

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.152 OF 2018

Sarjerao Kundlikrao Sabhadinde)
Age:62 yrs, Occu. Retired, R/o. Row House No.3,))
Varun Park, High Court Colony, Satara Parisar,)
Aurangabad, Tq. and Dist. Aurangabad.)
...Applicant

Versus

1. The State of Maharashtra, Through its)
Principal Secretary, Water Supply and Sanitation))
Department, 7th Floor, Gokuldas Tejpal Building)
Complex, Near Crofered Market, Lokmanya Tilak))
Road, New Mantralaya Building, Mantralaya,)
Mumbai. 400 001.)
..Respondent

Shri V.B. Wagh – Advocate for the Applicant

Shri B.S. Deokar – Presenting Officer for the Respondents

CORAM : **Shri B.P. Patil, Acting Chairman**
RESERVED ON : **09.08.2019**
PRONOUNCED ON : **20.08.2019**

ORDER

1. Applicant has challenged the order dated 27.07.2017 issued by the Respondents refusing to grant the benefit of Assured Career Progression Scheme (in short ACPS) to him by filing the O.A. He has sought declaration that he is also entitled to get benefit of ACPS w.e.f. 08.04.2009 as per G.R. dated 01.04.2010 and also prayed for the consequential benefit in the present O.A.

2. Applicant has passed S.S.C. Examination and completed ITI in Motor Mechanical Trade and has done his apprenticeship in

State Transport Workshop for the period of one year. Applicant was initially appointed on the post of Mechanic in the Office of Assistant Geologist, G.S.D.A., Parbhani by order dated 23.07.1979. He was promoted on the post of Junior Engineer on 20.03.1989 and posted in the Office of Deputy Engineer, G.S.D.A., Latur. He was designated as Sectional Engineer in view of policy decision taken by Government, and thereafter, he was designated as Sectional Engineer (Gazetted) on 01.04.1996.

3. On 20.07.2001, the Government issued Resolution in respect of ACPS and granted the benefits to the employees who rendered 12 years' continuous service. The said scheme was further modified by the Government by G.R. dated 01.04.2010. Applicant has completed 12 years' service on the post of Sectional Engineer on 31.08.2008. Therefore, he was entitled to get the benefit of the modified ACPS in view of G.R. dated 01.04.2010. The proposal of the Applicant in this regard was forwarded by the Respondent No. 1 alongwith other employees. Respondent No.1 considered the Government Notification dated 31.05.1976 and G.Rs. dated 01.04.2010, 01.07.2011 and order dated 02.07.2017 and stated that the Applicant as well as Shri U.P. Sardeshpande were working on the post of Sectional Engineer and have completed 12 years' service, and therefore, they are entitled to get the benefit of G.R. dated 01.04.2010. Respondent No. 1 formed a Committee on 03.04.2017 for taking decision on the proposal. The Committee forwarded the said proposal to Finance Department for its concurrence alongwith its noting. The Finance Department considered the noting and proposal submitted to it and opined that the Respondent shall take the appropriate decision on the proposal considering the Rules. Therefore, the Respondent No. 1 considered the proposal of the Applicant and Shri U.P. Sardeshpande and decided to grant benefit of modified ACPS to Shri U.P. Sardeshpande as per G.R. dated 01.04.2010.

Respondent No.1 rejected the proposal of the Applicant on the ground that the Applicant did not fulfill the criteria as per the Rules and accordingly communicated the decision to the Applicant by communication dated 27.07.2017 through Director of the Ground Water Survey and Development Agency, Pune.

4. It is further contention of the Applicant that Respondent had not considered the Rule 5 (1) (b) of the Recruitment Rules for Drilling Engineer, 1976, which provides that the Mechanical Supervisor who passed S.S.C. examination & possesses experience more than 10 years in Drilling Bore Wells is eligible for the Promotional post of Assistant Drilling Engineer, Class-II. It is his contention that the said Rules have been framed by Rural Development Department. It is his contention that the post of Assistant Drilling Engineer & Deputy Engineer (Mechanical) were merged and brought under one nomenclature i.e. 'Deputy Engineer (Mechanical)' by G.R. dated 28.10.2008.

5. It is his further contention that in the year 2012, Government framed the Recruitment Rules in Water Supply and Sanitation Department for the post of Senior Drilling Engineer Group 'A' & Deputy Engineer (Mechanical) Group 'A' in the Maharashtra Ground Water Services. The said Rules viz. the Senior Drilling Engineer, Group-A and the Deputy Engineer (Mechanical) Group-A, in the Directorate of Groundwater Surveys and Development Agency, Maharashtra Groundwater Service, Maharashtra State under the Water Supply and Sanitation Department (Recruitment) Rules, 2012, are made effective from the date of issuance of the notification i.e. from 12.07.2012. In view of the Rule 4 (a) the post of Deputy Engineer Mechanic Group 'A' shall be filled by promotion of a suitable person on the basis of seniority subject to fitness, from amongst the person holding the post of Sectional Engineer in the Directorate and possess a degree or diploma in Mechanical Engineer or

Automobile Engineering and experience in water well drilling in different rock formations, operations and maintenance of pneumatic machinery and equipment.

6. It is further contention of the Applicant that he made representation to Respondent No. 1 and requested to extend the benefit of modified ACPS to him in view of G.R. dated 01.04.2010. It was conveyed to the Office of the Director of Ground Water Survey & Development Agency as well as to the Respondent No.1. But the Respondent No.1 rejected the proposal in respect of the Applicant by the impugned communication.

7. It is further contention of the Applicant that Respondent No. 1 had not considered the provisions of Recruitment Rules,1976 notified on 13.05.1976 while rejecting claim of the Applicant. But the Respondent No.1 considered the case of Shri U.P. Sardeshpande on the basis of said Rules and extended the benefit of G.R. dated 01.04.2010 to him.

8. It is his contention that his case is similar to that of the case of Shri. U.P. Sardeshpande. But the Respondent No. 1 made discrimination while rejecting his claim. It is his contention that because of rejection of his claim he has suffered loss and he is getting less pension. Therefore, he approached this Tribunal by challenging the impugned order dated 27.07.2017 issued by the Respondent No.1 and also sought declaration that he is entitled to get benefit of modified ACPS on the basis of G.R. dated 01.04.2010.

9. Respondent No. 1 resisted the contention of the Applicant by filing his Affidavit-in-Reply. It is his contention that as per G.R. dated 01.04.2010, completion of 12 years' service on the same post is not the only condition for an employee to avail the benefit of ACPS. In order to avail the benefit, it is also necessary

to possess the qualification of the post of promotion with the service of 12 years.

10. It is his contention that as per Recruitment Rules for the post of Deputy Engineer, 1974, the Applicant had not possessed necessary qualification for the promotional post of Deputy Engineer, and therefore, the benefit under ACPS was not extended to him. Shri U.P. Sardeshpande was possessing required qualification for extending benefit as per Recruitment Rules, 1976. Prior to 28.10.2005 for the post of Mechanical Supervisor / Sectional Engineer working in Ground Water Survey, two promotional posts i.e. Assistant Drilling Engineer, Deputy Engineer (Mechanic) were available. By the G.R. dated 28.05.2005, the posts of Assistant Drilling Engineer and Deputy Engineer (Mechanical) were merged and it was designated as Deputy Engineer (Mechanical). Finance Department conveyed to check whether Shri U.P. Sardeshpande and Applicant Sabhadinde possessed required eligibility for the promotional post on the date of completion of their 12 years' service on the post of Mechanical Supervisor/ Sectional Engineer i.e. 10.07.02 and 01.04.2008 respectively. During scrutiny, it was found that in case of Shri U.P. Sardeshpande, two promotional post i.e. Assistant Drilling Engineer/ Deputy Engineer (Mechanic) were available for Mechanic Supervisor on 10.07.2002. Shri U.P. Sardeshpande found ineligible for promotion on the post of Deputy Engineer (Mechanical) as he did not possess Degree in Mechanical Engineer as per Recruitment Rules for Deputy Engineers of the year 1974 published on 23.04.1974 but he was found eligible for the post of Assistance Drilling Engineer as he passed S.S.C. Examination and possessed experience of more than 10 years in drilling borewells as mentioned in the Recruitment Rules for the post of Assistant Drilling Engineer, 1976 notified on 13.05.1976. Therefore, he has been granted the

benefit under ACPS. In case of the Applicant, only one promotional post i.e. post of Deputy Engineer (Mechanic) was available on 01.04.2008. As per Recruitment Rules of the year 1974, the Applicant was not possessing required qualification for promotion on the post of Deputy Engineer (Mechanical) and therefore, his proposal was not considered for granting the benefit under modified ACPS.

11. It is his further contention that the cases of the Applicant and Shri U.P. Sardeshpande have been considered as per the Recruitment Rules then prevailing. No discrimination has been made by the Respondent while rejecting the claim of the Applicant.

12. It is his contention that Respondent No. 1 has taken conscious decision while rejecting the proposal of the Applicant to grant benefit under modified ACPS. There is no illegality in the impugned order. Therefore, he supported the impugned order and prayed to reject the O.A.

13. The Applicant filed Rejoinder to the reply filed by Respondent No. 1 and contended that Respondent No. 1 has placed reliance on the Rules of Industries and Labour Department but the same are not applicable to the case of the Applicant. The Applicant was working in the Rural Development Department presently known as Water Resources and Sanitation Department. Therefore, the Recruitment Rules, 1976 notified on 13.05.1976 are applicable to him.

14. It is his contention that his case and case of Shri U.P. Sardeshpande are similar but the Respondent has applied different criteria in considering his case and rejected his claim illegally.

15. It is his further contention that he is having experience of more than 10 years of Drilling of bore wells while Shri U.P. Sardeshpandedid not possess the experience of drilling in hard rock and bore wells. In spite of that Respondent No. 1 considered the case of Shri U.P. Sardeshpandehand granted him benefit and rejected hisclaim. Therefore, he prayed to allow the O.A.

16. Respondent No. 1 filled Sur-rejoinder and resisted the contention of the Applicant by raising similar contentions to that of the contentions raised by him in his Affidavit-in-reply.

17. It is his contention that the post of Assistant Drilling Engineerand Deputy Engineer (Mechanical) has been merged and it has been designatedas Deputy Engineer (Mechanical) after merger as per G.R. dated 28.05.2005. The Applicant completed 12 years' service on the post of Sectional Engineer on 01.04.2008 but on that date,the post of Assistant Drilling Engineer was not in existence. Therefore,Recruitment Rules for the post of Assistant Drilling Engineer of 1976 published on 13.05.1976werenot applicable in his case.The Recruitment Rules for the post of Deputy Engineer of 1974 published on 23.04.2014 were applicable to the Applicant.The Applicant was not possessing required eligibilitycriteriafor the promotion on the post of Deputy Engineer (Mechanical) as per the Recruitment Rules, 1974, and therefore,hisclaim has been rejected on that ground. Therefore, he prayed to dismiss the O.A.

18. I have heard Shri V.B. Wagh, learned Advocate for the Applicant and Shri B.S. Deokar, learned Presenting Officer for Respondent. I have perused the documents on record.

19. Admittedly,Applicant was initially Appointed as Mechanic in the Office of Assistant G.A.D.A. Parbhani by order dated 23.07.1979. He was promoted to the post of Junior Engineer by

order dated 20.03.1989. He has further designated as Sectional Engineer as per decision taken by the Respondent, and thereafter, designated as Sectional Engineer (Gazetted) on 01.04.1996. Admittedly, he completed 12 years of service on the post of Sectional Engineer. The proposal for extending the benefit of modified ACPS in view of G.R. dated 01.04.2010 to the Applicant has been forwarded to Respondent No. 1 along with Shri U.P. Sardeshpande. Admittedly, the Respondent No. 1 formed a Committee for taking decision on the proposal. The proposal was forwarded to Finance Department for its concurrence. The Finance Department opined that the proposal of the Applicant and Shri U.P. Sardeshpande would be decided by the Respondent No. 1 as per Rules. Thereafter, the Committee decided the proposal and extended benefit of G.R. dated 01.04.2010 to Shri U.P. Sardeshpande and rejected the proposal of the Applicant on the ground that he was not fulfilling the eligibility criteria required for promotion on the post of Deputy Engineer (Mechanical) as per the Recruitment Rules, 1974 published on 23.04.1974.

20. Learned Advocate for the Applicant has submitted that the Applicant was serving as Sectional Engineer under Respondent No. 1 and as per Recruitment Rules, 1976 published on 13.05.1976, the promotional post for the Sectional Engineer was Assistant Drilling Engineer (Class-II). As per Rule 5 (1)(b) of the said Rule, the Mechanic Supervisor who passed S.S.C. Examination and possesses experience of more than 10 years in Drilling Bore Wells will be eligible for promotion on the post of Assistant Drilling Engineer. He has submitted that the post of Assistant Drilling Engineer and Deputy Engineer (Mechanic) have been merged in the year 2005, and after merger it has been designated as Deputy Engineer (Mechanical). He has submitted that in view of Recruitment Rules, 1976 notified on 13.05.1976, the Applicant was eligible for promotion on the post

of Drilling Engineer which has been merged in the post of Deputy Engineer (Mechanical) in the year 2005, and therefore, he has satisfied required eligibility criteria for promotional post and thereafter he is entitled to get benefit as per G.R. 01.04.2010. The Respondents have not considered the said Recruitment Rules, 1976 notified on 13.05.1976 and wrongly rejected his claim. He has submitted that Shri U.P. Sardeshpande was also serving as Sectional Engineer and his case is similar to that of the case of the Applicant. Respondent No. 1 granted benefit of the G.R. dated 01.04.2010 to Shri Sardeshpande but he rejected the claim of the Applicant, and thereby, made discrimination. He has submitted that the impugned order issued by the Respondent No. 1 is illegal, and therefore, he has prayed to quash the impugned order by allowing the O.A.

21. Learned Presenting Officer has submitted that the proposal to extend benefit of ACPs to the Applicant and Shri U.P. Sardeshpande was sent to Respondent No.1. Respondent No.1 formed a Committee to take decision on it. The opinion of the Finance Department has been sought. Thereafter, Respondent No.1 took decision on the proposal and rejected the proposal of the Applicant on the ground that on 01.04.2008, when Applicant completed 12 years' service on the post of Sectional Engineer, he was not possessing required qualification for promotion to the post of Deputy Engineer (Mechanic) in view of the Recruitment Rules, 1974 notified on 23.04.1974. He has submitted that the post of Assistant Drilling Engineer was not in existence on 01.04.2008, and therefore, the Recruitment Rules, 1976 notified on 13.05.1976 was not applicable in the case of the applicant. He has submitted the case of Shri U.P. Sardeshpande was different than the case of the Applicant. Shri Sardeshpande was eligible for promotional post on 10.07.2002 on completion of 12 years' service on the post of Sectional Engineer. At that time i.e. on

10.07.2002 two promotional posts i.e. Assistant Drilling Engineer and Deputy Engineer were available to Shri. Sardeshpande. He was not possessing required eligibility criteria for the post of 'Deputy Engineer (Mechanical)' but he was possessing eligibility criteria for the post of 'Assistant Drilling Engineer'. Therefore, his case was governed as per Recruitment Rules 1976, notified on 13.05.1976.

22. Learned P.O. has further submitted that there is no discrimination on the part of the Respondent No.1 in considering the case of the Applicant and Respondent No. 1, has rightly rejected the claim of the Applicant on the basis of Recruitment Rules 1974 then prevailing as on 01.04.2008, and therefore, he justified the impugned order.

23. On perusal of documents on record. It reveals that proposal to extend benefit of G.R. of 01.04.2010 to the Applicant was sent to the Respondent No.1 as the Applicant rendered service of 12 years on the post of Sectional Engineer. It is material to note here that previously, two different promotional posts i.e. Assistant Drilling Engineer and Deputy Engineer (Mechanical) for the Sectional Engineers were available in the Department. There were two different Recruitment Rules for the promotion on the post of 'Assistant Drilling Engineer' and 'Deputy Engineer (Mechanical)'. As per the Recruitment Rules 1974 notified on 23.04.1974, the post of Deputy Engineer (Mechanical) has to be filled from the eligible Government employees i.e. Mechanical Supervisor working in ground Water Survey & Development Agency who possess degree or diploma in Mechanical Engineering or Electrical Engineer or Automobile Engineering with at least Three years' service in the case of Degree holder and Eight years' service in the case of Diploma holder. While as per Recruitment Rules 1976 notified on

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13.05.1976 the post of 'Assistant Drilling Engineer' has to be filled-in by promotion from among Mechanical Supervisor working in the Ground Water Surveys and Development Agency passed S.S.C. examination and possesses experience of more than 10 years in Drilling bore wells. In the year 2005 i.e. on 28.10.2005, the Government issued G.R. and took decision to merge the post of 'Assistant Drilling Engineer' and 'Deputy Engineer (Mechanical)' and new post was designated as Deputy Engineer (Mechanical). No post of Assistant Drilling Engineer was in existence thereafter. The Recruitment Rules of 1976 notified on 13.05.1976 for the promotion on the post of Assistant Drilling Engineer cannot be considered in the year 2008 i.e. on 01.04.2008 when the applicant was considered for promotion on the post of Deputy Engineer (Mechanical), as the post of Assistant Drilling Engineer was not in existence at that time. Therefore, Recruitment Rules 1974 of promotion on the post of 'Deputy Engineer (Mechanical)' notified on 23.04.1974 has to be taken in to account while considering the case of the Applicant. The Applicant has completed 12 years' service on the post of Sectional Engineer on 01.04.2008. On that day, he would be considered for the grant of benefit of modified ACPS as per the G.R. dated 01.04.2010. As per said G.R, the employee must fulfill the required eligibility criteria for the promotional post. On 01.04.2008 the Applicant was not possessing required eligibility criteria for the post of Deputy Engineer (Mechanic), as per Recruitment Rules 1974 notified in 23.04.1974, as he was not possessing degree or diploma in Mechanical or in electrical or Automobile Engineer, and therefore, he was held ineligible for the promotion on the post of Deputy Engineer. As he was not eligible for promotion, he was not granted the benefit under modified ACPS in view of the G.R. dated 01.04.2010. Consequently, the proposal so far as Applicant was concerned was rejected by Respondent No. 1. Respondent No.1 has rightly considered

the provision of G.R. dated 01.04.2010 and Recruitment Rules of 1974 notified on 23.04.1974, while rejecting the claim of the Applicant. The Respondent No.1 has rightly considered the provision of Recruitment Rules, 1976 then prevailing and applicable in case Shri U.P. Sardeshpande, and therefore in my view no discrimination was made by the Respondent while rejecting the claim of the Applicant. There is no illegality in the impugned order. Therefore, no interference in it is called for. There is no merit in the O.A. Consequently, it deserved to be dismissed.

24. In view of the discussion in foregoing paragraphs, the O.A. stands dismissed with no order as to costs.

(B.P. Patil)
Acting-Chairman

Place : Mumbai.

Date : 20.08.2019.

Dictation taken by : N.M. Naik.

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