

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 521 OF 2020**

(Subject:- Benefit of G.R./ Revise Pay/ Modified Assured Career Advancement Scheme)

**DISTRICT:-AURANGABAD**

**Laxman Baburao Jadhav,** )  
Age : 47 yrs. Occ. Service as Senior Clerk, )  
R/o House No. 134, Jijamata Colony, )  
XIII Scheme, Jai Bhavani Nagar, )  
CIDCO N-4, Aurangabad. ) **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra** )  
Through the Secretary, )  
Marathi Language Department, )  
8<sup>th</sup> Floor, New Administrative Building, )  
Madam Kama Marg, Hutatma Rajguru )  
Chowk, Mantralaya, Mumbai 400 032. )
2. **The Director of Languages,** )  
Administrative Building, )  
5<sup>th</sup> Floor, Near Dr. Ambedkar Udyan, )  
Govt. Colony, Bandra (East), )  
Mumbai – 400 051. ) **RESPONDENTS**

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**APPEARANCE** : Shri Ajay S. Deshpande, learned  
Counsel for the applicant.  
: Smt. M.S. Patni, learned Presenting  
Officer for the respondent authorities.

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

**RESERVED ON** : **18.01.2024.**

**PRONOUNCED ON** : **26.02.2024**

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## **ORDER**

Heard Shri Ajay S. Deshpande, learned counsel for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondent authorities.

2. By this Original Application the applicant is seeking quashing and setting aside the communications of the respondents at Annexure 'A-7' dated 10.10.2019 and at Annexure 'A-9' dated 11.09.2020, declining thereby to consider the claim of the applicant for extending him the benefits under Modified Assured Career Advancement Scheme and to extend the same to the applicant from May 2012 and accordingly, to revise his pay and make payment of arrears. The applicant is also seeking direction to extend the benefits of revised Career Advancement Scheme in terms of modified scheme promulgated vide G.R. dated 20.02.2019 (Annexure 'A-5') and to extend the benefits thereunder on and from May 2020, along with applicant's other counterparts.

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

(i) In May 2000, the applicant has joined the service as Clerk-cum-Typist on the establishment of respondent No.2 and he was posted from time to time at various places cross the State including Aurangabad.

(ii) It is the further case of the applicant that on 06.05.2004, the applicant was implicated in a criminal case accusing him of having indulged in malpractices while conducting Marathi Short Hand Examination which was held on 30.04.2004. He was also placed under suspension by order dated 01.05.2004. Further the departmental enquiry came to be initiated against him. The initiation of the departmental enquiry was pursuant to the charge sheet dated 14.01.2005.

(iii) It is the further case of the applicant that though he was acquitted by Judicial Magistrate First Class, Aurangabad, it was carried out in appeal before the learned Additional Sessions Judge-5, Aurangabad, in which the applicant and all others have been acquitted by order and judgment dated 30.03.2012 and appeal against the acquittal

filed by the State being Criminal Application No. 3766/2012 is pending for adjudication before the Hon'ble High Court of Bombay, Bench at Aurangabad.

(iv) It is the case of the applicant that the suspension of the applicant came to be revoked only after the learned Additional Sessions Judge-5, Aurangabad acquitted the applicant by allowing his Criminal Appeal No. 48 of 2011 and the applicant resumed the duties on 01.09.2012.

(v) It is the further case of the applicant that a full-fledged enquiry was conducted and the Enquiry Officer has submitted his report on 15.06.2013 holding that the charges leveled against the applicant are partially proved. In view of said findings, the disciplinary authority has imposed the punishment of stoppage of one increment, without affecting the future increments, for a period of one year.

(vi) It is the case of the applicant that the Government has been pleased to regularize his suspension period and his entire period of suspension from 01.05.2004 to 31.08.2012 has been ordered to be treated as duty period for all the purposes and 80% of pay and allowances during the period of

suspension have been ordered to be paid to the applicant by order dated 14.03.2018.

(vii) The applicant further contends that he became eligible to receive the benefits under Time Scale Promotion Scheme upon rendering 12 years of service from June, 2012. However, presumably because of pending proceedings, the said benefits were not extended to him from July, 2012. Eventually, the applicant came to be promoted as Senior Clerk by order dated 17.03.2018 (Annexure 'A-1').

(viii) The applicant further contends that in view of modification of the said scheme, for extending the benefits under Time Scale Promotion Scheme, the applicant having been appointed in May 2000, he now becomes eligible not only for first benefit under Time Scale Promotion Scheme but also second benefit under the said scheme, in terms of G.R. dated 02.03.2019 (Annexure 'A-5'). The first benefit of Time Scale Promotion would now required to be extended from June 2010 and the second benefit from June 2020.

(ix) The applicant has continued to make the representation to respondent No.2 for extending him the benefit of Time Scale Promotion Scheme. His first representation is dated

07.09.2017 and he submitted another representation on 28.05.2018 and even thereafter. The respondent No.2 under communication dated 10.10.2019 instructed the Head of the Office in which he has been working that the request of the applicant for extending him first benefit under Time Scale Promotion Scheme cannot be considered in view of the conclusions in the departmental enquiry and also due to the fact that the appeal against the acquittal is pending for adjudication before the Hon'ble High Court of Bombay, Bench at Aurangabad. The said communication is marked as Annexure 'A-7'. The applicant has immediately thereafter submitted representations to respondent No.1 on 24.12.2019 and 20.03.2020 respectively. However, his representations at Annexure 'A-8' have been turned down by the respondent No.1 under the communication dated 11.09.2020 (Annexure 'A-9').Hence, this Original Application.

4. Learned counsel for the applicant submits that once respondents regularized the suspension period of the applicant, although restricted his pay and allowances to the extent of 80% to the suspension period, there is neither any propriety nor justification in declining to extend the benefits to applicant under Career Advancement Scheme.

5. Learned counsel for the applicant has brought to the notice of this Tribunal G.R. dated 15.12.2017 wherein the procedure is prescribed to grant of promotion to the Government servant against whom the departmental or criminal proceedings are pending and such a Government servant is suspended. Learned counsel for the applicant submits that even after punishment is imposed which is stoppage of one increment for one or more years, the procedure is prescribed for grant of promotional benefits. Learned counsel for the applicant submits that the said procedure is not followed.

6. Learned counsel for the applicant submits that the applicant has not been extended the first benefit under Time Scale Promotion Scheme, which was due in May 2012, the applicant has been sanctioned second benefit under the said scheme. Incidentally the applicant has also been further granted the functional promotion to the post of Superintendent by order dated 01.11.2023. Learned counsel for the applicant submits that the first functional promotion as Senior Clerk as well as second functional promotion as Superintendent were granted and at that time the pendency

of the criminal appeal against the acquittal had not come in the way of the applicant, thus the same cannot be a reason in granting notional promotion under the time scale promotion scheme.

7. Learned counsel for the applicant submits that the applicant was remained under suspension for more than 8 years which itself is unjust and illegal. However, once the said prolonged suspension period is decided to be treated as duty period for all the purposes, by restricting his pay and allowances during the said period of suspension to the extent of 80 % benefit under Career Advancement Scheme, benefits under Career Advancement Scheme need to be extended to the applicant on completion of 12 years of service. There is absolutely no justification in depriving applicant the benefits of Time Scale Promotion Scheme which he entitled from May 2012. Learned counsel for the applicant submits that because the applicant was under suspension, denial of the benefits under Time Scale Promotion Scheme cannot be countenanced. Notwithstanding pendency of the criminal appeal filed by the State against the order of acquittal, similarly the applicant is also entitled for the second benefit



under Career Advancement Scheme. Learned counsel for the applicant submits this Original Application thus deserves to be allowed in terms of prayer clauses and appropriate orders may be issued directing the respondents to extend the benefit of Career Advancement Scheme as prayed by the applicant.

8. Learned Presenting Officer based upon the affidavit in reply filed by respondent Nos. 1 and 2 submits that the applicant was delinquent in changing the answer sheets of the Marathi Shorthand Examination on 30.04.2004 at Aurangabad Centre. Consequently, he was suspended from 01.05.2004 to 31.08.2012 in terms of the provisions of Rule 4, Sub Rule 2(a) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred as M.C.S. "Rules, 1979"). Further the charge sheet was also served as per the memorandum dated 14.01.2005 on the applicant to initiate the disciplinary action as per Rules 8 and 12 of the said Rules, 1979. The Divisional Enquiry Officer has completed the enquiry and submitted the report to the office on 29.06.2013.

9. Learned P.O. submits that the period of suspension of the applicant was treated as service period for

all the purposes and the Government has approved to allow the allowances upto the limit of 80% of the salary and allowance in the period of suspension. Learned P.O. further submits that since the applicant has violated Rule 3 (1) (a) (two) and (three) of the said Rules, 1979, as a punitive action under Rule 5(4), the punishment was imposed upon him to withhold one increment of one year without permanent effect and the said order was in force till June 2015.

10. Learned P.O. submits that in view of above, the Confidential Reports of the applicant were not written during the suspension period. Consequently the applicant has been considered for promotion after July 2015 and actual promotion was given to him from 17.03.2018. Learned P.O. submits that as the applicant has not done office work during the period of suspension, the period of suspension cannot be counted as service period for the purpose of Assured Career Progression Scheme under the revised scheme. The same has been decided in the minutes of meeting held on 08.07.2011 (Annexure 'R-1').

11. Learned P.O. submits that as per General Administration Department, Government Resolution dated

15.12.2017, the benefits of Assured Career Progression Scheme cannot be given. Learned P.O. submits that the applicant's services during the period of suspension will be treated as service period only for the purpose of retirement pay and accordingly he will be entitled to retirement benefits. Learned P.O. submits that there is no substance in the Original Application and the same is liable to be dismissed.

12. I have carefully considered the pleadings of both the parties and the annexures. There is no justifiable reason to deny the applicant the benefits of Career Advancement Scheme. The prolonged suspension period of the applicant from 01.05.2004 to 31.08.2012 itself is illegal and without any justification. However, the entire suspension period of the applicant has also been treated as a duty period with only a rider that the allowances to be paid to prolonged suspension period have been restricted to 80%. I agree to the submissions made on behalf of the applicant that the applicant cannot be faulted and the reasons cannot be attributed to him for non-availability of Confidential Reports during the said period of suspension. Further the Government Resolution dated 15.12.2017 prescribes the

procedure for grant of promotion eventually wherein if the departmental enquiry and/or criminal proceedings are pending against the Government servant and going to the same he has been suspended, in addition to this, if such Government servant facing the departmental enquiry and/or criminal proceedings happened to the acquittal or inflicted to the punishment, the procedure is also prescribed for grant of promotion to the said Government servant in the said G.R. Further in the minutes of meeting (Annexure 'R-1') submitted on behalf of the respondent Nos. 1 & 2 , I do not find any reference to the said G.R. nor there is any reference as to why the said benefits were not extended to the applicant from the date for which he has repeatedly submitted the representation after his acquittal was recorded by Sessions Court. It is necessary to mention here that even the functional promotions of the applicant were considered and granted though the appeal against the acquittal is pending.

13. In terms of the said G.R. dated 15.12.2017 the procedure is prescribed as to how to write the Confidential Reports of such a Government servant who is under suspension and facing departmental enquiry and /or criminal

proceedings. However, admittedly the said procedure has not been followed by the respondents. Further the procedure is also prescribed for grant of promotion to such Government servant even he has been punished in the departmental enquiry proceedings or in the criminal proceedings as the case may. I find no reference either the procedure is followed or as to why the said benefits were granted to the applicant from date when he came to be acquitted by the Sessions Court and not from the earlier date.

14. The applicant has joined the service in May, 2000. There is no dispute that he has passed the prescribed departmental examination in due course without any delay. His entire service record appears to be unblemished except the solitary incidence of alleged mass copying wherein he allegedly helped those who were indulged in copying. In a criminal case, although the Trial Court has convicted him by judgment and order dated 18.02.2011, in appeal he has been acquitted of the charges by judgment and order dated 30.03.2012. So far as the departmental proceedings are concerned, the applicant has been inflicted the punishment of stoppage of one increment without cumulative effect. The

applicant was remained under suspension for prolonged period of more than 8 years and the punishment inflicted on him in the departmental proceedings is also partially proved. The first benefit under Time Bound Promotion Scheme became due to the applicant in May 2012, however, the said has not been extended to him. He came to be promoted as a Senior Clerk by order dated 17.03.2018 (Functional Promotion). So far as the modification in the scheme by G.R. dated 02.03.2019 is concerned, the Time Bound Promotion Scheme has been made applicable after 10, 20 and 30. Accordingly the applicant has been held eligible for the second benefit thereunder w.e.f. May 2020.

15. Thus considering the entire aspect of the case I am of the considered opinion that the applicant is entitled for the benefits under Modified Assured Career Advancement Scheme from May 2012 and he is entitled for the benefits of the said scheme in terms of the modified scheme promulgated by G.R. dated 20.02.2019. Hence, the following order:-

**ORDER**

(A) The Original Application No. 521 of 2020 is allowed.

- (B) The impugned communications of the respondents at Annexure A-7 dated 10.10.2019 and at Annexure A-9 dated 11.09.2020 are hereby quashed and set aside.
- (C) The respondents are hereby directed to extend the benefits to the applicant under Modified Assured Career Advancement Scheme from May 2012 and accordingly to revise his pay and make the payment of arrears thereof.
- (D) The applicant is entitled for the benefits of revised Career Advancement Scheme in terms of the modified scheme promulgated by G.R. dated 20.02.2019.
- (E) In the circumstances there shall be no order as to costs.
- (F) The Original Application stands disposed of.

**MEMBER (J)**

**Place:-Aurangabad**

**Date : 26.02.2024**

SAS O.A. 521/2020 (S.B.) VKJ Benefit of G.R./Revise Pay.