

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1030 of 2023 (S.B.)

Bhimrao Gangaram Jadhav,
Retired, Age 67 years, R/o Near Bhankhed,
Buddha Math, Mominpura Nagar.18.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary, Agriculture,
Animal husbandry, Dairy development and Fisheries Department,
Mantralaya, MUMBAI, 32.
- 2) The Commissioner,
Dairy Development Department, Administrative Building,
Varli Sea Face, Abdul Gaffarkhan Marg, MUMBAI-18.
- 3) The Regional Dairy Development Officer,
Civil Lines NAGPUR 440 001.

Respondents.

Shri Bharat Kulkarni, Advocate for the applicant.
Shri A.M. Khadatkhar, learned P.O. for respondents.

Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.

Date of Reserving for Judgment : 13th June,2024.

Date of Pronouncement of Judgment : 11th July,2024.

JUDGMENT

(Delivered on this 11th day of July,2024)

Heard Shri Bharat Kulkarni, learned counsel for applicant
and Shri A.M. Khadatkhar, learned P.O. for respondents.

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

The applicant is retired from the post of Junior Dairy Operator on 31/12/2016. The applicant is entitled for 3rd benefit of time bound promotion as per the G.R. 02/03/2019. After completion of service of 30 years, the applicant made representation for grant of 3rd benefit under the revised G.R. dated 02/03/2019. Respondent no.3 rejected the same on the ground that he was granted functional pay. It is submitted that that issue of non-functional pay is already decided by this Tribunal in O.A.Nos.633,733 and 599 of 2013 by common order dated 26/02/2015. This order is confirmed by the Hon'ble High Court in Writ Petition No.6629/2015. The SLP filed by the respondents also came to be dismissed. It is submitted that respondents have granted benefits of two time bound promotion, but 3rd time bound promotion is not granted as per the G.R. 02/03/2019. Therefore, the applicant has filed the present O.A. for the following reliefs –

“(11) (I) Quash and set aside the impugned letter communication dated 30/08/2023 of R. 3, being illegal & de-hors of law. At Annexure No. A-1

(II) Direct the Respondents to grant the 3rd benefit of revise ACP vide GR dated 02/03/2019 in the pay Rs. 35400/- Grade pay Rs.2800/-pay band S-9 to applicants with arrears & interest thereon. Revise the pension & retiral benefits.

3. Respondent nos.1 to 3 have filed reply. They have also submitted that as per the G.R. dated 8/6/1995 the post holders in

Group-C and Group-D in government service will be given pay scale of the higher post after 12 years of regular service. The applicant was granted 1st time bound promotion after completion of 12 years of regular service on 4/6/1998 on the post of Junior Dairy Operator. The respondents have granted 2nd time bound promotion on 4/6/2010.

4. It is submitted that the service book of applicant was submitted to the pay verification unit. The pay verification unit raised objections that as per the G.Rs. dated 20/07/2001 and 05/07/2010, the grade pay given to isolated post is Rs.200/- instead of Rs.300/-, therefore, the excess payment was recovered by the respondents. It is submitted that according to 7th Pay Commission, the service of Assured Progression Scheme (ACP) in the G.R. of Finance Department dated 2/3/2019 is cleared. However, three benefits under revised scheme can be allowed to the employees. In para-2 of the G.R., those employees who have received the functional promotion, they will be admissible only one benefit under this scheme. If the concerned employee has completed regular continuous service of 30 years in the same promotional channel, the number of functional promotions and benefits during the period of such 30 years should be at least three. Apart from that employees / officers who have received three functional promotions, any single benefit will not be admissible to them under this scheme. The G.R. of 2019 is very clear.

5. The applicant was granted one promotion and two benefits of time bound promotion of the entire period of his service and as per clause (ii) of the scheme in G.R. dated 2/3/2019 and hence the applicant is not entitled for 3rd benefit as per the 7th Pay Commission. Hence, the O.A. is liable to be dismissed.

6. The applicant has filed rejoinder. It is submitted that in reply, the respondents have mentioned the provisions of G.R. dated 1/4/2010 and para-2 (b) (3) which is deleted by the Government by Corrigendum dated 21/02/2024. Therefore, non-functional promotion pay structure clause is deleted and on which the action is taken by the respondents is illegal.

7. During the course of submission, the learned counsel for applicant has pointed out the G.R. dated 2/3/2019. He has pointed out clause (vii) and (viii) of the G.R., The material portion of the G.R. is reproduced below –

“(vii) पूर्वी १२ व २४ वर्षांच्या सेवेनंतर मिळणारे लाभ, सातव्या वेतन आयोगात १०, २० व ३० वर्षांच्या सेवेनंतर पात्रतेनुसार अनुज्ञेय केले आहेत. त्यामुळे ज्या कर्मचारी / अधिकारी यांना दि.०१.०१.२०१६ पूर्वी अनुज्ञेयतेनुसार यथास्थिती पहिला वा दुसरा लाभ मंजूर झाला आहे, अशा कर्मचारी / अधिकारी यांना उर्वरित यथास्थिती दुसरा व तिसरा लाभ पुढील तक्त्यात नमूद केल्यानुसार, पात्रतेनुसार, अनुज्ञेय राहिल.

दि.०१.०१.२०१६ पूर्वी १२ वा २४ वर्षांच्या सेवेनंतर घेतलेला लाभ	दुसऱ्या लाभाची अनुज्ञेयता	तिसऱ्या लाभाची अनुज्ञेयता
पहिला लाभ	पहिल्या लाभापासून आठ वर्षांनंतर (१२+८)	दुसऱ्या लाभापासून दहा वर्षांनंतर (२०+१०)
दुसरा लाभ	लागू नाही.	दुसऱ्या लाभापासून सहा वर्षांनंतर (२४+६)

(vii) ज्या कर्मचाऱ्यास दि.०१.०१.२०१६ ते या शासन निर्णयाच्या दिनांकापर्यंत यथास्थिती १२ वा २४ वर्षांच्या सेवेनंतर पदोन्नतीच्या साखळीतील पदावर पहिला अथवा दुसरा लाभ मंजूर झाला आहे, त्यांना २० (१२+८) व ३० (२४+६) एवढ्या वर्षांच्या नियमित सेवेनंतर, पात्रतेनुसार, यथास्थिती दुसरा व तिसरा लाभ मंजूर करण्यात यावा. ”

8. The learned P.O. has pointed out clause (iii) of the G.R. dated 2/3/2019. The clause (iii) of the G.R. is reproduced below –

“ iii) या योजनेअंतर्गत एकाच पदोन्नती साखळीतील पदावर मिळून झालेल्या संपूर्ण सेवा कालावधीत, संबंधितास सुरुवातीस लाभ मंजूर झाला असल्यास व तदनंतर लाभाच्या वेतनश्रेणीत त्याची कार्यात्मक पदोन्नती झाल्यास, पुन्हा वेतननिश्चीतीचा लाभ अनुज्ञेय नसल्याने, अशा पदोन्नतीची गणना एकूण तीन कार्यात्मक पदोन्नतीच्या संख्येमध्ये करण्यात येणार नाही. ”

9. Relying on the clause (iii), i.e., in respect of functional pay granted to the applicant, but the respondents are denying 3rd time bound promotion.

10. The learned counsel for applicant has pointed out the G.R. 1/4/2010 and para-3 of the G.R. is now corrected by corrigendum dated 21/2/2024. Para-3 of the G.R. of 1/4/2010 is reproduced below—

“(३) विवक्षित सेवाकालावधीनंतर, संबंधित पदाच्या कर्तव्ये व जबाबदारीत वाढ न होता, अकार्यात्मक वा तत्सम उच्च वेतनसंरचनेचा (Non functional pay structure) मंजूर करण्यात आलेला/येणारा लाभ हा या योजनेखालील पहिला लाभ समजण्यात येईल. उदा. मंत्रालय/विधान मंडळ सचिवालयातील कक्ष अधिकाऱ्यांना चार वर्षांच्या नियमित सेवेनंतर देण्यात येत असलेली अकार्यात्मक वेतनसंरचना. ”

11. The Corrigendum dated 21/2/2024 is reproduced below –

“शासन शुद्धीपत्रक -

१. वित्त विभागाच्या क्रमांक: वेतन-११०९/प्र.क्र.४४/सेवा-३, दि.०१.०४.२०१० रोजीच्या शासन निर्णयातील परिच्छेद क्रमांक २ (ब) (३) "विवक्षित सेवाकालावधीनंतर, संबंधित पदाच्या कर्तव्ये व जबाबदारीत वाढ न होता, अकार्यात्मक वा तत्सम उच्च वेतनसंरचनेचा (Non functional pay

structure) मंजूर करण्यात आलेला / येणारा लाभ हा या योजनेखालील पहिला लाभ समजण्यात येईल. उदा. मंत्रालय/विधानमंडळ सचिवालयातील कक्ष अधिकाऱ्यांना चार वर्षांच्या नियमित सेवेनंतर देण्यात येत असलेली अकार्यात्मक वेतनसंरचना" हा परिच्छेद पूर्णतः वगळण्यात येत आहे.

२. तसेच, वित्त विभागाच्या क्रमांक: वेतन-११०९/प्र.क्र.४४/सेवा-३, दि.०१.०४.२०१० रोजीच्या शासन निर्णयातील परिच्छेद क्रमांक २ (क) (१) मधील "तथापि, या योजनेतील पहिला लाभ म्हणून ज्या पदाची वेतनसंरचना मंजूर करण्यात आली आहे त्या पदाला विवक्षित सेवाकालावधीनंतर, त्या पदाच्या कर्तव्ये व जबाबदाऱ्यांत वाढ न होता, अकार्यात्मक वा तत्सम उच्च वेतनसंरचना मंजूर करण्यात येत असेल तर ती अकार्यात्मक वा तत्सम उच्च वेतनसंरचना दुसरा लाभ म्हणून मंजूर करण्यात येईल." हे वाक्य वगळण्यात येत आहे. "

12. In view of the Corrigendum dated 21/2/2024, non-functional pay / salary is not to be considered while granting time bound promotion. This issue was decided by this Tribunal. The said order was challenged before the Hon'ble High Court, Bench at Nagpur in Writ Petition No.6329/2015.

13. The material part of the Judgment is reproduced below –

" On hearing the learned Counsel for the parties and on a perusal of the impugned order, it appears that the Tribunal was justified in allowing the original application filed by the respondents. It was the case of the petitioners before the Tribunal that the petitioners had granted the first time bound promotion to the respondents in the year 1988 in pursuance of the Government Resolution dated 1.1.1986. We, however, find on a reading of the Government Resolution of the year 1986 that by the said Government Resolution, the State Government had merely revised the pay of the employees working in the milk scheme. The Tribunal rightly held that the case of the petitioners that they had granted time bound promotion to the respondents three times and therefore, the time bound promotion granted to them on the third occasion was withdrawn by the orders that were

challenged before the Tribunal, was not correct. The Tribunal rightly held that the assured progressive scheme was framed by of the policy of the Government in the year 1995 for the first time and hence, the petitioners could not have been granted the first time bound promotion in the year 1988. The Tribunal rightly held that the reliance placed by the petitioners on the Government Resolution revising the pay scale of the employees could not be considered as a time bound promotion. The Tribunal held that the respective respondents were granted time bound promotion by the petitioners only on two occasions firstly in the year 1995 w.e.f. 1.10.1994 and secondly in the year 2006 and 2008 after completion of 12 years of service from 1994. We find that the order of the Tribunal is just and proper and the Tribunal has rightly set aside the action on the part of the State Government of withdrawing the second time bound promotion, granted to the respondents.”

14. The contention of the respondents is that the applicant was granted non-functional pay and therefore he is not entitled for 3rd time bound promotion cannot be taken into consideration as per the Corrigendum dated 21/2/2024. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to consider the claim of the applicant for grant of 3rd time bound promotion / pay scale.

(iii) No order as to costs.

Dated :- 11/07/2024.

(Justice M.G. Giratkar)
Vice Chairman.

*dnk.

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

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 11/07/2024.