

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
40 WRIT PETITION NO.9956 OF 2018**

Ganpat Jalbaji Waghmare
Age:- 61 years, Occ. Pensioner,
R/o Saptgiri Nagar, Taroda (Bk)
Nanded, Tq. & Dist. Nanded ..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Revenue and Forest Department
Mantralaya, Mumbai-32.
2. The Principal Chief Conservator
of Forest, Nagpur,
Wan Bhawan, Ramgiri Road,
Civil Line, Nagpur-440001.
3. The Chief Conservator
of Forest, Aurangabad,
Wan Bhawan, Railway
Station Road, Opp. Govt.
Engineer College, Osmanpura,
Aurangabad.
4. The District Deputy Conservator
of Forest, Chikhalwadi,
Corner, Vazirabad, Nanded
Tq. & Dist. Nanded.
5. The Range Forest Officer,
Bodhadi, Tq. Kinvat,
Dist. Nanded. ..RESPONDENTS

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Mr. Hanumant P. Jadhav, Advocate for the
Petitioner.

Mr. A. R. Kale, AGP for Respondents-State.

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

DATED : 10th APRIL, 2019.

ORAL JUDGMENT (Per: S. V. Gangapurwala, J.):—

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the admission stage.

2. The petitioner had filed Original Application before the Tribunal with regard to the denial of the time bound promotional pay scale and ACPS benefits.

3. Mr. Jadhav, learned counsel for the petitioner submits that the petitioner was given the first time bound promotional pay scale on 23.06.1997. Subsequently, it was withdrawn in the year 2014 and it was again restored in the year 2015. The learned counsel submits that in fact the petitioner would be entitled for the first time bound promotional pay scale in the year 1997 and the second time bound promotional pay scales in the year 2009.

4. Mr. Kale, learned A.G.P. submits that for a person to be eligible for the time bound promotional pay scale or ACPS benefit the person should be eligible for promotion. The ACRs of the petitioner were negative, as such the first time bound promotional benefit granted to the petitioner in the year 1997 was withdrawn in the year 2014. In the meeting of the departmental selection committee after considering the ACRs for subsequent

year the petitioner was found eligible so on 04.03.2015 his first benefit was restored from the year 2015. The learned A.G.P. relies on the Clause D-5 of the Government Resolution dated 01.04.2010. According to the learned A.G.P. the Tribunal has not committed any error in passing the impugned order.

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

6. It is not disputed that the petitioner joined as Range Clerk with the respondent on 19.06.1984 and he was awarded the benefit of first time bound promotional pay scale on 23.06.1997. The said benefit was given, however, in the departmental selection committee meeting held on 19.11.2013 the committee considered the ACRs for the year 2008-2009 to 2012-2013 and found that for one year the ACR was B- (average) as such the petitioner was not entitled for promotion and cancelled the first time bound promotional pay scale granted from the year 1997. The second departmental selection committee meeting was held on 30.08.2014. It considered the ACRs for the years 2009-2010 to 2013-2014 and the petitioner was held eligible for promotion that is the petitioner is held eligible for ACPS benefit. The respondent restored first time bound promotional pay scale benefit to the petitioner however not from the year

1997 but gave it from 05.03.2015. The same was erroneous. For considering the eligibility of the person to be promoted as in the year 1997, the ACR of 2008-2009 would not be relevant. The petitioner at the relevant time in the year 1997 was eligible for promotion or not would be the relevant criteria.

7. More over, barring ACR of 2008-2009 which is average, the other ACRs were good. The ACRs from 2009-2010 to 2013-2014 were 'B'. The departmental selection committee held the petitioner to be eligible for promotion. Certainly, the petitioner would be entitled for ACPS benefit after completion of 12 years of service after the grant of first time bound promotional pay scale. The Division Bench of this Court in case of **Shrirang Atmaram Nikam Vs. District and Sessions Judge & Others** has observed that even if average is taken as adverse entry, even then for four years the petitioner has three good and one positively good. Based on that the petitioner would have been in the field of consideration. The fact that in five years, for one year the petitioner had adverse entry by itself will not make him ineligible.

8. The ACPS benefit can be withdrawn only if the person is found to be ineligible for regular promotion or if he refuses the promotion. In the present case the departmental selection committee held on 30.08.2014 considered that the petitioner

is eligible for the promotion.

9. In light of the above discussion we hold that the petitioner was rightly granted first time bound promotional pay scale on 23.06.1997. It is held that the petitioner is entitled for first time bout promotional pay scale on 23.06.1997. The petitioner would be entitled for second ACPS benefit after completion of 12 years of service. Provided he is eligible to be promoted on the next higher post and fulfills other parameters for grant of second ACPS benefit. The respondents shall consider the case of the petitioner for grant of second ACPS within a period of three months from today considering the aforesaid observations. In case, the department comes to the conclusion that petitioner is entitled for second ACPS benefit, then the petitioner shall be entitled for all consequential benefits including pay fixation and pension.

10. The order passed by the Tribunal stands set aside.

11. Rule made absolute in above terms. No costs.

(A. M. DHAVALÉ)
JUDGE

(S. V. GANGAPURWALA)
JUDGE