

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1230 of 2022 (S.B.)

Dayaram Ganpatrao Hedao,
Aged about 69 years, Occu.: Retired,
R/o Plot No.15, Suvikas Labout, Bhavani Mandir Road,
Bhavani Nagar, Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Principal Secretary,
Water Resources Department, Mantralaya, Mumbai-400 032.
- 2) Superintending Engineer,
Chandrapur Irrigation Project Circle,
Near Railway Station, Chandrapur-442 401.
- 3) Executive Engineer, Chandrapur Irrigation Division,
Chandrapur-442 401.

Respondents.

S/Shri R.M. Fating, V.P. Ingle, Advs. for the applicant.
Mrs. A. Warjekar, learned P.O. for respondent no.1.
Shri H.D. Marathe, Advocate for respondent nos.2 and 3.

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

Dated :- 10/04/2024.

J U D G M E N T

Heard Shri R.M. Fating, learned counsel for the applicant
and Mrs. A. Warjekar, learned P.O. for respondent no.1, none
appeared for respondent nos.2 and 3.

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

The applicant was initially appointed on the post of Technical Assistant. Subsequently his service was regularized w.e.f. 06/12/1985. The respondent authority has granted 1st time bound promotion to the applicant w.e.f. 01/04/1995. After attaining the age of 45 years, the applicant is exempted from passing the departmental examination as per the order dated 18/12/2003. The applicant has been granted promotion / absorption on the post of Civil Engineering Assistant. It was not a promotion, but it was an absorption. The applicant retired on 31/03/2012. The applicant has made representation to respondent nos.2 and 3 for grant of 2nd time bound promotion. It is not decided. Therefore, the applicant approached to this Tribunal for the following reliefs –

“ (12) (i) Call for record from the respondents pertaining to the time bound promotions to the applicant ;

i) Hold and Declare that the Applicant is entitled to receive second time bound promotion under Modified Assured Career Progression Scheme(MACPS) w.e.f. 01.04.2007, on completion of 12 years continuous service from the date of First benefit of time bound promotion;

(iii) Direct the Respondents to extend the benefit of Time Bound Promotion under the MACPS on the post of Junior Engineer w.e.f. 01.04.2007 in the pay scale of Rs.9300- 34800 Grade Pay Rs.4300/- (as per 6th Pay) on completion of 24 years of service, in the interest of justice;

(iv) Direct the Respondent to revise the pension in accordance with the implementation of MACPS to the Applicant and along with the consequential benefits and interest thereon.”

3. The O.A. is strongly opposed by the respondents. It is submitted in para-11 of reply as under –

“(11) I submit that the applicant had been granted exemption upon attaining 45 years of age from passing professional examination required for the post of Junior engineer and he was eligible for the 2nd time bound promotion; however since the confidential records of the applicant were not available and as such the benefit could not be extended.”

4. It is submitted that for want of ACRs, the applicant was not granted 2nd time bound promotion.

5. During the course of submission, the learned counsel for applicant has pointed out the Judgment of the Hon’ble Supreme Court in the case of **Dev Dutt Vs. Union of India & Ors.** in Civil Appeal No.7631 of 2002, decided on 12/05/2008 and the Judgment of the Hon’ble High Court of Jharkhand at Ranchi in the case of **Girish Pandey Vs. the State of Jharkhand & Ors.** The Hon’ble Supreme Court in the case of **Dev Dutt Vs. Union of India & Ors.** (cited supra) has held in para nos.45,46 and 47 as under –

“45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for

promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.

46. In view of the above, we are of the opinion that both the learned Single Judge as well as the learned Division Bench erred in law. Hence, we set aside the e judgment of the Learned Single Judge as well as the impugned judgment of the learned Division Bench.

47. We are informed that the appellant has already retired from service. However, if his representation for upgradation of the 'good' entry is allowed, he may benefit in his pension and get some arrears. Hence we direct that the 'good' entry of 1993-94 be communicated to the appellant forthwith and he should be permitted to make a representation against the same praying for its upgradation. If the upgradation is allowed, the appellant should be considered forthwith for promotion as Superintending Engineer retrospectively and if he is promoted he will get the benefit of higher pension and the balance of arrears of pay along with 8% per annum interest.”

6. In the Judgment of the Hon’ble High Court of Jharkhand at Ranchi in the case of **Girish Pandey Vs. the State of Jharkhand & Ors.**, it is held as under –

“Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that submissions based on the averments made in the writ petition is not tenable in the eyes of law. ACP benefits are given individually, it is not a case that when the similarly situated persons have been granted ACP and others are entitled for the same. The submissions of the learned counsel for the respondent-authorities is not accepted by this Court. ACR has to be brought to the notice of the DPC by the State-authorities,

the same is prepared by the Department not by the petitioner. Submission of the learned counsel for the respondents that in absence of ACR, the benefit of ACP/MACP cannot be given to the petitioner, is not accepted. Now the petitioner has retired from the service, it the duty of the respondents that the petitioner should be granted the benefits of ACP/MACP. It has been held in catena of decisions that in absence of the ACR, the ACP benefits or even the promotion cannot be withheld for which the respondents are responsible and not the petitioner. Further submission of the learned counsel for the respondents that the report regarding the status of the petitioner has not been received as yet is also misleading since after retirement, the admitted dues of ACP and other consequential benefits, cannot be denied on the ground of non-availability of ACR.”

7. In view of the above cited decisions, the respondent authority cannot say that 2nd time bound promotion was not granted because ACRs were not available. It is for the respondents to maintain the ACRs of the applicant. As per the Judgment in the case of **Girish Pandey Vs. the State of Jharkhand & Ors.**, admitted dues of ACPS and other consequential benefits cannot be denied on the ground of non-availability of ACRs. There is no dispute that the applicant is entitled for 2nd time bound promotion. In para-11 of the reply, it is specifically admitted that the ACRs of the applicant were not available and therefore the benefit could not be extended. This cannot be a ground for the respondent authority to deny the benefit. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to grant 2nd time bound promotion to the applicant, if he is eligible for the same and grant all consequential benefits within a period of four months from the date of receipt of this order.

(iii) No order as to costs.

Dated :- 10/04/2024.

(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 P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 10/04/2024.