

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 113/ 2019 (S.B.)

Diwakar Wasudeorao Dehankar,
Aged about 57 years, Occ. Service,
R/o Plot No. 88-A, In front of State Bank of India,
Jawahar Nagar, Manewada Road,
Nagpur-440 024.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Public Works,
Mantralaya, Mumbai- 32.
- 2) Chief Engineer, P.W.D. Bhavan,
P.W.D. Divisional Office, Amravati.
- 3) Superintendent Engineer,
Public Works Department,
Amravati.
- 4) Executive Engineer,
Marg Prakalp Division,
Amravati.

Respondents

Shri N.R.Saboo, Id. Advocate for the applicant.

Shri S.A.Sainis, Id. P.O. for the Respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 20th July, 2023.

Judgment is pronounced on 11th August, 2023.

Heard Shri N.R.Saboo, ld. counsel for the applicant and Shri S.A.Sainis, ld. P.O. for the Respondents.

2. Facts leading to this O.A. are as follows. For grant of deemed date of promotion to the post of Deputy Engineer the applicant had filed O.A. No. 843/2014 which was allowed by granting deemed date of promotion i.e. 05.09.2001, and consequential benefits by judgment dated 28.02.2018 (A-1). The applicant was actually promoted to the post of Deputy Engineer on 27.07.2004. By order / G.R. dated 30.10.2018 (A-3) claim of the applicant to grant pay scale of Deputy Engineer w.e.f. 05.09.2001 was rejected and he was informed that said pay scale would be payable from the date of actual promotion i.e. 27.07.2004 as per Rule 32 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. The applicant was placed under suspension on 24.11.2011 in contemplation of initiation of departmental enquiry and was reinstated on 05.06.2012 (A-R-3). On 09.01.2014 the applicant completed service of 12 years as Deputy Engineer and became eligible for grant of next pay scale as per Assured Progress Scheme. Departmental enquiry initiated against the applicant by chargesheet dated 12.04.2012 ended in his complete exoneration by order dated 08.12.2020 (at PP. 76 to 79). However, no specific order was passed about how the period of suspension was to be treated. The applicant was arrested in a case under the Prevention of Corruption Act. On account of

said arrest he was under suspension from 29.10.2015 to 24.03.2017. On this count his increments which were due on 01.07.2016 and 01.07.2017 were withheld in contravention of Rule 36 of the Maharashtra Civil Services (Pay) Rules, 1981. These grievances were put forth by the applicant before the authorities but to no avail. Hence, this O.A..

3. Respondent no. 2 has resisted the O.A. on the following grounds:-

A. Though deemed date of promotion to the post of Deputy Engineer was granted i.e. 05.09.2001, the applicant was actually promoted on 27.07.2004. In view of Rule 32 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 the applicant would get the pay scale of Deputy Engineer from the actual date of promotion as Deputy Engineer.

B. G.R. dated 15.12.2017 (A-R-1) provides for grant of ad-hoc promotion even during the pendency of judicial or departmental proceeding. However, there is no analogous provision for granting benefit of Assured Progress Scheme on ad-hoc basis during pendency of either judicial or departmental proceeding.

C. As per G.R. dated 23.05.2014 increments which fall within the period of suspension cannot be granted.

4. First contention of the applicant regarding his entitlement to get the pay scale of Deputy Engineer w.e.f. 05.09.2001 which is the deemed date of promotion granted by this Bench, deserves to be rejected in view of Rule 32 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 which reads as under:-

“32. How the date of promotion is determined.

The promotion of a Government servant from a lower to a higher post, his duties remaining the same, takes effect from the date on which the vacancy occurs, unless it is otherwise ordered. But when the promotion involves the assumption of a new post with enlarged responsibilities, the higher pay is admissible only from the date on which the duties of the new post are taken.” (Emphasis supplied)

5. Second contention of the applicant is that on completion of service of 12 years as Deputy Engineer, starting point of this period of 12 years being the deemed date of promotion i.e. 05.09.2001, he became entitled to next pay scale in view of G.R. dated 01.04.2010 (at PP. 64 to 67). Contention of the respondents, on the other hand, is that there is no provision to grant benefit of Assured Progress Scheme on ad-hoc basis during pendency of either judicial or departmental enquiry though in G.R. dated 15.12.2017 there is a provision to grant promotion on ad-hoc basis during pendency of judicial or departmental proceeding and a conjoint consideration of these factors shall suffice to reject aforesaid

contention of the applicant. According to the applicant, when he became entitled to this benefit of Assured Progress Scheme G.R. dated 01.04.2010 was holding the field and at any rate reliance sought to be placed by the respondents on G.R. dated 15.12.2017 is misconceived. There is merit in this submission. Clearly the matter would be governed by G.R. dated 01.04.2010. Relevant portion of G.R. dated 01.04.2010 reads as under:-

“(क) योजनेचा दूसरा लाभ :

(१) पहिल्या लाभानंतर १२ वर्षांची नियमित सेवा पूर्ण केलेल्या कर्मचा-यास पदोन्नतीच्या पदाची वेतनसंरचना दूसरा लाभ म्हणून मंजूर करण्यात येईल. तथापि, या योजनेतील पहिला लाभ म्हणून ज्या पदाची वेतनसंरचना मंजूर करण्यात आली आहे त्या पदाला विवक्षित सेवाकालावधीनंतर, त्या पदाच्या कर्तव्ये व जबाबदात वाढ न होता, अकार्यात्मक वा तत्सम उच्च वेतनसंरचना मंजूर करण्यात येत असेल तर ती अकार्यात्मक वा तत्सम उच्च वेतनसंरचना दुसरा लाभ म्हणून मंजूर करण्यात येईल.”

I have referred to order dated 08.12.2020 whereby the applicant was exonerated of all the charges laid by charge-sheet dated 12.04.2012. However, no order appears to have been passed as contemplated under Rule 72 of The Maharashtra Civil Services (Joining time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981. Since the applicant was exonerated there would be no escape from the conclusion that his suspension was wholly unjustified and, therefore, period of suspension will have to be treated as duty period. Once this conclusion is reached, technical impediment in

granting benefit of Assured Progress Scheme to the applicant would stand removed.

6. Third contention of the applicant is in respect of increments falling due within the period of suspension from 29.10.2015 to 24.03.2017. The respondents have contended that this claim is not admissible in view of G.R. dated 23.05.2014 which reads as under:-

“शासन निर्णय-

ज्या कर्मचा-याविरुद्ध शिस्तभंगाची किंवा न्यायालयीन कारवाई अंतिमरित्या पूर्ण होण्यापूर्वीच, निलंबनाची कारवाई मागे घेण्यात येऊन वा रद्द करण्यात येऊन त्यास शासन सेवेत पुनर्स्थापित करण्यात आल्यास, अशा शासकीय कर्मचा-याचे वेतन हे त्याच्या निलंबनाच्या लगतच्या दिवशी तो जेवढे वेतन घेत होता, तेवढ्याच वेतनावर निश्चिती करण्यात येईल, मात्र अशा प्रकारे निश्चित केलेले संबंधित कर्मचा-याचे वेतन हे त्याचा निलंबन कालावधी, भविष्यात ज्या प्रकारे नियमित होणार आहे, त्याबाबतच्या निर्णयाच्या अधीन असेल.”

According to the applicant, his claim for releasing increments falling due within suspension period would be governed by G.R. dated 08.09.2016 (A-12) which *inter alia* refers to G.R. dated 23.05.2014, and reads as under:-

“शासन निर्णय-

ज्या कर्मचा-याविरुद्ध शिस्तभंगाची किंवा न्यायालयीन कारवाई अंतिमरित्या पूर्ण होण्यापूर्वीच, निलंबनाची कारवाई मागे घेण्यात येऊन वा रद्द करण्यात येऊन त्यास शासन सेवेत पुनर्स्थापित करण्यात आल्यास, अशा पुनर्स्थापित शासकीय कर्मचाऱ्यास, शासन अधिसूचना वित्त विभाग दि. २२.०४.२००९ मधील नियम क्र. १० मधील तरतूदीनुसार पुनर्स्थापनेनंतर येणाऱ्या दि. १ जुलै या तारखेपूर्वी ६ महिने अथवा अधिक एवढी सलग सेवा झाल्यानंतर त्याच्या निलंबनाच्या लगतच्या दिवशी तो जेवढे वेतन घेत होता, तेवढ्याच वेतनावर आधारित तथापि सदर

अधिसूचनेतील नियम क्र.९ मध्ये विहित केलेल्या दराने, वार्षिक वेतनवाढ क्रमप्राप्त म्हणून अनुज्ञेय ठरेल. तसेच त्यानंतरच्या तथापि निलंबन कालावधी नियमित होईपर्यंतच्या कालावधीतील वेतनवाढी त्याला उपरोक्त नियम क्र. ९ व १० मधील तरतुदीनुसार अनुज्ञेय ठरतील. तसेच त्याचा निलंबन कालावधी भविष्यात ज्याप्रकारे नियमित होईल त्यानुसार प्रकरणपरत्वे संबंधित कर्मचाऱ्यास सुधारित दराने वेतनवाढ / वेतनवाढी अनुज्ञेय ठरतील.”

Thus, the applicant would be entitled to increments falling due within suspension period as per G.R. dated 08.09.2016.

7. For the reasons discussed hereinabove the O.A. is partly allowed in the following terms:-

- A. Benefit of Assured Progress Scheme shall be extended to the applicant on completion of service of 12 years as Deputy Engineer starting point of this period of 12 years being the date of grant of deemed promotion i.e. 05.09.2001.
- B. His increments falling due within suspension period from 29.10.2015 to 24.03.2017 shall be released as per G.R. dated 08.09.2016.
- C. No order as to costs.

(Shri M.A.Lovekar)
Member (J)

Dated :- 11/08/2023.
aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 11/08/2023.
and pronounced on

Uploaded on : 17/08/2023.