

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 949 OF 2012

DIST. : BEED

Mr. Namdeo Dudhajirao Waghmare,
Age. 58 years, Occ. Senior Clerk (now retired),
In the office of Minor Irrigation,
Sub Division, Kaij, Dist. Beed.
R/o Vikelwadi, Kaij.

--

APPLICANT

VERSUS

1. The State of Maharashtra,
Through the Presenting Officer,
Maharashtra Admn. Tribunal Mumbai,
Bench at Aurangabad,
AURANGABAD.
2. The Secretary,
Water Resources Department,
Mantralaya, Mumbai.
3. The Superintending Engineer,
Vigilance Squad, Aurangabad Circle,
Irrigation Department, Aurangabad.
4. The Superintendent Engineer,
Beed Irrigation Circle,
Parli . Vaijnath, Dist. Beed.

--

RESPONDENTS

APPEARANCE : Shri J.B. Choudhary, learned Advocate for
the applicant.
: Smt. Resha Deshmukh, learned Presenting
Officer for respondent nos. 1 & 2.
: Shri G.N. Patil, learned Advocate for
respondent nos. 3 & 4.

**CORAM : HON'BLE SHRI J. D. KULKARNI,
MEMBER (J)**

DATE :- 20th December, 2016

J U D G M E N T

1. This original application has been filed for directions to the res. nos. 2 & 3 to pay him arrears of pay and allowances from the deemed date of promotion granted to him i. e. w.e.f. 3.12.1986 to 2002 as the same has not been granted to the applicant by res. no. 2 vide impugned order dated 28.11.2011.

2. The applicant got retired from the service as a Sr. Clerk in the year 2011. He was working in the office of the Sub Divisional Engineer, Minor Irrigation Sub Division Kaij at the time of his retirement. He was initially appointed on 19.3.1988 as a Jr. Clerk and was promoted as a Sr. Clerk on 17.1.2002. Since the applicant was qualified for being promoted in the year 1986, he filed O.A. no. 27/2009 before this Bench of the Tribunal. In the said O.A. an order was passed on 17.2.2009, whereby the res. no. 2 was directed to take an appropriate decision on the representation filed by the applicant on 31.10.2008 as expeditiously as possible and preferably within three months from the passing of the said order. In view of that the applicant was promoted on ad-hoc basis on 17.1.2002.

3. The applicant was promoted on ad-hoc basis on the post of Sr. Clerk on 17.1.2002. The said ad-hoc promotion was regularized vide order dated 31.3.2011. The applicant then filed representation for deemed date of promotion from 3.12.1986. His said request was

accepted and he was given deemed date of promotion from 3.12.1986, however, the res. no. 1 was pleased to refuse the arrears of pay and allowances to the applicant from the date of deemed date of promotion till the date of actual promotion. The said order dated 28.11.2011 refusing to grant arrears to the applicant has been challenged by the applicant in this O.A. The impugned order dated 28.11.2011 reads as under :-

प्रमाण :-

अधिकांक अभियंता व परिमंडलीय अधिकारी, दक्षता पथक, औरंगाबाद यांना त्यांचे पत्र जा.कं. परिमंडळ/आस्था-५/१५०, दिनांक ९.९.२०११ व जा. कं. परिमंडळ/आस्थापना-५/१०८०/१, दिनांक ११.१०.२०११ च्या पत्रांच्या अनुषंगाने खालीलप्रमाणे कळविण्यांत येत आहे.

२. श्री. ना.दु. वाघमारे यांचा दिनांक १८.१.२०११ रोजी झालेल्या परिमंडलीय बैठकीत वरिष्ठ लिपिक पदाची दि. १७.१.२००२ पासूनची पदोन्नती नियमित करण्यांत आली आहे. मात्र श्री. वाघमारे (अ.जा.) यांना सेवा कनिष्ठ असलेले श्री. ए.एन. उबाळे (अ.जा.) वरिष्ठ लिपिक यांना दिनांक ३.१२.१९८६ रोजी वरिष्ठ लिपिक पदावर पदोन्नती मिळालेली आहे.

३. ही वस्तुस्थिती विचारात घेता श्री. वाघमारे, वरिष्ठ लिपिक यांना श्री. उबाळे, वरिष्ठ लिपिक यांचा वरिष्ठ लिपिक पदावरील पदोन्नतीचा दिनांक ३.१२.१९८६ हा मानीव दिनांक देण्यास प्रस्तुत जापनाव्यये मान्यता देण्यात येत आहे.

४. श्री. वाघमारे यांनी प्रत्यक्ष वरिष्ठ लिपिक पदावर काम न केल्याने सदर मानीव दिनांक कोणत्याही आर्थिक थकबाकीसाठी लागू रहाणार नाही.

सदर झापन शासन निर्णय क्रमांक एसआरव्ही-२००२/प्र.क्र.२/१२,
दि. ६.६.२००२ अन्वये प्रशासकीय विभागांना पदान करण्यात आलेल्या
अधिकारानुसार निर्गमित करण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने.

सहि/-
(द.अ. शिंदे)
अवर सचिव, महाराष्ट्र शासन+

4. The applicant is challenging only clause no. 4 of the impugned order dated 28.11.2011 and submits that the respondents ought to have granted arrears of pay and allowances to the applicant from the date of deemed date of promotion i. e. from 3.12.1986.
5. The res. nos. 1 & 2 have filed affidavit in reply. It is stated that the applicant has actually not worked on the promotional post of Sr. Clerk w.e.f. 3.12.1986 and, therefore, he cannot be granted such arrears of pay and allowances as per rule 32 of M.C.S. (General Condition of Services) Rules, 1981. It is stated that this point has been decided by this Tribunal in **O.A. no. 651/2007 (SHIVAPPA NARAPPA WAJGE VS. THE STATE OF MAHARASHTRA & ORS.)** by the judgment dated 21.1.2008 (Exh. R.2 paper book pages 31 to 45).
6. The res. nos. 3 & 4 have also filed common affidavit in reply and resisted the claim of the applicant.

7. Heard Shri J.B. Choudhary, learned Advocate for the applicant, Smt. Resha Deshmukh, learned Presenting, Officer for respondent nos. 1 & 2 and Shri G.N. Patil, learned Advocate for respondent nos. 3 & 4. I have perused the application, affidavit, separate affidavits in replies of the respondent nos. 1 & 2 and 3 & 4 and various documents placed on record.

8. The only material point to be considered in this O.A. is whether the impugned order dated 28.11.2011 refusing arrears of pay and allowances from the date of deemed date of promotion i. e. w.e.f. 3.12.1986 till the actual date of promotion granted to the applicant is legal and proper ?

9. As already stated, the applicant was actually promoted to the post of Sr. Clerk on 17.1.2002. He submitted that one Shri A.N. Ubale was junior to the applicant and said Shri Ubale was promoted as a Sr. Clerk on 3.12.1986 and, therefore, the applicant shall be given deemed date of promotion w.e.f. 3.12.1986. Vide impugned order dated 28.11.2011, the claim of the applicant for grant of deemed date 3.12.1986 has been accepted by the respondents and it has been stated that the applicant shall be deemed to have been promoted on the post of Sr. Clerk w.e.f. 3.12.1986, however, it is also mentioned that, since the applicant has not actually worked as Sr. Clerk from the date of grant of deemed date of promotion, he will not be entitled to any arrears of pay and allowances. The learned Advocate for the applicant submits that this condition that the

applicant is not entitled to arrears of pay and allowances from grant of deemed date of promotion i. e. from 3.12.1986 till the date of actual promotion is illegal.

10. The learned P.O. has invited my attention to the judgment of this Tribunal in similar circumstances in **O.A. no. 651/2007** (Exh. R.2 paper book pages 31 to 45) (supra). This judgment has been delivered by this Tribunal on 21.1.2008. In the said case also the State Govt. came with a case that as per the provisions of rule 32 of M.C.S. (General Condition of Services) Rules, 1981, an employee is not entitled to claim arrears, since the said employee has not actually worked on the promotional post. This Tribunal was pleased to observe in para 13 to 16 as under :-

¶3. We have considered the statement made by the applicant in his representation submitted to the authorities where he stated that he assumed the additional charge of Sr. Dafter Karkoon post, when he was discharging his duty as Jr. Dafter Karkoon. But by giving additional charge of the higher post or promotional post that cannot be compared or equated with the granting of actual promotion, it only shows that the applicant was given additional charge of the post of Sr. Dafter Karkoon when he was working as Junior Dafter Karkoon. The applicant for that matter certainly had received remuneration or additional allowance for holding the additional charge but that fact cannot be considered as regular promotion of Sr. Dafter Karkoon and he can claim the arrears on that count. No doubt he was not promoted when his Junior was promoted to the post of Sr. Dafter Karkoon and for that

matter now the State Government having realized that denial of promotion to the applicant was on misreading of the Rules, then exists, and therefore, the action of the Government not promoting the applicant cannot be called as illegal, but that was on account of misinterpretation or misreading of the relevant Rules.

14. As the Government now has realized its mistake and, therefore, having regard to the provisions of Rule 32 the deemed date of promotion to the applicant in the Cadre of Sr. Daftar Karkoon was assigned as 4.12.1971. Thus, State Government is justified in directing that the deemed date be taken for the purpose determining the applicant's pension only. As the applicant has not actually worked on promotional post of Sr. Daftar Karkoon, as such he is not entitled for the pay and allowances of the said post i. e. Sr. Daftar Karkoon, having regard to the Rules, in our opinion, the applicant is not entitled for actual salary of the higher / promotional post. Even on the well known principle of ~~No~~ No Work No Pay+ and applying it to the present case, as the applicant has not worked actually on the promotional post, he cannot claim that the Government should have given arrears of difference of pay and allowances after determining his pay in the cadre of Sr. Daftar Karkoons on the basis of deemed date of promotion.

15. In our view, the action of the State Government of assigning deemed date being consonance with Rule 32, thus, the applicant is not entitled for the relief as sought for. No doubt there is considerable delay on the part of the State Government to take decision in determining the question of

assigning deemed date of the applicant, but the applicant is also equally responsible for that matter. If the applicant was diligent about his right, to claim promotion to the post of Sr. Daftar Karkoon, he should have rush to the Court when he was superceded and Shri R.V. Jadhav though junior to him was promoted in the year 1971. For not taking prompt step, he should blame himself and for that matter no relief can be granted.

16. With the above observations and reasons original application stands dismissed with no order as to costs.+

11. The aforesaid judgment was assailed by applicant therein before the Hon^{ble} Bombay High Court, Bench at Aurangabad in W.P. no. 7631/2008 and Hon^{ble} High Court vide judgment and order dated 29.7.2011 was pleased to dismiss the said writ petition filed by the applicant therein and the order passed by the Tribunal in O.A. was confirmed.

12. The learned Advocate for the applicant submits that the Government of Maharashtra has issued one Circular dated 25.2.1965, copy of which is placed at paper book page 22 and another Circulars dated 26.11.1976 & 24.10.1979 respectively (paper book page 23) and as per the said Circulars, if the deemed date of promotion is granted, the employees are held eligible for arrears of pay and allowances from such date. The relevant Circulars have been issued long back and were having limited scope. This Tribunal has already discussed rule 32 of

M.C.S. (General Condition of Services) Rules, 1981 in O.A. no. 651/2007, as already stated.

The reliance is also placed by the learned Advocate for the applicant on the Government Circular dated 11.6.1993. On going through the said Circular, it seems that, the said Circular is not applicable to the present set of facts.

13. In the present case, the applicant actually has not worked on the promotional post till he was promoted on ad-hoc basis in the year 2002 and subsequently on regular basis. The deemed date of promotion can be considered only for the purpose of seniority and other pensionary benefits and not for arrears of pay and allowances. I, therefore, do not find any illegality in the impugned order dated 28.11.2011 passed by the res. no. 1. In view of the discussion in foregoing paragraphs, I pass the following order :-

ORDER

The O.A. No. 949/2012 stands dismissed. There shall be no order as to costs.

MEMBER (J)