

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 503 OF 2022

(Subject:- Cancellation of Benefits)

DISTRICT:-AURANGABAD

Kailas Ramdas Walekar,)
Age – 54 years, Occu. Service,)
R/o. Bharatnagar,)
Garkheda Parisar, Aurangabad.) **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through: The Secretary,)
Jalsampada Department,)
Mantralaya, Mumbai-32.)
 2. **The Chief Engineer,**)
Mechanical, Jalsampada Division,)
Nasik.)
 3. **The Superintending Engineer,**)
Mechanical Circle, Kolhapur,)
Varna Bhavan, Tarabai Park,)
Kolhapur-03.)
 4. **The Superintending Engineer,**)
Mechanical Circle, Nanded.)
 5. **The Executive Engineer,**)
Mechanical Division No. 2,)
Opposite Hedgevar Hospital,)
Aurangabad.)
 6. **The Sub-Divisional Engineer,**)
Mechanical, Karmashala Sub-Division,)
Aurangabad.) **RESPONDENTS**
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APPEARANCE : Shri K.B. Jadhav, learned Counsel
for the applicant.
: Shri N.U. Yadav, learned Presenting
Officer for the respondent authorities.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

RESERVED ON : **15.12.2023.**

PRONOUNCED ON : **04.01.2024.**

O R D E R

Heard Shri K.B. Jadhav, learned counsel for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondent authorities.

2. By this Original Application, the applicant is challenging the impugned communication/letter dated 02.04.2018 (Annexure 'A-9') issued by respondent No.3 thereby rejected the request of the applicant for cancellation of the order dated 06.12.2008 (Annexure 'A-3') issued by the Executive Engineer, Mechanical Division, Tilarinagar, Head Office, Kolhapur. The applicant is seeking direction to consider his request for cancellation of benefits of the designation and pay scale as per work for the post of Karkoon which was granted to him by order dated 06.12.2008.

3. Brief facts giving rise to the Original Application are as follows:-

(i) The applicant was initially appointed on 29.12.1988 with the respondents on daily wages. Thereafter, he was appointed on Converted Regular Temporary Establishment (hereinafter referred to as 'C.R.T.E.') as Helper. He was granted first time bound promotional pay scale on 31.07.2006.

(ii) According to the applicant while working on C.R.T.E., State Government issued the G.R. dated 29.09.2003 thereby granted the pay scale and designation as per work of the employees. By order dated 06.12.2008 the office of respondent No.3 granted the designation and pay scale of Karkoon post of Rs. 3050-75-3950-85-4590 to the applicant with effect from 18.03.2008. The copy of said order dated 06.12.2008 is marked as Annexure 'A-3'.

(iii) Thereafter the applicant was transferred from Kolhapur Division to Aurangabad Division in the month of September, 2010 and posted at Sub-Division, Jalna. At the request of the applicant, the respondent No.5 issued letter dated 05.05.2017 to respondent No.4 and requested therein

to cancel the pay scale and designation as Karkoon of the applicant. The respondent No.5 had recommended the case of the applicant, however, the said proposal was returned to the respondent No.5 with the direction to submit the said proposal to the respondent No.3 'Kolhapur' Division. Accordingly, the respondent No.5 has submitted the proposal dated 28.07.2017 to respondent No.3 requested therein to cancel the post of Karkoon, designation and pay scale which was given to the applicant as per work. The said proposal dated 28.07.2017 is marked as Annexure 'A-5'.

(iv) On 28.12.2017 the applicant has submitted detailed application to respondent No.3 and requested that he was granted higher pay scale on completion of 12 years' service on 29.12.2005. Thereafter, in the year 2008 he was granted pay scale and designation of Karkoon as per work, but pay scale was not increased. Therefore, he has not received any financial benefits of Karkoon post.

(v) By impugned order dated 02.04.2018 the respondent No.3 has rejected the request of the applicant for cancellation of benefits of Karkoon post on the ground that after grant of benefits, the said post will be abolished automatically as per paragraph No. 4 of the G.R. dated

29.09.2003 and as such, as per order No. 657 of the year 2008 cannot be cancelled. The said impugned order dated 02.04.2018 is marked as Annexure 'A-9'. Hence, this Original Application.

4. Learned counsel for the applicant submits that the applicant will not be entitled for second A.C.P.S. due to the post of Karkoon given to him and secondly due to the said Karkoon post he will be retired on completion of age of 58 years and if his benefits are cancelled then he will be entitled to continue in service till completion of 60 years of age on the post of Helper.

5. Learned counsel for the applicant submits that the respondent No.4 in respect of the similarly situated employees had cancelled the designation and pay scale of Karkoon post of 22 employees, however, the respondent No.3 has not considered similar request of the applicant.

6. Learned counsel for the applicant further submits that the applicant though working on the post of Karkoon has never received any additional financial benefits of the said post as there is no difference on his salary due to designation and pay scale of Karkoon post. Learned counsel for the

applicant submits that even the case of the applicant is positively recommended by the respondent No.5 and even though the Nanded Division has granted the benefits to such employees, the respondent No.3 has not considered the request and rejected the application by impugned order dated 02.04.2018. Learned counsel for the applicant submits that the impugned order is passed without application of mind and the same is arbitrary, irrational and illogical.

7. Learned P.O. has submitted the affidavit in reply on behalf of respondent Nos. 1 to 6. Learned P.O. submits that the applicant was brought on C.R.T.E. on 29.12.1993 as per Kalelkar Settlement on supernumerary posts as a Helper and thereafter, he was granted the pay scale as per work since 18.03.2008. So also, as per the G.R. dated 29.09.2003, the applicant was granted the revised pay scale as per work.

8. Learned P.O. submits that the applicant was granted pay scale and designation as Karkoon post while he was working at the establishment of respondent No. 3 i.e. Superintending Engineer, Mechanical Circler, Kolhapur. Therefore, though the respondent No.5 issued letter dated 05.05.2017 addressed to respondent No.4 and requested to

cancel the pay scale and designation as Karkoon of the applicant in terms of the request application of the applicant, the respondent No.4 has directed the respondent No.5 to submit the said proposal of the applicant to respondent No.3. Accordingly, the said proposal was sent to respondent No.3 on 28.07.2017.

9. Learned P.O. submits that in terms of order of the Superintending Engineer, Mechanical Circle, Nanded dated 15.01.2011, the pay scale of 22 employees was cancelled and they were accommodated in their original posts. It is submitted that Kolhapur Division has not passed any such order and in view of same no discriminatory treatment was given to the applicant. Learned P.O. submits that even though the Nanded division has passed the said order in favour of the similarly situated persons like applicant, the same is against the mandate of the G.R. dated 29.09.2003 issued by Public Works Department more specifically clause No. 4, wherein it is clearly mentioned that appropriate changes should be made in the pay scale of the post and the pay scale of the post to which the concerned employees have been transferred while converting the pay scale according to the designation and designation as per the work and then the

post would remain on the C.R.T.E. without being taken in the regular category and that the said supernumerary posts held by him earlier had automatically got lapsed as soon as the benefits “ designation as per work and pay as per the designation” is accepted by the applicant. The applicant had accepted the said benefits since 2008.

10. Learned P.O. submits that furthermore the Superintending Engineer, Mechanical Circle, Nanded has passed the said orders in the year 2011 in favour of similarly situation persons in view of fact that those employees have immediately made references in the year 2009 and 2010 itself. However, the applicant has approached belatedly in the year 2017 and that too after availing the said benefits. Learned P.O. submits that the applicant is raising this issue at the fag end of his service in order to get the benefit of increase in the period of attending age of superannuation from 58 to 60 years. Thus, the claim of the applicant is not acceptable and deserves to be rejected being non-est.

11. Learned P.O. submits that if the claim of the present applicant is to be considered then number of similarly situated employees may approach to this Tribunal

for the same relief treating the same as fresh cause of action and it will give rise to increase in financial burden of Government exchequer. Learned P.O. submits that this Original Application liable to be dismissed as the applicant is not entitled for any relief.

12. I find no substance in the Original Application. The Government by G.R. dated 29.09.2003 particularly paragraph No. 4 unambiguously and clearly stated the designation and pay scale as per work and that thereafter the original post held by such an employees would be lapsed. In view of same, I do not find any cause of action in favour of the applicant. The applicant has accepted the said pay scale and designation voluntarily even though there is no difference as such between the pay scales. However, it cannot be ignored that the applicant had enjoyed designation for such a long period of 2008 to 2017. I find much substance in the submissions made on behalf of the respondents that the applicant has approached to this Tribunal with ulterior motive to get the benefit of increase in the age of retirement on superannuation from 58 to 60 years.

13. Learned counsel for the applicant vehemently submitted about the said orders passed in favour of similarly

situated employees by respondent No.4. It appears that the said order passed by the respondent No.4 is not in accordance with the G.R. dated 29.09.2003 more particularly clause No. 4 of the said G.R. In view of the same, such an inappropriate, incorrect and illegal order cannot be considered as precedent for granting the similar benefits to the present applicant.

14. In the result I find no substance in the Original Application and the same is liable to be dismissed. Hence, the following order:-

ORDER

- (A) The Original Application No. 503 of 2022 is hereby dismissed.
- (B) In the circumstances, there shall be no order as to costs.
- (C) Accordingly, the Original Application stands disposed of.

MEMBER (J)

Place:-Aurangabad

Date : 04.01.2024

SAS O.A. 503/2022 (S.B.) VKJ Cancellation of benefits.