

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 555 of 2010**

Shri Shivbaran S/o Bhagwandin Gupta,  
Aged 57 years, Occ. Service,  
R/o plot no.1, Karve Nagar,  
Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
In the Ministry of Industry, Energy & Labour,  
Mantralaya, Mumbai-32 through its Secretary.
- 2) Director of Geology & Mining,  
Government of Maharashtra, Old Secretariat  
Building, Civil Lines, Nagpur.

**Respondents.**

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**Shri V.S. Kukday, Advocate for the applicant.**

**Shri P.N. Warjurkar, P.O. for the respondents.**

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**Coram :- Shri Shree Bhagwan,  
Member (A) and  
Shri A.D. Karanjkar, Member (J).**

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**JUDGMENT**

**Per : Anand Karanjkar Member (J).**  
**(Delivered on this 26<sup>th</sup> day of February, 2019)**

Heard Ms. R.V. Kukday, learned counsel holding for Shri V.S. Kukday, learned counsel for the applicant and Shri P.N. Warjurkar, learned P.O. for the respondents.

2. The applicant was appointed as Junior Geologist in the year 1977. In 1999 according to the applicant, the applicant was promoted as Assistant Geologist that post was upgraded as Geologist Class-I. The applicant came to be suspended on 02/11/2005 when he was serving at Nagpur vide order at Annex-A-1. The respondents did not issue charge sheet to the applicant or there was no decision for the revocation of the suspension, therefore, the O.A.228/2008 was filed by the applicant and the application was partly allowed and direction was given to the respondents to decide the representation dated 19/05/2008 made by the applicant vide at Annex-A-2.

3. The respondent no.1 passed the order Annex-A-3 and revoked the suspension. Thereafter the applicant made representation to the respondents to reinstate him with continuity in service. Accordingly, vide order at Annex-A-5 the applicant was reinstated in service at Chandrapur on 20/02/2009. The applicant had to join duty, but on 9/3/2009 there was some incident due to which the applicant was suffering from slip disk problem and he submitted application for leave. The applicant submitted applications for extension of leave and ultimately he joined on 7/12/2009. The applicant retired from the service on 31/10/2010 on attaining the age of superannuation.

4. It was grievance of the applicant that his leave applications were not decided, on the contrary show cause notice was issued to him why his leave applications should not be rejected. The applicant was directed to appear before the medical board, but the medical board was never constituted.

5. The second grievance of the applicant is that till his retirement he was working on the post of Geologist Class-I, but he was not paid the salary for that post. Even after retirement as the D.E. was pending provisional pension of the applicant was fixed, but it was not fixed as per the pay admissible to the post of Geologist, Class-I, but it was fixed as per the pay admissible to the post of Junior Geologist, Group-B.

6. It is submitted that the applicant filed O.A.23/2011 as his D.E. was not completed in time. It is submitted that direction was given in O.A.23/2011 to the respondents to complete the inquiry within a period of 180 days from 20/03/2014 and on failure of the respondents to complete the inquiry within 180 days from 20/03/2014, the applicant would stand exonerated from all the charges. It is now submitted that the inquiry was not completed within stipulated time, consequently as per the order in O.A.23/2011 the applicant stood exonerated. It is submission of the applicant that though the inquiry was closed as per the order passed in

O.A.23/2011, but no steps are taken by the respondents to decide what should be the nature of the suspension period. Under these circumstances the present application is filed by the applicant for issuing direction to the respondents to pay him full salary for the suspension period, to direct the respondents to sanction the leave applications and to direct the respondents to pay the arrears of salary as per the pay admissible to the post of Geologist class-I and accordingly fix the pension of the applicant along with other consequential benefits.

7. The application is opposed by the respondents. It is contention of the respondents that the applicant was never promoted on the post of Geologist, Class-I, but the promotion was for a temporary period and the applicant was continued to work on the promotional post till 7/6/2003. It is submitted that after 7/6/2003 the temporary promotion was not extended, consequently the applicant has no right to claim the post of Geologist, Class-I. The next submission is that though the Government did not issue the confirm promotion order or did not extend, the period of promotion order after 7/6/2003, in the official correspondence, the designation of the applicant was not changed and it was mentioned that the applicant was Geologist, Class-I, but it was not a fact, consequently the decision was taken by the Government to make correction in the

Government record to the effect that the applicant be designated as Junior Geologist, Group-B and not as Geologist, Class-I. It is submitted that now the departmental inquiry is closed as per the direction issued by this Bench in O.A.23/2011 and proposal is forwarded to the Government to take prompt decision regarding the suspension period of the applicant. It is further submitted that the leave applications of the applicant are granted and all benefits are paid to him. It is submitted that there is no substance in the case of the applicant that his promotion was confirmed and therefore there is no substance in this application.

8. We have heard the learned counsel for the applicant and learned P.O. At the time of hearing, the learned counsel for the applicant accepted that now the leave applications mentioned in Clause 2 of prayer clause are allowed, therefore, the dispute remains only regarding the claim of the applicant to the post of Geologist, Class-I and his salary during the suspension period.

9. During the course of argument the learned counsel for the applicant was unable to satisfy this Bench on which basis the applicant is claiming that he was regularly promoted on the post of Geologist, Class-I and it was confirm promotion. There is no document produced by the applicant to show that any order was passed by the Government to promote the applicant on the post of

Geologist, Class-I. On the contrary, the learned P.O. invited attention to the corrigendum dated 07/03/2014 issued by the Government of Maharashtra. It is mentioned in the corrigendum that the applicant was temporary promoted on a post which was to be filled by nomination and the period of the promotion was for 11 months and it was extended only till 7/6/2003. It is further mentioned that after 7/6/2003 the Government never extended the temporary promotion order, but due to inadvertence the designation of the applicant remained as Geologist, Class-I, consequently decision was taken by the Government that the designation of the applicant be changed as Junior Geologist, Group-B. In order to remove doubts, we directed the respondents to produce original service book of the applicant. Even after perusing the original service book, it seems that the applicant was never promoted on the post of Geologist, Class-I on permanent basis. It seems that till filling of the post by nominated candidates, temporary promotion was given to the applicant and this temporary order never extended after 7/6/2003. In view of this discussion, we do not see any merit in the contention of the applicant that till his retirement he worked on the post of Geologist, Class-I and therefore, he is entitled for the salary admissible to the post of Geologist, Class-I and all the arrears. In view of this, we do not see any merit in the claim of the applicant that he is entitled to receive the

pension as per the pay scale admissible to the post of Geologist, Class-I.

10. Now so far as suspension period is concerned, though the inquiry is closed in the year 2014, but till today no decision is taken by the Government regarding the suspension period, whether it should be treated as duty period or not. In view of this inordinate delay there was correspondence made by the Department. Vide letter dated 20/11/2018 the Administrative Officer, GSDA, Nagpur wrote letter to the Additional Chief Secretary, Industries, Energy and Labour that the applicant stood retired from the service in the year 2010 on attaining the age of superannuation. The departmental inquiry is pending against the applicant came to be closed in the year 2014 as it was not completed within a fixed time and therefore requested to take decision regarding the suspension period. It is very surprising that in spite of this correspondence, the Government is not taking any steps regarding the suspension period. The learned counsel for the applicant submitted that if the suspension period is treated as duty period, then the applicant would be entitled to the increments during this suspension period of three years and it will increase the pension of the applicant and he will recover the pay and allowances of the suspension period. As the matter of fact, there is no justification with the respondents as to why decision is not taken

even after expiry of four years after closure of the departmental inquiry, regarding the suspension period of the applicant. In our view this approach of the respondents is contrary to the principles of the natural justice and it amounts to victimization. In view of this, we pass the following order –

**ORDER**

- (i) The O.A. is partly allowed.
- (ii) The claim of the applicant to the post of Geologist, Class-I is rejected. The respondents are directed to decide the nature of the suspension period within a period of three months from the date of this order and on their failure to decide the same within specified time, the period of suspension shall be treated as duty period and applicant will be entitled to all the benefits in consequence thereof. No order as to costs.

**(A.D. Karanjkar)**  
**Member(J).**

**(Shree Bhagwan)**  
**Member (A).**

**Dated :- 26/02/2019.**

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