

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 431 OF 2020

DIST. : AURANGABAD

Purushottam Gangadhar Khule,)
 Age. 40 years, Occ. Government Service,)
 Working as Assistant (Legal),)
 Law & Judiciary Department,)
 Old High Court Building, 1st Floor,)
 Jalna Road, Aurangabad.)
 R/o Flat No. A-02, Shri Gurudatta)
 Apartment, Shambhunagar, Garkheda,)
 Aurangabad, Tq. & Dist. Aurangabad.)

-- **APPLICANT**

VERSUS

- 1) **The State of Maharashtra,**)
 Through Additional Chief Secretary,)
 (Services), General Admn. Department,)
 Madam Cama Road, Hutatma)
 Rajguru Chowk, Mantralaya,)
 Mumbai – 400 032.
- 2) **The Principal Secretary & RLA,)**
 Law & Judiciary Department,)
 Madam Cama Road, Hutatma)
 Rajguru Chowk, Mantralaya,)
 Mumbai – 400 032.
- 3) **Smt. Seema Ganpati Patil,**)
 Age. Major, Occu. Superintendent)
 (Legal), C/o Office of Law and)
 Judiciary Department,)
 Madam Cama Road, Hutatma)
 Rajguru Chowk, Mantralaya,)
 Mumbai – 400 032.

- 4) **Shri Sachin Dattatraya Kasture,**)
 Age. Major, Occu. Superintendent)
 (Legal), C/o Office of Law and)
 Judiciary Department,)
 Madam Cama Road, Hutatma)
 Rajguru Chowk, Mantralaya,)
 Mumbai – 400 032.
- 5) **Smt. Shubhangi M. Binkar,**)
 Age. Major, Occu. Superintendent)
 (Legal), C/o Office of Law and)
 Judiciary Department,)
 Administrative Building No. 1)
 (M.A.T. Building), Ground Floor,)
 Civil Lines, Near Udyog Bhavan,)
 Nagpur 440 001.)
- 6) **Shri Sujit Devidas Borkar,**)
 Age. Major, Occu. Superintendent)
 (Legal), C/o Office of Law and)
 Judiciary Department,)
 Madam Cama Road, Hutatma)
 Rajguru Chowk, Mantralaya,)
 Mumbai – 400 032.)

.. RESPONDENTS

APPEARANCE :- Shri Ajay Deshpande, learned Advocate for the applicant.

: Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent authorities.

: Shri Suresh P. Salgar, learned counsel for respondent nos. 3 to 5 (**absent**).

: Shri S.D. Joshi, learned counsel for respondent no. 6 (**leave note**).

CORAM : **Hon'ble Shri V.D. Dongre, Member (J)**
and
Hon'ble Shri Bijay Kumar, Member (A)
RESERVED ON : **26.04.2023**
PRONOUNCED ON: **20.06.2023**

ORDER

(Per :- Shri V.D. Dongre, Member (J))

1. This Original Application is filed challenging the seniority list dated 10.8.2020 of the post of Superintendent (Legal) (Gazetted Group-B) (Annex. A-8) and further seeking directions to respondent nos. 1 & 2 to grant deemed date of promotion to the applicant of the post of Superintendent (Legal) at par with private respondent nos. 3 to 5 and to consider the claim of the applicant for further promotion of the post of Under Secretary (Legal) and also challenging the impugned communication dated 14.6.2021 (Annex. A-11) issued by respondent no. 2 rejecting the claim of the applicant of deemed date.

2. Facts in brief giving rise to the Original Application can be summarized as follows :-

The applicant has passed L.L.B degree in the year 2002. He practiced as an Advocate from 2002 to 2009.

3. The applicant came to be selected to the post of Assistant Legal (Non-Gazetted), (Group-B) in Law & Judiciary Department and was posted at Mumbai on 3.12.2009. The respondent nos. 3 to 5 were junior to the applicant in the cadre of Assistant (Legal).

4. As per the Deputy Secretary (Legal) Group-A, Under Secretary (Legal) Group-A, Superintendent (Legal) Group-B in the Law & Judiciary Department (Recruitment) Rules, 2012 the feeder cadre of the post of Superintendent (Legal) (Group-B) is Assistant (Legal) having not less than 5 years regular service in that post. In that regard the respondent no. 2 framed Departmental Examination Rules for promotion to the post of Superintendent (Legal) Group-B from the post of Assistant (Legal) Rules, 2012 published by Notification dated 19.7.2012 (Annex. A-1), As per the said Departmental Examination Rules every Assistant (Legal), who has completed 5 years continuous service on that post, shall be required to pass the departmental examination within 9 years of continuous service as Assistant (Legal) and within 3 chances more particularly as per rules 3 & 4 thereof. Rule 5 thereof provides that any Assistant (Legal), who fails to pass the examination within time limit and chances specified shall loose the seniority for the purpose of promotion

to the post of Superintendent (Legal) Group-B. The applicant passed the said departmental examination within 3 chances and within 9 years. The applicant availed 1st chance in the year 2015, 2nd chance in the year 2016 and 3rd chance in the year 2017. He passed the said examination in 3rd chance in the examination held in between 22.11.2017 to 24.11.2017. The applicant was declared 'Pass' as per the result declared on 25.5.2018 of the departmental examination held in the year 2017.

5. The provisional seniority lists of the post of Assistant Legal as of 1.1.2015 and 1.1.2016 were published on 23.12.2016 (Annex. A-2 collectively). In the said seniority lists, the applicant is at Sr. no. 3. Sr. no. 2 Shri S.S. Dahatonde was relieved on 21.8.2016 as he was selected as Civil Judge Junior Division and Judicial Magistrate First Class. The provisional seniority list of the post of Assistant (Legal) as of 1.1.2017 was published on 28.1.2018 (Annex. A-3). The applicant stood at Sr. no. 2 in the said seniority list as Shri S.S. Dahatonde Sr. No. 2 had left the service. The candidate at Sr. nos. 1, 3 & 4 and 6, who have joined as respondent no. 6, 3, 4 and 5 from the said provisional seniority list were granted temporary promotion to the post of Superintendent (Legal) as per order dated 16.6.2017,

which fact is reflected in the provisional seniority list of Assistant (Legal) as of 1.1.2017 (Annex. A-3). The candidates at Sr. nos. 3, 4 & 6, who are joined as respondent nos. 3, 4 & 5 are shown junior to the applicant in the said seniority list as of 1.1.2017 (Annexure A-3).

6. In the circumstances as above, it is stated that admittedly the applicant has passed the departmental examination for promotion to the post of Superintendent (Legal) in 3rd chance on 25.5.2018 and within permissible period of 9 years as required in rule 4 of Departmental Examination Rules, 2012 (Annex. A-1). Therefore, in terms of rule 5 of the said Departmental Examination Rules the applicant has not lost his seniority in the cadre of Assistant (Legal) at Sr. no. 2. Soon after qualified in the department examination the applicant made representation on 26.4.2018 and reminder representations dated 13.12.2018, 13.2.2019, 27.5.2019 (part of Annex. A-4 collectively) for promotion to the post of Superintendent (Legal). The Law & Judiciary Department at Aurangabad, also by its letter dated 14.12.2018 (part of Annex. A-4 collectively) requested respondent no. 2 to consider the case of the applicant for promotion to the post of Superintendent (Legal) as per his seniority, but in vain.

7. Letter dated 31.5.2019 (Annex. A-5) addressed by respondent no. 2 to the Joint Secretary, Law & Judiciary Department, Aurangabad Branch was received by the applicant, which revealed that opinion of the General Administration Department was sought upon the case of the applicant and also it was opined that the applicant had not passed the departmental examination at the time when meeting of the D.P.C. was conducted, and therefore, he is not eligible for promotion by demoting the juniors and the case of the applicant can be considered subsequent to passing of his departmental examination as per the eligibility ignoring the fact that it was already communicated in the representations the applicant was eligible for promotion from 25.4.2018 when he was declared passed the examination. The respondents failed to consider that aspect of the matter.

8. Thereafter the applicant kept regular follow-up with the respondents by making further representations dated 31.7.2019, 19.7.2020 and 7.9.2020 (part of Annex. A-6 collectively) by reiterating his request for promotion on the post of Superintendent (Legal) with deemed date and further promotion to the post of Under Secretary (Legal). Even the Law & Judiciary Department, Aurangabad Branch by letter dated

8.9.2020 (part of Annex. A-6 collectively) requested the respondent no. 2 to consider the case of the applicant for promotion on the post of Superintendent (Legal) together with deemed date and further promotion on the post of Under Secretary vide letter dated 8.9.2020 (part of Annex. A-6 collectively).

9. Respondent no. 2 issued revised provisional seniority lists of the cadre of Assistant (Legal) vide Circular dated 19.6.2020 (Annex. A-7) for the period of 1.1.2010 to 1.1.2020, thereby superseding the seniority lists of 1.1.2011 to 1.1.2017. The seniority position of the applicant is the same. The respondents ought to have reviewed the orders of temporary promotions granted to the juniors of the applicant on the post of Superintendent (Legal). Surprisingly the respondents issued seniority list of the post of Superintendent (Legal) as of 1.1.2020 vide Annexure G-2 to Circular dated 10.8.2020 (Annex. A-8) without granting promotion to the applicant to the post of Superintendent (Legal) together with deemed date. The claim of the applicant for promotion on the post of Superintendent (Legal) and grant of deemed date of the said post is still pending with the respondents. The name of the applicant does not appear in the seniority list of Superintendent (Legal) (Annexure

A-8). The respondents ought not to have published seniority list of the post of Superintendent (Legal) without considering the claim of the applicant. By the said seniority list (Annex. A-8) the respondent nos. 3 to 5, who were junior to the applicant in the cadre of Assistant (Legal) are shown without showing name of the applicant above them, as the applicant was entitled for deemed date of the said cadre. In view of the same the said seniority list of the post of Assistant (Legal) (Annex. A-8) is illegal and is liable to be quashed and set aside.

10. During pendency of this Original Application the respondent no. 2 decided the representations made by the applicant thereby rejecting the claim of the applicant and communicating the same to the applicant by letter dated 14.9.2021 (Annex. A-11). The said impugned rejection is not sustainable and is also liable to be quashed and set aside. Hence, this application.

11. The Original Application is resisted by filing affidavit in reply on behalf of respondent no. 2 by one Shri Tukaram Kisanrao Chavan, Solicitor-Cum-Deputy Secretary, Law & Judiciary Department Mumbai, Branch at Aurangabad thereby resisted the adverse contentions raised in the Original Application. It is submitted that the applicant along with

certain other Assistants (Legal) working in the Law & Judiciary Department became eligible for appearing in the Departmental Examination for promotion to the post of Superintendent (Legal) from the post of Assistant (Legal) in the year 2015. The applicant though appeared in the said examination failed to clear it in first 2 attempts in the years 2015 and 2016 respectively. However, some other Assistants (Legal) including some juniors to the applicant, who appeared for the departmental examination, cleared it conducted in the years 2015 and 2016. They made representations to the respondent no. 2 for considering their cases for further promotion to the post of Superintendent (Legal). As there was no bar under rules for temporary promotions to the post of Assistants (Legal), who were junior to the applicant but had cleared the departmental examination for promotion to the post of Superintendent (Legal), after due consultation with the General Administration Department, temporary promotions were given to those 4 Assistants (Legal) i.e. respondent nos. 6 and 3 to 5 vide order dated 16.6.2017. At that time admittedly the applicant had not cleared the departmental examination. Admittedly the respondent nos. 3 to 5 were junior to the applicant in the cadre of Assistants (Legal).

12. It is further submitted that the applicant cleared the departmental examination for promotion to the post of Superintendent (Legal) in 3rd and last chance in the year 2018. After passing the departmental examination the applicant requested the respondent no. 2 for grant of promotion to the post of Superintendent (Legal). The respondent no. 2 referred the case of the applicant to the G.A.D. for its advice whether the applicant can be promoted on the post of Superintendent (Legal) by reverting the junior-most employee promoted by order dated 16.6.2017. The General Administration Department in its noting dated 13.5.2019 stated that when the meeting of the Departmental Promotion Committee for the purpose of effecting promotions in the year 2016-17 was held at that time the applicant had not passed the departmental examination, but Assistants (Legal), who were junior to him, had passed the said departmental examination. At that time the applicant was not eligible for promotion. The applicant, however, has passed the departmental examination within stipulated years and attempts, his seniority on the post of Assistant (Legal) shall be kept intact. In view of the same the G.A.D. opined that it is necessary to consider the case of the applicant for promotion in the select list year following the date on which the applicant has passed the departmental examination. In view of the same the

applicant was not promoted to the post of Superintendent (Legal) by reverting junior-most employee. The applicant was accordingly informed by the communication dated 31.5.2019 (Annex. A-5).

13. It is further submitted that the applicant belongs to Open category. As there was no vacant post of Superintendent (Legal) during the select list years 2018-19 and 2019-20 his case could not be considered for promotion.

14. It is further submitted that the Recruitment Rules for the post of Superintendent (Legal) namely The Deputy Secretary (Legal) (Group-A), Under Secretary (Legal) (Group-A) and Superintendent (Legal) (Group-B) Rules, 1997 came to be amended vide Notification dated 7.1.2020 (Annex. R-1). In earlier Rules of 1997 the ratio of promotion, which was earlier 67:33 was deleted and it was provided 100% posts of Superintendent (Legal) are to be filled in by promotion. In view of that the applicant along with one Shri S.P. Kakade were found FIT for promotion and they were accordingly promoted to the post of Superintendent (Legal) vide order dated 29.12.2020 (Annex. R-2).

15. So far as request of the applicant for grant of deemed date of promotion on the post of Superintendent (Legal) is concerned, it is submitted that his request will be considered as per rules governing in the field with due consultation of G.A.D. and other concerned departments. It is further submitted that temporary promotions of Superintendent (Legal) given vide order dated 16.6.2017 have been regularized vide order dated 20.7.2019 after due consultation with the G.A.D. and the M.P.S.C. as reflected in the letter of M.P.S.C. dated 2.2.2019 (Annex. R-3). Accordingly, following due procedure final seniority list of Superintendent (Legal) as of 1.1.2020 has been published on 10.8.2020 (Annex. A-8). It is legal and proper. There is no merit in any of the contentions of the learned counsel for the applicant assailing the said seniority list. It is submitted that the temporary promotions to the juniors of the applicant were given on 16.6.2017 and therefore reliance of the applicant on para 1.11 of the concerned G.R. dated 1.8.2019 is not applicable to the present case. Para 1.11 of the G.R. dated 1.8.2019 reads thus :-

“1.11) प्रकरण खुले ठेवणे

पदोन्नतीसाठी अधिकारी/ कर्मचारी पात्र असूनही निव्वळ प्रासनामार्फत पदोन्नतीच्या पात्रते संदर्भातील काही बाबीचे आदेश निर्गमित झाले नसल्यास त्यासाठी संबंधित अधिकारी/कर्मचारी जबाबदार नसल्यामुळे त्याला

पदोन्नतीपासून वंचित ठेवणे योग्य नसल्याने त्याचा समावेश निवडसूचीमध्ये करून पदोन्नतीसाठी पद राखून ठेवणे म्हणजे प्रकरण खुले ठेवणे होय. उदा. मुद्दा क्र उ (5) मध्ये नमुद प्रकरणे खुली ठेवावी.

उ (5). उपरोक्त मुद्दा क्र- 3 मध्ये नमुद केलेल्या निकषानुसार पात्रता तपासताना खालील नमुद प्रकरणे खुली ठेवण्यात यावीत.

1. संबंधित अधिकारी/कर्मचारी यांनी परिविक्षाधीन कालावधी समाधानकारकरित्या पूर्ण करित असल्याबाबतच्या सर्व अटी शर्तीची पूर्तता केली असेल मात्र केवळ प्रशासकीय विलंबामुळे त्यांचे परिविक्षाधीन कालावधी पूर्ण झाल्याबाबतचे कार्यालयीन आदेश निर्गमित झाले नसल्यास,

2) संबंधित अधिकारी/कर्मचारी यांनी स्थायित्व लाभ प्रमाणपत्राची सर्व अटी व शर्ती पूर्तता केली असेल मात्र केवळ प्रशासकीय विलंबामुळे त्यांचे स्थायित्व लाभ प्रमाणपत्राबाबतचे कार्यालयीन आदेश निर्गमित झाले नसल्यास.

3) विचारक्षेत्रातील अधिकारी/कर्मचारी यांचे वयाच्या 50/55 व्या वर्षी सेवा ठेवण्याबाबतचे पुनर्विलोकन झाले नसल्यास.”

16. The case of the applicant does not fall within the purview of the aforesaid provision. Hence, the present Original Application is liable to be dismissed.

17. We have heard the oral arguments advanced by the learned counsel for the applicant, as well as, considered notes of submissions filed on behalf of the applicant on one hand and the learned Presenting Officer on the other hand. We have also perused the documents placed on record.

18. After having considered the rival pleadings, documents and submissions, it is evident that admittedly the applicant was appointed on the post of Assistant (Legal) on 3.12.2009. At that

Time the Recruitment Rules for the post of Superintendent (Legal) namely Deputy Secretary (Legal) (Group-A), Under Secretary (Legal) (Group-A) and Superintendent (Legal) (Group-B) Rules, 1997 were in operation. The applicant completed 5 years' service on the post of Assistant (Legal) on 2.12.2014. As per rule 3 of the Departmental Examination Rules for promotion to the post of Superintendent (Legal) from the post of Assistant (Legal), Rules 2012 the eligibility criteria was prescribed as under :-

*“3. **Eligibility** - For being eligible to appear for the examination, as Assistant (Legal) must have passed the post Recruitment Training Examination prescribed for Assistant (Legal) and must have also completed five years continuous service as an Assistant (Legal).”*

19. Rule 4 thereof provides period and number of chances as follows :-

*“4. **Period and number of chances.** – (1) Subject to the provisions of rule 3, every Assistant (Legal) shall be required to pass the examination within nine years of his continuous service as an Assistant (Legal) and within three chances;*

(2) Any chance which Assistant (Legal) may have already availed of under the existing rules shall be counted towards the computation of total number of chances to be availed under these rules;

Provided that the Assistant (Legal) who belongs to the Scheduled Castes or Scheduled Tribes or De-notified Tribes or Nomadic Tribes, shall be allowed to pass the

examination within ten years of his continuous service as an Assistant (Legal) and within four chances.”

20. In premise of rule 4 as above the applicant cleared the departmental examination in 3rd attempt and within prescribed period of 9 years, which was held from 22.11.2017 to 24.11.2017 and the result thereof being declared on 24.5.2018.

21. Further admittedly the respondent no. 6, who is senior to the applicant and the respondent nos. 3 to 5 who were junior to the applicant in the cadre of Assistants (Legal), however, passed/cleared the departmental examination ahead of the applicant in the 1st or 2nd attempt in the years 2015 and 2016. Thereafter, they were temporarily promoted to the post of Superintendent (Legal) vide order dated 16.6.2017. It is reflected in the seniority list of the post of Superintendent (Legal) as of 1.1.2020 (Annex. A-8). According to the respondents, the temporary promotions of Superintendent (Legal) given vide order dated 16.6.2017 have been regularized vide order dated 20.7.2019 after due consultation with the G.A.D. and the M.P.S.C. as reflected in the letter of M.P.S.C. dated 2.2.2019 (Annex. R-3).

22. It is contended on behalf of the applicant in the written submissions (page nos. 152 to 160 of paper book) that the

M.P.S.C. gave approval for regularization of the promotions of the juniors of the applicant only because of suppression of the fact that the applicant was senior in the seniority lists of Assistant (Legal) to that of respondent nos. 3 to 5.

23. It is true that in all the provisional seniority lists of the cadre of Assistants (Legal) the applicant is shown senior to respondent nos. 3 to 5 and the respondent no. 6 is shown senior to the applicant. In spite of the fact that the respondent nos. 3 to 5, who were junior to the applicant, cleared the departmental examination ahead of the applicant, the seniority of the applicant in the said cadre is kept intact, which is in accordance with rule 5 of the Departmental Examination Rules, 2012, which is as follows :-

“5. Consequences of failure to pass examination. – Any Assistant (Legal) who fails to pass the examination within the time limit and chances specified in rule 4, shall lose the seniority, for the purpose of promotion to the post of Superintendent and shall rank below all the Assistant (Legal) who pass the examination before him and also below all those who are senior to such Assistant (Legal) below whom he is placed and who may pass the examination after him but within the period and chances specified in rule 4.”

24. According to the applicant, he is entitled for deemed date of promotion in the cadre of Superintendent (Legal) once he passed the departmental examination as on 25.4.2018.

25. In this regard it is pertinent to note that though the respondent no. 2 in the affidavit in reply has contended that temporary promotion of the respondent nos. 3 to 5 and respondent no. 6 to the post of Superintendent (Legal) were regularized on 20.7.2019 in the impugned seniority list of the post of Superintendent (Legal) as of 1.1.2020 the date of promotion of respondent nos. 3 to 5 are mentioned as 16.6.2017. The date of regularization of promotion i.e. 20.7.2019 is not mentioned. Even date 16.6.2017 is not mentioned as date of temporary promotion.

26. The learned counsel for the applicant has heavily placed reliance on the judgment of the Hon'ble Supreme Court in this case of **State of Maharashtra Vs. Jagannath Achyut Karandikar** reported at **AIR 1989 SC 1133**. In paragraph nos. 9 & 10 of the said judgment it is observed and held as under :-

“9. This is a question of construction of the rules which form part of the scheme prescribing a condition for promotion. We do not have to reflect upon the rules of interpretation since they are well settled. They are now like the habits of driving which have become ingrained. They come to our assistance by instinct. We are to use the different rules meticulously to give effect to the scheme as we use the clutch, brake and accelerator for smooth driving. These rules are to be harmoniously construed. We should not concentrate too much on one rule and pay too little attention on the other. That would lead us astray and result in hardships. We must avoid such construction. Rule 2 of

the 1962 Rules no doubt states that a candidate who does not pass the examination at the end of nine years' service will lose his seniority. But this rule cannot be read in isolation as the High Court did. It has to be read along with the other rules since it is a part of the scheme provided for promotion. Rule 5 requires the Government to hold the examination every year. This rule is the basis of the entire scheme and the effect of other rules depends upon holding the examination. If examination is not held in any year, the rule 2 cannot operate to the prejudice of a person who has not exhausted all his chances. The person who has not exhausted the available chances to appear in the examination cannot be denied of his seniority. It would be unjust, unreasonable and arbitrary to penalise a person for the default of the Government to hold the examination every year. That does not also appear to be the intent or purpose of the 1962 Rules.

10. If the examination is not held in any year, the person who has not exhausted all the permissible chances has a right to have his case considered for promotion even if he has completed 9 years' service. The Government instead of promoting such persons in their turn made them to wait till they passed the examination. They are the persons falling into the category of "Late Passing". To remove the hardship caused to them the Government wisely restored their legitimate seniority in the promotional cadre. There is, in our opinion, nothing improper or illegal in this action and indeed, it is in harmony with the object of the 1962 Rules."

27. The learned counsel for the applicant has further submitted that the applicant is entitled for deemed promotional date as he has passed the departmental examination within the prescribed period of 9 years and in 3 attempts. Hence, according to him, for getting placement in the seniority of Superintendent (Legal) it is not necessary for the applicant to actually do the physical service in that cadre. To substantiate

the said contentions he has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Union of India and Others Vs. K.B. Rajoria** reported at **AIR 2000 SC 1819**. In the cited case there was requirement of 2 years continuous service in the grade of Additional Director General (Works) for promotion to the post of Director General (Works). It is held that the candidate, who was given notional promotion to the post of Director General (Works), is eligible for selection if he had completed two years' service from the date of notional promotion. 'Regular service' cannot be construed as 'actual physical service', more so, when notional promotion was given to a candidate for compensating wrong done to him earlier by suppression by his junior

28. The learned counsel also placed reliance on the judgment of the Hon'ble High Court of Judicature at Bombay in the case of **State of Maharashtra Vs. Sanjeev Lavhaji Salvi** reported at **AIR ONLINE 2019 BOM 1131**. In the said citation case the respondent (original petitioner) was promoted to the rank of Assistant Superintendent by order dated 24th July, 2008. The respondent (original petitioner) made a representation to the petitioners (original respondents) and requested to award a deemed date of promotion in the cadre of Assistant

Superintendent from 29th January, 2003. His representation was not answered, and therefore, he approached the Maharashtra Administrative Tribunal by filing Original Application No. 1011/2009 seeking directions to the petitioners (original respondents) to decide his representation. Original Application was allowed and the present petitioners (original respondents) were directed to decide representations of the respondent (original petitioner) within 2 months. Petitioners (original respondents) vide order dated 9.9.2009 rejected the request of the respondent (original petitioner) in respect of grant of deemed date of promotion. Aggrieved by the said order the respondent (original petitioner) preferred O.A. No. 96/2010 before the M.A.T. This O.A. no. 96/2010 was allowed by the Tribunal vide order dated 16.4.2014 thereby petitioners (original respondents) were directed to grant deemed date of promotion in favour of the respondent (original petitioner) in the cadre of Assistant Superintendent as 29.1.2003 with all consequential benefits such as seniority, difference in arrears of pay and allowances within a period of two months. Aggrieved by the said order Writ Petition was preferred. In paragraph nos. 7 to 10 it is observed as follows :-

“7. Rule 5(1) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 reads as under :

“5(1) Assignment of deemed dates appointment.

(1) Notwithstanding anything contained in Rule 4, (on recommendation of the Competent Authority, the Government may), in accordance with the provisions contained in the following sub-rules, assign to a Government servant, a deemed date of appointment to a post, cadre or service which is different from the date of his actual appointment thereto; and on such a deemed date having been assigned, the length of his service in the said post, cadre or service shall be computed as commencing from (The deemed date assigned under this rule and the seniority list prepared in pursuance of the same shall not ordinarily, be altered at the time of preparation of seniority list on the subsequent occasions or in the subsequent years), date.”

8. It is clear from the aforesaid Rule that the seniority list prepared in pursuance to the deemed date Rane 5/5 WP-4108-2016 11.12.2018 shall not ordinarily be altered at the time of preparation of seniority list on the subsequent occasions or in the subsequent years.

In the case in hand, the respondent/applicant was promoted in the cadre of Assistant Superintendent on 24 th July 2009, however, petitioners refused to grant deemed date on the ground that he had not completed three years of service in the cadre of Senior Clerk.

9. We do not agree with this reason as, once deemed date of promotion was given to the applicant in the cadre of Senior Clerk as mentioned hereinabove, the said date is to be considered in the promotional cadre of Assistant Superintendent and so on.

10. In view of the facts aforesaid, we do not see any reason to interfere with the orders passed by the Maharashtra Administrative Tribunal. The petition deserves no consideration. It is rejected accordingly.”

29. In the background of the ratio laid down in the aforesaid citations relied upon by the learned counsel for the applicant if

the facts of the case are considered and more particularly if the impugned seniority list dated 10.8.2020 of the post of Superintendent (Legal) (Annex. A-8) is considered, it is seen that the respondents in the affidavit in reply have stated that the respondent nos. 3 to 5, who were junior to the applicant in the cadre of Assistants (Legal), they were considered for promotion by way of temporary promotion and they were subsequently regularized by order dated 20.7.2019. However, the contentions raised in the affidavit in reply does not reflect in the impugned seniority list dated 10.8.2020 (Annex. A-8). There is no mention that it was a temporary promotion given on 16.6.2017. It is true that there is mention in the remark column that those promotions were regularized by order dated 20.7.2019. However, none of the parties to this litigation have pointed out any provision of law providing that the promotions are required to be regularized. In view of the same the contentions raised on behalf of the respondents and sought to be relied upon by the applicant are to be discarded.

30. From the facts on record, it is seen that the respondent no. 6, who is senior to the applicant and the respondent nos. 3 to 5, who were junior to the applicant, were promoted, though temporarily, that was as per the recommendations of the

Departmental Promotion Committee. Admittedly, at that point of time the applicant was not eligible for promotion to the post of Superintendent (Legal) as he had not passed the requisite departmental examination. He passed the departmental examination, which was held in the year 2017 of which results were declared in May, 2018. Thereafter the D.P.C. meeting was not held either in the year 2018 or in the year 2019. Hence, it cannot be said that after the applicant became eligible for promotion to the post of Superintendent (Legal), he was denied promotion wrongly. The applicant is promoted subsequently in the year 2020 by office order dated 29.12.2020 (Annex. R-2). In the circumstances as above, no case is made out by the applicant for grant of deemed date of promotion in the cadre of Superintendent (Legal) that of respondent nos. 3 to 5, who were junior to him and were promoted on 16.6.2017. It is an admitted position that the applicant's seniority is kept intact in the cadre of Assistants (Legal) as he has passed the departmental examination in requisite period and in requisite attempts. By any stretch of imagination the applicant's seniority cannot be maintained in the next cadre of Superintendent (Legal). The case laws relied upon by the applicant in that regard would not help him.

31. In view of the above, the impugned communication dated 14.6.2021 (Annex. A-11), rejecting the claim of the applicant of deemed date of promotion in the cadre of Superintendent (Legal) is legal & proper. No interference therein at the hands of this Tribunal is called for. In the circumstances, the Original Application fails on all counts being devoid of merits. Hence, we proceed to pass the following order :-

ORDER

Original Application No. 431/2020 stands dismissed with no order as to costs.

MEMBER (A)

MEMBER (J)

Place : Aurangabad

Date : 20.06.2023