

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No.974 of 2017(D.B.)

SANJAY S/O PUNDLIK CHAHANDE,
Aged 60 years, Occ: Retired,
R/o Plot no. 1, Suryakiran Society,
Rudranagar, Mhalginagar, Besa Road, Nagpur.

Applicant.

Versus

- 1) THE STATE OF MAHARASHTRA,
Through its Secretary,
State Excise Department having its office at Mantralaya,
Mumbai-32.
- 2) Deputy Divisional Commissioner State Excise, 102,
Old Sachivalaya, Civil Lines, Nagpur.
- 3) Superintendent of State Excise,
First floor, Administrative Building, Civil Lines, Wardha.
- 4) Accountant General (A&E)-II,
Maharashtra, Nagpur,
Civil Lines, Nagpur. 440 001.
- 5) Commissioner of State Excise,
Maharashtra State, Mumbai,
Old Jakat House, 2nd floor,
Shahid Bhagatsingh Marg, Fort, Mumbai-23.
- 6) Pay Verification Unit,
Nagpur through its Account Officer
Office of the Joint Director of Account Treasury,
Civil Lines, Nagpur.

Respondent.

Shri N.S. Warulkar, Advocate for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondent.

**Coram :- Hon'ble Shri Justice M.G. Giratkar, Vice Chairman and
Hon'ble Shri Nitin Gadre, Member (A).**

Dated :- 20/08/2024.

J U D G M E N T

Heard Shri N.S. Warulkar, learned counsel for the applicants and Shri V.A. Kulkarni, learned P.O. for the respondent.

2. The case of the applicant in short is as under –

The applicant was initially appointed on the post of Jawan State Excise on 25/11/1998. Thereafter, he was continuously working on the same post till the date of his next promotion on the post of Sub Inspector, State Excise D-2, Division, Nagpur. He joined on the post of Sub Inspector on 04/06/2013 and he was transferred to State Excise, Flying Squad, Wardha where he joined on 05/07/2016. He continued to work there till the date of his retirement on 30/09/2016.

3. It is the contention of the applicant that the applicant is retired on the post of Sub Inspector State Excise, but he is not granted pension of the said post on the ground that the promotion was temporary and said promotion was not regularized. Hence, the applicant approached to this Tribunal for the following reliefs –

“ (8) (i) direct the Respondent nos. 2 to 4 to grant the Applicant, difference of Retirement Benefit amounts in Pension and Gratuity also to grant him consequential and monetary benefits arising therefrom, after proper Pay Fixation at the rate of Rs 10830+3500 for the purpose of grant of pension and gratuity, from the date of his Retirement.

(ii) further be pleased to hold and declare that the Applicant is entitled to all consequential and monetary benefits arising therefrom after the Competent Authority grants proper pay scale at the rate of 10830+3500 for the purpose of grant of Retirement Benefits and further direction to pay 18% interest on the said amounts.

8 (ii-a) Hold and declare that applicant is entitled for regularization of promotion on the post Sub Inspector State Excise and all other retirement benefits arising therefrom as granted to Shri M.T.Kale and Shri G.S.Thulkar, in the interest of justice.

4. The O.A. is strongly opposed by the respondents by filing reply. It is submitted that the applicant was granted promotion on the post of Sub Inspector State Excise, but that promotion is not regularized. Therefore, the applicant is not entitled to get the pension of promotional post of Sub Inspector State Excise. Hence, the O.A. is liable to be dismissed.

5. During the course of submission learned counsel for applicant has pointed out the decision of this Tribunal in the O.A.No.235/2021, decided on 21/12/2022. The similar issued was before this Tribunal. This Tribunal has held that though the promotion was temporary, but the applicant was working on the post of Sub Inspector State Excise at the time of retirement and therefore he is entitled to get the pension of post Sub Inspector State Excise. The Judgment in O.A.No. 235/2021 is not challenged by the respondents.

6. Similar relief is prayed by the applicant. The applicant's case is similar to the case of the applicant in O.A.No.235/2021. The applicant is claiming the same relief as the relief claimed in O.A.No.235/2021. This Tribunal has granted the relief on the ground that the applicant is entitled to get pension of the last pay drawn. Para-5 and 6 of the Judgment are reproduced below –

“(5) From the perusal of the Judgment, it appears that in the cited Judgment the applicant was temporarily promoted on the post of PSI, but pension was granted of the post of ASI. In para nos.28,29 & 30 following observations were made –

“28. Now, turning to the facts of the present case, admittedly, the Respondents have extracted the work of PSI from the Applicants. On the cost of repetition, I would again like to mention that, there is no defence of non-eligibility or absence of substantive post. Therefore, harmonious construction of the Pension Rules in the light of aforesaid Judgment of Hon'ble Supreme Court clearly spells that, even if the promotion was under the garb of temporary promotion, the Respondents cannot deny retiral benefits to the Applicants on the basis of last drawn pay from which they stand retired. Needless to mention that the pension is not charity or bounty. It is the right of Government employee. The principle enunciated by Hon'ble Supreme Court in various decisions referred to above, are clearly attracted to the present set of facts. Therefore, it would be highly unjust and iniquitous to deny the pensionary benefits to the Applicants. Such pensionary benefits conferred upon them by statute cannot be taken away under the guise of temporary promotion for no fault on the part of Applicants, particularly after extracting the work of promotional post from them. This conclusion is again fortified in view of the corrigendum issued by State of Maharashtra on 09.06.2016, which specifically provides to consider basic pay fixed for the post from which an employee has been retired for the purposes of grant of pension.

29. Suffice to say, the denial of such right by the Respondents is contrary to the Rules and fundamental rights of the Applicants to receive the pension. Such statutory right cannot be taken away under the garb of executive order of temporary promotion.

30. In view of aforesaid discussion, I have absolutely no hesitation to sum up that the Applicants are entitled to the pension on the basis of last drawn pay, which was of the rank of PSI and the applications deserve to be allowed.

(6) The said O.A. No.1041 of 2017 with other connected matters was allowed and the respondents were directed to pay retiral benefits to the applicants on the basis of last drawn pay of the post from which they stand retired and shall release all consequential benefits within three months.”

7. In view of the cited Judgment, the applicant is entitled for the same relief. Hence, we pass following order –

ORDER

(i) The O.A. is allowed.

(ii) The respondent nos. 2 and 4 are directed to grant the applicant pension and pensionary benefits on the basis of last drawn pay of the post on which he stood retired.

(iii) The respondents are directed to pay the consequential benefits i.e. difference of pay etc. within a period of six months from the date of receipt of this order.

(iv) No order as to costs.

(Nitin Gadre)
Member(A).

(Justice M.G.Giratkar)
Vice Chairman.

Dated :- 20/08/2024.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman and
Member (A).

Judgment signed on : 20/08/2024.