

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION NO.362/2015
AND
ORIGINAL APPLICATION NO.413/2014.

1. Hemraj Nilkanthrao Dhande,
Aged about 35 years,
Occ- Service,
R/o Lakhni, Distt. Bhandara.
2. Omprakash Vasanttrao Gahukar,
Aged about 38 years,
Occ- Service,
R/o Mohapa, Tq. Kalmeshwar,
Distt. Nagpur.

Applicants.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Agriculture,
Mantralaya, Mumbai-32.
2. The Joint Director of Agriculture,
Nagpur Division, Nagpur.
3. Digambar Vaikunthrao Thakre,
Agriculture Officer, Mandal Agri. Office,
Gondia.
4. Virag Anandrao Deshmukh,
Agriculture Officer, Mandal Agri. Office,
Salekasa, Distt. Gondia.
5. Sandip Vitthalrao Pahapale,
Agriculture Officer, Mandal Agri. Office,
Po - bhurna, Distt. Chandrapur.

6. Vilas Hemant Gawande,
Agriculture Officer, Mandal Agri. Office,
Nagbhid, Distt. Chandrapur.

Respondents.

Shri N.R. Saboo, Ld. counsel for the applicants.
Shri A.P. Sadavarte, Ld. P.O. for the respondent Nos. 1 and 2.
Shri S.C. Deshmukh, Ld. Advocate for respondent Nos.4, 5 & 6.
None for respondent No.3.

Coram:- B. Majumdar, Vice-Chairman and
S.S. Hingne, Member (J)

Dated:- 22nd March, 2016.

Order

29th

Per:Member (J)

The C.A. is filed to dispose of the O.A. in the light of communication dated 3.9.2015 issued by the Commissioner of Agriculture (M.S.), Pune, regulating the seniority issue.

2. The applicants are Agriculture Assistants. The respondent Nos. 3 to 6 are promoted as Agriculture Supervisors vide order dated 26.2.2014. The applicants claimed that they are junior to the applicants. Hence, their promotion orders be quashed and the applicants be promoted and placed above them.

3. The respondent-department has committed some irregularities while preparing the seniority list and, therefore, same were changed from time to time. Based on the said seniority list, respondent Nos. 4 to 6 were given promotion as Agriculture Supervisors. According to the applicants, they are senior to those respondents. But, the respondents are wrongly given promotion as per the seniority, is not properly dealt with.

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4. The Commissioner of Agriculture (M.S.), Pune on 3.9.2015 issued communication to the Joint Director of Agriculture, Nagpur (R.2) informing that the correspondence is made with the G.A.D. and as per guidelines to fix the seniority on the point at stake and new seniority list be prepared as per those guidelines. The Joint Director of Agriculture, Nagpur (R.2) has to act on it and prepare a fresh seniority list as per those guidelines and keeping the legal provisions of the M.C.S. (Regulating of Seniority), Rules, 1982 in mind.

5. In this changed situation, applicants have filed C.A. to dispose of the O.A. on the basis of that communication dated 3.9.2015. However, respondent Nos. 4 to 6 have objected on the ground that they are already promoted vide order dated 26.2.2014 and, therefore, objected to dispose of the O.A. Perusal of the promotion order (P.56, A-1), evinces that the order is on *ad-hoc* basis for eleven months or until further orders and the employee will not get the seniority on this basis.

6. It is worthwhile to note that the seniority is a sensitive issue and the dockets of the Tribunal are flooded with such matters. Needless to mention that the Tribunal cannot issue of fixing seniority list from all the angles, because the entire data cannot be available. In the communication dated 3.9.2015, it is specifically mentioned that all the guidelines, instructions and legal provisions will be considered and

the seniority of all the employees will be determined. Under such circumstances, it will not be proper to decide the inter se seniority issue of these litigants only, which will be again subject to the final conclusion made by the department. Under such circumstances, it will be a futile exercise to proceed with and decide the matter on merit. It is always benefitted^{cial} in the circumstances to leave such aspect to the department to decide effectively and completely.

7. The learned counsel for the applicants urged that the applicants are already working on the promotional posts, but that will be subject to the preparation of fresh final seniority list which may affect them adversely. However, the respondents if aggrieved thereby, can ventilate their grievance by taking available recourses. Anyhow, fact remains that when the department wants to consider and finalize the issue of seniority of the employees, there is no point to proceed with the O.A. Consequently, the C.A. stands allowed and the O.A. is disposed of in the light of above observations.]

sd/-
(S.S.Hingne)
Member (J)

sd/-
(B.Majumdar)
Vice-Chairman

pdg

⊗ para 7 is modified, as on next page.

(7) In the original O.A. the applicants prayed to set aside the promotion of the respondent nos. 3 to 6 and to grant the promotion to the applicants. The learned Advocate Mr. Saboo submits that since the seniority list is to be prepared afresh as per communication dated 3-9-2015, the O.A. can be disposed of by giving direction as prayed in the C.A.

Mr. Deshmukh, Id. Advocate for R-4 to 6 submits that there is no reason to set aside the promotion of R-3 to 6. Mr. Sadavarte, Id. P.O. submits that the promotional posts to be filled from nomination quotas are vacant. Under such circumstances, the O.A. can be disposed of without demoting R-3 to 6 by giving temporary promotion to the applicants, if they are otherwise eligible, on par with R-3 to 6 without determination the issue of the seniority.

In preparing new seniority list, all the aspects will be considered afresh and the seniority of the applicants and respondents may be changed. However, the parties if aggrieved thereby are at liberty to ventilate the grievance on publication of the fresh seniority list. The learned advocate Mr. Saboo urged that the respondents though junior are promoted but not the applicants. This promotion is temporary and since the candidates by nomination are not available. It is submitted by the learned P.O. that some promotional posts are vacant. As such, the applicants can be promoted on temporary basis on par with respondent nos. 4 to 6 without determining their inter-se seniority. There is also no reason to deprive them of such benefits when promotion is given to the juniors. Consequently, the C.A. is allowed and the O.A. is disposed of with the direction to promote the applicants on temporary/ad-hoc basis on par with respondents nos. 4 to 6 if they are otherwise eligible. It is made clear that this temporary promotion will not create any equity in applicants favour. The issue of

regular promotion will be based on fresh seniority list. The order of promotion of applicants be complied within three months, from date of receipt of this order. No order as to costs.

Order dated 31/03/2016 -

Heard Shri N.R.Saboo, Id. counsel for the applicants, Shri A.P. Sadavarte, Id. P.O. for R-1 & 2 and Shri S.C.Deshmukh, Id. counsel for R-4,5 & 6. With the consent of Id. counsel for parties the speaking to minutes are issued and para 7 is modified as above.

sd/-

(S.S.Hingne)
Member (J)

sd/-

(B.Majumdar)
Vice Charman.