

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 49 OF 2015

DISTRICT : LATUR

Dattatray s/o Gyanobarao Zade,)
Age : 45 years, Occu. : Service,)
R/o. c/o S.B. Shelke, Shivkamal Silver Arch,)
Old AUSA Road, Nandi Stop, Latur, Dist. Latur.)

.. **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
2. **The Transport Commissioner,**)
Mumbai.)
3. **The Regional Transport Officer,**)
Latur.)
4. **The Regional Transport Officer,**)
Nanded.)

.. **RESPONDENTS**

APPEARANCE : Shri A.D. Gadekar, Advocate for Applicant.

: Shri I.S. Thorat, P.O. for the Respondents.

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

Reserved on : **11.04.2023**

Pronounced on : **07.06.2023**

O R D E R

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

1. By invoking provisions under Section 19 of the Administrative Tribunals Act, the present Original Application is

filed challenging the impugned order / communication dated 24.11.2011 (Exhibit-H) issued by the respondent No. 2 i.e. the Transport Commissioner, Mumbai rejecting the claim of the applicant in view of the Notification dated 28.01.2010 to the post of Tax Recovery Officer (previously nomenclatured as Motor Vehicle Inspector (Non-Technical) and seeking direction against the respondent Nos. 2 to 4 to consider the claim of the applicant for the said post in view of communication dated 23.12.2008 (Exhibit-A).

2. The facts in brief giving rise to this application can be stated as follows :-

(a) The applicant entered into the Government service on 15.10.1997 and presently he is serving as Junior Clerk in the office of Regional Transport Office, Latur.

(b) The Deputy Secretary, Home Department, Maharashtra State had issued letter/ communication dated 23.12.2008 (Exhibit-A) addressed to the respondent No. 2 i.e. the Transport Commissioner, Mumbai pointing out a need of filling 28 posts of Motor Vehicle Inspector, Group-C amongst vacancies of other posts and to fill up those posts from amongst the employees of different RTO offices, who

were eligible and fulfilling conditions mentioned in the said letter. In view of that the applicant, who had that time was serving in Regional Transport Officer, Latur submitted an application dated 17.01.2009 (Exhibit-B) contending that he fulfilled all the criteria mentioned in the letter dated 23.12.2008 addressed to his office i.e. the respondent No. 3 i.e. the Regional Transport Officer, Latur seeking to consider him on promotional post of Motor Vehicle Inspector (Non-Technical). The respondent No. 3 accordingly under forwarding letter dated 27.01.2009 (Exhibit-C) submitted names and details of 8 employees including the applicant for consideration of promotion to the post of Motor Vehicle Inspector (Non-Technical).

(c) Thereafter the respondent No. 2 i.e. the Transport Commissioner, Maharashtra State, Mumbai addressed letter dated 06.03.2009 (Exhibit-D) to the Regional Transport Officer, Nanded i.e. the respondent No. 4 informing that two posts of Motor Vehicle Inspector (Non-Technical) were sanctioned to Nanded Region.

(d) The respondent No. 3 i.e. the Regional Transport Officer, Latur by it's communication dated 18.03.2008

(Exhibit-E) informed the respondent No. 2 i.e. the Transport Commissioner, Mumbai the fact that the then Latur, Osmanabad and Ambajogai Dy. Offices were upgraded into Regional Offices. However, post of Motor Vehicle Inspectors (Non-Technical) were not created in Latur Regional Transport Office and requested to create such posts for Latur Regional Transport Office. It was also pointed out that seniority list of the employees of such newly upgraded regions has not been separately prepared.

(e) Thereafter, the Departmental Promotion Committee (DPC) was held on 19.03.2009 and the minutes thereof communicated by dated 21.03.2009 (Exhibit-F) would show that out of those employees, who were under consideration, none of them was eligible for promotion to the post of Motor Vehicle Inspector (Non-Technical). Amongst them five were from Nanded Regional Transport Office and one was from Latur Regional Transport Office, whose name is Shri D.K. Londhe, Senior Clerk.

(f) In fact, as per the criteria laid down in communication dated 23.12.2008 (Exhibit-A) the applicant was eligible and entitled to claim promotion to the post of

Motor Vehicle Inspector (Non-Technical), as the applicant is fulfilled the criteria mentioned in clause No. 7 of five years' experience in the matter of recovery of tax/revenue.

(g) Since the name of the applicant was not considered in DPC meeting dated 19.03.2009, the applicant filed O.A. No. 1194/2009 before this Tribunal. The said O.A. No. 1194/2009 was disposed of by the order dated 02.08.2010 (part of Exhibit-G collectively) thereby directing the respondents to consider the applicant for promotion on the post of Motor Vehicle Inspector (Non-Technical), when fresh process for promotion for the said post is initiated.

(h) After decision in the O.A. No. 1194/2009, the applicant said to have made application dated 24.12.2010 for consideration of his claim on the post of Motor Vehicle Inspector (Non-Technical) in accordance with the above-said decision of this Tribunal.

(i) It is submitted that after decision in the said O.A., the respondent No. 2 by impugned letter/ order dated 24.11.2011 (Exhibit-H) addressed to the respondent No. 3 i.e. the Regional Transport Officer, Latur informed that as per the Government Notification dated 28.01.2010 the

employee eligible for the post of Tax Recovery Officer i.e. the then Motor Vehicle Inspector (Non-Technical) criteria was of holding the post of Head Clerk (Rural) and working on that post for not less than three years. The applicant is Junior Clerk and does not fulfill the said criteria. Hence, the claim of the applicant rejected, which is impugned in the present Original Application.

(j) It is contended that the applicant is eligible and entitled to claim the promotion to the post of Motor Vehicle Inspector (Non-Technical) in accordance with the criteria laid down in letter dated 23.12.2008 (Exhibit-A) addressed by the respondent No. 1 to the respondent No. 2, which required experience of five years doing work of Tax Recovery and holding Heavy Motor Vehicle Licence for two years old. The applicant is fulfilling that criteria. The claim of the applicant for promotion was illegally denied relying upon the subsequent Notification dated 28.01.2010.

(k) Contrary to the impugned decision / communication dated 24.11.2011 (Exhibit-H), the respondents have selected Shri Yasin Shaikh and Shri D.D. Khandagale to the post of Tax Recovery Officer, Group-C by the order

passed in October 2010, who were respectively Senior Clerk and Junior Clerk, thereby they were appointed in the office of Regional Transport Officer, Aurangabad. In view of the same, the applicant has been discriminated. Hence, the present Original Application.

3. The affidavit in reply is filed on behalf of respondent Nos. 1 to 3 (page Nos. 46 to 74 of the paper book) by one Shri Sarjerao S/o Ramrao Shelke working as Regional Transport Officer, Aurangabad, Dist. Aurangabad, thereby he denied all the adverse contentions raised in the Original Application.

(i) It is specifically submitted that presently the applicant is working as Senior Clerk in the office of Deputy Regional Transport Officer, Osmanabad. Previous O.A. filed by the applicant and decision therein is not disputed. After decision dated 02.08.2010 in O.A. No. 1194/2009 new Recruitment Rules for the post of Tax Recovery Officer (the then Motor Vehicle Inspector (Non-Technical)) have been framed and notified on 28.01.2010 (part of Exhibit R-4 collectively). It is admitted that previous Departmental Promotion Committee meeting held on 19.03.2009 at Nanded had did not consider the claim of the applicant on

the ground that the applicant hail from Latur Region. As per the letter dated 06.03.2009 (Exhibit-D) issued by the Transport Commissioner, Maharashtra State, Mumbai, no post of Motor Vehicle Inspector (Non-Technical) was shown to be reserved for Latur Region. Therefore, also the applicant's claim at that time was not considered.

(ii) It is further submitted that subsequently Departmental Promotion Committee took place on 07.05.2011 at Latur. The name of the applicant was placed before the said committee. The minutes of the said DPC meeting dated 07.05.2011 (Exhibit R-3) would show that as per the record the applicant was working in Latur office, where no post of Tax Recovery Officer was available, as the Latur Region was newly created and was separated from Nanded and Aurangabad Regions. Therefore, the name of the applicant was not considered. In addition to that new Recruitment Rules for the post of Tax Recovery Officer (the then Motor Vehicle Inspector (Non-Technical)) have been framed, but yet to receive final approval from the concerned department. According to the said new Recruitment Rules published on 28.01.2010 (part of Exhibit-R-4 collectively), the applicant is not qualified for the said post. Hence, the

name of the applicant was rightly not considered for the post of Tax Recovery Officer.

(iii) So far as promotion of Shri Yasin Shaikh and Shri D.D. Khandagale from the office of Regional Transport Officer, Aurangabad is concerned, they were given ad-hoc promotion on the post of Tax Recovery Officer, which is in contravention of the provisions of Notification published on 28.01.2010. In view of the same, the applicant cannot cite and rely upon the said instance. In view of the same there is no merit in the present Original Application and the same is liable to be dismissed.

4. Separate affidavit in reply is filed on behalf of respondent No. 4 i.e. Regional Transport Officer, Nanded (page Nos. 75 & 76 of paper book). It is only stated that in the DPC meeting dated 19.03.2009 name of the applicant was not considered. It is also submitted that copy of the letter dated 27.01.2009 (Exhibit-C) referred by the applicant is not found in the record of the respondent No. 4, but that letter is found referred in the letter dated 14.01.2016 written by the Regional Transport Officer, Nanded.

5. The applicant filed affidavit in rejoinder (page Nos. 77 to 91 of the paper book) denying the contentions raised in the affidavit in reply by reiterating the contentions raised in the Original Application and additionally mentioning that two posts at Nanded are still vacant and are not being filled in. He also placed on record documents (Exhibit-J collectively) showing that he is having experience of more than 5 years doing Tax recovery work.

6. We have heard the arguments advanced by Shri A.D. Gadekar, learned Advocate for the applicant on one hand and Shri I.S. Thorat, learned Presenting Officer for the respondents on the other hand.

7. After having considered the rival pleadings, documents and submissions on record, the applicant's claim in the present Original Application is to be considered in view of the order dated 02.08.2010 (part of Exhibit-G collectively) passed in O.A. No. 1194/2009 filed by the applicant, which is as follows :-

“O R D E R

The respondents are directed to consider the applicant for promotion on the post of Motor Vehicle Inspector (Non-Technical) when fresh process for promotion for the said post is initiated.

With these directions, the original application stands disposed of with no order as to costs.”

8. Admittedly at the time of filing of the O.A., the applicant was working on the post of Junior Clerk. However, in the affidavit in reply filed on behalf of respondent Nos. 1 to 3 in para No. 1 at page No. 47 of the paper book, it is mentioned that presently the applicant is working as Senior Clerk in the office of Deputy Regional Transport Officer, Osmanabad. However, admittedly the applicant is seeking his promotion to the post of Tax Recovery Officer, which was previously known as Motor Vehicle Inspector (Non-Technical). The applicant is claiming promotion on the said post more particularly in view of letter dated 23.12.2008 (Exhibit-A) addressed by the respondent No. 1 to the respondent No. 2, thereby specifying requirement for promotion to the post of Motor Vehicle Inspector (Non-Technical)/Tax Recovery Officer. The clause No. 7 of the said letter is as follows:-

“७. मोटार वाहन निरीक्षक (अतांत्रिक) या पदावरील तदर्थ पदोन्तीसाठी कर वसुलीसंबंधी कामाचा किमान पाच वर्षे अनुभव आवश्यक. तदर्थ पदोन्ती द्यावयाच्या उमेदवाराने सहायक मोटार वाहन निरीक्षक या पदासाठी आवश्यक ठरविण्यात आलेली शारीरिक क्षमता धारण केलेली असणे आवश्यक आहे. संभाव्य उमेदवाराकडे जड वाहन चालविण्याची किमान दोन वर्षे जुनी अनुज्ञप्ती असावी.”

9. After decision in O.A. No. 1194/2019 dated 02.08.2010 (part of Exhibit-G collectively), admittedly, the applicant made application dated 24.12.2010 to the respondent No. 1 for

consideration of his name for promotion to the post of Tax Recovery Officer / Motor Vehicle Inspector (Non-Technical). Copy of the said representation dated 24.12.2010 is produced on record by the applicant during hearing of the present Original Application. Reference of this letter / representation of the applicant dated 24.12.2010 is there in the impugned letter / order dated 24.11.2011 (Exhibit-H). It is pertinent to note here that neither in letter / representation dated 24.12.2010 made by the applicant nor in the impugned order / letter dated 24.11.2011 (Exhibit-H), there is reference of order of this Tribunal dated 02.08.2010 (part of Exhibit-G collectively) passed in O.A. No. 1194/2009. The claim of promotion of the applicant to the post of Tax Recovery Officer / Motor Vehicle Inspector (Non-Technical) is denied by the impugned order / communication dated 24.11.2011 (Exhibit-H) referring to Notification dated 28.01.2010 issued by the Home Department, copy of which is produced by the respondent Nos. 1 to 3 along with their affidavit in reply as part of Exhibit R-4 collectively at page No. 71 of the paper book.

10. The respondent Nos. 1 to 3, however, have produced on record a copy of minutes of subsequent DPC meeting dated 07.05.2011 as part of Exhibit R-3 collectively to the affidavit in

reply. In this minutes of DPC meeting, it appears that the name of the applicant was considered for promotion. That was also pursuant to 8 names including the name of the applicant communicated by the respondent No. 3 i.e. the Regional Transport Officer, Latur to the respondent No. 2 i.e. the Transport Commissioner, Mumbai as reflected in document Exhibit-C. In view of that, it can be said that the name of the applicant is considered pursuant to the order dated 02.08.2010 passed in O.A. No. 1194/2009 (part of Exhibit-G collectively).

11. Upon perusal of the impugned order /letter dated 24.11.2011 (Exhibit-H), it is evident that the applicant's claim is denied in view of the subsequent Recruitment Rules of Tax Recovery Officer (Group-C) (Entry into Service) Rules, 2010 (part of Exhibit R-4 collectively) published on 28.01.2010 at page Nos. 73 and 74 of the paper book. It is however, pertinent to note here that in the affidavit in reply filed on behalf of respondent Nos. 1 to 3 as regards said Recruitment Rules, it is categorically and fairly mentioned in para No. 8 (page No. 51 of the paper book) that new Recruitment Rules for the post of Tax Recovery Officer have been framed and notified on 28.01.2010, but yet to come into force. This aspect however, is not taken into consideration by the Departmental Promotion Committee in it's

fresh meeting held on 07.05.2011, in which the name of the applicant is discarded for promotion observing that there was no sanctioned post of Tax Recovery Officer in Latur Region. However, vacancy of that post in Latur Division / Region is not available was already dealt with in the order of this Tribunal dated 02.08.2010 passed in O.A. No. 1194/2009 and as such, it was incumbent upon the DPC to consider the name of the applicant for promotion to the post of Tax Recovery Officer, if he is otherwise eligible.

12. In the affidavit in reply filed on behalf of respondent Nos. 1 to 3, it is admitted that the applicant is doing work of recovery of tax as additional duty of his original post of Junior Clerk / Senior Clerk. In that regard contention raised by the respondent Nos. 1 to 3 is reproduced hereunder :-

“1.....So far as the contentions raised by the applicant that in addition to his job, he has been given the responsibility of recovery of tax as well as of auction sale of the vehicles which have not paid the taxes are concerned, it is submitted that it is primary duty and responsibility of every employee who is working under the control and supervision of taxation authority to help for recovery of tax as well as auction the vehicles and property of the tax defaulters.”

13. In the circumstances as above, the DPC and the respondent Nos. 1 to 3 ought to have considered the case of the applicant for promotion to the post of Tax Recovery Officer / Motor Vehicle Inspector (Non-Technical) only in view of eligibility criteria laid down in the letter dated 23.12.2008 (Exhibit-A) and not under the Recruitment Rules of 2010 for the post of Tax Recovery Officer (Group-C) (part of Exhibit R-4 collectively), which was not enforceable and had not come into force. In view of the same, it is apparent that the respondents have failed to consider the claim of promotion made by the applicant in accordance with law in fresh DPC as was directed by this Tribunal as per the order dated 02.08.2010 passed in O.A. No. 1194/2009. The reference of Recruitment Rules of 2010 of Tax Recovery Officer vide Notification dated 28.01.2010 is totally misplaced and misconceived, which Rules were not in force at all.

14. In view of above, it was incumbent upon the respondents to consider the claim of the applicant for promotion to the post of Tax Recovery Officer / Motor Vehicle Inspector (Non-Technical) as per the criteria laid down in letter dated 23.12.2008 (Exhibit-A). As per the said criteria laid down in clause No. 7, which is already reproduced, the applicant has placed on record necessary experience of five years doing work of Tax Recovery

and holding Heavy Motor Vehicle Licence for two years old. The said documents regarding experience of tax recovery work are annexed along with rejoinder affidavit filed by the applicant and Heavy Motor Vehicle Licence as part of Exhibit-B collectively at page No. 17 of the paper book.

15. Apart from that the applicant has also relied upon the appointment order of October, 2010 issued by the respondent No. 2 to one Shri Yasin Shaikh and Shri D.D. Khandagale on the post of Tax Recovery Officer, Group-C at Aurangabad Regional Transport Officer, though they were working on the post of Senior Clerk and Junior Clerk respectively. The respondent Nos. 1 to 3 in their affidavit in reply has recorded the said alleged incidence of discrimination. In para No. 12 at page No. 54 of the paper book the following pleadings are raised :-

“12. With reference to para No. 13, the applicant contends that one Shri Yasin Shaikh (Senior Clerk) and Shri D.G. Khandagale from the office of Regional Transport Officer, Aurangabad were given the ad hoc promotion on the post of Tax Recovery Officer which is in contravention of the Notification issued by the State of Maharashtra, Home Department on 28.01.2010. In this regard, I say and submit that the promotion granted to those employees is purely temporary due to which those employees are not entitled and

cannot stake claim regarding the post of Tax Recovery Officer. Ad hoc promotion will come to an end from the date on which the Recruitment Rules are finalized and will come into force. As such, as soon as the new Recruitment Rules come into force, those who have been granted ad hoc promotion will have to apply as a fresh. Ad hoc promotion of one Shri Yasin Shaikh and Shri Khandagale have been made by the respondent No. 2. It is pertinent to clarify that the respondent No. 2 is appointing authority.

16. The said contentions on behalf of respondent Nos. 1 to 3 seem to be misplaced more particularly in view of the fact that Notification dated 28.01.2010 regarding Recruitment Rules for the post of Tax Recovery Officer had not come into force as on that date. Hence, these submissions raised on behalf of respondent Nos. 1 to 3 are contrary to the earlier pleadings about the Notification dated 28.01.2010. In view of the same, it can be inferred that the instances relied upon by the applicant can be termed as legal appointments. However, the said instances definitely would show that the applicant has been discriminated. In the circumstances as above, in our considered opinion, the impugned order / letter dated 24.11.2011 (Exhibit-H) issued by the respondent No. 2 is not sustainable in the eyes of law and the same is liable to be quashed and set aside. Consequently, the

present Original Application succeeds. We, therefore, proceed to pass the following order :-

ORDER

The Original Application is allowed in following terms :-

- (A) The impugned order / letter dated 24.11.2011 (Exhibit-H) issued by the respondent No. 2 rejecting the claim of the applicant for the promotion to the post of Tax Recovery Officer / Motor Vehicle Inspector (Non-Technical) is hereby quashed and set aside.
- (B) Consequently the respondents are directed to consider the claim of the applicant for promotion to the post of Tax Recovery Officer / Motor Vehicle Inspector (Non-Technical) and to appoint him on the said post in accordance with law considering the criteria laid down in letter / order dated 23.12.2008 (Exhibit-A) addressed by the respondent No. 1 to the respondent No. 2 within a period of three months from receipt of certified copy of this order, if required by creating supernumerary post.
- (C) There shall be no order as to costs.

MEMBER (A)

MEMBER (J)