

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.179/2016

DISTRICT – DHULE

Shri Avinash Kashiram Shirsath,
Age: 64 years, Occ : Retired,
R/o : 11, Sudarshad Colony,
Deopur, Dhule.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through the Secretary,
Public Work Department,
Mantralaya, Mumbai-400 032.
2. The Chief Engineer,
Public Works Department,
Nasik Division, Nasik.
3. The Superintendent Engineer,
Public Work Department,
Dhule.
4. The Executive Engineer,
Public Works Department,
Road Project Division,
Dhule.

...RESPONDENTS

APPEARANCE :Shri Shrikant Patil learned Advocate for
the applicant.

Shri V.R.Bhumkar learned Presenting
Officer for the respondents.

CORAM : Shri J.D.Kulkarni, Hon'ble Member (J)

J U D G M E N T**[Delivered on 30th August, 2016]**

The applicant has prayed that communication dated 29-11-2010 issued by the office of Chief Engineer, Public Works Department, Nasik Division, Nasik be quashed and set aside and the respondent nos.2 and 3 be directed to make pay fixation of the applicant by extending benefit of time bound promotion w.e.f. 20-01-2005. It is further stated that the applicant has filed representation on 24-01-2011 for getting such time bound promotion but the respondent no.2 did not take any action, and therefore, respondent no.2 be directed to decide his representation.

2. The applicant submits that he was working as Deputy Executive Engineer in the office of respondent no.4 and has performed all his duties sincerely and diligently. He belongs to SC category. His entire service record is clean and unblemished. He has completed 12 years continuous service on 20-01-2005 and was entitled to claim time bound promotion w.e.f. 20-01-2005.

3. Vide impugned communication dated 29-11-2010, he was informed that since Annual Confidential Reports (ACRs) for the period 2000-2001 to 2004-2005 were not complete and ACRs for the period of 2001-2002 were not made available by Sindhudurg Office of the respondents and from whatever available Confidential Reports, its evaluation comes to (B-), the applicant was not entitled for promotion. Said communication has been challenged in this O.A.

4. The respondents in their reply affidavit have stated that the applicant was not eligible for time bound promotion since ACRs for the year 2000-2001 were C- (C minus). It is, further stated that ACRs of the year 2001-2002 are not available whereas the CR for the period 2000-2001 to 2004-2005 are not satisfactory.

5. Heard learned Advocate for the applicant and the learned P.O. Perused the memo of O.A., affidavit, affidavits in reply and various documents placed on record by the parties.

6. It is an admitted fact that during the pendency of the O.A., applicant got retired on superannuation on

31-12-2010. Whatever ACRs available in respect of the applicant have been placed on record at paper book pages 51, 58, 62, 66, and 70. From the said ACRs, it seems that ACR for the year 2000-2001 of the applicant was marked as "C-" (C minus) i.e. below average. ACR for the year 2002-2003 is "B", for the year 2003-2004 it is "B", but same is incomplete. ACRs, which are adverse, were not communicated to the applicant. In fact, none of the ACRs have been communicated to the applicant.

7. From the reply affidavit filed on behalf of respondent nos.1 to 4, it is clear that there is no dispute that the applicant was entitled for time bound promotion as claimed by the applicant in the year 2005. It was, therefore, necessary to consider the applicant's ACRs for 5 years prior to that date. However, either his ACRs were incomplete or were not available. Above all, none of the ACRs have been communicated to the applicant including the alleged adverse ones.

8. Hon'ble the Apex Court in the case of **Vijay Kumar, I.A.S. V/s. State of Maharashtra & Ors. [AIR-SC-1988-2060]** has observed that, where the Confidential Reports relied on for the purpose were not sent to the delinquent officer and there is no evidence to indicate

that it were received by the applicant, denial of senior time scale to such officer is arbitrary and unjustified.

9. Admittedly, the applicant is not responsible for writing of his ACRs nor is he responsible for non-availability of the ACRs. Therefore, denial of time bound promotion to him is arbitrary.

10. Impugned communication dated 29-11-2010 states as under:

“सदर प्रस्ताव शासन निर्णयानुसार आवश्यक असणा—या बाबींची पडताळणी केली असता, त्यात श्री. अविनाश काशिराम शिरसाठ, उपकार्यकारी अभियंता यांचे सन—२०००—२००१ ते २००४—२००५ या कालावधीतील गोपनीय अहवाल परिपूर्ण असणे आवश्यक होते. परंतु उपलब्ध गोपनीय अहवालाची प्रतवारी पडताळणी केली असता (ब—) अशी आहे. तसेच ते सन २००१—२००२ मध्ये ते सिंधुदूर्ग येथे कार्यरत असतानाचे त्यांचे मुळ गोपनीय अहवाल या कार्यालयाकडे पाठविलेले नाहीत. ते शासन निर्णयातील अटी व शर्ती पूर्ण करित नसल्यामुळे त्यांना आश्वासित प्रगती योजनेचा लाभ मंजूर करता येत नाही. ही बाब मंडळस्तरावरून निदर्शनास आणून द्यावी ही विनंती.”

11. Thus, it is clear that the applicant is not at all responsible for non-availability of ACRs. It is also material to note that the Superintending Engineer, Dhule vide letter at Exhibit-B (paper book page 12) has requested Chief Engineer, Public Works Department, Nasik Division, Nasik that the applicant shall be granted time bound promotion w.e.f. 20-01-2005 since he has completed 12 years' service

on that date. Said recommendation itself shows that the applicant was entitled to claim time bound promotion on that date, and his case was also recommended. In such circumstances, respondents ought to have granted him time bound promotion scale as claimed. Hence following order:

ORDER

- (A) O.A. is allowed.
- (B) Impugned communication dated 29-11-2010 issued by the respondent no.2 is quashed and set aside. Respondents are directed to grant time bound promotion to the applicant w.e.f. 20-01-2005.
- (C) There shall be no order as to costs.

(J. D. Kulkarni)
MEMBER (J)