

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1313 OF 2023

District : Thane
Sub.:- Recovery

Shri Sanjay Punamchand Khajone.)
Age : 57 Yrs, Working as Steno-Typist in)
the office of Joint Commissioner of State)
Tax (Appeals), Charai, District : Thane and)
R/o. A/504, Shreenath CHS Ltd.,)
Khambalpada, Thakurli (E),)
District : Thane.)...**Applicant**

Versus

The Additional State Tax Commissioner,)
Thane Zone, Thane, having office at 3rd)
Floor, GST Bhavan, in the campus of)
District Collector, Court Naka, Thane.)...**Respondent**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Smt. Archana B.K, Presenting Officer for Respondent.

CORAM : Shri M.A. Lovekar, Vice-Chairman

DATE : 05.03.2025

JUDGMENT

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. Archana B.K, learned Presenting Officer for the Respondent.

2. Undisputed facts are as follows :-

By order dated 22.10.2008, benefit of 1st Time Bound Promotion was extended to the Applicant w.e.f.05.08.2006. At this point of time, he was holding the post of Steno-Typist and hence, next scale of Stenographer (Lower Grade) was given to him. By order dated 02.03.2021, benefit of 2nd Time Bound Promotion was extended to him w.e.f.01.01.2016 and next scale of Stenographer (Higher Grade) was given to him. As per 'The 'Personal Assistant Group-B, Higher Grade Stenographer Group-B, Lower Grade Stenographer Group-B and Steno-Typist Group-C in the various Offices of Government outside Greater Mumbai (Recruitment) Rules, 1997 (hereinafter referred to as 'Recruitment Rules of 1997' for brevity), Shorthand speed of 120 W.P.M. was one of the criteria for the post of Higher Grade Stenographer which the Applicant did not fulfill. On the basis of said Rule i.e. Rule 4, the impugned order dated 08.08.2023 withdrawing benefit of 2nd Time Bound Promotion was passed and recovery of excess payment directed by the other impugned order dated 23.08.2023. Hence, this Original Application.

3. Stand of the Respondent is that the impugned orders are consistent with 'Recruitment Rules of 1997', the Applicant did not fulfill one of the criteria for the post of Higher Grade Stenographer, benefit of 2nd Time Bound Promotion was wrongly extended to him, it was always open to the Respondent to withdraw the same, the Applicant had executed 'Undertakings' for refund of excess payment and for all these reasons, the impugned order cannot be interfered with.

4. The point to be considered is whether benefit of Time Bound Promotion/Assured Career Progression Scheme which is purely monetary in nature, could have been denied to the Applicant because he did not fulfill one of the criteria i.e. Shorthand speed of 120 W.P.M. prescribed for the post of Higher Grade Stenographer in 'Recruitment Rules of 1997'. In view of the following ratio laid down in ***Kamlanand Thakur Vs. The State of Bihar & Ors. (2025(1) SLR 695 (Patna),***

Patna High Court (Full Bench), this question will have to be answered in the negative. -

“42. The Supreme Court, after reviewing the Bihar Accounts Service Rules, 2000 as modified on 28th of March, 2000, which provided for minimum Graduation qualification for promotion to Bihar Accounts Service as also the ACP Rules of 2003, which spelled out that the beneficiary ought to fulfill the same conditions as would be required for promotion, held that "fulfillment of the educational qualifications prescribed under the Recruitment Rules for the purposes of promotion are not necessary for non-functional in situ promotion. In other words, educational qualification required for the purposes of promotion is not necessary for the grant of in situ promotion, i.e., only for extending the monetary benefit where there are no promotional avenues and the employees are likely to be stagnated".

43. While coming to such conclusion, the Supreme Court has noted that the ACP scheme was enforced on the recommendations of the 5th Central Pay Commission in the context of Group C and D employees and it provided monetary benefits to the employees on completion of twelve years and twenty four years of regular service, who were not able to get promotion. The scheme as such was anti-stagnation and envisaged merely placement of the employees in the higher pay-scale for the grant of financial up-gradation only, without grant of actual promotion.

44. The benefit of ACP as such is like granting non-functional in situ promotion.

45. The Supreme Court, after referring to Union of India & Ors. vs. C.R Madhava Murthy and Anr.: (2022) 6 SCC 183 and Union of India and Anr. vs. G Ranjanna & Ors.: (2008) 14 SCC 721 has held that the ACP/MACP scheme is only to relieve the frustration on account of stagnation and it does not involve actual grant of promotional post, but merely monetary benefits in the form of next higher grade, subject to fulfillment of qualifications and eligibility-criteria.

46. These are incentive schemes for the employees to complete a particular period of service but without getting promotion for lack of promotional avenues.

47. The effect of scheme, the Supreme Court went on, must be judged keeping in view the object and purport of the scheme. In that context, it was further held that the fulfillment of educational qualifications prescribed under the Recruitment Rules for the purposes of promotion are not necessary for non-functional in situ promotion like grant of ACP.”

5. Since it is held that benefit of 2nd Time Bound Promotion was rightly extended to the Applicant, the question of recovery of amount said to have been paid in excess on account of wrong pay fixation, and

whether on the basis of 'Undertakings' said to have been executed by the Applicant, such recovery can be enforced, does not survive for determination.

6. For all these reasons, the Original Application is allowed in the following terms :-

- (a) The impugned orders dated 08.08.2023 and 23.08.2023 are quashed and set aside and it is held that by order dated 02.03.2021, benefits of 2nd Time Bound Promotion were rightly extended to the Applicant.
- (b) No order as to costs.

Sd/-
(M.A. Lovekar)
Vice-Chairman

Mumbai
Date : 05.03.2025
Dictation taken by :
S.K. Wamanse.

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