

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION No.1189 of 2016

Shri Subhash Namdev Rane)
R/at. At post Samda, Tal. Daryapur,)
Dist. Amravati.)..... **Applicant**

Versus

1. The State of Maharashtra, through the)
Secretary, Revenue & Forest Department,)
2nd floor, (Estab-E-1), Madam Cama Road,)
Mantralaya, Mumbai 32.)
2. The Collector, Ratnagiri.)...**Respondents**

Shri K. R. Jagdale, Advocate for the Applicant
Shri A. J. Chougule, Presenting Officer for the Respondents

CORAM : SHRI A. P. KURHEKAR , MEMBER (J)

DATE : 08.03.2019

JUDGMENT

1. Heard Shri K. R. Jagdale, learned Advocate for the Applicant and Shri A.J. Chougule, the learned Presenting Officer for the Respondents.
2. In the present O.A., the Applicant has challenged the impugned communication dated 13.10.2015 as well as 31.08.2016 and for the direction to the Respondents to grant him benefit of 1st Time Bound Promotion on completion of his 12 years continuous service in the cadre of Clerk-cum-Typist.
3. The Applicant was appointed on the post of Clerk-cum-Typist on 18.01.1996 on the establishment of Collector, Ratnagiri (Respondent No.2. He had passed the RQT Examination on 26.04.2002. Subsequently, he was also promoted to the post of Awal Karkoon on 14.07.2002. However, on 11.08.2006, he was reverted to the post Clerk-cum-Typist on the ground of non

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submission of Caste Validity Certificate. Later, the Applicant was removed from service by the Respondent No.2 by order dated 01.03.2008 on the ground of failure of Caste Validity Certificate, which he was bound to submit as being candidate from the ST category. The Applicant approached the Hon'ble High Court by filing W.P. No.1243/2008 challenging the impugned termination order dated 01.03.2008, the Hon'ble High Court by order dated 29.07.2008 directed the Caste Scrutiny Committee to decide the caste claim of the Applicant within six months and further directed that if the caste claim of Applicant is validated then the Applicant should approach the Respondents by way of representation for reconsideration of impugned order dated 01.03.2008. No decision was taken by Caste Scrutiny Committee within stipulated time. The Applicant again approached the Hon'ble High Court, challenging the termination order dated 01.03.2008 vide W.P.No.2930/2014, dated 08.08.2014 with operative following order :-

"5 The impugned order dated 01.03.2008 is quashed and set aside. The respondent No.2 is directed to reinstate the petitioner within a period of two weeks from today. It is, however, made clear that the appointment of the petitioner be treated as having been made for a candidate belonging to open category and not the reserved category. Though it is directed that the petitioner is entitled to continue in service, he shall not be entitled to any back wages for the period during which he was out of employment."

4. On the basis of the order of Hon'ble High Court, the Applicant was reinstated in service w.e.f. 20.10.2014. After reinstatement, the Applicant has filed representation dated 21.10.2015 for grant of benefit of 1st Time Bound Promotion. However, the request of the Applicant has been rejected by the Respondent No.2 by communication dated 13.10.2015 and 31.08.2016 on the

ground that he was out of service from 01.03.2008 to 06.11.2014 and, therefore, not entitled to the benefit of earlier service.

5. Shri K. R. Jagdale, learned Advocate for the Applicant has pointed that admittedly the Applicant has completed 12 years of service before his removal from the service and, therefore, denial of benefit of 1st Time Bound Promotion is illegal. He further urged that the Respondent No.2 has misconstrued the order of Hon'ble High Court for rejecting the claim of 1st Time Bound Promotion benefit of the Applicant. He, therefore, contends that the communications impugned are not sustainable in law and the fact and deserves to be set aside.

6. Per contra, Shri A. J. Chougule, learned Presenting Officer for the Respondents submitted that as per communication, the Applicant was out of service from 01.03.2008 to 06.11.2014 and, therefore, benefit of 1st Time Bound Promotion was denied to him.

7. When specific query was raised to the learned P.O. as to how the benefit of 1st Time Bound Promotion can be denied to the Applicant in view of admittedly completion of 12 years of service before removal from service, he could not give any the satisfactory reason.

8. Thus, the question involved in the present O.A. is very simple as to whether the Applicant is entitled to the benefit of 1st Time Bound Promotion and answer is in affirmative. Admittedly, the Applicant joined the serviced on 18.01.1996 and removed from service on 01.03.2008. He had passed RQT

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Examination. Thus, there is no denying that before removal from service, he had completed 12 years uninterrupted and continuous service. In other words, right to consider for benefit of 1st Time Bound Promotion accrued to him on completion of 12 years of service which is subject to the fulfillment of other requirements of grading in ACR etc. However, in the present case, the Respondent No.2 denied the benefit of 1st Time Bound Promotion on the ground that Hon'ble High Court has not given service benefits of the earlier period to him. This interpretation of the Respondent No.2 is obviously erroneous. What the Hon'ble High Court directed that the petitioner is entitled to continue in service but he shall not be entitled to any back-wages for the period during which he was out of employment. The Applicant was out of employment from 01.03.2008 to 06.11.2014 and, therefore, he is obviously not entitled to the back-wages of this period. However, in so far as earlier period of his service from 18.01.1996 to 01.03.2008 is concerned, there is no such direction of the Hon'ble High Court not to consider the said period for service benefits. The order of Hon'ble High Court is restricted to the period for which applicant was out of service.

9. Suffice to say, the interpretation made by the Respondent No.2 is completely erroneous. It is necessary to point out that admittedly the applicant has completed 12 years of service before the date of removal and this being the position he was entitled to be considered for the benefit of 1st Time Bound Promotion subject to fulfillment of other conditions. As such, the right accrued

to the Applicant cannot be taken away by his subsequent removal which was, in fact set aside by the Hon'ble high Court.

10. The necessary corollary of above discussion leads me to sum-up that the O.A. deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) Communication dated 13.10.2015 and 31.08.2016 are hereby quashed and set aside.
- (C) As the Applicant had completed 12 years of service before removal from service, he is entitled to be considered for the benefit of 1st Time Bound Promotion subject to fulfillment of eligibility and criteria.
- (D) The Respondent No.2 is, therefore, directed to consider the issue of grant of 1st Time Bound Promotion to the Applicant in view of completion of 12 years of service and if found entitle and fulfill the required conditions, the same be granted to him with monetary benefits.
- (E) Aforesaid exercise be completed within two months from today.
- (F) No order as to costs.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)