

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 65 OF 2017**

**DISTRICT : AURANGABAD**

**Shri Kundan s/o Vsantrao Deshmukh,** )  
Age: 43 years, Occu. : Service )  
As Auditor Grade-II, in the office of )  
District Special Auditor Class-I, )  
Co-operative Societies, )  
R/o A-66, Nathnagar, Behind Sindhi Colony, )  
Aurangabad, Dist. Aurangabad. ) **.. APPLICANT**

**V E R S U S**

- 1) **The Commissioner for Cooperation,** )  
**& Registrar,** Cooperative Societies, )  
Maharashtra State, Central Building, )  
Near Pune Railway Station, Pune-1. )
- 2) **The Divisional Joint Registrar,** )  
Cooperative Societies (Audit), )  
Aurangabad Region, Aurangabad. ) **.. RESPONDENTS**

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**APPEARANCE** : Shri S.D. Joshi, Advocate for the Applicant.

: Smt. M.S. Patni, Presenting Officer for the  
Respondents.

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**CORAM : JUSTICE M.T. JOSHI, VICE CHAIRMAN.**

**AND**

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

**DATE : 31.01.2019.**

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**O R D E R**

**(PER –Atul Raj Chadha, Member (A))**

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

2. By filing the present Original Application, the applicant has made following prayers :-

*“B) By issue of an appropriate order or direction, the impugned communication/ order bearing O.No. ESTABLISHMENT/DESK-1/ DEEMED DATE/ DESHMUKH/016, dated 7.6.2016, issued by respondent No. 1 thereby rejecting the request of the applicant for grant of deemed date of promotion to the post of Auditor Grade-II w.e.f. 27.09.2008 may kindly be quashed and set aside.*

*C) By issue of an appropriate order or direction, the respondent No. 1 and 2 may kindly be directed to grant 27.09.2008 as ‘Deemed date’ of promotion to the post of Auditor Grade-II along with all the consequential benefits such as fixation of pay, arrears of pay, appropriate fitment in the cadre of Auditor Grade-II within a period of 3 months.”*

3. The following are the submissions of the learned Advocate for the applicant:-

(a) The applicant was appointed as a Junior Clerk in the year 1993,

(b) The applicant had submitted his Medical Certificate i.e. disability to the extent of 56% under Partial Deaf Category,

(c) Under the provisions of The Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 (herein after referred as Act), 3% reservations was required to be made for physically disabled persons (Differentially abled persons) at Roster Point Nos. 1, 34 and 67 (one percent each for blind, Orthopedically handicapped and partially deaf persons). However, the posts are not reserved for the blind or partially blind persons for Sub Auditor or Auditor Grade in the instant case,

(d) The appointment of the applicant was made as nominee of freedom fighter and on some complaints a departmental enquiry was started against the applicant. The said departmental enquiry was completed in the year 1998. However, no decision was taken till January, 2015 and he was exonerated vide order dated 16.01.2015.

(e) The applicant was denied first promotion to the post of Sub-Auditor and required to file O.A. No. 999/2004 for claiming promotion. It was denied to him due to pendency of the departmental enquiry and the applicant was granted promotion for the post of Sub-Auditor on 26.09.2005 after the directions given by this Tribunal on 09.09.2005 in O.A.

no 999/2004 subject to final outcome of Departmental Enquiry,

(f) The applicant was again denied promotion to the higher post of Auditor Grade-II, though he fulfilled requisite criteria. The applicant was again required to file O.A. No. 11/2011 for claiming promotion to the post of Auditor Grade-II. However, during the pendency of the said O.A., a meeting of Departmental Promotion Committee was held by the concerned respondents and the promotion was granted to the applicant on 30.05.2015,

(g) The Division Bench of this Tribunal while disposing the O.A. No. 11/2011, directed the respondents to consider the representation of the applicant for grant of deemed date of promotion w.e.f. 27.09.2008,

(h) However, the respondents have denied the deemed date of promotion on the ground that no person junior to Applicant was promoted. Hence, he is required to file the present O.A. for grant of deemed date of promotion.

4. The respondent Nos. 1 and 2 in their affidavit in reply in paragraph No. 6 (paper book page no. 71) submitted that the

departmental enquiry was initiated against the applicant, which was finalized on 16.01.2015 and the applicant was promoted on 30.05.2015. The deemed date of promotion is also denied on the ground that no person junior to the Applicant was promoted

5. The applicant also approached the Commissioner of Handicap Welfare, Pune, who had directed vide order dated 22.06.2009 which reads as under:-

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**आ दे श**

१) वादी यांचा अर्ज अंशतः मान्य करण्यात येत आहे.

२) प्रतिवादींनी वादी विरुद्ध प्रलंबित असणा-या विभागीय चौकशीचा अंतिम निर्णय सदरच्या आदेश प्राप्त झाल्यापासून ६० दिवसात घ्यावा.

३) वादी हे सेवा ज्येष्ठता, बिंदू नामावली रजिस्टर व इतर निकषानुसार वादीची मागणी तपासून लेखा परिक्षण श्रेणी - २ या पदावर पदोन्नत होण्यास पात्र असल्यास प्रतिवादी यांनी उपरोक्त विभागीय चौकशीच्या अंतिम निर्णयाच्या अधिन राहून ३० दिवसांच्या आत तात्पुरत्या स्वरूपात मानीव दिनांकासह पदोन्नती करावी.

४) उपरोक्त विभागीय चौकशी अंतर्गत वादी निर्दोष सिद्ध झाल्यास आणि आदेश क्र. ३ अन्वये पदोन्नतीस पात्र असल्यास सदरची तात्पुरती पदोन्नती प्रचलित नियमानुसार कायम करण्यात यावी.

आज रोज दिनांक २२.०६.२००९ सदरचे निकालपत्र माझ्या सहीने दिले आहे.”

In short, the Commissioner Handicap has directed that necessary decision in pending Departmental Enquiry be taken within sixty days. The Applicant be given temporary promotion with deemed date within thirty days taking into account his seniority, availability of Roaster Point etc. In case, the Applicant is

exonerated the temporary promotion be made permanent.

**However, the respondents had not implemented the order of the Commissioner of Handicap Welfare.**

6. Following are the observations of the D.P.C. meeting dated 25.05.2015:-

**“अस्थीव्यंगत्व अपंगासाठी आरक्षित असलेले पद - ०१ पद**

लेखापरिक्षक श्रेणी -२ पदोन्नती संवर्गाच्या प्रमाणीत करण्यात आलेल्या बिंदू नामावली नोंदवही नुसार खुल्या प्रवर्गासाठीचे एकूण २५ बिंदू रिक्त आहेत. तथापी सदर २५ पदांपैकी भरण्यायोग्य असलेली म्हणजेच नियमित योजना, साखर योजना व पदुम योजनेकडील केवळ ०४ पदे रिक्त असून सदर ०४ पदांपैकी एका पदावर विभाग बदलीने (श्रीमती देवकर्ते) व कापूस योजनेकडील कर्मचारी (श्री भगुरे व गायकवाड) समायोजनाने भरावयाची आहेत ही बाब लक्षात घेउन केवळ ०१ पदे अस्थीव्यंगत्व असलेल्या कर्मचा-यांच्या पदोन्नतीद्वारे भरण्याचा निर्णय घेण्यात आला. अपंग आरक्षण बिंदू नामावली नोंदवहीनुसार बिंदू क्र. ६७ हा दिनांक २७.०३.२००६ पासून रिक्त असून सदर बिंदू भरण्याचा निर्णय घेण्यात आला. उपलेखापरिक्षक संवर्गातील सेवाज्येष्ठतेनुसार पात्र असणा-या अस्थीव्यंगत्व असलेल्या कर्मचा-यांचा आढावा घेतला असता उपलेखापरीक्षक संवर्गाच्या अंतिम सेवाज्येष्ठता यादीनुसार कार्यरत असलेल्या १४१ कर्मचा-यांमध्ये अस्थीव्यंगत्व असलेले केवळ ०२ कर्मचारी आढळून आहे. प्रचलित नियमानुसार अस्थीव्यंगत्व असलेल्या किमान ०३ कर्मचा-यांचे विचारक्षेत्र तयार करणे आवश्यक आहे. तथापि उपलेखापरीक्षक संवर्गाच्या दि. ०१.०१.२०१४ रोजीच्या अंतिम सेवाज्येष्ठता यादीनुसार केवळ ०२ अस्थीव्यंगत्व असलेले कर्मचारी उपलेखापरिक्षक संवर्गात कार्यरत असल्यामुळे ०२ कर्मचा-यांचे विचारक्षेत्र तयार करण्यात आले. तयार करण्यात आलेल्या प्रपत्रानुसार अ.क्र. ०१ वरील कर्मचारी श्री. कुंदन वसंतराव देशमुख यांच्या गेल्या पाच वर्षांच्या गोपनीय अहवालाचे वर्गीकरणाने अवलोकन करून छाननी करण्यात आली. गोपनीय अहवालानुसार पदोन्नतीसाठी अनिवार्य असलेली किमान सरासरी व अन्य सर्व अनिवार्य अटी सदर कर्मचारी पूर्ण करीत आहे. त्यामुळे पदोन्नती देण्याचा निर्णय घेण्यात आला.

श्री कुंदन वसंतराव देशमुख याना या कार्यालयाद्वारे सन २००५ मध्ये देण्यात आलेली पदोन्नती ही त्यांच्याविरुद्धच्या विभागीय चौकशीच्या अधिन राहून देण्यात आली होती. श्री देशमुख यांच्याविरुद्धचे विभागीय चौकशी प्रकरण आता अंतिमतः निकाली निघाली आहे. त्यामुळे त्यांना

सन २००५ मध्ये देण्यात आलेली पदोन्नती आयुक्त, अपंग कल्याण यांचे न्यायालयाचे आदेशातील मुद्दा क्रमांक ४ नुसार नियमित करण्याचा निर्णय घेण्यात आला.

श्री देशमुख हे खुल्या प्रवर्गातील असून शासन निर्णय क्रमांक एसआरव्ही-१०९९/प्र.क. ३७/९९/१६ अ दिनांक ०५ मार्च, २००२ सोबतच्या परिशिष्टातील सुचना लक्षात घेऊन सामाजिक आरक्षण बिंदु नामावली खुल्या प्रवर्गासाठी राखीव असलेल्या बिंदू क्र. ५६ हा वापरण्याचा निर्णय घेण्यात आला.”

The DPC confirmed the temporary promotion of Applicant given in 2005 as per the order of Commissioner Handicap as Applicant was exonerated and recommended his further promotion against open point No. 56 to the Applicant.

7. It is an admitted fact that two posts for physically handicapped persons were filled up at roster point Nos. 1 and 34 on 18.12.2002 and 22.09.2005 respectively by appointing Shri A.G. Shinde (Physically Handicap) and Shri P.M. Kaushike Partialy Deaf and point No. 67 was vacant since 27.03.2006 (paper book page no. 45).

8. The applicant was promoted temporarily in the year 2005 as per order of this Tribunal, subject to outcome of the departmental enquiry. As per the Recruitment Rules, the applicant was required to work on the lower post for a minimum period of three years before he become eligible for the higher post. The Applicant was promoted to the post of Sub Auditor On 26.09.2005 and completed three years on 26.09.2008. Hence, he

has claimed deemed date from 27.09.2008 along with all consequential benefits.

9. It is surprising to note that the departmental enquiry completed in the year 1998 was finally decided in the year 2015 and during pendency of the decision, the applicant was required to approach this Tribunal twice and as well as the Commissioner, Handicap welfare, Pune. According to the Applicant, it was not proper for the respondents to withhold the promotion, though the roster point was available and the applicant was found otherwise fit, however, the promotion of the applicant was kept open in the D.P.C. proceedings due to pendency of the departmental enquiry ( Para 6 of reply – Page 71 of Paper Book).

10. Following is the position with regard to roaster (Page 45 of the Paper Book):

अपंग आरक्षण नोंदवहीनुसार निर्माण दिनांक	बिंदू क्रमांक	अपंगत्वाचे आरक्षण	भरलेले अपंग आरक्षीत कर्मचा-याचे नाव	आरक्षण पुढे नेले काय / असल्यास कोणत्या अपंगत्वाचे
१८.१२.२००२	०१ प्र.आ.	अस्थीव्यंग	ए.जी. शिंदे	नाही
२२.०९.२००५	३४ प्र.आ.	कर्णबधीर	पी.एम. कौशिके	नाही
२७.०३.२००६	६७ प्र.आ.	अस्थीव्यंग	रिक्त	अस्थीव्यंग
०१.०८.२००७	१०१ वि.आ.	कर्णबधीर	रिक्त	कर्णबधीर
१५.०३.२०११	१३४ वि. आ.	अल्पदृष्टी	रिक्त	अल्पदृष्टी

It is clear from above that Roaster Point Nos. 1 and 34 were filled up in the years 2002 and 2005 by promoting Shri S.G Shinde (Physically Handicap) and Shri Kushike (Partially Deaf)

respectively and Roaster Points No. 67( Physically Handicap) and 101 (Partially Deaf) available on 27.03.2006 and 1.08.2007 respectively were kept vacant.

11. The Section 36 of the said Act reads as under:

*“36. Vacancies not filled up to be carried forward – Whether in any recruitment year any vacancy under section 33, cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may first be filled by interchange among the three categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability: Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed the vacancies may be interchanged among the three categories. ”*

The Roaster Point No. 67 was vacant in the year 2006 and was meant for Orthopedic Disabled Person and in case of non-availability of person with such disability or for any sufficient reason, should have first carried forward to succeeding year and in case of non-availability of such particular employee in the

succeeding year, it should have been filed amongst the three categories and thereafter was open for open category.

12. It is clear that the Roaster Point No. 67 was available on 27.03.2006, as well as, Roaster Point No. 101 was also available on 01.08.2007. If the Applicant became eligible, he should have been considered as per the provisions of Section 36 of the said Act by the DPC irrespective of a pending Departmental Enquiry against the Applicant. As per the procedure, his candidature should have been considered and the result should have been kept in the sealed cover. In case the Applicant is exonerated later, he should have to be given promotion with retrospective effect. In view of above following orders are issued :

**ORDER**

1. The Original Application is allowed with no cost to either of the parties.
2. The Respondents are directed to reconvene the DPC for the year 2008/2009 within a period of three months from the date of this order as per the provisions of the Act as detailed above and if the Applicant is found fit, he should be granted deemed date of promotion with all consequential benefits.

**MEMBER (A)**

**VICE CHAIRMAN**