

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1213 OF 2013

Arvind Vishnupant Dharurkar .. Petitioner

Versus

The Maharashtra Jeevan Pradhikaran
and Another .. Respondents

Shri Milind K. Deshpande, Advocate for the Petitioner.

Shri D. P. Bakshi, Advocate for Respondent Nos. 1 and 2.

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATE : 03 JULY, 2015.

PER COURT :

1. The petitioner seeks Selection Grade Pay in the cadre of Superintending Engineer and promotion in the cadre of Chief Engineer with effect from 01.04.1996, so also, impugnes the communication dated 16.11.2009 informing the petitioner that, he is not entitled for the said benefit.

2. Mr. M. K. Deshpande, the learned counsel for the petitioner strenuously contends that, petitioner joined the services of P. W. D. as a Junior Engineer in the year, 1964. On

18.08.1966 petitioner was promoted to the post of Deputy Engineer. In December, 1983 the petitioner was promoted to the post of Executive Engineer. Thereafter, the petitioner was promoted to the post of Superintending Engineer on 08.11.1990 and retired on attaining the age of superannuation in the said cadre of Superintending Engineer, in the year, 1998. The learned counsel submits that, vide Government Resolution dated 14.12.1995, the Government revised the pay scale of Engineer's working in the said cadre. The Government Resolution was made applicable to the Respondent Nos. 1 and 2. The said Government Resolution is made applicable with retrospective effect from 01.01.1986. As per the said Government Resolution, selection grade for 20% posts in the cadre of Superintending Engineer was permissible. It was also made applicable to the employees drawing the pay scale of Rs.3,700 – 5,000/- to Rs. 4,500 - 5,700/- . As the petitioner was in the pay scale of Rs. 3,700 – 5,000/- the petitioner was entitled to get the revised pay scale of Rs. 4,500 – 5,700/-. The learned counsel submits that, the Respondent No. 1 issued an order on 31.01.2000 and thereby granted selection grade to the Superintending Engineers by way of promotion, although they had retired and the benefit of said order was extended to 21 employees. According to the learned counsel, on 21.02.2000 petitioner made a representation to the

Chairman of the Maharashtra Jeevan Pradhikaran, claiming the selection grade in the cadre of Superintending Engineer. On 09.06.2000, the Respondent No. 2 in reply to his representation dated 21.02.2000, informed the petitioner that, the petitioner cannot be promoted or given selection grade as the Annual Confidential Reports of the petitioner were not up to the mark. The petitioner again on 05.08.2000 made representation to the Hon'ble Minister for considering his case, as his Annual Confidential Reports for the period from 1992 to 1996 were on an average 'B(+)'. On 15.09.2007 also, representation was made to the Authorities in that regard but no avail. Again on 03.09.2009 petitioner made representation to the Respondent No. 1 requesting to consider his case for selection grade, promotion in the cadre of Superintending Engineer with effect from 01.04.1996. Pursuant thereto, the Respondent No. 2 informed petitioner vide letter dated 16.11.2009 that, petitioner does not fulfill the norm and also is not eligible for selection grade. The learned counsel strenuously submits that, at no material point of time petitioner was communicated with any adverse Annual Confidential Reports. The un-communicated adverse Annual Confidential Reports cannot form foundation to deny benefits of selection grade and or promotion. The learned counsel relies on the judgment of the Apex Court in a case of **Vijay Kumar,**

I. A. S. V/s State of Maharashtra reported in **1988 A. I. R. (SC) 2060.** The learned counsel also relies on the judgment of the Apex Court in a case of **Sukhdev Singh V/s Union of India and Others** reported in **2013 (9) SCC 566.**

3. The learned counsel further submits that, the benefit of the said Government Resolution dated 14.12.1995 has been granted to the persons even after retirement. There was no impediment to consider the case of the petitioner. The petitioner's Annual Confidential Reports were 'B(+)' on an average. The petitioner has worked sincerely and has been promoted from time to time. In the year, 1996, the Annual Confidential Reports of the petitioner was 'A(+)'. The work of the petitioner in the cadre of Superintending Engineer was appreciated by the Higher Officer's by issuing letters. According to the learned counsel, the un-communicated Annual Confidential Reports are being relied to deny benefits to the petitioner. The same is against the dictum of the Apex Court. The learned counsel submits that, the benefits of Selection Grade Pay and promotion in the cadre of Chief Engineer with effect from 01.04.1996 be awarded to the petitioner as he is entitled for the same.

4. Mr. Bakshi, the learned counsel for the respondents submits that, petitioner could not be considered for further promotion to the post of Chief Engineer as he did not fulfill the criteria of minimum gradation of Annual Confidential Reports, which was fixed as 'B(+)'. The average Annual Confidential Reports of the petitioner were graded as 'B' only as such till the date of retirement of the petitioner i.e. 31.10.1998, petitioner could not get promotion to the post of Chief Engineer. The selection grade of 4,500 – 5,700/- for Superintending Engineer i.e. the selection grade was only for 20% posts of the cadre of Superintending Engineer. For getting the said selection grade pay the concerned Superintending Engineer has to qualify, by fulfilling the norm of the Seniority-cum-Merit. So also, has to possess the norms of minimum gradation of Annual Confidential Reports for last 5 year's, as decided by the Selection Committee. In the present case, the Selection Committee fixed 'B(+)' as the minimum gradation of Annual Confidential Reports for last 4 year's. The petitioner could not achieve the minimum standard of average for last 4 year's i.e. 'B(+)', as such could not be given the benefit of the Selection Grade Pay. The Selection Committee is competent to make the gradation. The learned counsel submits that, the petition need not be entertained on the ground of delay and laches also. The gradation list prepared by the

Selection Committee shows that, the average Annual Confidential Report of petitioner for the year, 1998 is only 'B'. The Annual Confidential Report of 1997 – 1998 was written as 'B(-)' and there was a endorsement that, integrity doubtful. There were four members in the Selection Committee, one member gave gradation as 'B(-)' other three member's gave it 'B', therefore, the average gradation was 'B'.

5. We have considered the submissions canvassed by the learned counsel for the respective parties.

6. In fact, the Government Resolution dated 14.12.1995 was made applicable to the Respondent No. 1. The petitioner retired in the year, 1998, as a Superintending Engineer. On 31.01.2000, the Respondent No. 1 issued an order and granted selection grade to the Superintending Engineers. The petitioner claimed that, it has not been granted to him. On 21.02.2000 the petitioner had made representation in that regard and on 09.06.2000 the petitioner was intimated that, petitioner cannot be promoted nor can be give selection grade as Annual Confidential Reports of the petitioner were not up to the mark. The writ petition is filed in the year, 2013, i.e. after 13 year's of the claim been denied. Although intermittently in the year, 2007

and 2009 representation was made but it was in June, 2000, itself petitioner had the knowledge that, his claim is denied. In fact, the petition deserves to be dismissed on the ground of delay and laches itself. The case of the petitioner can not be also compared with other Superintending Engineers who were granted benefit. As per the Government Resolution dated 14.12.1995, 20% posts of Superintending Engineer were to be given benefit of Selection Grade Pay, however, the minimum criteria was required to be satisfied. The Selection Committee was constituted and in the year 1999, orders were passed. It is not that, 100% posts of Superintending Engineer were to be awarded Selection Grade Pay. Only 20% were to be awarded selection grade pay and the report and the recommendation of the Selection Committee shows that, only those whose Annual Confidential Reports had gradation 'A' or 'B(+)' were awarded the said benefit of Selection Grade Pay that too to the extent of 20% post. In the year, 1996, one post was available for grant of selection grade. It was granted to the person having gradation 'A'. In the year, 1997, three persons were granted the said benefit out of that, two had gradation 'A' and one 'B(+)'. In the year, 1998, also three persons were given benefit of Selection Grade Pay, one of 'A' and two of 'B(+)'. Petitioner retired in October, 1998. For none of the years the Selection Grade Pay was granted

to a person whose gradation as per the Annual Confidential Reports was 'B' all were either 'A' or 'B(+)' and that was the criteria fixed. The petitioner had gradation 'B', the Selection Committee had made that gradation. After the long slumber of 13 year's petitioner can not say that, the said gradation is incorrect. Same is the reason for not considering the petitioner for promotion to the post of Chief Engineer. There is no dispute with proposition that, the adverse Annual Confidential Reports are required to be communicated. However, the Selection Committee had done the gradation and it was the case of giving benefit to only 20% of the available post and there were already persons having 'A' and 'B(+)' gradation available who were given the benefit. The claim of petitioner was rejected in the year, 2000 and the said benefit is now agitated after a long slumber of 13 year's.

7. Considering the aforesaid aspects of the matter, the case of the petitioner cannot be considered. Writ petition as such is dismissed. No costs.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]