

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 134 OF 2016

DISTRICT : BEED

Madansing s/o Suppadsing Rajput,
Age: 35 years, Occu.: Service
(as Sr. Daftar Karkoon on
reversion as Daftar Karkoon),
R/o: Vishweshwar Colony,
Pimpargavhan Road, Near
Nagad Narayan Chowk, Beed.

.. APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
General Administration Dept.,
M.S., Mantralaya, Mumbai - 32.
2. The Superintending Engineer,
Vigilance Squad, A'bad Circle,
Irrigation Division, Sneha Nagar,
Behind Old High Court, Aurangabad.
3. The Superintending Engineer
and Administrator, Command
Area Development Authority, Beed.
4. Sanjay s/o Dalsing Bamnat,
Age: 34 years, Senior Daftar Karkoon,
C/o: 0/0 Executive Engineer,
Jaikwadi Project Division No. 2, Parbhani...**RESPONDENTS**

APPEARANCE : Shri Avinash Deshmukh, Advocate for the
Applicant.

: Shri I.S. Thorat, Presenting Office for
respondent Nos. 1 to 3.

: Shri K.B. Jadhav, Advocate for respondent
No. 4.

CORAM : **Shri V.D. Dongre, Member (J)**
and
Shri Bijay Kumar, Member (A)
Reserved on : **10.02.2023**
Pronounced on : **24.03.2023**

ORDER

(Per : Shri Bijay Kumar, Member (A))

1. This Original Application No. 134 of 2016 has been filed by one Madansingh s/o Suppadsingh Rajput, r/o District- Beed on 15.02.2016, invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, being aggrieved by impugned order issued by respondent No. 2 dated 11.02.2016 reverting the applicant from the post of Senior Daftar Karkoon to the post of Daftar Karkoon and also another impugned order issued by respondent No. 2, dated 11.02.2016 promoting respondent No. 4 to the post of Senior Daftar Karkoon.

2. The facts of the matter may be summed up as follows :-

(a) It is admittedly that both the applicant and the respondent No. 4 belong to VJ-A category and both of them were appointed by nomination as Daftar Karkoon on 20.08.2009. Applicant is at seniority No. 106 whereas the respondent No. 4 has seniority position of 98 as on

01.01.2012 as per provisional seniority list published by respondent 22.04.2013, a copy of which is appended at page 63, Annexure R-1 of the Paper-Book.

(b) It is also undisputed that the applicant had caste validity certificate whereas the respondent No. 4 did not have the same at the time of filling the vacant post of Sr. Daftar Krkoon and therefore, the Departmental Promotion Committee held on 30.04. 2013 recommended name of the applicant along with three others for promotion to the post of Sr. Daftar Karkoon.

(c) The list of 4 recommended names for promotion was communicated by respondent No. 2 to respondent No. 3 vide his letter with outward No. परिमंडळ/आस्थापना-१/३८/सप, dated 31.05.2013 (Annexure A-1, page 19 of Paper-book). The said communication has been cited by the applicant as promotion order of the applicant in the para 6 (iii) of the O.A. (page 3 of the paper-book) and also in the list of documents appended at page 18 of the paper-book. However, the applicant has not submitted copy of promotion order issued to him.

(d) We may infer from contents of Para No. 5 of the said

communication made by respondent No. 2 with respondent No. 3 bearing outward No. परिमंडळ/आस्थापना-१/३८/सप, dated 31.05.2013 that the name of the applicant had been recommended for promotion in the contingency that a senior employee belonging to backward class could not produce caste validity certificate and the promotion of the applicant was subject to following conditions :-

“५. सेवाज्येष्ठ कर्मचा-यांची जात वैधता प्रमाणपत्र सादर न केल्यामुळे शासन निर्णय सा.प्र.वि. क्र. बीसीसी- १२०७/ प्र.क्र.५३/०८/१६-ब, दिनांक १६.६.२००८ अन्वये पदोन्नतीस पात्र असूनही जात प्रमाणपत्र वैधते अभावी त्यांना पदोन्नती देण्यात आलेली नाही. संबंधितांनी वैधता प्रमाणपत्र सादर करेपर्यंत अथवा (११ महिन्यासाठी) आपणास खालील रकाना क्र. २ मध्ये दर्शविलेल्या संवर्गात तात्पुरत्या स्वरूपात पदोन्नती देण्यात येत आहे संबंधितांनी वैधता प्रमाणपत्र सादर केल्यानंतर रकाना क्र. ४ मधील दर्शविलेल्या कर्मचा-याची तात्पुरती पदोन्नती आपोआप संपुष्टात येईल.”

(e) Submissions made by respondent No. 4 in affidavit in reply filed on his behalf have not been disputed by any of the parties to the dispute, according to which the respondent No. 4 had obtained caste certificate validity report dated 02.12.2013 bearing No. A 305063 issued by Member Secretary & Research Officer, Caste Certificate Scrutiny Committee, Aurangabad Division, Committee No. 1, Aurangabad and submitted the same to respondent No. 2 on 11.12.2013, a copy of which is appended at page No.

77 of paper book. Respondent No. 4 had also submitted his caste verification certificate to the Sub-Divisional Engineer, Palshi Nevpur Canal Sub-Division, which was forwarded to the respondent No. 2 by Executive Engineer, Aurangabad Irrigation Division to respondent No. 3 vide forwarding letter outward No. औषावि/आ.२/५३८३/सह, dated 18.12.2013, a copy of which is at page No. 74 of paper book.

(f) Respondent No. 2 held meeting of the Departmental Promotion Committee on 07.07.2015 followed by another meeting on 08.12.2015. Decision taken by the Departmental Promotion Committee in its meeting dated 08.12.2015 regarding the post of Sr. Daftar Karkoon is quoted for ready reference as follows-

“८) वरिष्ठ दप्तर कारकून :- सिंचन व्यवस्थापन कर्मचाऱ्या मधील वरिष्ठ दप्तर कारकून पदांची १३ मंजूर आहेत. या मंजूर पदावर दिनांक ३०/०४/२०१३ रोजीच्या बैठकीत दप्तर कारकून पदावरील कर्मचाऱ्यांना पदोन्नती देण्यात आलेल्या आहेत. दिनांक ३०/०४/२०१३ बैठकीच्या वेळी दप्तर कारकून पदांच्या निवडसुचीतील श्री. विजयानंद नानाभाऊ तरकसे, अ.जा. व श्री संजय दलसिंग बमनात, वि.जा.अ. यांच्याकडे जात वैधता उपलब्ध नव्हते. त्यावेळी त्यांचे जात संवर्गातील त्यांचे कनिष्ठतम कर्मचारी श्री. राजु शामराव बनकर, अ.जा. व श्री मदनसिंग सुपडसिंग राजपुत, वि.जा.अ. यांना तात्पुरती पदोन्नती देण्यात आली होती. श्री तरकसे व श्री बमनात यांना पदोन्नती देणेबाबत दिनांक ०७/०७/२०१५ बैठकीमध्ये चर्चा करण्यात आली होती व त्यामध्ये श्री. तरकसे व श्री. बमनात यांना व.द.का. पदावर पदोन्नती देण्याचा निर्णय घेण्यात आलेला होता. त्यामुळे त्यांचे कनिष्ठतम श्री बनकर व श्री राजपुत, व.द.का. चे पदे रिक्त नसल्याने त्यांना

पदावनत करणे क्रमप्रात ठरते. त्याप्रमाणे श्री बनकर व श्री. राजपुत यांना वरिष्ठ दप्तर कारकुन पदावरून दप्तर कारकुन पदावर पदावनत करून श्री तरकसे व श्री. बमनात यांना व.द.का. पदी पदोन्नत करण्याचा निर्णय सर्वानुमते घेण्यात आला.”

(g) It is also admittedly that respondent No. 2 communicated the decision of the DPC to respondent No. 3 and other offices concerned vide his letter No. परिमंडळ/आस्थापना-१/९/सप, dated 11.02.2016 recommending names of respondent No. 4 and another for promotion to the post of Sr. Daftar Karkoon in view of availability of their caste certificate validity report. At the same time, respondent No. 2 issued order No. 25 of 2016 reverting the applicant and another to the post of Daftar Karkoon upon their respective seniors fulfilling criterion of eligibility for promotion to the post of Sr. Daftar Karkoon by making submission of their caste certificate verification reports.

(h) The applicant had, in the meantime worked on the post of Daftar Karkoon continuously without any break as stipulated in the Government Resolution bearing No. बीसीसी-१२०७/प्र.क्र.५३/०८/१६-ब, मंत्रालय, मुंबई, dated 16.06.2008, issued by Government in General Administration Department.

(i) The applicant has filed the present O.A. seeking

reliefs mainly on the following grounds stated in the O.A. :-

- (i) *His reversion to the post of Daftar Karkoon is against the principles of natural justice,*
- (ii) *His reversion has been ordered without considering that the respondent No. 4 had not submitted caste certificate validity within a period of 11 months*
- (iii) *That the applicant was not given one day break after every 11 month before extending his services on the post of Sr. Daftar Karkoon on lapse of 11 months' period which amounts to deemed regularization of his promotion to the post of Sr. Daftar Karkoon.*

3. Applicant has made prayer for Relief in terms of para 12 (A) to 12 (E) of this O.A. and Interim Relief in terms of para 12(F) and 12 (G) of this O.A., which are reproduced verbatim as follows for ready reference :-

“12) THE APPLICANT, THEREFORE, PRAYS THAT,

- A) *This Original Application may kindly be allowed thereby quashing and setting aside the imposed order of reversion of the applicant (Annex A-4 issued by Resp. No. 2 on 11/02/2016.*
- A-1) *This Original Application may kindly be allowed thereby quashing & setting aside the impugned order of promotion of the Resp. No. 4 (Annex. A-4 [a]) issued by Resp. No. 2 on 11/02/2016.*
- B) *This Original Application may kindly be allowed thereby holding and declaring that the promotion granted to the applicant vide order dtd. 31/05/2013 (Annex. A-1) by the*

Resp. No. 2 is deemed to have stood regularized in view of non- submission of the Validity Certificate by the senior employee within a period of 11 months from the date of said promotion given to him.

- C) *This Original Application may kindly be allowed thereby further directing the Respondents to extend to the applicant all the service benefits to which he would become entitled in view of grant of Prayer Clauses "A" and "B" in his favour.*
- D) *Costs of this Original Application may kindly be awarded to the applicant.*
- E) *Any other appropriate relief as may be deemed fit by this Hon'ble Tribunal may kindly be granted.*

INTERIM RELIEF

- F) *Pending the admission, hearing and final disposal of this Original Application the effect and operation of the impugned order of reversion of the applicant dtd. 11/02/2016 (Annex. A-4) issued by the Resp. No. 2 may kindly be stayed with further directions to the Respondents to permit the applicant to discharge duties attached to the promotional post of Senior Daftar Karkoon in the O/O Resp. No. 3. Ad-interim relief in terms of Prayer Clause "F" hereinabove may kindly be granted in favour of the applicant."*

4. Pleadings: Learned Presenting Officer filed affidavit in reply on behalf of respondent Nos. 1 to 3 on 29.07.2016, which was taken on record and copy thereof served on the other side. The applicant sought time to file rejoinder but, instead, prayed on 13.10.2016 for leave to implead the officer who is promoted in place of applicant as respondent No. 4 and carry out consequential amendment which was granted vide Oral Order dated 13.10.2016. Affidavit in reply was filed on behalf of respondent No. 4 on 20.12.2016 which was taken on record

and copy thereof served on the other side. As the applicant did not wish to file rejoinder to affidavits in reply filed on behalf of the four respondents, the matter was kept for final hearing in due course of time vide Oral Orders dated 08.03.2017. Later on, vide Oral Orders dated 22.03.2022 the matter was fixed for Final Hearing on 21.04.2022 which finally took place on 10.02.2023 during which the two sides reiterated what they had already submitted in their respective written submissions. Thereafter, the matter was reserved for order.

5. Analysis of Facts: -

(a) First of all, reference is made to the provisions of Government Resolution bearing No. बीसीसी-१२०७/प्र.क्र.५३/०८/१६-ब, मंत्रालय, मुंबई, dated 16.06.2008, issued by Government in General Administration Department complete text of which is reproduced below for ready reference:-

“जात वैधता प्रमाणपत्राअभावी रिक्त राहणारी
पदोन्नतीची पदे तात्पुरत्या पदोन्नतीने
भरण्याबाबत.

महाराष्ट्र शासन
सामान्य प्रशासन विभाग,
शासन निर्णय क्रमांक : बीसीसी-ए -१२०७/ प्र.क्र.५३/ ०८/ १९
मंत्रालय, मुंबई-४०० ०३२.
दिनांक :- १६/६/२००८

वाचा : १) शासन शुद्धीपत्रक, आदिवासी विकास विभाग, क्र. एसटीसी-

१४२०००/प्र.क्र.४३/का.१०, दि. २८.५.२००१,

२) शासन परिपत्रक, सामाजिक न्याय, सांस्कृतिक कार्य व विशेष सहाय

विभाग, क्र. सीबीसी - १०/२००४/प्र.क्र.५७०/मावक-५, दि. ५.३.२००५.

प्रस्तावना :

अनुसूचित जमातीच्या अधिकारी / कर्मचाऱ्यांना जमातीच्या प्रमाणपत्रची तपासणी झाल्याशिवाय पदोन्नती देण्यात येऊ नये असे आदेश संदर्भाधीन अ.क्र. १ येथील शुद्धीपत्राअन्वये देण्यात आले आहेत. तसेच अनुसूचित जाती, वि.जा.भ.ज., इ.मा.व. व वि.मा.प्र.च्या अधिकारी / कर्मचाऱ्यांची जात प्रमाणपत्रे पडताळणी समितीकडे पाठवून वैधता प्रमाणपत्र प्राप्त झाल्यानंतरच त्यांना पदोन्नती देण्यात यावी असे आदेश संदर्भाधीन क्र. २ च्या परिपत्रकाअन्वये देण्यात आले आहेत. या आदेशातील तरतूदीनुसार, ज्या मागासवर्गीय अधिकारी / कर्मचाऱ्यांची जात वैधता प्रमाणपत्रे प्राप्त झालेली नाहीत, त्यांना पदोन्नती देता येत नाही. यामुळे पदोन्नतीची बरीच पदे रिक्त राहतात. यामुळे प्रशासकीय कामकाजावर प्रतिकूल परिणाम होत असल्याचे निदर्शनास आले आहे. या अनुषंगाने उपाययोजना करण्याची बाब शासनाच्या विचाराधीन होती. शासनाने यासंदर्भात पुढीलप्रमाणे निर्णय घेतला आहे :-

शासन निर्णय :

ज्या मागासवर्गीय अधिकारी / कर्मचाऱ्यांना निवडसूचीत / तदर्थ पदोन्नतीसूचीत समावेशनास (पदोन्नतीस) पात्र ठरविले आहे. परंतु त्यांचे जात वैधता प्रमाणपत्र प्राप्त झालेले नसल्याने त्यांना पदोन्नती देता येत नाही अशा प्रकरणी संबंधित मागासवर्गीय अधिकारी / कर्मचाऱ्यांचा ज्या प्रवर्गातून (राखीव/खुल्या) समावेश झाला आहे त्या प्रवर्गातील त्याच्या लगत कनिष्ठ अधिकारी / कर्मचाऱ्यास निव्वळ तात्पुरत्या स्वरूपात ११ महिन्यांच्या कालावधीसाठी पदोन्नती देण्यात यावी. ही पदोन्नती खालील अटींच्या अधीन राहून देण्यात यावी.

१) संबंधित लगत कनिष्ठ अधिकारी / कर्मचारी मागास प्रवर्गातील असल्यास त्याचे जात वैधता प्रमाणपत्र प्राप्त झाले असणे आवश्यक राहिल.

२) ही पदोन्नती निव्वळ तात्पुरत्या स्वरूपाची असून संबंधित ज्येष्ठ अधिकारी / कर्मचाऱ्याने जात वैधता प्रमाणपत्र सादर केल्यावर ती आपोआप संपुष्टात येईल असे आदेशात नमूद करण्यात यावे..

३) सदर पदोत्रती ११ महिन्यांकरीता वा ज्येष्ठ अधिकारी / कर्मचारी जात वैधता प्रमाणपत्र सादर करेल यापैकी ने अगोदर घडेल तोपर्यंत सुरु राहिल. तथापि या कालावधीत ज्येष्ठ अधिकारी / कर्मचाऱ्याने जात वैधता प्रमाणपत्र सादर न केल्यास ही पदोन्नती १ दिवसाचा (सुटीचा कालावधी वगळून) खंड देवून पुढे चालू ठेवता येईल.

४) या तात्पुरत्या पदोन्नतीच्या परिणामी कनिष्ठ अधिकारी / कर्मचारी यांना सेवाज्येष्ठतेचा हक्क मिळणार नाही.

२. संबंधित मागास अधिकारी / कर्मचाऱ्याने जात वैधता प्रमाणपत्र सादर केल्यानंतर त्यास पदोत्रती देण्यात यावी व कनिष्ठ कर्मचाऱ्याची तात्पुरती पदोन्नती संपुष्टात आणावी. सदर ज्येष्ठ अधिकारी/कर्मचारी यांची पदोत्रतीच्या पदावरील ज्येष्ठता अबाधित राहिल.

३. मंत्रालयीन विभागांनी सदर आदेशातील तरतूदीनुसार राजपत्रित पदावर पदोत्रतीबाबतचे प्रस्ताव सामान्य प्रशासन विभागास सादर करावेत व अराजपत्रित पदांवर पदोन्नतीबाबत सर्व विभागप्रमुख / कार्यालय प्रमुख यांच्याकडून कार्यवाही होत असल्याची खात्री करून घ्यावी.

४. सदर शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या वेबसाईटवर उपलब्ध करण्यात आला असून त्याचा संगणक संकेतांक २००८०६१६१५३१४३००१ असा आहे.

५. हा शासन निर्णय सामाजिक न्याय व विशेष सहाय्य विभागाच्या अनौ. संदर्भ क्र. ४५/मावक ५, दिनांक -७/३/२००८ व आदिवासी विकास विभागाच्या क्र. क्र. अनौ. संदर्भ क्र. ४२/का.१०, दिनांक ५/४/२००८ अन्वये तसेच सामान्य प्रशासन विभाग/का.१२ च्या अनौ.संदर्भ क्र. ६५९/१२, दिनांक २८/४/२००८ अन्वये प्राप्त झालेल्या सहमतीने निर्गमित करण्यात आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

सही /-

(गो.आ.लोखंडे)

अवर सचिव, महाराष्ट्र शासन."

(b) Upon perusal of the para Nos. 1 and 2 of above G.R., it is crystal clear that the applicant was promoted until another Daftar Karkoon from VJ-A category, senior to him

submitted his caste certificate verification report. This condition being known to the applicant at the time of accepting temporary promotion order, his claim that the action of respondent authorities reverting him back to his substantive post amounts to violation of principles of natural justice does not hold ground.

(c) Upon perusal of clause No. 1 (4) of the operating part of the G.R. dated 16.06.2016 (supra), the claim of the applicant that just because he was not given one day's break while extending his temporary promotion entitles him to be given benefit of deemed regular promotion is also not supported by any rule/ recruitment rules or, citation of case law. In our considered opinion, this pleading too, is misconceived.

(d) It is undisputed that the respondent No. 4 had submitted his caste certificate validity report dated 02.12.2013 to respondent authorities in the month of December 2013, i.e within 7 months of grant of temporary promotion to the applicant; therefore, contention of the applicant that the respondent No. 4 could not submit the said certificate within 11 months is on the face of the records, without any basis.

(e) **Inference:** Based on analysis of facts on record and oral submissions made and evaluating them, we are of the considered opinion that this Original Application is misconceived, vexatious in nature and devoid of merit, hence the following order:-

ORDER

(A) Original Application No. 134 of 2016 is dismissed being misconceived and devoid of merit.

(B) No order as to costs.

MEMBER (A)

MEMBER (J)

Kpb/D.B. O.A. No. 134/2016 Reversion