

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

**ORIGINAL APPLICATION NO.1005 OF 2015
(Subject : Time Bound Promotion)**

DISTRICT: RAIGAD

Shri Prakash Maya Mhatre,)	
Resident of Vashi (Borze Fata),)	
District Raigad, Taluka PEN.)	
C/o. Dairy Manager, Government Milk Scheme,)	
Khopoli, Taluka Khalapur, District Raigad,)	
Sheel Phata.)	.. Applicant

Versus

1)	Regional Dairy Development Officer,)	
	Mumbai Region, 5 th floor,)	
	Konkan Bhavan, Navi Mumbai.)	
2)	The Dairy Manager,)	
	Government Milk Scheme,)	
	Khopoli (Sheel Phata), Taluka Khalapur,)	
	District Raigad.)	..Respondents

Shri A.S. Gadre, the learned Advocate for the Applicant.

Ms. S. Suryawanshi, the learned Presenting Officer for the Respondents.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

RESERVED ON : 04.10.2016.

PRONOUNCED ON : 07.10.2016.

J U D G M E N T

1. Heard Shri A.S. Gadre, the learned Advocate for the Applicant and Ms. S. Suryawanshi, the learned Presenting Officer for the Respondents.
2. Heard both sides. Perused the record annexed to O.A., the Government circular dated 06.09.2014 tendered at bar by learned P.O. and citations tendered by learned Advocate Shri A.S. Gadre for the Applicant.
3. Facts as alleged by Applicant are as follows :-
 - (a) Applicant was appointed on 13.08.1985 as direct recruit through employment Exchange for the post of Telephone Operator-cum-Receptionist in Dairy Development Project, Dapachari, Dahanu.
 - (b) Due to bad health, some time in 1992, the Applicant made request to the Respondents to transfer him on some other post.
 - (c) Applicant was transferred as Typist-cum-Clerk by order dated 15.10.1992 and was posted at Mahad. Copy of order posting the Applicant as Typist-cum-Clerk is at Annexure 'A' at page 12 of O.A. paper book.
 - (d) Local Dairy Development Officer, Mumbai passed one corrigendum dated 14.05.1999, amending earlier order and Applicant's pay was fixed treating his posting as fresh order of appointment in the post of Typist-cum-Clerk.
 - (e) Since Applicant's entry in Clerical Cadre was considered fresh appointment, the applicant is not granted the benefit of first and second Time Bound Promotion after completion of requisite years of services under Assured Career Progression by computing his employment tenure spent as Telephone Operator.
4. Applicant has prayed for relief of direction that period of service rendered by Applicant on the post of Telephone Operator-cum-Receptionist and award of pecuniary benefit of Assured Career Progression Scheme with all consequential effects.
5. This O.A. is opposed by Respondents by filing affidavit-in-reply. Entire thrust is laid on the need of computation of service as Telephone Operator for grant of Assured Career Progression (A.C.P.) under existing scheme.

6. During hearing, learned Advocate Shri A.S. Gadre for the Applicant has placed reliance on following two judgments :-

- (a) Judgment of Hon'ble Supreme Court in the case of Union of India and Another Versus V.N. Bhat, Civil Appeal No.8375 of 1997 with C.A.No.8329 of 2003, decided on 16.10.2003. (Reported)
- (b) Judgment of Hon'ble Supreme Court in the case of State of Maharashtra & Ors. Versus Shri Uttam Vishnu Pawar, Case No.Appeal (Civil) 1020 of 2002, dated 17.01.2008 (Unreported).

7. In both the judgments of Hon'ble Supreme Court relied by learned Advocate for Applicant the law as to was laid done by Hon'ble Supreme Court in case of :-

- (i) A.P. State Electricity Board v. R. Parthasarathi, 1998 (9) SCC 425,
- (ii) Scientific Advisor to Raksha Mantri v. V.M. Joseph, 1998 (5) SCC 305 and
- (iii) Renu Mullick v. Union of India, 1994 (1) SCC 373,

was followed.

8. Perused both judgments relied upon by learned Advocate for the Applicant. Perusal of the judgment in case of Shri Uttam Vishnu Pawar, it reveals that Hon'ble Supreme Court has upheld and confirmed the judgment / order passed by Hon'ble High Court, Bombay in the judgment and order passed by this Tribunal which was upheld.

9. In the aforesaid premises, the learned Advocate states that issue on which Applicant claims benefit is no more open for any type of debate and is governed by point of law which has attained finality.

10. On earlier dates of hearing, this Tribunal had asked question to the learned P.O. as to whether the applicant would have got some monetary advantages, had he not been drafted as clerk may be on his request or even on administrative ground, whatsoever, because the post of Telephone Operator-cum-Receptionist does not have any promotional avenue.

11. Learned P.O. has tendered copy of Government circular dated 06.09.2014. Perused the same. It reveals that in 2010 a scheme existed for payment of Grade pay to Government servants who do not have promotional channel at all. The said Grade pay was revised by Government circular dated 06.09.2014. Learned P.O. concedes to the position that had applicant continued as Telephone Operator, he would have been eligible to get grade pay as applicable in accordance with policy laid down in said Government decision.

12. Perusal of Judgment in case of Shri Uttam Vishnu Pawar (supra), it has transpired that applicant's case is replica of the facts as existed in Shri Uttam Vishnu Pawar case (supra) namely. Shri Uttam Vishnu Pawar was Telephone Operator, was drafted to Clerical Cadre, and it is ultimately held that he is entitled to benefit of A.C.P. of computation of tenure as Telephone Operator.

13. The State has failed to show even the hair lined distinguish between the case of Shri Uttam Vishnu Pawar (supra) and that of the Applicant.

14. It is thus evident that by virtue of drafting / transferring as Clerk, Applicant would not be entitled to inter se seniority as against other clerks already in the same cadre, because by virtue of entry in the Clerical cadre applicant shall not be entitled to upset the seniority rank of those who are already in the said rank, however for the purpose of pecuniary advantages of Assured Career Progression (A.C.P.) Scheme he does not loss credit of his employment i.e. past service is not forfeited.

15. It is thus evident that had the applicant continued to remain in the pay scale whichever was applicable to the post of Telephone Operator, and was not granted any amount even as grade pay. It is thus clear that the Applicant was bound to get pecuniary advantages by virtue of award of Grade pay as applicable to his pay band, which too has not been paid to him. Thus, applicant is entitled to be governed by ratio as laid down in Shri Uttam Vishnu Pawar (supra).

16. In the result this Tribunal holds as follows :-

Through the Applicant was initially the Telephone Operator, and on his own request, he was transferred / drafted as Clerk, Applicant is entitled to claims the benefit of A.C.P. Scheme, on the lines of the case of Shri Uttam Vishnu Pawar (supra).

17. In the result, O.A. succeeds it is declared that applicant is entitled to following reliefs :-

- (a) Computations of his service as Telephone Operator for counting qualifying services in the Government, for eligibility to get benefit of the scheme of A.C.P..
- (b) Respondents will have to calculate benefit to which applicant is entitled to, and grant to the Applicant by pecuniary benefits which have not been paid to him with interest @ 9% p.a..
- (c) This order be complied most expeditiously and without losing time by punctually completing every stage.
- (d) The process of computation must commence within 60 days from the date of this judgment.

18. Applicant is awarded quantified costs of Rs.10,000/- which be paid to him at the time of payment of arrears.

(A.H. Joshi, J.)
Chairman

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