

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 918 OF 2012

DIST. : AURANGABAD

Subhash Kondiba Paralikar,
Aged 58 years, Occu. Service,
Head Draftsman,
Office of the Chief Engineer,
Water Resources Department,
Aurangabad.

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APPLICANT

V E R S U S

1. The State of Maharashtra,
Through Secretary,
Irrigation Department,
Mantralaya, Mumbai - 32.

(copy to be served on the C.P.O.,
M.A.T., Aurangabad)

2. The Superintending Engineer,
Vigilance Unit,
Aurangabad Irrigation Circle,
Aurangabad.
3. Mr. M.R. Khan,
Retired Draftsman,
Juna Bazar, Near Adv. Mr. Ansari
Near Tahsil Office,
Main Post Office Road,
New Anti Corruption Office,
Aurangabad.

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RESPONDENTS

APPEARANCE : Smt. Suchita Dhongde (Upadhyay), learned
Advocate for the applicant.

: Smt. Resha S. Deshmukh, learned Presenting
Officer for respondents.

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

J U D G M E N T

{Delivered on 9th day of December, 2016}

1. The applicant was appointed as a Tracer on 13.9.1977. He belongs to Scheduled Tribe (S.T.) category. In September, 1984, the applicant passed the departmental eligibility test. His services are governed by Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 and particularly as per rule 4 (1) and (2) thereof. The seniority list of the Tracers has been published on 1.1.1986 in which the applicant has been shown from S.T. category. The meeting of the Departmental Promotion Committee (for short D.P.C.) was conveyed in August, 1986 and some Officers were promoted as Assistant Draftsmen, but the applicant was not considered for the said promotion. The applicant has, therefore, filed representation however no action for his promotion was taken. According to the applicant, his name has been shown at sr. no. 65 in the seniority list of Tracers and, therefore, he ought to have been promoted as Assistant Draftsman in the year 1986. The applicant was qualified for the said post in the year 1985 itself however, the candidates from sr. nos. 96 to 106 in the seniority list, who belong to Open Category, are shown to be promoted as Assistant Draftsman. Similarly, 01 candidate from O.B.C. category, 2 candidates from S.C. category and 8

candidates from Open category were promoted, but the applicant's claim was not considered.

2. The applicant's representation was forwarded to the Superintending Engineer, Vigilance Cell, Irrigation Division, Aurangabad on 6.9.2000 by the Superintending Engineer & Director, Irrigation Research & Development, Pune. Vide letter dated 24.10.2001 of the Govt. the applicant was informed that, the services rendered by him prior to selection by the Selection Board cannot be taken into consideration as per the Circular of the G.A.D. dated 24.3.1972. Thereafter, the Superintending Engineer, Vigilance Cell, Irrigation Division, Aurangabad was asked to submit a fresh proposal.

3. According to the applicant, the Govt. of Maharashtra vide letter dated 10.11.2006 has informed all the Head of the Departments to consider the reservation at every stage in regards to promotion as per the directions given by Hon^{ble} the Supreme Court. Accordingly on 30.11.2006, the Desk Officer of the Government of Maharashtra sought information regarding the applicant's request for deemed date of promotion on 3 points as per the letter dated 30.11.2006 (Annex. H). The information was accordingly supplied on 3.12.2008, wherein it was informed that, no candidate from S.T. category was given promotion on 26.6.1986 as such candidate was not available at that point of time and, therefore, the candidates from Open category viz. S/shri K.V. Sable, M.R.

Khan and P.D. Selmohakar were promoted. However, the copy of the minutes of the meeting of the D.P.C. dated 26.6.1986 is not available. It is stated by the applicant that the candidates from S.T. were available and were also eligible for promotion to the post of Assistant Draftsmen when meeting of D.P.C. was held on 26.6.1986, but the claim of the applicant has been ignored. The applicant was finally promoted as Assistant Draftsman on 2.9.1996. The applicant is, therefore, claiming directions to the respondents to grant him deemed date of promotion as Assistant Draftsman from 26.6.1986 with all consequential benefits including arrears of pay and allowances and consequential further promotions and other consequential benefits.

4. The respondent nos. 1 & 2 have resisted the claim. They admitted that the applicant was appointed as a Tracer on 13.9.1977 and he passed the departmental examination in the month of September, 1985. It is admitted that, he was promoted as a Assistant Draftsman on 2.9.1996, as Draftsman on 3.1.2001 and as a Head Draftsman on 22.5.2009. It is also accepted that the applicant filed representation. So far as the candidates at sr. nos. 96 to 106 in the seniority list of the cadre of Tracers, it is stated that all the candidates are from Open category are senior to the applicant. It is stated that the applicant has not filed any representation in the year 1986 when cases of other candidates were considered for promotion, but he has filed representation in the month of August, 2000.

5. The respondents submitted that, no candidate for S.T. category was available in the year 1986 when the D.P.C. meeting was held for considering the cases of the eligible candidates for promotion to the post of Assistant Draftsman. As regards providing of information that ~~as~~ no candidate from S.T. category was available~~q~~ It is stated that ~~it~~ is not clear that who and why that information was given to the Govt. by the Zonal Office vide letter dated 3.12.2008 (Exh. R.8)~~q~~and it is further stated by the respondents that it might be a mistake of the Zonal Office. As regards representation filed by the applicant, it is stated that legal notice of the applicant was received through Advocate Shri Bhumkar regarding deemed date of promotion on 6.5.2011 and the Govt. has instructed vide letter dated 22.5.2011 to submit deemed date proposal as per G.R. of the G.A.D. dated 6.6.2002. It is further stated that in compliance of the said letter revised proposal for deemed date of promotion will be kept before the D.P.C. (Water Resources Department, Aurangabad) Aurangabad Zone, Aurangabad and if the said proposal found suitable, it will be submitted to the Govt. for further action.

6. From the facts emerge as above, it seems that, there is no dispute of the fact that the D.P.C. meeting was held on 26.6.1986 to consider the cases of the candidates eligible for promotion to the post of Assistant Draftsman from the post of Tracer and the case of the applicant was not considered. The minutes of the meeting of the DPC are not available as it is stated that the matter being old one, the record is not available.

7. The Superintending Engineer, Vigilance Cell, Irrigation Division, Aurangabad has issued a letter to the Secretary, Water Resources Department, Mantralaya, Mumbai on 3.12.2008, copy of which is at Exh. I paper book page 23. In the said letter it is mentioned as under :-

मुद्दा कं. १ :- सादर करण्यात येते कि, दिनांक २६.६.१९८६ रोजी अ. जमातीच्या प्रवर्गातील कर्मचा-यांना पदोन्नती देण्यासाठी सादर प्रवर्गातील, कर्मचारी उपलब्ध नव्हते. असे या कार्यालयाचे दिनांक १०.४.२००१ च्या पत्रान्वये शासनास सादर करण्यात आले आहे. तसेच खुल्या प्रवर्गातील (१) श्री. के.व्ही. साबळे (२) श्री. एम.आर.खान (३) श्री. पी.डी.सेलमोहकर, अनुरेखकांना दिनांक २५.६.१९८६ रोजी पदोन्नती देण्यात आली आहे. सोबत सादर आदेशाची प्रत सादर करण्यात येत आहे.

मुद्दा कं. २ :- सन १९८६ मध्ये झालेल्या निवड समितीच्या बैठकीचा कार्यवृत्तांत जुना असल्यामुळे उपलब्ध होत नाही. तथापि निवडसूचीची प्रत सुलभ संदर्भासाठी सविनय सादर करण्यात येत आहे.+

8. From the aforesaid circumstances, it is clear that the applicant was not considered for promotion to the post of Assistant Draftsman in the meeting of D.P.C. dated 26.6.1986 on the ground that, no candidate from the S.T. category was available, though it is a fact that the applicant belongs to S.T. category and he was available. Considering the non-availability of S.T. candidates, 3 candidates from Open category were promoted. The minutes of the meeting of the D.P.C. dated 26.6.1986 are not available.

9. Vide order dated 20.7.2016 passed by this Tribunal in M.A. no. 291/2011 in O.A. no. 918/2012, the learned P.O. was directed to file additional affidavit in reply making clear the facts as to how the information was given to the Govt. as regards non-availability of the S.T. category candidates and how such mistake was committed and who has committed such a mistake. It was also asked to state in the said affidavit whether the applicant was being eligible for consideration for promotion in the year 1986 and whether his case was considered and if no, why it was not considered ?

10. In view of the aforesaid order, the res. nos. 1 & 2 have filed additional affidavit in reply on 22.11.2016. It is stated that the name of the applicant in the seniority was at sr. no. 266, whereas S/shri M.R. Khan and P.D. Selmohakar were not junior to the applicant and that they were from Open category. It is further stated that in the year 1985, neither the record of eligible candidates for promotion from S.T. category nor their C.Rs. were available in the Zonal Office and, therefore, names of such eligible candidates from S.T. category were not communicated to the res. no. 1. As regards letter dated 3.12.2008, it is stated that it has been communicated by the answering respondent that on 26.6.1986 no eligible candidates for promotion from S.T. category was available.

11. It is further stated by the respondents that, in the year 1994 out of 156 total posts, 13 posts were belonging to S.T. candidates and the

backlog of S.T. candidates was fully filled from some S.C. category candidates as the said backlog was exchangeable. As regards present applicant, it is stated that, during his entire service tenure, he has enjoyed all promotional posts and promoted on the higher posts as per the seniority and no single candidate junior to the applicant is promoted to the higher post superseding the applicant. Therefore, question of granting deemed date of promotion to the applicant does not arise.

12. From the aforesaid additional affidavit in reply it seems that the respondents have smartly tried to ignore the directions issued by the Tribunal in the order dated 20.7.2016 as mentioned above. The direction of the Tribunal was whether the applicant was eligible for promotion to the post of Assistant Draftsman from S.T. category and whether his claim was put up before the D.P.C. on 26.6.1986 ?

13. From the circumstances, already discussed hereinabove, and from the letter dated 3.12.2008 it is clear that the applicant's case was not considered in the D.P.C. meeting dated 26.6.1986 on the ground that no S.T. candidate was available for being considered for promotion, though it is a fact that the applicant was very much available on the said date.

14. The learned Advocate for the applicant invited my attention to G.R. dated 6.6.2002 issued by the G.A.D. as regards promotion to be given to the employees and strict compliance of the directions as regards to the employees belonging to backward class. It seems that the applicant's

name has not been considered on the ground that, no S.T. candidate was available. Had his name been considered in the D.P.C. meeting dated 26.6.1986, the possibility of he being promoted could not be ruled out. Considering these aspects, I pass following order :-

ORDER

- (i) The O.A. no. 918/2012 is partly allowed.
- (ii) The respondents are directed to call meeting of the D.P.C. and to consider the case of the applicant as to whether he could be given deemed date of promotion as claimed by him.
- (iii) If the new D.P.C. found the applicant eligible for grant of deemed date of promotion, consequential benefits also be granted to the applicant.
- (iv) The above exercise shall be completed by the respondents within a period of 3 months from the date of this order and the result thereof be communicated to the applicant in writing.

There shall be no order as to costs.

MEMBER (J)

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

MISC. APPLICATION NO. 291 OF 2011
IN
ORIGINAL APPLICATION NO. 918 OF 2012

DIST. : AURANGABAD

Subhash Kondiba Paralikar,
Aged 58 years, Occu. Service,
Head Draftsman,
Office of the Chief Engineer,
Water Resources Department,
Aurangabad.

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VERSUS

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RESPONDENTS

APPEARANCE : Smt. Suchita Dhongde (Upadhyay), learned
Advocate for the applicant.

: Smt. Resha S. Deshmukh, learned Presenting Officer for respondents.

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

J U D G M E N T

{Delivered on 9th day of December, 2016}

1. Heard Smt. Suchita Dhongde (Upadhyay), learned Advocate for the applicant and Smt. Resha S. Deshmukh, learned Presenting Officer for respondents.
2. M.A. No. 291/2011 has been filed by the applicant for condonation of 4 years, 11 months and 17 days delay in filing O.A. before this Tribunal.
3. Perused the application. Considered the contentions.
4. For the reasons states in the M.A., the same stands allowed and the delay of 4 years, 11 months & 17 days caused in filing the O.A. is condoned in the interest of justice and equity.
5. The M.A. stands disposed of. There shall be no order as to costs.

MEMBER (J)