

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.301 OF 2021

DISTRICT: AURANGABAD

Shri. D. P. Jadhav,
Age-58 years, Occu: Retired as
Senior Bacteriological Assistant,
R/o. Flat No. 143, Devgiri colony,
CIDCO, Aurangabad.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through its Secretary,
Public Health Department,
Gokuldas Tejpal Hospital Sankul Building,
10th floor B Wing Mumbai- 32,
Mantralaya, Mumbai 32.
- 2) The Director of Health Service,
Public Health Commissioner office at Mumbai,
Arogya Bhavan, Behind St. Georges Hospital
P. D'Mello Road, Mumbai-1.
- 3) The Dy Director of Health Service,
State Health Laboratory, Pune-1.
Military water supply campus, Near St. Merry School
Poolgate Staweale Road, Pune-1
- 4) The Dy. Director of Health Service,
(Economics and Administration) Mumbai,
Arogya Blavan Behind St. Georges Hospital,
P. D'Mello Road, Mumbai 1.
- 5) General Administration Department,
Public Health Department, Mumbai.
Arogya Blavan Behind St. Georges Hospital,
P. D'Mello Road, Mumbai 1.
- 6) The Junior Scientific Officer,
District Health Laboratory,

Nashik, Civil Hospital, Trimbakeshwar Road,
Trimbak Road, Nashik - 422002.

7. The Establishment officer,
Public Health Department, Mumbai.
Arogya Bhavan Behind St. Georges Hospital,
P. D'Mello Road, Mumbai-1. **...RESPONDENTS**

APPEARANCE : Shri A.S.Deshmukh, Counsel
holding for Shri G.J.Pahilwan,
Counsel for Applicant.
: Smt. Sanjivani Ghate, Presenting
Officer for the respondent authorities

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN.

DECIDED ON : 13.01.2023.

ORDER:

1. Heard Shri A.S.Deshmukh, learned Counsel holding for Shri G.J.Pahilwan, learned Counsel for the applicant and Smt. Sanjivani Ghate, learned Presenting Officer representing the respondent authorities.

2. Applicant has filed the present O.A. seeking quashment of the order dated 04-03-2020 passed by respondent no.1 whereby the request of the applicant claiming 19-12-1999 as deemed date of his promotion to the post of Senior Bacteriologist has been rejected by respondent no.2 and has also prayed for allowing the proposal dated 09-05-2018 forwarded by the Joint

Director, Health Services (Finance & Administration), Mumbai to Deputy Director, Health Services, State Health Laboratory, Pune.

3. The applicant entered into the Government service w.e.f. 11-12-1989 as Laboratory Technician Bacteriological Assistant. He got promoted to the next post as Senior Bacteriological Assistant as per his seniority. The applicant was promoted on the said post vide order dated 17-06-1998 and was posted at Kolhapur. The applicant, however, did not join at Kolhapur since his wife was suffering from severe asthma and she was under treatment at Buldhana. The applicant, therefore, refused the promotion and informed the respondents vide letter his dated 23-06-1998 that because of his personal problems he is not in a position to join at Kolhapur on promotion. Applicant had also made a request that he may be considered for promotion in the next year. The promotion order was accordingly cancelled on 24-06-1998.

4. The applicant subsequently requested the respondents vide his letter dated 25-06-1999 that he was ready to accept the promotion and hence his request for promotion be considered. However, respondents did not

promote the applicant. Some other persons who according to the applicant were junior to him were promoted. The applicant had, therefore, approached this Tribunal by filing O.A.No.124/2000. The said O.A. was filed before the Nagpur Bench of this Tribunal since the applicant at the relevant time was posted at Buldhana. The said O.A., however, was dismissed. While dismissing the said O.A., the Tribunal did observe that the applicant by refusing promotion has lost chance for consideration in the next Departmental Promotion Committee (DPC) since no roster point was available for the Scheduled Caste (SC) candidate. During the pendency of the aforesaid O.A. before the Nagpur Bench of the Tribunal vide order dated 31-03-2003 the applicant was promoted as Senior Bacteriological Assistant.

5. It is the grievance of the applicant that though the applicant filed applications from time to time with the respondents claiming deemed date of promotion and accordingly to grant him consequential benefits, the respondents did not consider the said request. It is the further contention of the applicant that respondent no.3 after having studied the facts involved in the matter of the

applicant forwarded a proposal to respondent no.2 recommending for grant of deemed date of promotion as 19-12-1999 on the post of Senior Bacteriological Assistant. However, the said proposal came to be turned down vide order dated 04-03-2020, against which the applicant has preferred the present O.A.

6. The applicant in the year 2016 also had preferred O.A.No.228/2016 along with M.A.No.108/2016 seeking condonation of delay before the Mumbai Bench of the Tribunal praying for grant of deemed date of promotion on the post of Senior Bacteriological Assistant w.e.f. February, 2000 at par with his batch-mate Mr. Padghan with all other consequential service benefits. The Tribunal, however, did not condone the delay and dismissed it. Consequently, O.A.No.228/2016 also got concluded therewith.

7. Shri A.S.Deshmukh, learned Counsel for the applicant submitted that the applicant was liable to be promoted in the year 1999 though he had refused promotion granted to him by the earlier order i.e. in 1998. Learned Counsel submitted that while refusing the promotion, the applicant had prayed that his case be

considered for promotion in the DPC of the next year i.e. in the DPC of 1999. Learned Counsel submitted that in the DPC of 1999, the case of the applicant was not considered for promotion on the ground that no roster point for Scheduled Caste to which the applicant belongs was available. Learned Counsel further submitted that in the passage of time, ultimately, it was revealed that in the year 1999 also roster point of Scheduled Caste was very well available and the applicant could have been promoted in the year 1999 itself. As such, the then Joint Director of Health Services Mumbai forwarded proposal dated 09-05-2018 recommending for grant of deemed date as 19-12-1999 for promotion of the applicant to the post of Senior Bacteriological Assistant. Learned Counsel submitted that on the basis of the information which was revealed and which was disclosed in the proposal dated 09-05-2018, the respondents must have given deemed date as was proposed in favour of the applicant.

8. Learned Counsel further submitted that without any good reason the respondents sought the directions from the General Administration Department and on the say of the said department, ultimately, refused the proposal vide

the impugned order. The learned Counsel submitted that the aforesaid proposal has been rejected on the ground that the earlier O.A. filed by the present applicant seeking deemed date of promotion was rejected. Learned Counsel submitted that the reason for which claim of the applicant has been rejected is wholly unsustainable. The learned Counsel submitted that the principle of res-judicata would not apply in the present matter. Learned Counsel submitted that in the earlier matter i.e. in O.A.No.124/2000, prayer of the applicant was for his promotion to the post of Senior Bacteriological Assistant and was not for deemed date. Learned Counsel further submitted that in so far as the O.A.No.228/2016 is concerned, in the said matter, the applicant has prayed for deemed date of February, 2000 at par with his batch-mate Mr. Padghan for his promotion to the post of Senior Bacteriological Assistant. In the present matter, the applicant is seeking deemed date of 1999 on the basis of the proposal forwarded by Joint Director, Health Services, Pune on 09-05-2018. In the circumstances, the learned Counsel submitted that the principle of res-judicata would not apply. Learned Counsel in the circumstances prayed for allowing the O.A.

9. The respondents have resisted the contentions raised in the O.A. and the prayer made therein by filing their joint affidavit in reply. Respondents have contended in the said affidavit that in view of the dismissal of O.A.124/2000 and rejection of M.A.No.108/2016, the request as has been made by the applicant in the present O.A. cannot be considered and deserve to be rejected. The respondents have contended that once the applicant had refused promotion, was not entitled to claim the said promotion much less the deemed date of the said promotion. It has been further contended that issues raised in the present O.A. are substantially dealt with in the earlier O.As. filed by the applicant. In the circumstances, the same request made on the same grounds cannot be considered being barred by the principle of res-judicata.

10. I have duly considered the submissions advanced on behalf of the applicant as well as the respondents. Admittedly, the applicant had refused the promotion on the higher post offered to him in the year 1998. In the year 1999, the applicant was not considered for his promotion though he had prayed for. Since the applicant was not considered for his promotion in the year 1999, he had filed

O.A.No.124/2000 before Nagpur Bench of this Tribunal. It is not in dispute that the said O.A. came to be dismissed. While dismissing the said O.A., the Tribunal had recorded a finding that no roster point was available for the candidate belonging to Scheduled Caste to which the applicant belongs and in the circumstances, no promotion was liable to be granted to the applicant. The aforesaid decision was admittedly not challenged by the applicant before the Hon'ble High Court. Said decision, therefore, attained finality.

11. Further, it is the matter of record that in the year 2016, the applicant filed another O.A. bearing O.A.No.228/2016. In the said O.A., the applicant claimed February, 2000 as his deemed date of promotion on the post of Senior Bacteriological Assistant. As because some delay had occasioned in filing the said O.A., the applicant had also preferred M.A.No.108/2016 along with the said O.A. This Tribunal has dismissed the said M.A. by passing a detailed order. In the said matter also it was contention of the applicant that while earlier O.A. was dismissed by Nagpur Bench of the Tribunal, false and incomplete information was provided to the Tribunal that no roster

point was available for promotion of the SC candidate. While deciding the M.A., the Tribunal has observed that, while deciding O.A.No.124/2000 the Nagpur Bench of this Tribunal had conclusively held that at the relevant time no roster point was available to the Scheduled Caste and as such there was no merit in the case of the applicant in the matter of seeking promotion. The Tribunal has then held that in the circumstances, to allow the M.A. would amount to infuse time barred O.A. which will be a futile exercise.

12. In view of the observations as are made by this Tribunal, it does not appear to me that even the present O.A. can be considered wherein the same prayers are made. Learned Counsel for the applicant earnestly urged that in the earlier O.A., deemed date was sought of the year 2000 whereas in the present O.A., the applicant is claiming deemed date of 1999 and as such it cannot be said that the identical or similar prayer was made by the applicant in the earlier O.A. I am, however, not convinced with the submission so made by the learned Counsel. It is immaterial whether deemed date is sought of the year 2000 or of 1999, the issue is whether the applicant was entitled to be given promotion at the relevant time. Said issue has

been conclusively decided by the Tribunal way back in the year 2007 while deciding O.A.No.124/2000 holding that 'no roster point was available to the Scheduled Caste at the relevant time'. The subsequent O.A. has not even been entertained by the Tribunal by not condoning the delay occasioned in filing the said O.A. However, from the observations made by this Tribunal while rejecting the O.A. to which I have referred hereinabove, it is writ large that the Tribunal was not inclined to condone the delay also for the reason that the issue of promotion was already concluded by the Tribunal.

13. I, therefore, see no reason for considering the present O.A. wherein the similar prayer has been made. In the result, following order is passed:

ORDER

Original Application is dismissed, however, without any order as to costs.

VICE CHAIRMAN

Place : Aurangabad
Date : 13.01.2023.