

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 435 OF 2019

DISTRICT : LATUR

Sadhu s/o Kundlik Lohar,
Age: 49 years, Occu: Service,
R/O. ITI Nilanga, Taluka Nilanga,
Dist. Latur.

.. APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Principal Secretary,
Skill Development and
Entrepreneurship Department,
Mantralaya, Mumbai-32
2. The Director,
Vocational Education and Training,
3, Mahapalika Marg,
P.O. Box No. 10036, Mumbai.
3. The Joint Director,
Vocational Education
and Training Institute,
Bhadkal Gate, Regional Office, Aurangabad
4. Vinayak S/o Uttam Bhusavale,
Age; Major, Occu; Service,
Industrial Training Institute, Nanded
Presently on deputation at Aurangabad. .. **RESPONDENTS**

APPEARANCE : Shri H.A. Joshi, Advocate for the Applicant.

: Shri M.P. Gude, P.O. for respondents.

CORAM : **Shri V.D. Dongre, Member (J)**
and
Shri Bijay Kumar, Member (A)

Reserved on : **02.02.2023**

Pronounced on : **14.03.2023**

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

1. One Shri Sadhu Pundalik Lohar, Resident of Taluka- Nilanga, District- Latur has filed this Original Application invoking provisions of S. 19 of the Administrative Tribunals Act, 1985 being aggrieved by impugned order No. 04/Estt-05/Deemed date/2019/Lohar/434, dated 25.03.2019, passed by respondent No. 2 i.e. the Director, Vocational Education and Training, Maharashtra State, Pune.

2. Brief facts that emerge admittedly in this matter may be summed up as follows :-

(a) The applicant belongs to Nomadic Tribe-C category (in short, NT-C) and is also physically handicapped. He was initially appointed as a senior clerk by nomination, and posted at Industrial Training Institute (in short, ITI), Latur vide order dated 22.12.2003.

(b) As per applicable Post-Recruitment Examination Rules, 1973, employees of the cadre of senior clerk are required to pass Post-Recruitment Examination within 4 years of their appointment as senior clerk and within 3 attempts as per provisions of Post-Recruitment

Examination Rules, 1973. However, as per Government Resolution issued by General Administration Department, bearing No. EXM-1075/1681-XVII, Sachivalaya, Bombay, dated 24.08.1976, employees belonging to backward caste had been given one additional chance and one more year to pass the departmental examination for promotion. The operating part of the said GR is quoted below for ready reference as follows :-

“RESOLUTION OF GOVERNMENT

In pursuance of the Policy of Government, for showing special sympathy to the Government servants belonging to the Backward Classes in the matter of promotions to the higher posts in Government offices, a proposal was under consideration for liberalizing the Departmental examinations rules for qualifying for promotions to the higher posts in respect of Government servants belonging to the Backward classes. The Government has now decided that the departmental examinations rules for promotion to the higher posts applicable to the Government servants, both Gazetted and Non-gazetted, in all the Government Officers, a provision should be made therein to the effect, that the candidates from (i) Schedule Castes, (ii) Scheduled Tribes, and (iii) Denotified Tribes and Nomadic Tribes, should be given one more chance and one more year, to pass the departmental examination, than is permissible under the rules to other candidates.

2. The departments of the Sechivalaya should be requested to take immediate action to amend the relevant departmental examinations rules accordingly where they exist, or to incorporate it in the new rules which will be framed hereafter.

By order and in the name of the Governor of Maharashtra,

Sd-

Under Secretary to the Government of Maharashtra.”

(c) The applicant was senior to respondent No. 4 in the cadre of senior clerk as his position in seniority list of senior clerks published on 09.10.2013 was 45, respondent No. 4 was at serial No. 46. However, respondent No. 4 passed the post-recruitment departmental examination within 3 years and 3 attempts whereas; the applicant passed the said examination in four attempts in the examination conducted in the month of June 2014.

(d) A vacancy occurred under promotion quota in the cadre of Head clerk for which meeting of Departmental Promotion Committee (in short, DPC) was held on 13.12.2011. As the respondent No. 4 was eligible for promotion having passed the post-recruitment departmental examination he was promoted to the post of Head Clerk vide order dated 16.06.2012. On the other hand, the applicant was not eligible for promotion to the post of senior clerk as he had not passed post-recruitment

qualifying examination by the time of promotion of respondent No. 4 in the year 2012.

(e) The applicant passed post recruitment qualifying examination in four attempts and four years in the year 2014 by appearing in the said examination which was held in the month of June 2014. Thereafter, the applicant submitted a representation dated 09.04.2015 to respondent No. 3 demanding promotion to the post of Head Clerk with deemed date of promotion of respondent No. 4 on the basis that the applicant had passed the post-recruitment departmental examination within prescribed number of years and attempts, he should not be made to suffer loss of seniority in the cadre of senior clerk. The applicant submitted other two representations dated 05.05.2015 and 07.07.2015 to respondent No. 3 reiterating his demand for promotion to the post of Head Clerk along with benefit of deemed date.

(f) The applicant filed an Original Application No. 747/2015 before this Tribunal. Before, the Tribunal passed orders, the applicant was given promotion to the post of Head Clerk vide order dated 24.02.2016 against open

category roster point and given posting at ITI Latur as per his request. Being dissatisfied by not given benefits of deemed date of promotion, the applicant made representation dated 06.12.2017 to respondent No. 3 demanding benefit of deemed date of promotion as the date of promotion of respondent No. 4 to the post of Head Clerk. Respondent No. 3 forwarded the said representation made by the applicant to respondent No. 2 vide a letter dated 24.01.2018 seeking further orders. Before, respondent No. 2 could decide the representation made by the applicant, this Tribunal had disposed of the said O.A. No. 747/2015 by passing Oral Order on 10.01.2019 directing the respondent No. 2 to decide the proposal dated 24.01.2018 submitted by respondent No. 3 to respondent No. 2 within a period of 3 months from the date of the Order of the Tribunal and communicate the decision to the applicant in writing.

(g) Respondent No. 4 was granted further promotion to the post of Office Superintendent vide order dated 02.02.2019 as the respondents treated the applicant junior to the respondent No. 4 in the cadre of Head clerk.

(h) Being aggrieved by promotion given to respondent No. 4 to the post of office superintendent, the applicant has filed the present O.A. No. 435/2019 and has sought relief in terms of prayer clause in para 7 and 8 of the O.A.

3. Relief Prayed for by the Applicant: The applicant has prayed for relief in terms of para 7 of the O.A. and interim relief in terms of para 8 of the O.A. which are being reproduced verbatim for ready reference:-

“7. RELIEF SOUGHT FOR :-

- A) *The record and proceedings of the case any kindly be called for:*
- B) *By issue of appropriate order or direction in the like nature the impugned Order No 04/Estt-05/Deemed date/2019/Lohar/434 Dated 25th of March 2019 issued by Director of Vocational Education and Training (Annexure “A-14”) may kindly be quashed and set aside.*
- C) *It be held and declared that the Applicant is entitled to the deemed date of promotion as 16.06.2012 for the post of Head Clark.*
- D) *By issue of appropriate order or direction in the like nature the impugned Order dated 02.02.2019 issued by Respondent No.3 (ANNEXURE “A-13”) to the extent of Respondent No.4 may kindly be quashed and set aside.*
- (E) *The Respondent No.1 to 3 may kindly be directed to promote Applicant to the post of Office Superintendent forthwith by granting all consequential benefits.*

F) *Any other suitable and equitable relief to which Applicant found entitled to may kindly be granted in the interest of justice.*

8) **INTERIM RELIEF**

(A) *Pending hearing and final disposal of this original application, The Respondent No.3 be restrained from confirming the promotion of Respondent No.4 Office Superintendent and further be restrained from continuing Respondent No.4 as Office Superintendent after expiry of period of 11 months.”*

4. Pleadings and Final Hearing :- Affidavit in reply on behalf of respondent Nos. 1 to 3 was filed on 18.11.2019, which was taken on record and a copy of which was supplied to the other side. The applicant filed rejoinder affidavit on 10.02.2020 which too, was taken on record and copy supplied to the respondents. Respondent No. 4 did not appear or submit any written say. The matter was finally heard on 11.11.2022 during which the learned Advocate for the applicant advanced following arguments :-

(a) The applicant has submitted in para 6 (iv) read with para 6 (xxi) asserted that a senior clerk is eligible for promotion to the post of Head Clerk on clearing Post Recruitment Examination for the Ministerial Staff of the Department of Technical Education Rules, 1973, notified on 10.09.1973. Accordingly, the applicant has claimed in the present O.A. that he became eligible for being

considered for promotion after clearing Post Recruitment Examination notified in the year 1973.

(b) It is admitted by the applicant that he could not pass the said examination before the meeting of Departmental Promotion Committee held on 13.12.2011 whereas respondent No. 4 had cleared the said examination. Therefore, the DPC held on 13.12.2011 recommended name of respondent No. 4 for promotion to the post of Head clerk. Accordingly, respondent No. 4 was promoted to the post of Head Clerk vide order dated 16.06.2012.

(c) It is admittedly, that applicant had cleared the said examination in the year 2014 and therefore, could acquire eligibility for promotion after clearing the Post Recruitment Departmental Examination.

(d) It is also admitted by the two sides that the applicant cleared the Post Recruitment Examination within prescribed attempts and prescribed number of years, his seniority in the cadre of Senior Clerk is protected. Based on this, the applicant has staked claims for deemed date of promotion to the post of Head Clerk. However, the learned Advocate for the applicant could not show any provision

under which seniority of the applicant in the cadre of next promotion i.e. Head Clerk is to be protected in this situation when the applicant had not acquired eligibility of promotion and was not born of the cadre of Head Clerk.

(e) The learned Advocate for applicant has submitted in para 6 (xxi) of this O.A. as follows :-

“xxi). The Applicant states that, without considering the matter from this aspect, the Respondent No. 2 deliberately considered it under Rule 15 of the said examination Rules of 1973 and arrived at conclusion that Applicant is not entitled for deemed date. Hereto, marked as Annexure “A-15” is the copy of impugned order dated 25.03.2019 issued by Respondent No. 2.”

(f) Upon, perusal of the impugned communication from respondent No. 2 no such mention of Rule 15 of the said examination Rules of 1973 is found. For ready reference, *text of the* impugned communication addressed by the respondent No. 2, i.e. the Joint Director, Vocational Education and Training, Regional Office Aurangabad bearing No. ०४/आस्था-०७/मानिव दिनांक/२०१९/लोहार/४३४, dated 25.03.2019, which is reproduced below :-

*“प्रति,
सहसंचालक,
व्यवसाय शिक्षण व प्रशिक्षण,*

प्रादेशिक कार्यालय,
औरंगाबाद

विषय- मानिव दिनांक मंजूर करण्याबाबत

श्री साधु कुंडलीक लोहार, मुख्य लिपिक, औ.प्र.संस्था, निलंगा, जि. लातूर

- संदर्भ- १. आपले पत्र क्र. मविका/ आस्था-२(११)(ब)/ २०१८/ ६७१, दि. २४/ ०१/ २०१८
 २. संचालनालयाचे पत्र क्रमांक ०४ / आस्था-०५/ मानिव दिनांक/
 २०१८/ लोहार/ ३९८, दिनांक १४ मार्च, २०१८.
 ३. आपले पत्र क्र. मविका/ आस्था-२(११) (६)/ २०१८/ ४१३८, दि. २८/ ०६/ २०१८.
 ४. संचालनालयाचे पत्र क्रमांक ०४ / आस्था-०५/ मानिव दिनांक/ २०१८/ लोहार/
 १२३९, दिनांक ०१ सप्टेंबर, २०१८
 ५. आपले पत्र क्र.-मविका/ आस्था-२(११)(ब)/ २०१८/ ६८५६, दि. १२/ १०/ २०१८
 ६. आपले पत्र क्रमांक-मविका/ आस्था- २(ब)/ २०५९/ ६४०, दि. २३/ ०१/ २०१९

उपरोक्त संदर्भीय पत्र क्र. १ अन्वये, आपल्या कार्यालयाच्या अधिपत्याखालील संस्थेमधील श्री साधु कुंडलीक लोहार, मुख्य लिपिक, औद्योगिक प्रशिक्षण संस्था, निलंगा, जि. लातूर यांनी त्यांच्यापेक्षा कनिष्ठ कर्मचारी श्री व्ही.यु. भुसावळे, मुख्य लिपिक, शासकीय तंत्र प्रशाला केंद्र नि औद्योगिक शाळा, औरंगाबाद यांच्या पदोन्नतीचा दिनांकाचा मानिव दिनांक मिळण्याबाबतचा प्रस्ताव संचालनालयास सादर केलेला आहे.

तसेच संदर्भांकित पत्र क्रमांक ६ अन्वये अपनाकडून श्री साधु कु. लोहार, प्रमुख लिपिक, औ.प्र. संस्था, निलंगा, जि. लातूर यांना मानिव दिनांक मंजूर करण्याबाबत श्री लोहार यांनी Original Application No. ७४७/ २०१५ अन्वये मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई, खंडपिठ औरंगाबाद यांच्याकडे सादर केलेल्या अर्जावर दि. १०/ १/ २०१९ रोजी दिलेल्या आदेशान्वये श्री. लोहार यांच्या अर्जावर संचालनालयाने तिन महिन्यात निर्णय घेण्याबाबत प्रस्ताव सादर केलेला आहे.

त्यानुषंगाने कळविण्यात येते की, शिक्षण विभाग आधेसुचना दिनांक १०/ ०९/ १९७३ नुसार विगीय परीक्षा ३ संधीत उत्तीर्ण होणे आवश्यक आहे आणि मागासवर्गीय कर्मचाऱ्यांना सा.प्र.विभागाच्या दि. २४ ऑगस्ट १९७६ च्या

शासन निर्णयानुसार विभागीय परिक्षा उत्तीर्ण होण्यासाठी अधिकची एक संधी देण्यात आलेली असल्याने मागासवर्गीय कर्मचाऱ्यांना ४ संधी उपलब्ध करून देण्यात आलेल्या आहेत.

तथापि, शिक्षण विभाग अधिसूचना दिनांक १०/०९/१९७३ नुसार *Failure in the first and second attempts shall not result stoppage increment or lose seniority, but person who has not passed the examination shall not be promoted to any higher post till he passes the examination* असे स्पष्ट निर्देश असल्याने, श्री. लोहार हे सन २०११-१२ या पदोन्नती वर्षातील पदोन्नती समितीच्या बळकीच्या दिनांकास विभागीय पर्यवेक्षीय परिक्षा अनुत्तीर्ण असल्यामुळे पदोन्नतीस अपात्र होते, म्हणून श्री. साधु कुंडलिक लोहार, मुख्य लिपीक यांना श्री. व्ही.यु. भुसावळे, मुख्य लिपीक यांच्या पदोन्नतीचा दि.२०/६/२०१२ हा मानीव दिनांक मंजूर करता येणार नाही.

यास्तव सदर बाब मा. मुख्य सादरकर्ता अधिकारी, मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई, खंडपिठ औरंगाबाद यांच्या निदर्शनास आणून य संबंधीतास अवगत करण्यात यावी व केलेल्या कार्यवाहीचा अहवाल संचालनालयास सादर करण्यात यावा.

Sd/-
(अ.म. जाधव)
संचालक”

The learned Advocate for the applicant has further orally argued during final hearing that *opposite to the stand taken by the Applicant in this OA the applicant has now submitted that PRT Rules are not applicable in the present matter, instead cause 4 of the Qualifying Examination for Promotion of Ministerial Staff to the Supervisory (Ministerial) post in the Department of Technical Education Rules, 1973 are applicable; this error of quoting wrong rules makes the*

impugned communication fit to be quashed and set aside and the matter needs to be remanded back to the respondent No. 2. As this aspect had not been raised either in this O.A. or in any of written submissions made by the applicant therefore, this, in our considered opinion, is submitted by the learned Advocate for the applicant at the stage of final hearing by way of afterthought and further does not deserve consideration.

(g) Moreover, the learned Advocate for the applicant could not justify his above arguments in the light of the fact that the applicant has himself relied on provisions of clause 15 of Post Recruitment Departmental Examination Rules, 1973 and mentioned the same in para 6 (iv), 6 (xxi) and 6 (xxv) of this O.A. He could also not advance any argument to establish that he was eligible for promotion to the post of Head Clerk in the year 2012 even though he had not passed qualifying examination.

(h) Therefore, we proceed to decide the matter on merit taking the underlying facts and applicable rules position.

5. Analysis of Facts and conclusion :-

(a) It is a fact that the applicant had passed the post recruitment departmental examination within prescribed

number of attempts in prescribed number of years. Therefore, his seniority in the cadre of senior clerk deserved to be protected and accordingly, has been protected. This does not mean that a candidate, like the applicant, gets any right for protection of his seniority on the post of subsequent promotions w.e.f. a date before he is born on the cadre of promotion / before the date he acquires eligibility for promotion to the promotional cadre.

(b) In the present case, the applicant had not denied opportunity for being considered by the DPC for promotion, instead, he had not acquired eligibility for promotion and therefore, could not be promoted along with respondent No.4.

(c) Respondent No. 2 was required by this Tribunal vide Order dated 10.01.2019 in O.A. No. 747/2015 to decide the representation made by the applicant within a period of 3 months from the date of the Order. Accordingly, respondent No. 2 had communicated, vide an impugned communication dated 25.03.2019, addressed to the respondent No. 3 his decision on representation made by the applicant. In our considered opinion, the Applicant has

not been able to establish his right for protection of his seniority in promotional cadre of Head Clerk at the point of time respondent No. 4 had been so promoted.

(d) Impugned Order dated 02.02.2019 issued by respondent No. 3 promoting respondent No. 4 to the post of Office Superintendent too, is evidently as per recommendations of DPC dated 27.12.2018. The applicant has challenged the same only on the same basis of his claim of protection of his seniority in the cadre of Head Clerk. This prayer too, has not be substantiated by the applicant.

(e) Therefore, in our considered opinion, the Original Application is misconceived and devoid of merit. Hence, the following order :-

ORDER

(A) The Original Application No. 435 of 2019 is dismissed for being devoid of merit.

(B) No order as to costs.

MEMBER (A)

Kpb/D.B. O.A. No. 435/2019 Promotion

MEMBER (J)