

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.379 OF 2018**

DISTRICT : PUNE

Shri Vishwas Jagannath Pagare,)
Age 56 years, (DOB : 26.6.1961),)
Occ. Civil Engineering Assistant at Small Scale)
Irrigation (Water Conservation Sub Division,)
Solapur Division, Solapur Circle, Pune),)
R/at Laxman Bungalow, Opp. Prem Rajani Sangh,)
Vasant Nagar, T.C. College, Road, Baramati, Pune)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Soil & Water Conservation Department,)
Mantralaya, Mumbai 400032)
2. The Additional Commissioner,)
(Chief Engineer), Soil & Water Conservation)
Division, Pune, Jail road, Yerwada, Pune-6)
3. The Regional Water Conservation Officer,)
(Superintending Engineer),)
Soil & Water Conservation Division (Circle),)
Bungalow No.3, Jail road, Yerwada, Pune-6)

4. The District Water Conservation Officer,)
(Executive Engineer),)
Soil & Water Conservation Division,)
Ujjani Colony, Guru Nanak Chowk, Solapur)..Respondents

Shri K.R. Jagdale – Advocate for the Applicant

Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)
RESERVED ON : 20th December, 2019
PRONOUNCED ON : 20th December, 2019

J U D G M E N T

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. The applicant has approached this Tribunal seeking first Time Bound Promotion w.e.f. 28.1.1995 and second Time Bound Promotion w.e.f. 28.1.2012.

Brief facts:

3. The applicant was appointed on temporary basis on 25.3.1982 as Technical Assistant. He failed in the necessary professional examination and did not clear the same till he completed 45 years of age. Hence, on 12.6.2016 order was issued stating that as he completed 45 years of age on 25.6.2006, he is exempted from professional examination from 25.6.2006. He was required to pass the examination for knowledge of computer. He failed in the same. Hence, as per GR dated 2.9.2003 he

became entitled for exemption on this account on completion of 50 years of age from 27.6.2011 as per GR dated 2.9.2003 (Exhibit R-2 page 83). The applicant remained absent from his services from 9.6.2003 to 11.1.2008. For the period of absence, leave was sanctioned on 24.8.2012 and thereafter his ACR became available for consideration.

4. The applicant has prayed as under:

“10. The applicant, therefore, prays that:

(a) By suitable order or directions this Hon’ble Tribunal may be pleased to modify the order dated 20.1.2018 issued by Respondent no.3 by modifying the date of first time bound promotion w.e.f. 28.1.1995 instead of 27.6.2013 with arrears of pay and accordingly revise and refix the pay scale of the applicant, forthwith.

(b) By suitable order or directions this Hon’ble Tribunal may be pleased to direct the respondents to grant benefit of second time bound promotion w.e.f. 28.1.2012 with arrears of pay and accordingly revise and refix the pay scale of the Applicant, with all other consequential service benefits, with accrued interest, forthwith.”

(Quoted from page 11 of OA)

5. The Ld. Advocate for the applicant relies on GR dated 15.10.2009 to support his claim that his juniors were granted first Time Bound Promotion from 28.1.1995 and therefore he also should be provided the benefit of first Time Bound Promotion from 28.1.1995. In this regard he refers to the cases of Mr. P.D. Boraste, Mr. A.H. Patil & Mr. P.V. Malwal. According to the applicant there was discrimination against him. He has therefore prayed that the impugned order dated 20.1.2018 granting him first Time Bound Promotion from 27.6.2013 (Exhibit Q page 71) should be modified and instead he should be given first time bound promotion from 28.1.1995, the date on which his junior was promoted. Ld. Advocate for

the applicant also relies on the judgment and order dated 25.6.2019 passed by this Tribunal in OA No.238 of 2016. As per this judgment, since the applicant joined in the year 1982, his services need to be counted from that date for the purpose of first Time Bound Promotion for counting of 12 years. In this regard he relies on the contents of the letter dated 18.6.1998 issued by Irrigation Department in consultation with Finance Department, which accorded approval to consider temporary services of Technical Assistants for considering the benefit of first Time Bond Promotion on completion of 12 years.

Submissions by the respondents:

6. The respondents no.3 and 4 have filed their affidavit in reply and contested the claims made by the applicant. According to the affidavit though the applicant joined in 1982, he was absorbed on 7.8.1989 and therefore he become entitled for the first Time Bound Promotion on 7.9.2001. Moreover, to earn the first Time Bound Promotion, the GR dated 8.6.1995 (Exhibit B page 18) prescribed the eligibility criteria. According to the same, passing in the professional examination was necessary. The applicant did not pass the same and therefore after he completed 45 years of age, he was granted exemption from 12.6.2006. Second requirement to earn the first time bound promotion was passing in computer examination. As the applicant did not pass the same, as per the GR dated 2.9.2003 (Exhibit R-2 page 83), he was given exemption on completion of 50 year of age and he became entitled for first Time Bound Promotion from 27.6.2011. The third requirement to earn the first Time Bound Promotion was "B"/"Good" remarks in the ACR. The applicant remained absent from service from 9.6.2003 to 11.1.2008 and this leave period was decided on 24.8.2012. As his ACRs were made available from 2008-09 to 2012-13, he became entitled to first Time Bound Promotion for the first time on 27.6.2013 and accordingly he was sanctioned first Time

Bound Promotion on 28.6.2013, by the order dated 20.1.2018 which is the impugned order in the OA.

7. The benefits extended to Mr. Boraste were provided to him as he passed the professional examination as well as computer examination and had more than "Good" ACRs. Hence, the case of the applicant cannot be compared with Mr. Boraste.

8. As far as the case of Mr. Patil and Mr. Malwal are concerned, the respondents have submitted that they passed the professional examination on 30.12.1997 and hence they were sanctioned Time Bound Promotion from 30.12.1997. Hence, there is no discrimination against the applicant as claimed by him. The persons whom he had referred are junior to him but they have passed the prescribed professional examination and became eligible to accord the benefits as per the GR.

Observations and findings:

9. I have examined the record furnished by the applicant as well as the GRs referred to by him regarding Time Bound Promotion. As per the GR issued on 8.6.1995 the first Time Bound Promotion is available on earning the eligibility criteria including professional examination, computer examination and ACR of minimum "B"/ "Good" for being considered for the entitlement.

10. In case of the applicant, it is admitted fact that he did not pass the professional examination and therefore on completion of 45 years of age was given exemption from 25.6.2006. After completion of 50 years age, he was given exemption from passing computer examination from 27.6.2011. As a result of his absence from duty his ACRs for the period from 2008-09 to 2012-13 became available after the period on 24.8.2012. Thus, he

became entitled for the first Time Bound Promotion for the first time on 27.6.2013. The respondents have sanctioned his first Time Bound Promotion on 28.6.2013, as per the GR mentioned above.

11. The cases of his juniors viz. Mr. Boraste, Mr. Patil and Mr. Malwal are of no use in considering his contention. Though they are juniors they have passed the professional examination and earned their first Time Bound Promotion on acquiring eligibility criteria. There is no discrimination against the applicant since the applicant did not have eligibility criteria, as he failed in prescribed professional examination, computer examination and did not have minimum B/Good ACRs of the relevant period in view of his prolonged absenteeism.

12. For the reasons stated above, I find that the prayers made by the applicant are purely from his dream and are not supported by any facts. There is no arbitrariness or illegality in the orders issued by the respondents. The applicant has failed in providing any valid ground in support of his claim to modify the impugned order.

13. There is no reason to interfere with the orders issued by the respondents. For the reasons stated above the OA is without valid grounds.

14. Therefore, Original Application is dismissed. No order as to costs.

(P.N. Dixit)
Vice-Chairman (A)
20.12.2019

Dictation taken by: S.G. Jawalkar.