

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 367 OF 2019  
(Subject – Deemed Date of Promotion)**

**DISTRICT : AURANGABAD**

**Arvind S/o Dattatraya Sulakhe,** )  
Age : 82 years, Occu. : Pensioner, )  
R/o “Sugandha”, Golden City, )  
Behind Nath Seeds, Aurangabad. ) ... **APPLICANT**

**V E R S U S**

- 1) **The State of Maharashtra,** )  
Through its Secretary, )  
Revenue and Forest Department, )  
Mantralaya, Mumbai. )
- 2) **The Divisional Commissioner,** )  
Aurangabad Division, Aurangabad. )
- 3) **The Collector,** )  
Aurangabad, Dist. Aurangabad. ) .. **RESPONDENTS**

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**APPEARANCE** : Shri R.B. Ade, learned Advocate for Applicant.  
: Shri V.R. Bhumkar, learned Presenting Officer  
for Respondents.  
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**CORAM** : **SHRI V.D. DONGRE, MEMBER (J).**  
**DATE** : **16.12.2021.**  
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**O R D E R**

1. By invoking the jurisdiction under Section 19 of the Administrative Tribunals Act, 1985, the present Original

Application is filed by the applicant seeking to quash and set aside the impugned communication dated 27.03.2019 (Annexure A-1 collectively, page No. 20 of paper book) issued by the Under Secretary to the Government of Maharashtra to the Divisional Commissioner, Aurangabad Division, Aurangabad and consequential communication dated 01.04.2019 (Annexure A-1 Collectively) issued by the Deputy Commissioner (Revenue), Aurangabad, thereby rejecting the claim of the applicant for giving him deemed date of promotion on the post of Deputy Collector w.e.f. 16.09.1982 and seeking direction to the respondents for giving deemed date of promotion on the post of Dy. Collector w.e.f. 16.09.1982.

2. The facts in brief for the purpose of deciding the Original Application can be summarized as follows :-

At the outset, it is seen that this matter has a chequered history.

(i) The applicant joined the service as Peshkar (Awal Karkun) on 15.05.1956 with the then Hyderabad Government and after reorganization of the States, his services were allotted to the State of Bombay, now the State of Maharashtra. The applicant was promoted to the post of

Naib Tahsildar on 11.06.1968 and thereafter, promoted as Tahsildar on 09.04.1980. He was given deemed date of promotion in the cadre of Naib Tahsildar w.e.f. 01.04.1962 and in the cadre of Tahsildar w.e.f. 07.04.1974.

(ii) It is further submitted that thereafter, without preparation and finalization of seniority list of Tahsildars, large number of promotions were given by the Government of Maharashtra by its order dated 16.09.1982 thereby employees, who were junior to the applicant, were promoted on the post of Deputy Collector. Therefore, the applicant filed W.P. No. 301/1984 before the Hon'ble High Court for granting him promotion on the post of Deputy Collector, as juniors to him were promoted and he was deprived of promotion. After establishment of Maharashtra Administrative Tribunal, the said W.P. No. 301/1984 was transferred to the said Tribunal and was renumbered as O.A. No. 281/1991. The said Original Application No. 281/1991 was decided by the Tribunal by the judgment and order dated 20.10.1992 (Annexure A-2), thereby the said O.A. was disposed of by giving appropriate directions to the respondents. It is specifically stated as per the said directions, the adverse remarks for the year 1980-81 and

1981-82, which were communicated to the applicant on 04.01.1984 were to be ignored at the time of meeting of the Selection Committee held on 19.11.1984. The representations made by the applicant as regards those adverse remarks were pending, though the adverse remarks were communicated to the applicant on 04.01.1984.

(iii) In the circumstances as above, the judgment and order dated 20.10.1992 (Annexure A-2), ought to have been implemented by the respondents, which reads as under :-

“ **ORDER**

1. *The case of the petitioner shall be considered by the Selection Committee as if he was considered along with his juniors who were promoted vide Government order dated 16.09.1982.*

2. *As we have observed that the adverse remarks in the C.Rs. which were not communicated to the petitioner before the meetings of the Selection Committee were held, could not have been considered by the Selection Committee in the meetings in which petitioner was considered and found unfit. Petitioner will have, therefore, to be considered by the respondents a fresh as on the date on which meeting of the Selection Committee was held taking into*

*account the communication or non-communication of the adverse remarks and the decision on the representations made, if any, by the petitioner.*

*3. After the reconsideration of the petitioner's case by the Selection Committee, Respondents would decide the deemed date of promotion in the grade of Deputy Collector, if found eligible as prayed for in his O.A. No. 281/1991.*

*With these directions both the petitions are allowed.*

*4. In the circumstances of the case we make no order as to costs. ”*

(iv) It is further contention of the applicant that as the said judgment and order dated 20.10.1992 was not implemented by the respondents; the applicant filed C.P. No. 03/1993 before the Maharashtra Administrative Tribunal Mumbai, Bench at Aurangabad. Thereafter by the order dated 12.03.1993, the applicant was granted promotion to the post of Deputy Collector and the department was directed to consider the question of deemed date of promotion expeditiously and the C.P. was disposed of accordingly by issuing order dated 16.03.21993 (Annexure A-3). However, the aspect of deemed date of

promotion in the cadre of Deputy Collector was not decided thereafter.

(v) The applicant thereafter submitted representations dated 23.11.2009 and 20.09.2012 and visited the office of respondent No. 1 many times. He also sought information as regards progress of giving him deemed date of promotion by submitting an application under Right to Information Act on 20.09.2005. No information was furnished to him. He therefore, preferred requisite appeal to the office of Deputy Secretary, who by order dated 27.01.2006, directed to expedite the case of deemed date and to inform the applicant within three months. However, no action was taken by the concerned respondents. In the year 2009 therefore, the applicant again made application seeking information under RTI but it was not furnished. He was required to file first and second appeal in the year 2010. The Information Commissioner by the order dated 25.01.2010 (Annexure A-4) allowed the appeal filed by the applicant.

(vi) It is further submitted that in the year 2012, fire took place in the Mantralaya, Mumbai, in which the entire

record was burnt. The applications were invited from the applicant for reconstruction of record. He submitted various applications for that purpose during the period from 26.06.2012 to 06.04.2017. In spite of that, there was no implementation of the order passed in the C.P. No. 03/1993 giving deemed date to the applicant in the cadre of Deputy Collector. In view of the same, the applicant filed O.A. St. No. 365/2018 seeking relief of deemed date of promotion on the post of Deputy Collector w.e.f. 16.09.1982. The said O.A. was disposed of by the order dated 11.04.2018 (Annexure A-5), whereby the respondent No. 1 was directed to take decision positively on the deemed date of promotion within a period of three months and communicate the same to the applicant.

(vii) Thereafter, the Deputy Commissioner (Revenue), Aurangabad by the communication dated 19.10.2018 (part of Annexure A-6 collectively) recommended to the Additional Chief Secretary (Revenue), Revenue and Forest Department, Mantralaya, Mumbai, specifically stating that the applicant is entitled for promotion as per the average of confidential reports for the relevant period ignoring the adverse remarks. It was also stated that there was no

Departmental Enquiry or proposed Enquiry against the applicant.

(viii) However, by the impugned communication dated 01.04.2019 (Part of Annexure A-1 collectively) the Deputy Commissioner (Revenue), Aurangabad communicated that the Divisional Promotion Committee in its meeting dated 18.01.2019 by considering the remarks in the confidential reports of the applicant for the year 1977-78 and 1981-82 came to the conclusion that the deemed date of promotion to the applicant on the post of Deputy Collector w.e.f. 16.09.1982 is not admissible thereby the copy of impugned communication dated 27.03.2019 (Part of Annexure A-1 collectively) is annexed, which is addressed by the Under Secretary to the Government of Maharashtra to the Divisional Commissioner, Aurangabad Division, Aurangabad, whereby it is stated that the deemed date of promotion i.e. 16.09.1982 to the applicant on the post of Deputy Collector is not admissible considering the annual confidential reports of five years between 1977-78 and 1981-82 as held in the meeting dated 18.01.2019 by the Divisional Promotion Committee.



(ix) Both these impugned communications are challenged by the applicant in the present Original Application stating that both these communications are in contravention of the decision of this Tribunal dated 20.10.1992 in O.A. No. 281/1991, whereby adverse remarks are expunged. It is also violative of the provisions of the Government Resolution dated 28.01.1975 (Annexure A-7), particularly para Nos. 4 and 5, which are regarding persons belonging to backward class, who should be considered under special sympathy.

3. The affidavit in reply is filed on behalf of respondent No. 1 by one Dr. Sheshrao Prabhakar Sawargaonkar, Deputy Collector (Revenue) in the office of the Divisional Commissioner, Aurangabad, thereby it is submitted that the matter of deemed date of promotion to be given to the applicant was discussed in the meeting of Departmental Promotion Committee (DPC) held on 18.01.2019 in view of the directions issued by this Tribunal in O.A. St. No. 365/2018. Even the G.R. dated 28.01.1975 was considered. As per the said G.R. dated 28.01.1975 (Exhibit R-1), the DPC took into consideration the Annual Confidential Reports of the applicant for the period from 1977-78 to 1981-82. Thereby adverse remarks were recorded against the applicant in

the Annual Confidential Reports for the period 1980-81 and 1981-82. Those adverse remarks were already communicated to the applicant. Therefore, the conscious decision was taken that the applicant was not entitled for deemed date of promotion. In view of the same, he has justified both the communications dated 27.03.2019 (Annexure A-1 collectively) and 01.04.2019 (Annexure A-1 collectively) being legal and proper and in accordance with law.

4. I have heard the arguments advanced by the learned Advocate for the applicant on one hand and learned Presenting Officer for the respondents on other hand.

5. Perusal of the record would show that the respondent No. 1 by the impugned communication dated 27.03.2019 (part of Annexure A-1 collectively) has rejected the claim of the applicant of deemed date of promotion on the post of Deputy Collector w.e.f. 16.09.1982 by taking into consideration the adverse remarks against the applicant for the years 1977-78 and 1981-82. Further impugned communication dated 01.04.2019 (Annexure A-1 collectively) addressed to the applicant by the Deputy Commissioner (Revenue), Aurangabad, is onward

communication intimating order of the respondent No. 1 reflected in the impugned communication dated 27.03.2019.

6. It is pertinent to note here that the aspect of adverse remarks against the applicant for the year 1977-78 and 1981-82 was addressed in the decision of the Maharashtra Administrative Tribunal Mumbai in T.A. No. 2307/1992 in W.P. No. 301/1981 with O.A. No. 281/1991 (Annexure A-2). Even the same is dealt with in Contempt Petition No. 03/1993 filed by the applicant arising out of the decision in T.A. No. 2307/1992 in W.P. No. 301/1981 with O.A. No. 281/1991. While narrating the facts of the case, I have already reproduced the orders in abovesaid both matters. Conjoint reading of both these orders would show that, by the order dated 16.03.1993 in C.P. No. 03/1993, the department was directed to consider the question of deemed date expeditiously. Record further shows that even while disposing of subsequent O.A. St. No. 365/2018 (Annexure A-5) filed by the applicant, learned Single Bench of this Tribunal at Aurangabad directed the respondent No. 2 to comply with the requirement of respondent No. 1 by putting fresh proposal. The respondent No. 2 accordingly submitted proposal dated 19.10.2018 (Annexure A-6) with the respondent No. 1 stating that the applicant is entitled for deemed date of promotion w.e.f. 16.09.1982 in the cadre of

Deputy Collector and during the relevant period, there was no pending or proposed Departmental Enquiry against the applicant. However by the impugned order dated 27.03.2019 (Part of Annexure A-1 collectively), the respondent No. 1 refused the said relief to the applicant giving reason of adverse remarks of the years 1977-78 and 1981-82.

7. From the record, it is evident that the adverse remarks against the applicant for the years 1977-78 and 1981-82, though communicated to the applicant on 04.01.1984, same could not have been taken into consideration by the Selection Committee in its meeting held on 19.11.1984, as the representations in that regard made by the applicant were pending. It is also a matter of record that by the order dated 12.03.1993, the applicant was granted promotion to the post of Deputy Collector. In fact in decision dated 20.10.1992 in T.A. No. 2307/1992 in W.P. No. 301/1981 with O.A. No. 281/1991 (Annexure A-2), the criteria for considering the case of the applicant for deemed date of promotion in the cadre of Deputy Collector and his promotion are dealt with. When it is already held that there was no proper communication regarding the adverse remarks, necessarily they were required to be ignored being deemed to have been expunged. Nothing is reflected in the impugned decision of the

respondent No. 1 in the impugned communication dated 27.03.2019 (part of Annexure A-1 collectively) as to even after the decision of the Maharashtra Administrative Tribunal Mumbai in T.A. No. 2307/1992 in W.P. No. 301/1981 with O.A. No. 281/1991 (Annexure A-2), as to how the respondent No. 1 is entitled to take into consideration the adverse remarks. In view of the same, the decision of the respondent No. 1 thereof is certainly without any plausible reasons and in fact, the said decision is taken ignoring the judicial decision in the matter. In view of the same, it suffers from illegality. It is devoid of merits and therefore, it is liable to be quashed and set aside. In the circumstances, the applicant shall be entitled for deemed date of promotion w.e.f. 16.09.1982 as prayed for. Hence, I proceed to pass following order :-

**ORDER**

The Original Application No. 367/2019 is allowed in following terms :-

- (i) The impugned communication dated 27.03.2019 (part of Annexure A-1) issued by the Under Secretary to the Government of Maharashtra to the Divisional Commissioner, Aurangabad Division, Aurangabad and consequential communication dated 01.04.2019

(Annexure A-1 Collectively) issued by the Deputy Commissioner (Revenue), Aurangabad are hereby quashed and set aside.

- (ii) The respondents are directed to give deemed date of promotion to the applicant on the post of Deputy Collector w.e.f. 16.09.1982 with all consequential benefits within a period of three months from the date of this order.
- (iii) There shall be no order as to costs.

**PLACE : AURANGABAD.**  
**DATE : 16.12.2021.**

**(V.D. DONGRE)**  
**MEMBER (J)**

**KPB** S.B. O.A. No. 367 of 2019 VDD 2021 Deemed Date of Promotion