

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 556 OF 2020

DISTRICT : NANDURBAR

Umakant Lotan Bedse,)
Age : 55 years, Occu. : Govt. Service as)
Senior Tribal Development Inspector,)
In the office of Project Officer, Integrated Tribal)
Development Project, Nandurbar.)
R/o : Plot No. 46 B/47, Laxmi Narayan Nagar,)
Behind Kamnath Mahadeo Mandir, Nandurbar.).. **APPLICANT**

V E R S U S

1. **Commissioner of Tribal Development,**)
Maharashtra State, Nasik.
2. **The State of Maharashtra,**)
Through the Secretary,)
Tribal Development Department,)
Mantralaya, Mumbai 400 032.).. **RESPONDENTS**

APPEARANCE : Shri Ajay Deshpande, Advocate for the
Applicant.

: Shri I.S. Thorat, P.O. for the Respondent
Authorities.

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

Reserved on : **02.05.2023**

Pronounced on : **21.06.2023**

O R D E R
(Per : Shri Bijay Kumar, Member (A))

1. The Original application No. 556 of 2020 has been filed by
one Shri Umakant Lotan Bedse on 14.12.2020, invoking

provisions of Section 19 of the Administrative Tribunals Act, 1985. The applicant is aggrieved by notification of Rules referred to as “Assistant Project Officer (higher Grade) and Other Officers (Grade-2) Recruitment (Amendment) Rules 2017”, which was notified on 31.07.2017. These rules had been notified by way of amendments to *Recruitment Rules of 1984*.

2. Facts of the case- Important facts which emerge from the submissions made by the two sides of the dispute are being listed as follows :-

(a) The applicant was first appointed as a Senior Clerk in Tribal Development Department through Sub-ordinate Services Selection Board, Nashik vide order dated 23.08.1991. Later on, he was promoted to the post of Deputy Accountant vide order dated 30.06.2010. The applicant has further submitted in para 5, page 3 of the paper-book of this O.A. that he was further promoted as Senior Tribal Development Inspector on 31.07.2014. However, the applicant has neither enclosed a true copy of his promotion order to the post of Senior Tribal Development Inspector, nor did he enclose copy of recruitment rules for the post of Senior Tribal Development

Inspector, though both these documents are material in this case.

(b) As a last resort, the learned Presenting Officer was directed vide oral order dated 23.03.2023 to place on record (i) final establishment pattern after creation of 1961 posts in Tribal Development Department by G.R. Dated 23.01.2014 and (ii) Recruitment Rules for the post of Warden and Senior Tribal Development Instructor which was complied by the learned P.O. on 29.03.2023. From the details submitted by learned P.O., Senior Tribal Development Inspector in the '*Directorate of Tribal Development (Recruitment) Rules, 1998*' were notified on 07.10.1988 regulating recruitment to the post of Senior Tribal Development Inspector in the Maharashtra Tribal Development Services, Class II in the Directorate of Tribal Development of the Govt. of Maharashtra. Rule 4 of the said Recruitment Rules provides for appointments to the post of Senior Tribal Development Inspectors by Promotion and Nomination on 50: 50 Basis; and Rule 3 (a) provides for appointment by promotion as follows :-

“ 3. (a). promotion of a suitable person on the basis of seniority subject to fitness from amongst the persons holding the posts of Tribal Development Inspector,”

(c) Additional 36 posts of Senior Tribal Development Officer were created vide G.R. dated 23.01.2014, a copy of which is at page No. 105 of the paper-book. Though the applicant was not in the cadre of Tribal Development Inspector, yet he was promoted as Senior Tribal Development Inspector on 31.07.2014 which is in pay scale of Rs. 9300-34800 plus Grade Pay of Rs. 4300. Thus, the applicant came in cadres of posts equivalent in terms of pay band and Grade-Pay of Wardens, Research Assistants, Office Superintendents, Junior Administrative Officers, and Cultural Officers, all of whom are in pay band of Rs. 9300-34800 with Grade Pay of Rs. 4300.

(d) As per amended Recruitment Rules named as "*Assistant Director (Higher Grade) and Other Officer (Class-2) in the Directorate of Tribal Development (Amendment) Rules 2017,*" the post of Warden and Senior Tribal Development Inspector have been put in one category with 37.5% posts reserved for them and posts of Office Superintendent, Cultural Officer, Junior Administrative Officer and Research Officer constitute another category for promotion to the post of Assistant Project Officer (Higher Grade), and Other Officers (Class-2) in the Directorate of Tribal

Development for which 12.5% posts have been earmarked. Rest of the 50% posts of Assistant Project Officer (Higher Grade), and Other Officers (Class-2) in the Directorate of Tribal Development are to be filled by nomination.

(e) To the contrary to the Re-amended Recruitment Rules, the applicant has pleaded for getting clubbed with the cadres having 12.5% quota as he finds himself senior to others in this category whereas, his chances of promotion, on his getting clubbed with Wardens is lower. In support of his claim, the applicant has advanced arguments as elaborated in following paras of this order.

3. GROUNDS FOR SEEKING RELIEF PRAYED FOR: The applicant has argued that as a common seniority list was being prepared for the post of Office Superintendent, Cultural Officer, Junior Administrative Officer and Research Assistant to which the cadre of Senior Tribal Development Inspector was also included, taking the cadre of Senior Tribal Development Inspector out of that category without obtaining choice of officer concerned is illegal.

4. RELIEF PRAYED FOR- The applicant had prayed for reliefs in terms of para 20 of the original application. The learned

Advocate for the applicant had verbally prayed on 28.07.2022 for grant of leave to amend the O.A. and add prayer clause (B-1). Amended prayer clause is reproduced verbatim for ready reference as follows :-

“20. THE APPLICANT, THEREFORE, PRAYES THAT:

- (A) Original application may kindly be allowed.*
- (B) The respondents may kindly be directed to redress the grievances ventilated through representations at Annexure “A-6” and Annexure “A-7”, especially in the backdrop of the communication of R-2 to R-1, dated 09.05.2019 at Annexure “A-8” and till redressal of the grievances, the process of effecting promotions to Group ‘B’ post taken up vide communication of R-1 dated 24.11.2020 at Annexure ‘A-3’ may kindly be ordered to be deferred.*
- (B-1) The amendment notification at Annexure A-1 dated 31.07.2017 virtually taking away the promotional prospects of the incumbents belonging to the cadre of sEnior Tribal Development Inspectors to the cadre of Assistant Project Officer- Class-II may kindly be quashed and set aside to that extent by directing to effect to the promotions of Senior Tribal Development Inspectors from the common pool of Office Superintendent, Cultural Officer, Research Assistant and Junior Administrative Officer as before.*
- (C) Pending hearing of final disposal of this application, the respondents may kindly be directed not to proceed with the process of promotion to Group ‘B’ post geared up vide communication dated 24.11.2020 at Annexure ‘A-3’.*
- (D) Any other suitable and equitable relief to which applicant is entitled be granted in his favour.”*

5. INTERIM RELIEF GRANTED:

- (a) This Tribunal [CORAM: A.D. Karanjkar, Member (J)] had, vide oral order dated 17.12.2020 granted interim relief in following terms as stated in para 3 of the said order-

“3. I have heard submissions of the learned Chief Presenting Officer. There is substance in the contention of the applicant that grave prejudice will cause to the applicant if officer junior to him is promoted. Therefore, it is necessary to issue direction to the respondent No. 1 and 2 not to proceed with the promotion till compliance of the order dated 09.05.2019 issued by the Government of Maharashtra, which is at page no. 50 of the paper-book of the O.A.”

(b) On perusal of aforesaid communication dated 09.05.2019 issued by the Tribal Development Department, it is found that the said reference is not any order but a letter forwarding list of 2 complaints for necessary action. Below quoted the said communication, hereinbefore referred to as order dated 09.05.2019, which is in Marathi:-

“क्र.०२२२२०४८७८९

क्रमांक संकीर्ण २०१९/ प्र.क्र.
आदिवासी विभाग विभाग,
मादाम कामा रोड, हुतात्मा राजगुरु चौक
मंत्रालय विस्तार, मुंबई
०९ मे २०१९

प्रति,
आयुक्त,
आदिवासी विभाग,
नाशिक.

विषय - संदर्भावर आवश्यक कार्यवाही होणे बाबत.

महोदय,

उपरोक्त विषयान्वये खालील संदर्भाच्या प्रतीवर उचित कार्यवाही करून केलेल्या अहवाल शासनास सादर करावा.

अ.क्र.	विषय	अर्जदार / तक्रारदार
1.	प्रकल्प अधिकारी पांढरकवडा यांचा मनमानी कारभार नियंत्रीत	श्री. संतोष राऊत अधिकारी विकास विभाग कर्मचारी संघटना मधील

	करण्याबाबत.	राज्य नाशिक
2.	कार्यालयीन अधीक्षक / कनिष्ठ प्रशासकीय अधिकारी/ संशोधन सहाय्यक / वरिष्ठ आदिवासी विकास निरीक्षक या समकक्ष संवर्गाची एकत्रित असलेल्या सेवाज्येष्ठता यादीतून	उमाकांत लोटन बेडसे वरिष्ठ आदिवासी विकास निरीक्षक, एकात्मिक आदिवासी विकास प्रकल्प, नंदुरबार.

आपला.

(गोविंद माईणकर)

अवर सचिव, महाराष्ट्र शासन

सहपत्रे वरीलप्रमाणे

6. **Pleadings and Final Hearing:** - Affidavit in reply on behalf of respondents was filed by learned Presenting Officer on 19.07.2022 which was taken on record and a copy thereof served on the other side. The learned Advocate for the applicant filed rejoinder affidavit on 28.07.2022 which too, was taken on record and a copy thereof served on the other side. Therefore, the respondents filed a short affidavit on 24.02.2023 which was taken on record and served on the other side. Learned Advocate for the applicant too, had placed on record notes of submissions along with certain documents, which were not the part of earlier submissions. These documents have already been taken on record which were given page numbers for future reference vide oral orders of the Tribunal passed on 20.01.2023. The matter

was finally heard at length on 02.05.2023 and reserved for orders.

7. **Analysis of Facts: -**

(a) It is evident that the applicant has not adduced any evidence to justify his promotion to the cadre of Senior Tribal Development Inspector for which, as per Recruitment Rules, 1988, feeder cadre is Tribal Development Inspector. The Respondents too, have not explained the basis of promoting the applicant from cadre of Deputy Accountant to the post of Senior Tribal Development Inspector.

(b) Further it has been argued on behalf of the applicant that even though certain cadres, namely, Office Superintendent, Senior Tribal Development Inspectors, Cultural Officer, Junior Administrative Officer and Research Assistant are exclusive with each other, mere publishing a common seniority list of such cadres results into formation of a non-separable group of cadres for promotion to the next cadre. However, no rules or case laws have been cited to support this argument.

(c) Provisions of rule 3 of un-amended Recruitment Rules for the post of Assistant Project Officer (Higher Grade) and

other officers (Class -2) (in the Tribal Development Directorate) Recruitment Rules, 1984 which deals with promotion to the said post, are being quoted for ready reference as follows :-

“३. संचालनालयातील सहायक प्रकल्प अधिकारी (उच्च श्रेणी) आदिवासी विकास अधिकारी, सांख्यिकी अधिकारी, प्रशासन अधिकारी, गृह प्रमुख किंवा संशोधन अधिकारी यांच्या पदावरील नियुक्ती ही एकतर, -

(अ) सहायक प्रकल्प अधिकारी (निम्न श्रेणी), कार्यालय अधीक्षक, सांस्कृतिक अधिकारी, वसतिगृह अधीक्षक आणि संशोधन अधिकारी ही पदे धारण करणाऱ्या व त्या पदांवर तीन वर्षांपेक्षा कमी नसेल इतकी सेवा झालेल्या व्यक्तींमधून, पात्रतेस अधीन राहून वरिष्ठतेनुसार, योग्य व्यक्तीला पदोन्नती देऊन; किंवा”

(d) The above quoted Recruitment Rules for the posts of Assistant Project Officers (Higher Grade) and other officer (Class-2) (in the Directorate of Tribal Development), 1984 has no provision for promotions to persons working in the cadre of Senior Tribal Development Inspectors into the said promotion cadre. Therefore, the applicant knew at the time of his entry into the cadre of Senior Tribal Development Inspector the rule position. The impugned amendment of 2017 provides for a new opportunity to him.

(e) The respondents on their part have not advanced any rationale of categorization of all the feeder cadres into two categories and assigning quota of 37.5% and 12.5%

arbitrarily. The respondents had been given opportunity to submit their say on this point vide queries mentioned in para 7 (a) to 7 (c) of oral order dated 21.01.2023; however, no submissions have been made by them. The Tribunal has taken judicial notice of rule 6 of unamended Recruitment Rules 1984 and amended Recruitment Rules of 2017. Grouping of various cadres and their respective quota as per the Recruitment Rules, 1984 *vis a vis* Recruitment Rules, 2017 for the post of Assistant Project Officer (Higher Grade) and other officers (class-2) (in the Directorate of Tribal Development) is tabulated below :-

Promotion 50% quoted in both RR	Feeder Cadre Group-I		Feeder Cadre Group-II	
	Cadres	Quota	Cadres	Quota
As per 1984 R.R.	Assistant Project Officer (Lower Grade), Office Superintendent and Cultural Officer	40%	Hostel Superintendent Research Officer	10%
As per 2017 R.R.	Warden and Senior Tribal Development Officer	37.5%	Office Superintendent, Cultural Officer, Junior Administrative Officer and Research Assistant	12.5%

Upon analyzing above facts, in our considered opinion, the ratio of quota which was earlier 40% and 10% has been modifies to 37.5% and 12.5% which may not be called as material deviation so far as the applicant is concerned, as the post of Senior Tribal Development Inspector has been introduced in promotion channel for the first time.

8. CONCLUSIONS: The applicant, as well as, the respondents have not advanced any arguments regarding the basis of granting promotion to the applicant from cadre of Deputy Accountant to the cadre of Senior Tribal Development Inspector when feeder cadre for promotion is Tribal Development Inspector. Secondly, under unamended Recruitment Rules, persons in the cadre of Senior Tribal Development Inspectors were not eligible for promotion in the cadre of Assistant Project Officer (Higher Grade) and other officers (class-2). Thirdly, the applicant has not substantiated his argument by any citations, that publication of one common seniority list for some cadres has effect of merger of cadres. Last but not the least, the applicant has not been able to show that putting various feeder cadres into two categories with defined quota for each of them is, *mala-fide* on any ground. Judicial intervention is not warranted in such situation just to

facilitate priority in promotion to any one or few applicants of a particular cadre only because they have by chance seniority advantage by regrouping of various cadres. Therefore, the following order : -

ORDER

- (A) The original application is hereby, dismissed for being devoid of merit.
- (B) Interim orders dated 17.12.2020 and 20.01.2023 are, hereby, vacated.
- (C) No order as to costs.

MEMBER (A)

MEMBER (J)

Kpb/D.B. O.A. No. 556/2020 VDD & BK 2023 promotion