

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.838/2015

DISTRICT – JALGAON

Ramdas s/o Tulshiram Patil,
Age: 63 years, Occ : Retired,
R/o : Wade, Tq. Bhadgaon,
District Jalgaon.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Public Works Department,
Mantralaya, Mumbai-400 032.

2. The Superintendent of Engineer,
Public Works Department,
Jalgaon.

3. The Executive Engineer,
Public Works Department,
Jalgaon.

...RESPONDENTS

APPEARANCE :Shri R.P.Bhumkar, learned Advocate
for the applicant.
:Shri S.K.Shirse, learned Presenting
Officer (PO) for the respondents.

CORAM : Hon'ble Shri J.D.Kulkarni, Member (J)

DATE : 27th January, 2017

J U D G M E N T
[Delivered on 27th day of January, 2017]

Applicant has retired as Civil Engineering Assistant. He claims that the respondents be directed to grant him time bound promotion pay scale benefits with effect from 01-10-1994 as per G.R. dated 31-07-2013 and Circular dated 28-10-2015 and to grant him higher pay scale as per order passed by the Hon'ble Bombay High Court Bench at Nagpur in a group of Writ Petition No.5185/2014 & Ors. It is the case of the applicant that the Government has issued G.Rs. dated 01-11-1977, 10-07-1979, 28-11-1979, 22-03-1983, 11-02-1992 etc. and decided that those persons who are working in the Government service, and who have completed age of 45 years, will be exempted from Divisional Examination for higher pay scale or promotion. On 08-06-1995, the Government issued another G.R. whereby those employees who have completed 12 years' service and who have not been promoted to the higher post were to be given benefit of higher pay scale. On the basis of the said G.R. and the directions issued by the Sukhatankar Committee, such facilities were given to the employees vide G.R. dated 08-06-1995, and time bound promotion was granted to those Class III and Class IV employees who though

were entitled to promotion and were not promoted though completed continuous service of 12 years.

2. Employees working on the post of Assistant Junior Engineer, Mistri Grade-I, Road Clerk, Master Clerk, Time Keeper and Tracer etc. in the Public Works Department were finally absorbed as Civil Engineering Assistant (CEA). However, inspite of completion of the qualifying service, applicant was not provided with the benefit of various G.Rs. as regards time bound promotion pay scale.

3. One Shri Baburao Thombre filed Writ Petition No.2038/2009 before the Bombay High Court Bench at Nagpur. In the similar circumstances, other 26 petitions had filed before the Hon'ble High Court and a common judgment was delivered on 14-06-2011. Judgment was also passed in Writ Petition No.1434/2009 on 27-01-2010. However, till today respondents have not taken appropriate decision to grant pay scale to the applicant with effect from 01-10-1994.

4. In the reply affidavit respondent nos.1 to 3 have initially stated that the applicant was Mistri Grade-II and he did not have requisite criteria for absorption in CEA cadre mentioned in paragraph 5 of the G.R. dated 31-01-1989. Since the applicant did not pass

departmental examination required for the post of Sub-Overseer which is requisite criteria for absorption in CEA cadre, he was not absorbed in CEA cadre and it is the reasons why the benefit of G.R. was not granted to the applicant. However, respondents seem to have changed their defense in subsequent paragraphs of the reply affidavit. It is stated that there was no provision for exemption from passing departmental examination for absorption in CEA cadre after attaining age of 45 years during the period from 01-01-1989 to 06-12-2001. The applicant has retired on 31-07-2001 on superannuation, and therefore, he was not entitled to be absorbed in CEA cadre in subsequent part of paragraph 2. However, it is stated by respondent nos.1 to 3 as under (page 38):

“I further say and submit that, the applicant completed the training which was necessary for the absorption in the cadre of CEA from 05-08-1992 to 04-01-1993. But, he did not pass the departmental examination of the posts of CEA. It is seen from the record that vide order of the Superintending Engineer, PWD Circle, Jalgaon dated 27/10/2014, the applicant was absorbed in CEA cadre w.e.f. 01/01/1989, that is after the retirement of the applicant. Consequently, Superintending Engineer, Public Works Department Circle, Jalgaon, granted exemption from passing the eligibility examination for the promotion to the post of Junior Engineer on 01/01/1992.”

*That, the Superintendent Engineer, Public Works Department Circle, Jalgaon, issued the office order dated 27.10.2014 as per directions given vide Government letter dated 01.11.2013. But this letter is cancelled vide Government circular dated 28.10.2015. Therefore, the applicant is not entitled for the benefits absorption in CEA cadre & accordingly benefits of the time bound promotion. The copy of above said Govt. letter dated 01/11/2013 is annexed herewith and marked at **Exhibit "R-4"**.*

[reproduced as it is from paper book page no.38 of the O.A.]”

5. From the aforesaid averments, it will be clear that, though initially, respondents were saying that the applicant was not entitled to be absorbed in the cadre of CEA, subsequently, they have admitted that applicant was so absorbed with effect from 01-01-1989. Such order has been passed after retirement of the applicant i.e. on 27-10-2014.

6. Applicant has filed rejoinder and submitted that the applicant was granted exemption for passing qualifying examination with effect from 01-01-1989, and, therefore, respondents' statement that the applicant cannot be exempted or the exemption granted earlier has been cancelled, is a false statement. Applicant has also placed on record a copy of the order whereby the applicant has been exempted.

7. Relevant letter of exemption has been placed on record by the applicant at paper book page 108-109 (both inclusive). From the said letter (Annexure A-9), it seems that the applicant's name stands at Sr.No.3 and it is shown that he has crossed the age of 45 years on 01-08-1988 and was absorbed in the CEA cadre on 01-01-1989 and has been exempted from passing qualifying examination for the benefit of pay scale of Junior Engineer from 01-01-1989. It is clear that the applicant was absorbed in the cadre of CEA on 01-01-1989, and not only that, he was also exempted from passing qualifying examination on the same date. In such circumstances, there was absolutely no embargo considering applicant's case for grant of time bound promotion pay scale. It therefore seems that the case of the applicant is covered by various G.Rs. and is required to be considered. Hence, following order:

ORDER

- (i) O.A. is allowed.
- (ii) Respondents are directed to consider the case of the applicant for grant of time bound promotion pay scale as prayed for in view of the various G.Rs. referred in the O.A.
- (iii) Decision in this regard shall be taken within 3 months from the date of this order and be communicated to the applicant in writing.

- (iv) It is needless to mention that the applicant will be entitled to arrears, if any, if he is found eligible for such time bound promotion pay scale.
- (v) In the circumstances, there shall be no order as to costs.
- (vi) There shall be no order as to

(J. D. Kulkarni)
MEMBER (J)

Place : Aurangabad
Date : 27-01-2017.

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