

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 1068 OF 2023

DISTRICT:- PARBHANI

Gunaji s/o Gendaji Kamble,)
Age: 65 yrs, Occu: Retired as Circle Officer)
R/o. Gaghudas Gruhnirman Sanstha,)
Rahul Nagar, Parbhani,)
Tal. and Dist: Parbhani .)... **APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through its Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai-400 032.)
- 2. The Collector,**)
Parbhani.)
- 3. The Tahsildar,**)
Manvat, Dist. Parbhani.)...**RESPONDENTS**

APPEARANCE : Shri P.G. Suryawanshi, learned counsel
holding for Talekar and Associates,
learned counsel for the applicant.

: Smt. R.S. Deshmukh, learned Presenting
Officer for the respondent authorities.

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

RESERVED ON : 21.08.2024.

PRONOUNCED ON : 18.10.2024.

ORDER

Heard Shri P.G. Suryawanshi, learned counsel holding for Talekar and Associates, learned counsel for the applicant and Smt. R.S. Deshmukh, learned Presenting Officer for the respondent authorities finally with consent at admission stage.

2. By filing this Original Application the applicant is seeking following reliefs:-

- (A) *To direct the respondents to grant benefits of second time bound promotion i.e. notional increments to the applicant w.e.f. 01.10.2010.*
- (B) *To direct the respondents to pay arrears of salary to the petitioner as sequel to grant of benefits of second time bound promotion and revision of pension benefits, with an interest @ 18% per annum to the applicant.*
- (C) *To direct the respondents to grant all the consequential benefits including arrears of salary, as a sequel to grant of benefits of second time bound promotion along with an interest @18% per annum.*
- (D) *To direct the respondents to grant benefits of second time bound promotion i.e. notional increments to the applicant w.e.f. 01.10.2010,*

pending hearing and final disposal of present Original Application.

3. Brief facts giving rise to this Original Application are as follows:-

(i) The applicant was selected and appointed on the post of Talathi vide order dated 29.09.1984. After completion of 12 years of service on the post of Talathi, benefits of first time bound promotion were granted to the applicant w.e.f. 01.10.2002 (Annexure 'A-1'). Thereafter the applicant came to be promoted on the post of Circle Officer w.e.f. 09.07.2013. The applicant came to be retired after attaining the age of superannuation w.e.f. 30.09.2014 (Annexure 'A-2').

(ii) The applicant further contends that meanwhile crime bearing No. 58/2014 came to be registered against the applicant for the offence punishable under Section 420, 467 and 468 of the Indian Penal code. By judgment and order dated 02.11.2020, the Judicial Magistrate First Class, Sonpeth acquitted the applicant in the Regular Criminal Case No. 57/2014 (Annexure 'A-3'). Further, the enquiry officer has also exonerated the applicant in the departmental enquiry vide order dated 19.01.2021. The respondent No.2- Collector treated the period of suspension of the applicant from

15.02.2014 to 12.08.2014 as period spent on duty for all purposes vide order dated 26.02.2021.

(iii) It is the further case of the applicant that due to pendency of the criminal case and departmental enquiry, the benefits of second time bound promotion were not extended to the applicant. After acquittal from the criminal case and completion of the departmental enquiry, the applicant has approached the respondent No.3 by filing the representation dated 05.02.2021 (Annexure 'A-5') requesting therein to grant benefits of the second time bound promotion. The District Promotion Selection Committee, Parbhani headed by respondent No.2- Collector in its meeting dated 20.12.2021 rejected the claim of the applicant for grant of the benefits of second time bound promotion solely for the reason that the applicant retired one day prior to complete qualifying service for grant of second time bound promotion. Hence this Original Application.

4. Learned counsel for the applicant submits that as per G.R. dated 02.03.2019, the applicant is entitled for second time bound promotion after completion of 20 (12 +8) years of service. The first time bound promotion was granted to the applicant w.e.f. 01.10.2002 and after completion of 8

years of service i.e. on 01.10.2010, the applicant was entitled for second time bound promotion as per the G.R. dated 02.03.2019. Learned counsel for the applicant submits that the respondents cannot deny the second time bound promotion to the applicant on the ground that one day prior to completing the qualifying service for grant of second time bound promotion, the applicant came to be retired.

5. Learned counsel for the applicant in order to substantiate his contention placed his reliance in a case of **Pandurang Vithobaji Dhumne & Ors. Vs. the State of Maharashtra & Ors. (Writ Petition No. 5864/2019)** decided by the Division Bench of Hon'ble High Court of Bombay, Bench at Nagpur vide judgment and order dated 02.03.2022, wherein the petitioners have completed one full year service on 30th June of their respective years of retirement, but the increment fell due on 1st July, the date of which they were not in service. In the backdrop of these facts, the Division Bench has held that what is important in the matter is that the petitioners have completed one full year service on 30th June of the respective years of their retirement, however they were denied the benefit of the increment that fell due on 1st July, just because on the date of the increment falling due they

were not in service. The Division Bench has thus allowed the said Writ Petition in terms of prayer clause (A) directing the respondent No.4 to take all necessary steps for granting notional annual increment to the petitioners therein.

6. Learned counsel for the applicant has also placed his reliance in a case of **Saketh India Ltd. & Ors. Vs. India Securities Ltd.** reported in **(1999) 3 SCC** wherein the Hon'ble Supreme Court has held that ordinarily in computing the time, the rule observed is to excluded the first day and to include the last. The Hon'ble Supreme Court has considered the provisions of Section 9 of General Clauses Act and decided the matter filed by the petitioners therein. Learned counsel for the applicant has also placed his reliance in a case of **the Director (Admn. and HR) KPTCL & Ors. Vs. C.P. Mundinamani & Ors. (Civil Appeal No. 2471/2023)** wherein the identical issue is dealt with by the Hon'ble Supreme Court. Learned counsel for the applicant submits that the Original Application deserved to be allowed.

7. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent No.2 submits that the applicant was granted first time bound promotion on

01.10.2002. Learned P.O. submits that however it is not correct that in view of the G.R. dated 02.03.2019 the applicant is entitled for second time bound promotion benefit w.e.f. 01.10.2010. The said G.R. is effective from 01.01.2016 and for the employees who were in service on the said date i.e. 01.01.2016. In the instant case the applicant came to be retired on 30.09.2014 and thus the said G.R. is not applicable for the second time bound promotion of the applicant. The District Promotion Selection Committee has rightly passed the order which is impugned in the Original Application. There is no substance in the Original Application and the same is liable to be dismissed.

8. By filing this Original Application the applicant is seeking direction to the respondents to grant benefits of second time bound promotion w.e.f. 01.10.2010 and also seeking other consequential benefits in connection with the same.

9. The G.R. dated 02.03.2019 still holds the field. In terms of said G.R. the employee is entitled for three benefits in 7th Pay Commission in revised assured progressive scheme implemented w.e.f. 01.01.2016. Accordingly, as per the

provisions of clause No. (vii) of the said G.R. dated 02.03.2019 the officer/employee who has completed 20 (12+8) years of regular continuous service on or before 01.01.2016 will be entitled for second benefits and such benefits will be sanctioned on 01.01.2016 as per eligibility.

10. In view of above, I don't find any substance in the submissions made on behalf of respondent No.1 by learned Presenting Officer that the said G.R. is effective from 01.01.2016 and for the employees who are in the service on the said date and the applicant who has already retired on 30.09.2014 and therefore, the provisions of G.R. cannot applicable for the second time bound promotion of the applicant.

11. It also reflects from the impugned order (Annexure 'A-8') which is the minutes of meeting of the committee constituted for grant of first, second and third time bound promotion, particularly paragraph No.5, that the applicant has been refused to grant time bound promotion only for the reason that one day before the due date the applicant came to be retired on attaining the age of superannuation.

12. The provisions of Section 9 of General Clauses Act are important. Section 9 gives statutory recognition to the well-settled principle applicable to the construction of statutes that ordinarily, in computing time, the rule observed is to exclude the first and to include the last. It is well settled that when a computation is to be for the benefit of the person affected, as much time should be given as the language admits of and when it is to his detriment the language should be construed as strictly as possible.

13. In a case **Saketh India Ltd. & Ors. Vs. India Securities Ltd.** (supra) relied upon by learned counsel for the applicant the Hon'ble Supreme Court had an occasion to deal with the question as to whether the complaint filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 is within or beyond time. In paragraph No. 8 of the judgment the Hon'ble Supreme Court has made the following observations:-

"8. Hence, there is no reason for not adopting the rule enunciated in the aforesaid case which is consistently followed and which is adopted in the General Clauses Act and the Limitation Act. Ordinarily in computing the time, the rule observed is to exclude the first day and to include the last. Applying the said rule, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of 15 days from the date of the receipt of the notice by the drawer, expires. The period of 15 days in the present case expired on 14-10- 1995. So cause of action for filing complaint would arise from 15-10-1995. That day (15th

October) is to be excluded for counting the period of one month. Complaint is filed on 15-11-1995. The result would be that the complaint filed on 15th November is within time.”

14. In a case of **The Director (Admn. and HR) KPTCL & Ors. Vs. C.P. Mundingamani & Ors.**(supra) relied upon by learned counsel for the applicant the Hon’ble Supreme Court had an occasion to deal with the question as to whether the officer/employee is entitled for the annual increments which shall earn one day prior to the date of retirement on attaining the age of superannuation. In paragraph No. 7 the Hon’ble Supreme Court has made the following observations:-

“ 7. In view of the above and for the reasons stated above, the Division Bench of the High Court has rightly directed the appellants to grant one annual increment which the original writ petitioners earned on the last day of their service for rendering their services preceding one year from the date of retirement with good behaviour and efficiently. We are in complete agreement with the view taken by the Division Bench of the High Court. Under the circumstances, the present appeal deserves to be dismissed and is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.”

15. In the instant case also the second time bound promotion is granted to the officer/employee for rendering the services preceding the period from the due date of admissibility of time bound promotion. In terms of Section 9

of the General Clauses Act as discussed above, the first day is excluded and the passing day is included. Thus the applicant is entitled for the second time bound promotion. Thus considering the entire facts of the case I am inclined to allow the present Original Application. Hence, the following order:-

O R D E R

- (i) The Original Application is hereby partly allowed.
- (ii) The respondents are hereby directed to grant the benefits of second time bound promotion i.e. notional increments to the applicant w.e.f. 01.10.2010.
- (iii) The respondent are hereby directed to pay arrears of salary to the applicant as sequel to grant of benefits of second time bound promotion and further directed to revision of pension benefits. The respondents are also directed to grant all the consequential benefits to the applicant.
- (iv) The applicant's claim about the interest @18% per annum is hereby rejected.

- (v) In the circumstances there shall be no order as to costs.
- (vi) The Original Application is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad

Date : 18.10.2024

SAS O.A. 1068/2023 Benefit of Time Bound Promotion.