

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI
BENCH AT AURANGABAD
ORIGINAL APPLICATION NO.768 OF 2012 (D.B.)

DISTRICT : AHMEDNAGAR

1. Shri Subhash Bhikaji Deshmukh,)
Mistry, Upper Pravara Dam Sub-Division No.1,)
Chitalwedhe, Tal. Akole, District Ahmednagar)
2. Shri Bhausahab Nivrutti Godse,)
Driver, Upper Pravara Dam Sub-Division No.1,)
Chitalwedhe, Tal. Akole, District Ahmednagar)
3. Shri Laxman Pandharinath Dhumal,)
Labour, Upper Pravara Dam Sub-Division No.1,)
Chitalwedhe, Tal. Akole, District Ahmednagar)
4. Shri Vishwanath Bapu Jondhale,)
Driver, Upper Pravara Dam Sub-Division No.1,)
Chitalwedhe, Tal. Akole, District Ahmednagar)..Applicants

Versus

1. The State of Maharashtra,)
Through the Secretary,)
General Administration Department,)
Mantralaya, Mumbai)

2. The Secretary,)
Water Resources Department,)
Mantralaya, Mumbai 400032)
3. The Executive Engineer,)
Upper Pravara Dam Division, Sangamner,)
District Ahmednagar, Beed District Beed)..Respondents

Shri A.S. Deshmukh – Advocate for the Applicants

Shri I.S. Thorat – Presenting Officer for Respondents No.1 and 2

Shri G.N. Patil – Advocate for Respondent No.3

CORAM : Shri Rajiv Agarwal, Vice-Chairman
Shri B.P. Patil, Member (J)

DATE : 8th March, 2017

J U D G M E N T

1. Heard Shri A.S. Deshmukh, learned Advocate for the Applicants, Shri I.S. Thorat, learned Presenting Officer for Respondents No.1 and 2 and Shri G.N. Patil, learned Advocate for Respondent No.3.

2. In this OA, the Applicants who are working in various Group C and D posts in Akole Taluka of Ahmednagar District, which is a tribal area, have challenged the validity of part of para 3(7) of GR dated 6.8.2002 as arbitrary and against the spirit of the policy decision contained in the aforesaid GR that those working in Naxal affected or Tribal areas will be given one-step promotion as long as they are working in such areas.

3. Learned counsel for the Applicants argued that the Govt. had taken a policy decision to encourage employees/officers who work in Naxal

affected/Tribal areas by giving them various incentives, as many a times, employees are reluctant to work in such areas. Various Government Resolutions enunciating Govt. policy in this regard have been issued. By GR dated 6.8.2002 (Annexure A-1), Govt. has, inter alia, extended the facility of extending one-step promotion to all persons from Group A to Group D working in Tribal/Naxal Affected areas till they continue to work in that area. However, this benefit is sought to be taken away by the later part of this para which provides that one-step promotion will not be applicable to those who have already been granted benefit of Time Bound Promotion/benefit of Assured Career Progression Scheme. Learned counsel for the Applicant argued that this latter stipulation is against the spirit of this GR which is mentioned in the preamble of the GR as below:

“ आदिवासी क्षेत्रातील बिकट परिस्थितीत शासनाच्या योजनांची प्रभावीपणे अमलबजावणी करणा-या शासकीय अधिकारी/ कर्मचारी यांना त्या भागात काम करताना येणा-या विविध अडचणींचा विचार करून तसेच नक्षलग्रस्त/ संवेदनशील भागात (जिविताची) सुरक्षितता इत्यादी बाबी लक्षात घेवून त्यांना काही प्रोत्साहनपर सवलतीही देण्यात आलेल्या आहेत. आदिवासी भागाच्या विकासासाठी राबविण्यात येत असलेल्या शासनाच्या विविध योजनांचा पुरेपूर लाभ तेथील जनतेला मिळाला. त्यांचा विकास व्हावा यासाठी तळमळीने काम करणा-या अधिकारी/ कर्मचा-यांच्या अडीअडचणी दूर व्हाव्यात आणि त्यांना जोमाने काम करण्यास प्रोत्साहन मिळावे याकरिता विविध सवलती देण्यात आलेल्या आहेत. त्यात सुधारणा करणे तसेच काही अतिरिक्त सवलती देण्याची बाब शासनाच्या विचाराधीन होती.”

(quoted from page 25-26 of OA)

4. The purpose of GR dated 6.8.2002 is that employees working in Tribal/Naxal affected areas should get more pay as incentive than their counterparts working in other areas. The stipulation that those granted Time Bound Promotion will not get one step promotion is against the spirit, if not the letter of this GR. This is arbitrary, irrational and illogical. Learned counsel for the Applicants stated that by order dated 21.11.2016, this Tribunal had directed Principal Secretary (Services) in the General

Administration Department (GAD) to file an affidavit if ground 8(III) of this OA was found meritless by him. Another affidavit pursuant to order dated 23.6.2016 is filed by the same officer on 17.9.2016. Learned counsel for the Applicant stated that no rationale for the decision of the Govt. for not extending one-step promotion to those who are already granted Time Bound Promotion is given in these affidavits. Para 7 of the affidavit dated 2.12.2016 is contradictory as it is admitted that the present OA is not fit for contest. However, the respondents are still contesting this OA.

5. Learned PO argued on behalf of the Respondents No.1 and 2 that in para 7 of the affidavit in reply dated 2.12.2016 word 'not' has crept in as a typographical error. If the affidavit is read in full, it is quite clear that the respondents have found ground 8(III) of the OA as meritless. Learned PO argued that later stipulation in para 3(7) of GR is well thought out and cannot be held to be arbitrary. The purpose behind this GR dated 6.8.2002 is to encourage young and energetic officers/employees to work in Tribal/Naxal affected areas as oftentimes they are unwilling to work there. Such persons are given facilities like retention of Govt. accommodation, which they were allotted before transfer to Tribal areas, and choice of posting after the period of posting in Tribal areas is over. It is clear that various GRs in this regard have been issued keeping in mind inconvenience which employees face, when they are posted in Tribal/Naxal Affected areas. If a person has been granted Time Bound Promotion, he has already acquired seniority of at least 12 years. Similarly, there may be local employees, who may not be interested in transfer out of such areas. This stipulation, which is under challenge, is included so that the true spirit of extending this facility is restricted only to deserving cases. Learned PO argued that if one-step promotion is given to those who are already earning higher pay scale as per Assured Career Progression Scheme, without discharging duties of the higher scale, they will get pay two steps higher. A Clerk will get the pay of Naib-Tahsildar,

and a Naib-Tahsildar will get pay of a Deputy Collector. Learned PO argued that this is not the intention of the aforesaid GR. Only young employees/officers are encouraged to take up postings in Tribal areas and this stipulation is not arbitrary or unreasonable. In fact, it is highly reasonable considering the overall spirit of the said GR. It does not defeat the purpose of the GR.

6. We find that GR dated 6.8.2002 consolidates the instructions contained in five earlier GRs and three circulars regarding benefits to be extended to employees posted to Tribal/Naxal affected areas. It is seen that the policy encourage young officers to be posted in such areas. For All India Services (IAS, IPS and Indian Forest Service) Officers, those appointed in junior scale on first posting are to be posted in said areas. On promotion to senior scale, these officers are to be posted for a minimum of three years in such areas, including first posting on promotion. Para 1(5) specifically mentions that those who are more than 50 years, should not be posted to such areas. It is clear that intention is to post young officers in Tribal/Naxal affected areas. Para 1(12) provides that after completion of their posting in such areas, an employee is eligible for posting in a district of his choice. Such employees can retain Govt. accommodation in earlier place of posting on transfer to Tribal/Naxal affected areas. As per para 3(7), such employees are also given one-step promotion. The intention appears to be to encourage employees to work in Tribal/Naxal affected areas, at least for some years. Another element of the policy is to encourage and post young employees in Tribal/Naxal affected areas. The Applicants are working in Tribal areas (Akole Taluka of Ahmednagar district) for long and they have already been granted Time Bound Promotion. They have not stated that they want posting out of Tribal area, as they have worked for quite some time in that area. It appears that they want to continue in that area and claim additional benefit of one-step promotion after Time Bound Promotion. Evidently,

that is not strictly in consonance with the policy of the Govt. For such employees, Govt. has decided not to extend one-step promotion. This is a policy decision of the Govt. and there is hardly any scope for intervention by this Tribunal, especially as this stipulation does not appear to be arbitrary or unreasonable.

7. We are not inclined to interfere with the policy decision of the Govt. As a result this OA is dismissed with no order as to costs.

(B.P. Patil)
Member (J)

(Rajiv Agarwal)
Vice-Chairman

Dictation taken by: S.G. Jawalkar.

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