

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.3519 OF 2010

Petitioner : Madhukar Vinayakrao Rajvaidya,
 Aged 70 years, Occ. Retired Govt. Servant,
 R/o 28, Pooja Colony, Farshi Stop, Amravati,
 – Versus –

Respondents : 1. State of Maharashtra,
 through its Secretary,
 Department of Higher and Technical Education,
 Mantralaya, Mumbai -32.
 2. Director of Technical Education,
 Maharashtra State, Mumbai -1.
 3. The Principal,
 Govt. Engineering College,
 V.M.V. Road, Amravati.

 Mr. R.V. Shiralkar, Advocate for the Petitioner.
 Mr. M.K. Pathan, A.G.P. for Respondents 1 & 2.

CORAM : **ROHIT B. DEO AND Y.G. KHOBRADE, JJ.**
DATE : **3rd FEBRUARY, 2023.**

J U D G M E N T : (Per Rohit B. Deo, J.)

The petitioner is assailing the judgment dated 30/09/2009 rendered by the learned Maharashtra Administrative Tribunal ('MAT' for short) in Original Application No.585/2000, whereby the application preferred by the petitioner seeking a declaration that he is entitled to Senior

Scale of Rs.3000-5000/- and Selection Grade of Rs.3700-5700/- with effect from 01/01/1986 instead of 01/01/1988 and 01/01/1993 respectively as granted, is rejected.

02] Perusal of the pleadings in the original application reveal that the thrust of the submission was that nothing adverse was communicated to the petitioner as would render him ineligible for consideration for grant of Senior Scale and Selection Grade. The petitioner averred in the original application that the petitioner was communicated with only one adverse remark for the year 1979-1980 against which the petitioner represented, which representation is not decided. The petitioner emphasized that he was allowed to cross the efficiency bar and contended that this fact *ipso facto* substantiates that the performance of the petitioner was at par with the standards expected.

03] The learned MAT considered the submissions thus :

“13] *The proceedings of the selection committee referred to above show that it had used an overall average grade of ‘B’ of ACRs. This was based on directives received from the Govt. vide their letter dated 21/04/1995. The committee had examined and evaluated the applicant’s ACRs for the period from 1968-69 (when he was appointed) and 1995-96 and rated their suitability for grant of senior scale as follows :*

Years	68-69	69-70	70-71	71-72	72-73	73-74	74-75	75-76	76-77
Appraisal	B-	B-	B-	B-	C	C	B	B-	B
Remark	Adverse Remarks	Adverse Remarks	Adverse Remarks	Adverse Remarks	Adverse Remarks	Adverse Remarks		Not fit for promon	
Years	77-78	78-79	79-80	80-81	81-82	82-83	83-84	84-85	85-86
Appraisal	B	B-	C	B-	B	B	Not available	B-	B
Remark		Not fit for promon	Adverse Remarks	Adverse Remarks	-	-	-	Not fit for promon	-
Years	86-87	87-88	88-89	89-90	90-91	91-92	92-93	93-94	94-95
Appraisal	B	B	B	B	B	B-	B	B	B
Remark	-	-	-	-	-	Not fit	-	-	-
Years	95-96								
Appraisal	B								
Remark	-								

14] *The committee found that it was only for the period from 1974-75 to 1986-87 (ignoring the one for 1983-84 which was not available) that the applicant was found to have a consistently satisfactory performance record for 8 years. Hence, the applicant was found fit for the senior scale w.e.f. 01/01/86, which is the next due date after 01/01/88. On the same principles, considering the overall good records for the years 1985-86 till 1992-93, he was granted the selection grade w.e.f. 01/01/93.*

15] *On the basis of the above, we find that the decision of the respondents to grant senior scale from 01/01/88 and selection grade from 01/01/93 to the applicant is based on a fair and objective consideration of the applicant's performance records and it is also consistent with the conditions specified and prescribed for this purpose in the GR dated 23 March, 1990. Hence, the O.A. deserves to be dismissed., It is dismissed accordingly with no order as to cost."*

04] The submission that the petitioner was permitted to cross the efficiency bar is not considered by the learned MAT. We further find that the submission which learned Counsel Mr. Shiralkar has canvassed before us, which is that the eligibility or standard was changed only in the year 1994 and prior to that B- rating was considered as satisfactory performance, was lost sight by the respondents and the learned MAT, and is not as a fact canvassed before the learned MAT. We have not come across any specific pleading in the original application on the basis of which the learned MAT could have considered such submission. Nonetheless, we find that an arguable question is involved inasmuch as the material on record does suggest that it was only in the year 1994 that the minimum standard was changed from B- to B and a decision was taken in the meeting of the screening committee to review the cases of employees who are assigned B- rating. Mr. Shiralkar submits that no such exercise was done in the case of the petitioner. We further find that the submission that the adverse remarks were not communicated, will have to be gone into in further depth inasmuch as, what is observed by the learned MAT is that the record of communicating the adverse remarks is not available. The employee has taken a particular stand on oath and the implication of absence of record with the employer will have to be gone into.

05] We find that there are certain other issues which may arise for determination. We are not consciously delving deeper inasmuch as we find some substance in the submission of the learned Counsel Mr. Shiralkar that it would be more appropriate if the matter is remitted to the learned MAT, which would be better placed to consider all the aspects of the matter.

06] We quash and set aside the judgment impugned. We remit the matter to the learned MAT. The learned MAT is requested to permit the parties to amend the pleadings and to place on record additional material, if so advised. We request the learned MAT to decide the original application as expeditiously as possible.

07] Writ petition is partly allowed. Rule accordingly with no order as to costs.

(Y.G. KHOBRADE, J.)

(ROHIT B. DEO, J.)

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