेत वेतन घेत ँहे ते पद जणू काहँ ँकाकँ पद ँहे

असे समजून या वेतनसंरचनेतल एकाक पदाला योजनेया पहया लाभंतागम अनुनेय असणार वेतनसंरचना दूसरा लाभ हणुन मंजूर करयात येइल.

या योजनेचा पहला लाभ मलायानंतर कमच्यायास पहला लाभाया पदावर य पदोनेत मलाल असेल आण यानंतर योजनेचा दूसरा लाभ मलायापुव्व यापुडील पदोनेतया पदावर य पदोनेत मलाल असेल व यानंतर पदोनेत साखलत पुढल पदालाचा संवगउपलध नसेल तर तो या पदाया वेतनसंरचनेत वेतन घेत आहे ते पद जनुकाह एकाक पद आहे असे समजून या एकाक पदाला योजनेया पहया लाभंतागम अनुनेय असणार वेतनसंरचना दूसरा लाभ हणुन मंजूर करयात येइल.”

9. Other terms and conditions would not be much necessary to be mentioned herein except that clause 4 provides that if an employee got one actual promotion before availing of any benefit and if in the hierarchy there was no scope for further promotion then, he would be entitled to be treated as an employee holding solitary post.

10. As the matter stands, second ACP has already been granted to the applicants. Insofar as applicant No.1 Shri Chandrakant Gangaram Pimpalkar is concerned, page 46 of the P.B. can be perused. His pay scale at the time of grant of second ACP was Rs. 9300-34800 with GP of Rs. 4300. After the grant of second benefit post 24 years of service w.e.f. 23.1.2008, his pay scale was Rs. 9300-34800 with GP of Rs. 4400. Mr. Bhoot, the learned Advocate for the

applicants pointed out that the pay scale remained the same while there was a benefit of just Rs. 100/- and that too in the grade pay. That cannot be the correct approach at all, according to the learned Advocate for the applicants. In this behalf, it needs to be mentioned that what has apparently been given to the applicants was the pay scale of Sectional Engineer and not that of Sub-Divisional Engineer. According to Mr. Bhoot, the learned Advocate for the applicants, promotional posts would not be of the Sectional Engineer because as per record, that was only "व्यवहारीक" as described in Marathi and, therefore, promotional posts would be that of Sub-Divisional Engineer. In para 7 of the O.A., it is pleaded *inter alia* that in terms of other sub-clause (c) of clause 2 of 2010 G.R., substantial part of which has been reproduced in Marathi hereinabove, the applicants would be entitled to pay band of the pay of promotional posts. However, inasmuch as the first benefit under that scheme was allowed carrying only non functional promotion or higher pay after specific period, then the functional pay would be allowed as a second benefit. He has referred also to Annexure A-7 which is some kind of communication from the Government to the Chief Engineers and Superintendents etc. dated 19.3.2011. It is in Marathi. It is stated there that insofar as the 2010 scheme was concerned, guidance was being sought with regard to

which pay scale would be applicable for the second benefit. It was mentioned there that those Junior Engineers who got time bound promotion on that post, they will be, subject to their eligibility otherwise, after completing of twelve years of regular service, be entitled to the pay scale of Sectional Engineer as second benefit. It is further mentioned that those of this category who had got as first benefit, pay scale of Junior Engineer will be entitled as a next higher pay scale, the pay scale of Sectional Engineer as second benefit.

11. Now, there is some more discussion to follow. At this stage itself, it can be usefully noted that the concept of promotion that was vigorously canvassed by Mr. Bhoot, the learned Advocate for the applicants has to be understood with reference to the context which herein is the entitlement to second benefit and, therefore, one has to go by various other aspects of the matter rather than bodily lifting the names of the promotional posts and applying them regardless of the context of the present case. But I may only mention that according to Mr. Bhoot, the learned Advocate for the applicants, the pay scale to which the applicant would be entitled to the second benefit is Rs. 15600-39100 with grade pay Rs. 5400/-. In what has been described as return on behalf of the respondents, in para 14

which contained specific pleadings on behalf of Finance Department, it is pleaded as follows:

The promotional hierarchy including non functional promotional post for the members of Applicants; union as follows:

Civil Engineering Assistant

PB Rs. 5200-20200

GP Rs. 2400

Junior Engineer

PB Rs. 9300-34800

GP Rs. 4300

Sectional Engineer

PB Rs. 9300-34800 (Non functional pay structure)

GP Rs. 4400

Sub-Divisional Officer

PB Rs. 15600-39100 (Non functional pay structure)

GP Rs. 5400+

12. The above paragraph quite clearly indicates the hierarchy as well as the concept of non functional pay structure. In para 15, it is clear that on the basis of the above hierarchy, the incumbent on the post of Civil Engineering Assistant would get second benefit in the pay band of Rs. 9300-34800 with GP of Rs. 4400 of the post of Sectional Engineer as per para 2 (c) (1) of the G.R. of 1st April

2010 already quoted hereinabove. The directly recruited Junior Engineers would, however, get second benefit in the pay band of Rs. 15600-39100 plus grade pay of Rs. 5400/-. The learned P.O. repeatedly pointed out to the chargin of Mr. Bhoot, learned Advocate for the applicants that the applicants are not holding either degree or diploma in engineering. Having considered the rival submissions in depth in the light of the pleadings with particular reference to the pleadings just referred, I find that there is a clear dichotomy in the service conditions of engineers depending upon which source they came from and how did they originate. If the distinction is consciously done, there is nothing to indicate that any principle of law or constitution is offended despite attempts by Mr. Bhoot, in my view, such a dichotomy of posts on the basis of the decision of Hakim Committee referred to in para 16 of the specific pleading of the Finance Department at page 69 of the P.B. should not be interfered with. I am in complete agreement with the respondents that other factors remaining constant, the law laid down by the Hon'ble Supreme Court in **State of Haryana V/s Civil Secretariat Personnel Staff Association (2002) 6 SCC- 72 and Union of India V/s Makhanchandra Roy AIR 1977 SC 2391** has to be applied. However, by other factors remaining constant what is means is that there can be some factors constituting absence of bonafides or whimsical approach. If that was not there,

then the Court would not rush in, where the Pay Committee being an expert body has already treaded.

13. The hierarchy that is mentioned in para 11 of the report on behalf of the respondents is insofar as C.E.As are concerned, the Civil Engineering Assistant, Junior Engineer, Sectional Engineer and the Sub-Divisional Engineer. On record, I find the Recruitment Rules for the post of Junior Engineer (Civil), Group-B alongwith the amended rules of 1988 and 2006. Rule 3 thereof as it stands after amendment provides *inter alia* that the appointment of Junior Engineers would be made by promotion of a suitable person on the basis of seniority subject to fitness from amongst the Civil Engineering Assistants who have passed qualifying examination for the post of Junior Engineer and that as I have already mentioned, the applicants have cleared. At page 96 of the P.B., there are rules called %Sectional Engineers (Civil), Group-B in the Maharashtra Service of Engineers (Recruitment) Rules, 1997+. Rule 3 thereof needs to be fully reproduced:

%Appointment to the post of Sectional Engineers (Civil), Group-B in the Maharashtra Service of Engineers shall be made by selection on the basis of seniority, subject to fitness from amongst the persons holding the posts of Junior Engineer who-

- (a) Possess a three years Diploma in Civil Engineering or any other qualification declaredly by Government to be equivalent thereto, and have put in not less than five years regular service as Junior Engineer on regular establishment in the Department, or
- (b) possess an Upper Subordinate Certificate awarded by the Osmania University, or other qualification declared by Government to be equivalent thereto and have put into not less than seven years regular service s Junior Engineer on regular establishment in the Department, or
- (c) are not possessing any of the qualifications mentioned in clause (a) and (b) above but have put in not less than ten years regular services as Junior Engineer on regular establishment in the Department.

14. The above service rules would in my view make it very clear that Mr. Bhoot, the learned Advocate for the applicantsq submission that the Sectional Engineer is not a promotional post, would not hold water. The learned Advocate for the applicants contended that even the respondents themselves stated that there was no document to suggest that the Sectional Engineer was a promotional post. Now the effect of the material on record clearly negate in my view the case tried to be set up by Mr. Bhoot, the learned Advocate for the applicants. I must repeat here that the concept of

promotion has to be studied in the context of the present case and, therefore, the emphasis that he laid on the Marathi word, "व्यवस्थान्ती" to buttress his contention that the post of Sectional Engineer was not a promotional post in the context of the present case, cannot be accepted. I have already mentioned above that the concept of non functional pay structure is very much there and if all these aspect of the matter are taken into consideration, then even if the pay scale has remained the same, nothing possibly could be done because all these matters which were studied by Hakim Committee and based on it the report was produced. An individual interest needs to be protected. But it may not always be possible to please everybody all the times. I find nothing wrong in the impugned decision of the respondents which as mentioned above, was based on various instruments. As a matter of fact, acceptance of Mr. Bhoot, the learned Advocate for the applicants arguments, would in fact, in my view violate the provisions of 2010 modified ACP by giving to the applicants jump over the next promotional post which they are actually entitled to. In view of these reasons, I find no merit in this O.A. and the same is hereby dismissed with no order as to costs.

(R.B. Malik)
Member (J)

