

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 393/2022 (S.B.)

Shrikrushna Manikrao Belorkar,
Aged about 55 years,
Occ. Service, R/o Pundlik Baba Nagar,
Tower Line, Amravati - 444 604.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Secretary,
Department of Technical Education,
Mantralaya, Mumbai- 400 032.
- 2) The Joint Director,
Technical Education, Regional Office,
Government Polytechnic College Premises, Gadge Nagar,
Amravati.
- 3) Principal,
Government Engineering College, Kathora Naka,
Amravati.

Respondents

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

Shri M.I.Khan, Id. P.O. for the respondents.

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

JUDGMENT

Judgment is reserved on 02nd April, 2024.

Judgment is pronounced on 15th April, 2024.

Heard Shri N.R.Saboo, Id. counsel for the applicant and Shri
M.I.Khan, Id. P.O. for the Respondents.

2. Case of the applicant is as follows. The applicant joined the respondent department as Hamal on 01.09.1990. As per G.R. dated 08.06.1995 (A-1), considering the fact that he fulfilled all criteria, he should have been granted first time bound promotion on completion of service of 12 years as was done in the cases of similarly placed employees. By order dated 16.12.2015 (A-2) first time bound promotion was given to the applicant w.e.f. 01.09.2013. One Rajgure was promoted as Fitter Instructor in 2006 though he was junior to the applicant. Vide order dated 11.02.2015 the applicant was promoted not as Fitter but as Clerk. He made several representations for grant of first time bound promotion w.e.f. 01.09.2002, and for grant of deemed date of promotion. As per G.Rs. dated 20.07.2001 (A-10) and 02.07.2019 (A-11) benefits of second and third time bound promotion should be extended to him.

3. Stand of the respondents is as follows. A.C.Rs. of the applicant were below "B" for the relevant period. Benefit of first time bound promotion was extended to those whose A.C.Rs. were above "B". Meetings of D.P.C. were held on 30.04.2012 and 13.09.2012. In the meeting of D.P.C. held on 03.12.2015 A.C.Rs. of the applicant for previous five years were found to be "B+". Therefore, benefit of first time bound promotion was extended to him w.e.f. 01.09.2013.

4. In his rejoinder the applicant has pleaded that no A.C.R. was communicated to him, as per G.R. dated 10.12.2015 (A-III) criterion of average grading of B+ is made not applicable to Group-D employees, and by letter dated 05.10.2023 (A-I) the applicant was informed under the R.T.I. Act as follows:-

प्रमाणित करण्यात येते की, श्री श्रीकृष्ण माणिकराव बेलोकर हे या संस्थेत सन 1990 ते 2001 या कालावधीत हमाल या पदावर कार्यरत होते. त्यांचे गोपनीय अहवाल धारीकेचे निरीक्षण केले असता सन 1990 ते 2001 या कालावधीतील कामकाजाचे सर्वसाधारण मुल्यमापनाबाबतची नोंद आढळून आलेली नाही.

According to the applicant, aforesaid letter dated 05.10.2023 falsifies stand of the respondents that for his failure to attain benchmark of B+ grant of time bound promotion to the applicant was deferred. There is merit in this submission. Assuming that the applicant had failed to attain such benchmark, these A.C.Rs. could not have been relied upon since the same were not communicated to the applicant. In support of this conclusion reliance may be placed on **Sukhdev Singh Vs. Union of India & Ors. 2013 ALL SCR 1617** wherein it is held:-

3. Subsequent to the above two decisions, in the case of Dev Dutt vs. Union of India and others (2008) 8 SCC 725 : [2008 (4) ALL MR 438 (S.C.)], this Court had an occasion to consider the question about the communication of the entry in the ACR of a public servant (other than military service). A two Judge Bench on elaborate and detailed consideration of the matter and also after taking into consideration the decision of this Court in U.P. Jal Nigam and principles of natural justice

exposed by this Court from time to time particularly in A.K. Praipak vs. Union of India (1969) 2 SCC 262; Maneka Gandhi vs. Union of India (1978) 1 SCC 248; Union of India vs. Tulsi Ram Patel (1985) 3 SCC 398; Canara Bank vs. V.K. Awasthy (2005) 6 SCC 321 and State of Maharashtra vs. Public Concern for Governance Trust (2007) 3 SCC 587 : [2007 (2) ALL MR 410 (S.C.): 2007 ALL SCR 867] concluded that every entry in the ACR of a public service must be communicated to him within a reasonable period whether it is poor, fair, average, good or very good entry. This is what this Court in paragraphs 17 & 18 of the report in Dev Dutt at page 733:

“In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways:-

(1) Had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future.

(2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi vs. Union of India (supra) that arbitrariness violates Article 14 of the Constitution.

Thus it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.”

5. The applicant has also relied on G.R. dated 10.12.2015 which states:-

प्रस्तावना -

शासन निर्णय वित्त विभाग दि.०५.०७.२०१० मधील परिच्छेद क्र. २(ड) (२) मधील तरतुदीनुसार सुधारित सेवांतर्गत आशवासित प्रगती योजनेचा दुसरा लाभ मंजूरीकरीता गोपनीय अहवालाची सरासरी ब+ (निश्चित चांगला) अशी विहित करण्यात आलेली आहे. तथापि, शासन निर्णय सामान्य प्रशासन विभाग दि.२६.०७.१९९४ अन्वये गट-ड मधील कर्मचाऱ्यांचे अहवाल लिहण्याची पध्दत सन-१९९४-१९९५ या वर्षापासून बंद करण्यात आली असून त्याऐवजी प्रत्येक कर्मचाऱ्यांसाठी वैयक्तिक नस्ती ठेवण्याबाबतची तरतुद करण्यात आली आहे. त्यामुळे गट-ड मधील कर्मचाऱ्यांकडून ब+ (निश्चित चांगला) या गोपनीय अहवाल सरासरीची पूर्तता होणे अशक्यप्राय असल्याचे निदर्शनास आले आहे. त्या पार्श्वभूमीवर शासन निर्णय वित्त विभाग दि.०५.०७.२०१० ला पुढील प्रमाणे शुध्दीपत्रक निर्गमित करण्यात येत आहे.

शुध्दीपत्रक -

सदर शासन निर्णय वित्त विभाग दिनांक ५.७.२०१० मधील परिच्छेद क्र. २(ड) (२) मधील

"मात्र, गोपनीय अहवालाची सरासरी प्रतवारी "ब+" (निश्चित चांगली) प्राप्त करणे आवश्यक राहिल"

याऐवजी

"मात्र, गोपनीय अहवालाची सरासरी प्रतवारी "ब+" (निश्चित चांगली) प्राप्त करणे आवश्यक राहिल. तथापि ही तरतूद गट-ड कर्मचाऱ्यांकरिता लागू राहणार नाही."

6. The applicant has further relied on order dated 07.11.2008 (A-II) which shows that record of the applicant containing assessment of his performance was destroyed pursuant thereto. All these circumstances taken together show that the ground on which grant of benefit of first time bound promotion was deferred in case of the

applicant cannot be sustained and contention of the applicant that he was entitled to get said benefit w.e.f. 01.09.2002 will have to be accepted. In the facts and circumstances of the case the respondents will have to be directed to consider entitlement of the applicant to get benefit of second and third time bound promotion in view of determination made by this Tribunal regarding his entitlement to first time bound promotion w.e.f. 01.09.2002. Hence, the order:-

O R D E R

The O.A. is allowed in the following terms:-

The applicant is held entitled to first time bound promotion w.e.f. 01.09.2002. The respondents are directed to consider his entitlement to second and third time bound promotion on the basis of this determination, and pay consequential monetary benefits to him, within four months from today. No order as to costs.

Member (J)

Dated :- 15/04/2024
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 : 15/04/2024
and pronounced on

Uploaded on : 16/04/2024