

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 533 OF 2015**

DIST. : HINGOLI

Shivaji Prabhurao Shinde, )  
Age. 52 years, Occu. Service as Clerk in )  
Supply Department, Tahsil Office, )  
Basmat Nagar, Dist. Hingoli, )  
R/o Plot no. 45, Surana Nagar, )  
(Malwadi), Hingoli. )-- **APPLICANT**

VERSUS

The State of Maharashtra, )  
Through the Collector, Hingoli. )-- **RESPONDENTS**

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APPEARANCE :- Shri Ajay S. Deshpande, learned Advocate  
for the applicant.  
: Smt. M.S. Patni, learned Presenting Officer  
for the respondents.  
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**CORAM : JUSTICE A.H. JOSHI, CHAIRMAN  
AND  
ATUL RAJ CHADHA, MEMBER (A)**

**RESERVED ON : 21.2.2019**

**PRONOUNCED ON : 27.2.2019**  
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**JUDGMENT**

***[Per : Atul Raj Chadha, Member (A)]***

1. Heard Shri Ajay S. Deshpande, learned Advocate for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondents.

2. Following are the main prayers of the Applicant :-

*“(B) By issuing appropriate direction, communication of respondent dated 31.7.2015 at Annexure ‘A-6’, rejecting the grievance of the applicant may kindly be quashed and set aside by directing the respondent to place the applicant at Sr. No. 131 A, immediately below Shri Maroti Amruta Shinde and to take immediate steps to promote him to the post of Senior Clerk/Awal Karukn and to grant the applicant a deemed date of promotion in the cadre of Senior Clerk/Awal Karkun as 24/26.02.2015, i.e. the date of promotion of said Shri Maroti Amruta Sinde.*

*“(C) Pending hearing and final disposal of this O.A., the respondent may kindly be directed to place the case of the applicant before the appropriate DPC for the purpose of granting deemed date of promotion to the post of Senior Clerk/Awal Karkun, without any further delay.”*

3. Following are the main submissions of the Applicant :

3.1) The Applicant has served Armed Forces for 17 years and as such eligible and entitled to have the benefits as Ex-serviceman.

3.2) The Applicant was selected by the District Selection Committee, Hingoli for the post of Clerk-cum-Typist in reciprocation of an advertisement published under Ex-serviceman category.

- 3.3) He was wrongly denied appointment on the pretext that, benefit for serving employment as an Ex-serviceman can be availed only once, alleging that the Applicant has already availed such benefit.
- 3.4) In fact, the Applicant had not availed benefit of being Ex-serviceman while serving on employment in the past and still he was denied appointment.
- 3.5) Being aggrieved, Applicant had approached this Tribunal in O.A. no. 322/1999 which came to be decided in favour of Applicant by order dated 9.2.2010 by directing respondent for issuing appointment order within two months. In compliance to the said decision of this Tribunal, the Applicant was appointed on 4.6.2010 only after receipt of notice of contempt. The Applicant was appointed as Clerk-cum-Typist in the pay scale of Rs. 5200-20200 + Grade Pay Rs. 1900.
- 3.6) The Applicant submits that his appointment was pursuant to the selection made in the year 2008 against an earmarked vacancy for Ex-serviceman, though, his appointment was made on 4.6.2010 after the first round of litigation about his entitlement as Ex-serviceman.

- 3.7) The Applicant also submits that one Shri S.S. Kale was appointed pursuant to the same selection process of 2008 and was promoted on the basis of D.P.C. meeting dated 14.6.2013 on 30/31.10.2013 and the claim of the Applicant was not considered. By another order dated 24.2.2015 Shri Maroti Amruta Shinde along with seven others were promoted and Applicant was wrongly denied promotion.
- 3.8) The Applicant received a communication from the Respondents that Smt. Sandhya Kale and Shri Maruti Amruta Shinde joined services on 17.11.2008 and 18.11.2008 respectively. Accordingly they are placed at serial Nos. 128 and 131 in the gradation list respectively. Whereas, the Applicant has joined service on 15.6.2010, and placed at serial No. 176.
- 3.9) In view of the fact that the Applicant was not allowed to join service on pretext of availing twice benefit of Ex-serviceman which was not correct and later as per order of this Tribunal in which it was held that he has not availed benefit twice of Ex-serviceman. Accordingly, the Applicant prayed that he should be placed at Serial No. 131-A below Shri Maroti Amruta Shinde who was selected from Ex-serviceman

category and the Applicant be granted deemed date of promotion 24/26.2.2015 i.e. the date of promotion of Maroti Amruta Shinde.

4. In the above background of submissions, we have examined the order of this Tribunal dated 9.2.2010 in O.A. no. 322/2009 which is reproduced herein below :-

***“Oral order***

1. *Heard respective counsel.*

2. *Applicant has approached this Tribunal for relief as under :-*

*“(b) The impugned communication of R-2 dated 31.12.2008 at Exh. ‘G’ may kindly be quashed and set aside, by directing R-2 to issue an order of appointment in favour of the applicant pursuant to his selection for the post, against Ex-servicemen category, by holding that having not availed the benefit of being an Ex-serviceman in the past, the applicant is eligible and entitled to be considered for appointment against 15% reservation meant for Ex-servicemen.*

3. *Applicant served in the Armed Force for 17 years and hence believes to be entitled to the benefits available to Ex-servicemen while seeking public employment. In February 2008 District Selection Committee Hingoli under Chairmanship of Respondent No. 2 had published an advertisement for the post of Clerk cum Typist on the establishment of respondent no. 2, out of which 4 posts were reserved for Ex-servicemen. Applicant submitted his candidature and after selection process he was declared a selected candidate. By communication dt.25.6.08 (Exh. E) District Sainik Welfare Officer informed respondent no.2 that, applicant and two others were already in Govt. service, and therefore, they are not eligible to avail benefit of 15% reservation for Ex-*

servicemen. Respondent no. 3 under whose control the applicant is serving at Wardha at present conveyed to respondent no. 2 by communication dt. 24.11.08 (Exh.I) that, applicant has not availed benefit of being Ex-serviceman for seeking an appointment to a public post and therefore, there should be no impediment for appointment of applicant under respondent no. 2 on a seat reserved for Ex-servicemen category.

4. Communication at paper book page 24 is under challenge. Applicant is informed by this communication that, as per G.R. No. आरटीए-१०९०/२२/प्रक. ६/९३/१२ dt. 8.6.93, benefit of reservations available for Ex-servicemen category can not be enjoined more than once. Thus, an individual who is already in Govt. service by taking benefit of reservation of Ex-servicemen category, he can not seek another appointment with the Govt. by taking benefit of such reservation. A copy of this G.R. is available on record at paper book page no. 25, and the relevant portion reads :-

“एकदा देण्यात आलेल्या सवलती त्यांना नागरी सेवेतील पदावर पुन्हा नियुक्तीसाठी लागू होणार नाहीत असे आदेश निर्गमित केले आहेत.”

Whether for the appointment under control of respondent no.2, applicant is taking benefit of reservation for Ex-servicemen on the second occasion is the determining factor. Admittedly, applicant is selected in response to advertisement by respondent no. 2 on a seat reserved for Ex-servicemen category. In order to fasten the blame upon the applicant that, he is taking benefit of such reservation on second occasion respondents will have to demonstrate that, applicant has taken such benefit some time in the past. Ld. P.O. relies upon the communication Exh. E (page 20) for the purpose. By this communication District Sainik Welfare Board has informed Collector Hingoli as under :-

“तसेच उपरोक्त परिच्छेद दोन मधील अनुक्रमांक २, ४ व ११ मधील माजी सैनिक हे अगोदरच शासकीय सेवेत सेवारत असल्याकारणास्तव, शासन निर्णय क्रमांक आरटीए-१०९०/२२/प्रक. ६/९३/१२ दिनांक ८ जून १९९३ (छायांकित प्रतसोबत जोडण्यात येत आहे.) अन्वये माजी सैनिक या संवर्गातून १५ % आरक्षणा मधून निवड होण्यास पात्र ठरत नसल्यामुळे.....”

As against this Advocate Shri Deshpande has placed reliance upon communication at Exh. I (page 27). This is a communication by Dy. Director (Rehabilitation) Sainik Kalyan Vaibhag, Maharashtra State addressed to Collector Hingoli and he informs :-

“तसेच श्री. शिंदे हे या विभागातच कार्यरत असल्याने त्यांना माजी सैनिकासाठी असणा-या १५ % आरक्षणाचा लाभ मिळालेला नाही आणि ते देखील नियुक्तीस पात्र आहेत तरी श्री शिंदे यांना लिपीक पदावर नियुक्ती देण्यास हरकत नाही.”

5. We are posed with a question as to which out of the two communications should be accepted. However, on going through the communication dt. 25.6.08, which is the basis of impugned order, it can be said that, District Sainik Welfare Board has not categorically stated that, for the purpose of appointment in the Govt. service, applicant has taken benefit of reservation available to Ex-servicemen. The portion extracted from the said communication simply says that, because applicant is already in government service, he can not take the benefit of reservation available to Ex-servicemen. This is not correct interpretation of G.R. dt. 8.6.93. The said resolution obstructs appointment on a seat reserved for Ex-servicemen provided the individual has taken the benefit of such reservation for earlier appointment. In fact, we are informed by Advocate Shri Deshpande that, so far as appointments with District Sainik Welfare Board, all the appointees are Ex-servicemen and no civilian is recruited or appointed and therefore, for appointment under District Sainik Welfare Board, it can not be said that, the individual has taken benefit of reservation available for Ex-servicemen.

6. As against this, communication by Dy. Director of Sainik Welfare Division is quite specific. Dy. Director has clarified that, applicant has not taken benefit of 15% reservation available to Ex-servicemen in the past and therefore, there is no impediment in appointing the applicant on a seat reserved for Ex-servicemen.

7. In the light of fact and circumstances as above, as also in view of the tenor of the language in the communication dt. 25.6.08 and 4.11.08, it can be said that, communication dt. 25.6.08 does not specifically say that, applicant has already taken benefit of reservation

*available for Ex-servicemen. On the contrary, the Dy. Director of Sainik Welfare Division has categorically informed Collector Hingoli that, applicant has not taken such benefit in the past. Consequently, applicant can not be denied an appointment pursuant to his selection in the 15% seats reserved for Ex-servicemen by respondent no. 2.*

*8. O.A. therefore, succeeds. Communication Exh.-G (Page 24) is quashed and set aside. Collector Hingoli is directed to issue an appropriate order in favour of the applicant pursuant to his selection, which is referred as cancelled in the impugned quashed communication. This should be done in any case within a period of two months from today.*

*O.A. disposed of.”*

5. The reliance was also made to sub rule 2 of Rule 4 of Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, which reads as under :-

**“4. General principles of seniority.**

(2) *Notwithstanding anything contained in sub-rule (1)-*

*(a) the inter se seniority of direct recruits selected in one batch for appointment to any post, cadre or service, shall be determined according to their ranks in the order of preference arranged by the Commission. Selection Board or in the case of recruitment by nomination directly made by the competent authority, the said authority, as the case may be, if the appointment is taken up by the person recruited within thirty days from the date of issue of the order of appointment or within such extended period as the competent authority may in its discretion allow;*

*(b) the inter se seniority of Government servants promoted from a Select List shall be in the same order in which their names appear in such Select List. If the Select List is prepared in two parts, the*



*first part containing the names of those selected unconditionally and the second part containing the names of those selected provisionally. All persons included in the first part shall rank above those included in the second part;*

*Provided that, if the order in which the names are arranged in the Select List is changed following a subsequent review of it, seniority of the Government servants involved shall be re-arranged and determined afresh in conformity with their revised ranks.”*

It is clear from the above order of this Tribunal that Applicant was wrongly denied appointment in 2008 despite his selection in the Ex-serviceman category and if the communications made in this regard would have been correctly interpreted, the Applicant would have been appointed in the year 2008 and would have got seniority as per Rule 4 (2) (a) and (b).

6. There is nothing on record that what would have been inter se seniority in case he would have been appointed in first instance. Though, as per letter of District Sanik Welfare Board (page 34 of paper book) apparently he was below Shri Shinde Maruti Amrta. Further, it is also not on record whether the Applicant had otherwise met the criteria of the D.P.C. meeting dated 6.4.2015. Therefore, following order is made :

**ORDER**

- (a) Respondents are directed to reconvene the meeting of D.P.C. dtd. 24.4.2015 considering the inter se-seniority as per the

selection made in the year 2008 and grant him notional position in the gradation list.

- (b) It is also made clear that the Applicant would not be entitled for any financial benefits till his appointment was made on 26.4.2010 as per order of this Tribunal.
- (c) O.A. is allowed with no costs to either of the parties.

**(ATUL RAJ CHADHA)**  
**MEMBER (A)**

**(A.H. JOSHI)**  
**CHAIRMAN**

**Place : Aurangabad**

**Date : 27.2.2019**