

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.85 OF 2017**

DISTRICT : PUNE

Shri Ashok Kondiba Randive,)
Deceased through L.Rs.)
Smt. Asha Ashok Randive, widow,)
301, Venkatesh Residency, Mahadev Nagar,)
Manjari Budruk, Pune 412307)..Applicant

Versus

1. The Secretary,)
Water Resources Department,)
Mantralaya, Mumbai 400032)
2. The Superintending Engineer and Director,)
Directorate of Irrigation Research & Development))
and Zonal Officer, Pune Zonal Office,)
8, Moledina Road, Pune 411001)
3. The Superintending Engineer,)
Mechanical Circle, Central Building, Pune-1)
4. The Executive Engineer,)
Mechanical Division No.2, Swargate, Pune-37)

5. The Executive Engineer,)
Khadakwasla Irrigation Division,)
Mangalwar Peth, Barne Road, Sinchan Bhavan,)
Pune 411011)..Respondents

Shri V.V. Joshi – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)

DATE : 4th November, 2019

J U D G M E N T

1. Heard Shri V.V. Joshi, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. The applicant is before this Tribunal seeking Time Bound Promotion from 1.2.2007.

Brief facts of the case:

3. The applicant had joined the service under the establishment of respondent no.3 on 29.4.1978 as a Junior Clerk. He was promoted as Senior Clerk on 30.8.1993. On 12.4.2013 as per request made by the applicant since he had completed 50 years of age, though he did not pass the eligibility examination of MSCIT, he was exempted from the same. The applicant had joined the service from category on the basis of caste certificate issued on 9.11.1978. He applied for validity of the same on 15.4.2011 and obtained the caste certificate from scrutiny committee validating the same on 20.9.2012. Accordingly, he has been granted benefits of ACP Scheme of the higher grade. He has prayed as under:

“10(a) This Hon’ble MAT Tribunal be pleased to declare that the applicant was eligible to be granted Time Bound Promotion from the date 1.2.2007 when he was eligible to be granted Time Bound Promotion.”

(Quoted from page 7 of OA)

4. In support of the same he has furnished the following grounds:

“1. The applicant was entitled for the First Time Bound Promotion on completion of 12 years service on 30.8.2005. Respondent had asked for caste validity certificate which was received by the applicant on 20.9.2012. The applicant was required to pass MS-CIT, but as the applicant attained age of 50 on 1.2.2007, he was exempted from the examination. Therefore, applicant was entitled for First Time Bound Promotion from the date he completed 50 years of age i.e. from 1.2.2007.

2. The Caste Validity Certificate dated 20.9.2012 validates the caste certificate issued earlier which is dated 9.11.1978.

3. The applicant was eligible to be granted time bound promotion on completion of 12 years of service in the post of Senior Clerk on 30.8.2005 and became eligible to be promoted or was in the zone of consideration for further post of First Clerk w.e.f. 1.2.2007 and his C.Rs. were up to the mark and proposal was submitted to that effect and therefore the order of the respondent no.3 granting the promotion under ACP w.e.f. 20.9.2012 is not correct and the applicant should have been granted the said benefit w.e.f. 1.2.2007. The applicant states that as per the GR dated 5.3.2015, the respondent ought to have examined the case and demanded the Caste Validity Certificate 6 months in advance of the date of eligibility, i.e. 6 months prior to 1.2.2007. Moreover, the applicant is not at fault as the Caste Validity Certificate nowhere states that it is valid from the date of issue of the certificate and therefore the impugned order is required to be modified to give the benefits w.e.f. 1.2.2007, instead from 20.9.2012.”

(Quoted from page 5-6 of OA)

5. The respondents no.3 & 4 have contested the submissions made by the applicant and filed their affidavit stating as under:

“5. With reference to ground 7(1), I say as follows: With respect to the contention of the applicant as per the GR bearing No.CBC/10/2004/Pra.Kra./570/Mavak/5/Mantralaya dated 5.3.2005 and as per GR No.1111/Pra.Kra.8/Seva 3 dated 1.7.2011, the criteria for promotion as in the applicant’s case was that he was (a) required to appear and pass MSCIT examination and was required to (b) submit his caste validity certificate for availing the benefit of promotion immediately after the completion of his 12 years of service on 30.8.2005. That as per the said GR, if any applicant who have attained 50 years of age was exempted from appearing and passing the MSCIT examination however since the applicant has deliberately neglected in submitting the said Caste Validity Certificate and he has only submitted the said certificate on 20.9.2012 therefore he was rightly not promoted for the period 2005 to 20.9.2012. That after the applicant had submitted the caste validity certificate on 20.9.2012 he was promoted and such promotion was prospective. The said GR nowhere speaks of giving any retrospective effect hence the entire claim of the applicant is totally frivolous as Ignorance of Law cannot be excused and he cannot be allowed to take benefit of his own wrong to bypass the GR as the Public Exchequer is involved and the respondent in absence of any caste validity certificate was not obliged to grant promotion because from the period 30.8.2005 to 20.9.2012 since the caste validity certificate of applicant was not filed/submitted with respondents. There were contingency as to whether the applicant was eligible and would qualify as per the said GR. Hence, he was not promoted.”

(Quoted from page 37 of OA)

6. The respondents have therefore mentioned that the applicant is not eligible for any relief and the OA may be dismissed.

Observation and findings:

7. The Ld. PO has also enclosed the GR regarding ACPS at Exhibit R-1 page 41 of OA. The relevant portion of the same reads as under:

अ. क्र.	मुद्दा	स्पष्टीकरण
१३	सेवांतर्गत आश्वासित प्रगती योजनेसाठी जात वैधता प्रमाणपत्र आवश्यक आहे का ?	या योजनेअंतर्गत पदोन्नतीच्या पदाची वेतनसंरचना अनुज्ञेय होत असल्याने सर्वसाधारण पदोन्नतीसाठीच्या आवश्यकता पूर्ण करणे अपेक्षित आहे. त्यामुळे मागासावर्गीय उमेदवारांच्या बाबतीत जात वैधता प्रमाणपत्र आवश्यक राहिल.

(Quoted from page 46 of OA)

8. In this case as per facts mentioned above the applicant had completed his 50 years in the year 2008. There is no record or any document furnished by the applicant to indicate that thereafter he had applied for obtaining the exemption certificate. However, the impugned order dated 12.4.2013 refers to his application and in response to the same the exemption has been granted to him along with 5 others having various dates of birth. It is the contention of the applicant that he had applied for caste validity certificate on 15.4.2011. However, the same was issued to him on 20.9.2012 and thus there was a delay in the same. The exhibit enclosing the GR at Exhibit R-1 from the respondents is categorical and mentions that producing caste validity certificate is a must to obtain benefits of promotions. It therefore directs that all candidates claiming to be belonging to backward class must produce caste validity certificate to obtain benefits of the same. The Ld. Advocate for the applicant has submitted that the applicant had applied in April 2011 for obtaining exemption certificate and therefore it would not be proper to say

that he had deliberately delayed in obtaining the caste validity certificate. The examination of the record indicates that the applicant had applied on 15.4.2011 and he has been issued the same on 20.9.2012. The applicant was at that time in service and if he desired he could have approached the caste scrutiny committee for validating his caste certificate expeditiously. He could have also assisted the caste scrutiny committee in expediting the issuance of validity certificate. However, the same does not seem to have taken place. It would be therefore inappropriate to hold the respondents responsible for his inaction in expediting the issuance of caste validity certificate. It would have been appropriate if the respondents had on their own moved the caste scrutiny committee to procure the validity certificate when he came in the zone of consideration as per the circular (Exhibit H page 24). Mere existence of this circular however does not enable the applicant the requirement of procuring validity certificate.

9. For the reasons mentioned above I find that the impugned order giving him time bound promotion from the date he submitted the validity certificate viz. 12.4.2013 need no interference.

10. OA is therefore without any valid reasons and therefore dismissed. No order as to costs.

(P.N. Dixit)
Vice-Chairman (A)
4.11.2019

Dictation taken by: S.G. Jawalkar.