

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 322 OF 2015**

**DISTRICT: - AURANGABAD**

**Balasaheb S/o. Manoharrao Kulkarni,**

Age : 65 years, Occu. Nil (Pensioner),  
R/o: C/o Mrs. Sarika Milind Joshi,  
Flat No. 5-C-1, Sara Elite, Gut No. 171,  
Cidco, Waluj Mahanagar-1,  
Aurangabad.

**.. APPLICANT.**

**V E R S U S**

- 1) The State of Maharashtra**  
Through its Secretary  
(Command Area Development),  
Water Resources Department,  
M.S., Mantralaya, Mumbai-32.
- 2) The Superintending Engineer,**  
Minor Irrigation [Water  
Conservation] Circle,  
Aurangabad.
- 3) The Executive Engineer,**  
Minor Irrigation [Water  
Conservation] Division, Beed.
- 4) The Accounts Officer,**  
Pay Verification Unit,  
Aurangabad.

**.. RESPONDENTS.**

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**APPEARANCE :** Shri A.S. Deshmukh – learned Adv.  
for the applicant.

: Shri I.S. Thorat – learned Presenting  
Officer for the res.

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**CORAM : JUSTICE M.T. JOSHI, VICE CHAIRMAN**

**DATE : 2<sup>ND</sup> NOVEMBER, 2017**  
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**ORDER**

1. Heard Shri Avinash S. Deshmukh, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondents.

2. Aggrieved by the decision of the respondent No. 2 denying the applicant second time bound promotion and also withdrawal of the benefit of first time bound promotion granted earlier, the applicant has filed the present Original Application.

3. The submissions from both the sides would show that the applicant was appointed as a Typist on 16.02.1973 with the earlier "Irrigation Department", which is now renamed as "Water Conservation Department". He was granted first time bound promotion according to scheme introduced on 8<sup>th</sup> June, 1995, on 7<sup>th</sup> February, 1998 with retrospective effect from 1<sup>st</sup> October, 1995. He was superannuated on 31<sup>st</sup> August, 2008. Another G.R.

dated 1<sup>st</sup> April, 2010 excluded employees who had retired between 1<sup>st</sup> October, 2006 and 31<sup>st</sup> March, 2010 from grant of second time bound promotion. The applicant, therefore, along with other similarly situated employees had filed O.A. bearing No. 560/2011 in the Maharashtra Administrative Tribunal. The said G.R. was quashed by the Principal Seat of this Tribunal at Mumbai in the said O.A. vide order dated 22<sup>nd</sup> April, 2014. Eventually the case of the applicant came for consideration for grant of the benefit of second time bound promotion, before the respondent No. 2.

4. At this time of considering the case of the present applicant, the respondent No. 2 has found that in fact, the present applicant was not eligible for grant of even first benefit also on the ground that the present applicant had not passed the departmental examination and further the present applicant had already refused to have promotion in the cadre of clerk / in the administrative cadre vide request letter dated 8<sup>th</sup> October, 1985. Therefore, not only the second time bound promotion was refused, but the

first time bound promotion was revoked by these two impugned letters dated 13<sup>th</sup> March, 2015 (Annexures 'A-9' & 'A-10). Hence, the present Original Application.

5. The applicant submits that according to the rules, he was exempted from passing the departmental examination. Further vide the letter in dispute he merely refused for working in clerical / administrative cadre and did not refuse to have any promotion and, therefore, both the orders issued by respondent No. 2 are illegal.

6. According to the respondents, the applicant failed not only fulfilling the criteria of passing departmental examination, but even he had earlier refused to have promotion as detailed supra and, therefore, the first time bound promotion could not have been granted to him. As first time bound promotion was granted under mistake, the same is only rectified by the impugned directions and, therefore, the present Original Application deserves to be dismissed.

7. Upon hearing both the sides, it is clear from tone and tenor of the pleadings of the application and also contents

of the letter of the present applicant dated 8<sup>th</sup> October, 1985, that the present applicant shown his willingness to be remained in typist cadre and refused “promotion in the promotional post available in clerical cadre” [Exh. ‘R-1 Collectively, page-103]. The applicant has not placed reliance on any rules to show that the certain promotional posts in the typist cadre were available. The time bound promotion was granted to him in the equivalent to the pay scale in clerical cadre (Exh. ‘R-1’ Collectively, page-102]. Therefore, the interpretation of the letter as given by the applicant during arguments will have to be forthrightly rejected.

8. The impugned orders, therefore, cannot be faulted with.

9. It is however, to be noted that first time bound promotion was granted to the present applicant on 7<sup>th</sup> February, 1998 with retrospective effect from 1<sup>st</sup> October, 1995. The present applicant was also thereafter suitably granted pay scale. He has been superannuated on 31<sup>st</sup> August, 2008. Later on he filed O.A. with the Principal

Seat of this Tribunal at Mumbai as detailed supra. The decision passed thereon had woken up the respondent No. 2, which led to rectification of the mistake on 13<sup>th</sup> March, 2015. Naturally the recovery is also directed.

10. First time bound promotion was granted to the present applicant for which he cannot be faulted for making any false representation. He has retired long back i.e. on 31<sup>st</sup> August, 2008. The recovery, therefore, cannot be directed and even first time bound promotion granted to him long back cannot be now revoked. It would entail into recovery from the pension. In that view of the matter, the following order: -

### **ORDER**

- i) The present Original Application is partly allowed.
- ii) The order of the respondent No. 2 dated 13<sup>th</sup> March, 2015 revoking first time bound promotion is hereby quashed and set aside.
- iii) It is hereby directed that the applicant shall continue to get the benefit of first time bound promotion.

iv) The present Original Application is dismissed as regards the second communication dated 13<sup>th</sup> March, 2015 where under second time bound promotion was refused to the applicant.

v) Accordingly, the present Original Application stands disposed of without any order as to costs.

**VICE CHAIRMAN**

O.A.NO.322-2015(SB)-HDD-2017