IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.89 OF 2016

DISTRICT : PUNE

Shri Santoshkumar Suryabhan Rakh ..Applicant

Versus

The State of Maharashtra & Ors. ..Respondents

Shri K.R. Jagdale – Advocate for the Applicant

Shri N.K. Rajpurohit – Chief Presenting Officer for the Respondents

CORAM : Shri R.B. Malik, Member (J)

DATE : 18th February, 2016

O R D E R

1. Heard Shri K.R. Jagdale, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.

2. The main relief sought relates to the promotion to the post of Senior Clerk and the interim relief is sought to ensure

that the applicant was not reverted to the post of Junior Clerk because he has been admittedly promoted on temporary basis for 11 months which period has expired either on 11/12.2.2016 and has continued by virtue of an order made by me twice. The second extension was occasional because the learned CPO furnished for perusal two judgments of the Hon'ble Supreme Court. The first extension was granted the order dated 10.2.2016. The fact that the applicant continued to hold the temporary promotional post was defined as status quo and that status quo was directed to be maintained till 15.2.2016 and then till 18.2.2016.

3. It is not necessary at this stage to make any detailed observation or comments so as to conclude any of the parties. All my observations are strictly limited for the purpose of this interim order.

4. The applicant belongs to NT(D) category and was apparently appointed from PAP NT(D) category on 31.12.2003 as a Junior Clerk. Thereafter 2006 DPC another candidate was promoted and he was brought on transfer from Mumbai Circle to Pune and was eventually absorbed. The applicant claims to have been entitled to the promotion at that time as per GAD circular dated 22.9.2003. According to the applicant even in 2007-2008, 2009 also there was a vacancy for NT(D) category candidates for promotion. He went on making representations.

On 25.2.2010 the Superintending Engineer, Pune informed him that his case for promotion will be considered in the next DPC. He was then transferred in Electrical Inspection Division, Pune as a Junior Clerk on 1.6.2010.

5. It is apparently an indisputable factual position that during September-November 2011 Backward Cell, Pune Division took up the case of the applicant and the respondent no.3 undertook to update the roster register in the matter of consideration of applicant's promotion. The applicant again made representations and again the said cell gave directions in that behalf repeatedly from time to time. The applicant then moved the GAD also on 15.7.2013. The GAD vide its communication dated 6.9.2013 wrote to the respondent no.3 taking exception to the dragging of feet in this matter. The Chief Engineer (ELE) wrote to the Superintending Engineer a communication Exhibit 'AG' (page 105 of the paper book) dated 27.10.2014 where again displeasure was expressed at the delay in considering the case of the applicant for promotion. It was in that background that ultimately the order Exhibit 'AL' (page 116 of the paper book) came to be issued whereby the applicant was temporarily promoted for 11 months as mentioned above.

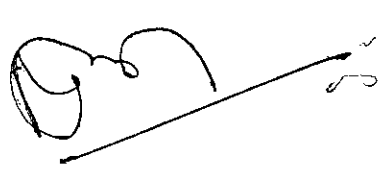
6. It in fact appears from the affidavit in reply itself that the first such promotion to the applicant was given on 11.3.2014. Thereafter as per GR dated 24.4.2015 the office of

the Superintending Engineer, Pune Regional Electrical Circle was placed under the establishment of Industry, Energy and Labour Department. The Ld. CPO told me that the formalities will have to be completed and the same would take some time. In additional affidavit in reply the facts of the directions from Backward Cell have been admitted. The applicant has given an option to continue with Industry, Energy and Labour Department (Exhibit 'AR-6', page 165 of the paper book).

7. The above discussion would make it very clear that even for promotion on temporary basis the applicant did not have the smooth sailing so to say but ultimately albeit on temporary basis he was promoted twice. His eligibility in that behalf, therefore, at least for the temporary basis cannot in my view be questioned. On the peculiar set of these facts granting all latitude to the respondents and Ld. CPO, I find that the case of the applicant has its own peculiar hue. As of now I am not deciding the rights finally. As of now, I am only considering if the state of affairs such as they are should be allowed to continue or the applicant should be reverted forthwith. Needless to say that it will be open to the respondents to take a final call on applicant's ultimate eligibility for promotion just like any employer in case of his employee. This power and manner of exercise thereof is not going to be affected even if the applicant continued to be on temporary basis holding the promotional post. To repeat if the applicant was found wanting

ultimately he could still be reverted. This aspect of the matter I must repeat is peculiar to the present facts. Although in theory the Ld. CPO is right in contending that an employee has got only a right for being considered for promotion and not get promoted just because he thinks he is eligible or entitled. But equally true is the fact even at this interim stage that even for consideration for promotion the applicant had to run from pillar to post and the respondents took their own time even in responding to the concerned authorities who are charged with the responsibility to ensure welfare of the underprivileged employees. It is not as if the respondents readily considered the case for promotion of the applicant. Therefore, the issue is as to whether till such time as a final decision is taken the present status quo should be allowed or reversion of the applicant must take place. In my view by the very nature of things this is going to be an interim arrangement and the preferred course of action in the peculiar set of facts herein will be to let the present state of affairs continue.

8. The Ld. CPO told me that it is without the province of the judiciary to direct promotion and it is within the exclusive domain of the authorities. Now in actual fact situation I am not for the first time giving directions of applicant's promotion. The authorities have done it twice and they must have done it after they found the applicant fit for promotion. From the record it would appear that the applicant could not be given regular



promotion because of any infirmity or negative marking against him but because all the other reasons relating to administration. That being the state of affairs pending final decision if I were to continue the status quo I do not think I will have encroached upon the domain of the authorities.

9. The Ld. CPO invited reference to the judgments of the Hon'ble Supreme Court in **STATE OF MADHYA PRADESH VERSUS SRIKANT CHAPHEKAR (1992) 4 SCC 689, K. SAMANTARAY VERSUS NATIONAL INSURANCE CO. LTD. (2004) 9 SCC 286, DEPUTY INSPECTOR GENERAL OF POLICE VERSUS R. MOOKAN 1997(8) CPSC 1541** and **UNION OF INDIA AND OTHERS VERSUS JUGAL KISHORE SAMAL (2004) 13 SCC 15**. The principles laid down by the Hon'ble Supreme Court in the above referred case laws have already been applied by me in the above discussion. The law laid down is that no employee has got a right to be promoted though he has got a right to be considered for promotion. However, significantly no authority lays down that even while considering the case of promotion the State can, with impunity violate the constitutional provisions of equality and a guarantee against hostile discrimination. Another principle is with regard to the limitation on the powers of judiciary to interfere in such matters. I have already made it clear that I am not hereby making any final order of promotion. It only so happens that the respondents on their own showing are going to take time to

finalize promotion and pending that the issue is as to whether applicant should be reverted or the present status quo should continue. Working on the principles laid down by the Hon'ble Supreme Court and applying the said principles hereto in my view this status quo can safely be allowed to continue.

10. Shri K.R. Jagdale, Ld. Advocate for the applicant relied upon the judgment of the Hon'ble Supreme Court in **VISHWAS ANNA SAWANT AND OTHERS VERSUS MUNICIPAL CORPORATION OF GREATER BOMBAY AND OTHERS AIR 1994 SC 2408** which lays down the principle with regard to the right of SC and ST candidates for being considered for promotion and that being a fundamental right. Shri Jagdale, Ld. Advocate referred me to the judgment of the Hon'ble Supreme Court in **COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH AND ANOTHER VERSUS K.G.S. BHATT AND ANOTHER AIR 1989 SC 1972**. There in dealing with an industrial dispute the Hon'ble Supreme Court was pleased to hold that all opportunities must be given for advancements to the employees including by way of promotion.

11. In view of the foregoing making it clear that this order will hold good only till such time as the seniority of the applicant is finally decided and no new right shall be created hereby, the status quo granted by this Bench on 10.2.2016 shall continue till further orders without effecting the process of

consideration of the applicant's case for promotion. The respondents shall be free to take appropriate decision as warranted by the facts including all other circumstances like ACR etc. OA stands adjourned to 14.3.2016.

18.2.16

(R.B. Malik)
Member (J)
18.2.2016

Date : 18th February, 2016

Dictation taken by: S.G. Jawalkar.

E:\JAWALKAR\Judgements\2016\2 February 2016\OA.89.16.J.2.2016-SSRakh-Promotion SO to 14.3.16.doc

(G.C.P.) J 1726(B) (20,000—10-2013) [Spl.- MAT-F-2 E.

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

M.A./R.A./C.A. No. of 20

I N

Original Application No. of 20

FARAD CONTINUATION SHEET NO.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

18.02.2016

O.A No 640/2015

Heard Shri D.B Khaire, learned advocate for the applicant and Smt K.S Gaikwad, learned Presenting Officer for the Respondents.

It appears that the Applicant has not impleaded the State of Maharashtra, through Addl. Chief Secretary, Public Health Department, Mantralaya, Mumbai and also G.A.D in the context of the present facts the mere impleadment of the MPSC may not necessarily assist the Tribunal to render an effective adjudication. Further the circular dated 3.7.2004 from G.A.D (Page 93, Exh-F) has not been challenged. Mr Khaire seeks permission to amend the O.A appropriately in the light of what has been mentioned above.

Permission is granted. The amendment to be effected within one week from today and consolidated copy of the application after amendment be filed and one copy be given to the learned P.O for the existing Respondent and the other Respondents be served in accordance with the rules.

O.A is now adjourned to 10.3.2016 for filing additional affidavit/affidavit in reply.

Sd/- Sd/-

(R.B. Malik) (Rajiv Agarwal)
Member (J) Vice-Chairman

Akn

DATE: 18/2/16

CORAM:

Hon'ble Shri. RAJIV AGARWAL (Vice - Chairman)

Hon'ble Shri R. B. MALIK (Member)

APPEARANCE:

Shri/Smt.: D. B. Khaire

Advocate for the Applicant

Shri/Smt.: K. S. Gaikwad

C.P.O / P.O. for the Respondents

Adj To: 10/3/16

5

(G.C.P.) J 1726(B) (20,000—10-2013) |Spl.- MAT-F-2 E.

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

M.A./R.A./C.A. No. of 20

I N

Original Application No. of 20

FARAD CONTINUATION SHEET NO.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

18.02.2016

329/2015

O.A No 327 & 328/2015

Heard Shri A.V Bandiwadekar, learned advocate for the applicants and Shri K.B Bhise, learned Presenting Officer for the Respondents.

We have perused the record and proceedings. By order dated 8.12.2015 in W.P no 5937/2015 with two other Writ Petitions, arising out these O.As, the Aurangabad Bench of the Hon. Bombay High Court has been pleased to make these matters time bound to be decided by 8.3.2016. Mr Bandiwadekar seeks a very short adjournment to argue the matter.

Considering his submission, we make it very clear that on the next date the group of these three O.As shall be heard and both the sides must carefully note it that it will be heard continuously till such time as the arguments are over. Written arguments and authorities, if, they are required to be tendered, must be tendered at the time of arguments and not when the matter is closed for final orders.

S.O to 24.2.2015 first on Board.

DATE: 18/2/16
CORAM:
Hon'ble Shri. RAJIV AGARWAL (Vice - Chairman)
Hon'ble Shri R. B. MALIK (Member) J
APPEARANCE:
Shri/Smt. A.V. Bandiwadekar
Advocate for the Applicant
Shri/Smt. K.B. Bhise
C.P.O/P.O. for the Respondents
Adj To: S.O. to 24/2/16
FOB

Sd/- Sd/-

(R.B. Malik) 18/2/16 (Rajiv Agarwal)
Member (J) Vice-Chairman

(G.C.P.) J 1726(B) (20,000--10-2013)

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

M.A./R.A./C.A. No. of 20

I N

Original Application No. of 20

FARAD CONTINUATION SHEET NO.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

18.02.2016

O.A No 553/2015

Heard Smt Punam Mahajan, learned advocate for the applicants and Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

Learned C.P.O submits letter dated 16.2.2016 which seems to suggest that no posts are available to give promotion to the post of Superintending Agriculture Officer as already 52 officers are working in excess of the sanctioned post. A clear affidavit may be filed by the Government that if already 52 officers are working in excess of the sanctioned posts, whether any promotion orders are likely to be issued in near future and if so the time frame may be indicated and if not what happens to the proceedings of the D.P.C of 2014, may be clarified.

S.O to 3.3.2016. Hamdast.

Sd/-
(R.B. Malik)
Member (J)

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Akn

DATE: 18/2/16

CORAM:

Hon'ble Shri. RAJIV AGARWAL
(Vice - Chairman)

Hon'ble Shri R. B. MALIK (Member) J

APPEARANCE:

Shri/Smt. : Punam Mahajan

Advocate for the Applicant

Shri /Smt. : N.K. Rajpurohit

C.P.O/P.O. for the Respondents

S.O. to 3/3/16.

Hamdast.

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.189 OF 2016

DISTRICT: MUMBAI

Ms M. G. Rane & Ors. **Applicant**

Versus

The State of Maharashtra & Ors. **Respondents**

Shri A.V. Bandiwadekar, learned Advocate for Applicants

Smt. Kranti Gaikwad, learned P.O. for the respondents.

CORAM : SHRI R.B. MALIK, MEMBER (J)

DATE : 18.02.2016

O R D E R

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicants and Smt. Kranti Gaikwad, the learned Presenting Officer for the respondents.

2. The matter has been placed before me for consideration of interim orders. Learned P.O. strongly opposes grant of any relief as such.

3. I have heard the rival submissions. As of today, it will not be appropriate to make any detailed comment or observations, however, there is some history in the form of two earlier O.A.s and the orders made therein. Copies thereof have been annexed hereto. It cannot be said that there are no arguable points at all even as Shri Bandiwadekar insists on interim relief in terms of para 10

hereof. As of today, reserving liberty to the applicants to renew the request for interim relief on the next date, I direct the respondents to place on record an affidavit howsoever short pleading facts generally and with particular reference to the issue of interim relief. The record if any may also be kept ready for perusal if need be.

4. Issue notice returnable on 29.2.2016.

5. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.

6. Applicant is authorized and directed to serve on Respondent intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A.. Respondent is put to notice that the case would be taken up for final disposal at the stage of admission hearing.

7. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

8. The service may be done by Hand delivery, speed post, courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.

9. S.O. to 29.2.2016.

Sd/-

(R.B. Malik)
Member(J)

18.2.16

vso

(G.C.P.) J 1726(B) (20,000—10-2013)

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

M.A./R.A./C.A. No. of 20

I N

Original Application No. of 20

FARAD CONTINUATION SHEET NO.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
DATE: 18/2/16 CORAM: Hon'ble Shri. RAJIV AGARWAL (Vice - Chairman) Hon'ble Shri R. B. MALIK (Member) J APPEARANCE: Shri/Smt. S.P. Manchekar, A.V. Bandiwadekar, M.R. Patil Advocate for the Applicants. K.B. Bhise holding for Smt. K.S. Gaikwad Shri /Smt. C.P.O / P.O. for the Respondents Adj to S.O. to 25/2/16. OA 963/12, OA 595/14 & OA 966/14. FH/HOB M. R Patil S.P. Manchekar 24/2/16 AV for Petkar 24.2.16. 24.2.16 CPO MAT	**18.02.2016** **O.A Nos 963/2012, 595/2014 & 966/2014** Heard Ms Swati Manchekar, Shri A.V Bandiwadekar, and Shri M.R Patil, learned advocate for the applicants and Shri K.B Bhise, holding for Smt K.S Gaikwad, learned Presenting Officer for the Respondents. In these groups of O.As we made a detailed order on 20.8.2015. We gave certain directions. The order is self speaking and needs to be referred to. At the moment there is nothing to indicate as to what all has been done in the matter of compliance thereof. We regret to say that if this attitude persists, we may have to summon the Divisional Commissioner, Konkan Division to ensure that the orders of the Tribunals are not made light of. The learned P.O is directed to make sure that this order is communicated to the concerned authority/authorities and file an appropriate affidavit showing the compliance and action required to be taken. L.O. There was some confusion when the matter was called out and therefore, the above order came to be passed. However, it is recalled when it was pointed out by Shri K.B. Bhise, learned P.O who placed on record copy of letter dated 10.2.2016. Therefore, we make it clear that we express no opinion against the Commissioner, on the contrary we express appreciation for the compliance made by the Commissioner and the office staff. S.O to 25.2.2016. Sd/- Sd/- (R.B. Malik) (Rajiv Agarwal) Member (J) Vice-Chairman Akn