

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
AURANGABAD BENCH, AURANGABAD**

**MISC. APPLICATION NO. 242 OF 2016
WITH
ORIGINAL APPLICATION NO. 684 OF 2015**

DISTRICT : AHMEDNAGAR

Shri Subhash S/o Jethmal Bafana,
Age : 62 years, Occ. : Retired
R/o 13, Lalgulab Colony, Pipeline Road,
Ahmednagar.

....APPLICANT

VERSUS

1. The State of Maharashtra,
Its Secretary, Revenue and Forest Department,
Mantralaya, Mumbai-32.
(copy served on the P.O. in M.A.T.
Bombay Bench at Aurangabad)
2. The Settlement Commissioner &
Direction of Land Records,
Maharashtra State, Pune-1.
3. The Deputy Director of Land Records,
Nashik Region, Nashik.
4. The Superintendent of Land Records,
Ahmednagar, Dist. Ahmednagar.

.....RESPONDENTS

APPEARANCE : Shri B.V. Thombre, learned Advocate for the
Applicant.

: Shri V.R. Bhumkar, learned Presenting
Officer for the Respondents.

**CORAM: HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN (A)
AND
HON'BLE SHRI J.D. KULKARNI, MEMBER (J)**

DATE : 21.10.2016

ORDER**(Per : Shri J.D. Kulkarni, Member (J))**

1. O.A. No. 684/2015, has been filed by the applicant for relief that the letter/order dated 22.9.2014, issued by the Official Superintendent, Deputy Director of Land Records, Nashik Region, Nashik be quashed and set aside and further for appropriate order/directions be issued to the respondents no. 1 to 4 to grant benefits of promotion along with all consequential benefits such as arrears of pay, increments etc. to the applicant, since the date he is entitled to. It is further claimed that considering the confidential reports and the list of seniority the benefit of promotion may be granted to the applicant since 1.6.2006 and further that the representations filed by the applicant on 25.09.2007, 11.06.2012, 10.10.2011 and 20.02.2012 be decided within a reasonable time.

2. The applicant joined service as Copying Clerk/Utara Clerk on 9.11.1978. He has completed 12 years of continuous service on 9.11.1990 and has also passed departmental eligibility examination in the year 1994. He was promoted to the post of Copying Clerk/Utara Karkoon/Nimtandar/ Maintenance Surveyor on 1.5.2003. On 25.9.2007, he made an application for first promotion on the post of Headquarter Assistant. However, he was

found eligible for promotion by the Divisional Promotion Committee, Nasik Division, Nasik, on 21.05.2011. He again filed application for promotion on the next post on 10.10.2011. In the mean time, he came to be retired on superannuation from the post of Maintenance Surveyor from the office of Deputy Superintendent of Land Records Sangamner, Dist. Ahmednagar on 31.12.2011. He has served for 33 years in the department.

3. According to the applicant, the respondents granted promotion to the junior employee of the applicant but denied the same to the applicant. Vide communication dated 22.9.2014, the claim for promotion was rejected and this impugned communication is challenged in this O.A.

4. The respondents Nos. 2 to 4 have resisted the claim of the applicant by filing affidavit in reply and denied the applicant's claim.

5. The applicant has filed M.A. No. 242/2016, for urgent hearing of his O.A. No. 684/2016, since the O.A. is being heard on merits, the said M.A. stands disposed of accordingly.

6. The learned Advocate for the applicant submits that Smt. Smita Zodhapkar, was his junior and she was promoted but the applicant was neither promoted nor benefit of time bound

promotion was given to him. On the contrary, his claim was rejected vide impugned communication dated 22.09.2014.

7. We have perused the communication dated 22.9.2014, from which it seems that the applicant's work was not satisfied and he was not found fit for promotion. It is further stated that the applicant was undergoing punishment in the year 2007 and therefore, he was not found fit for promotion. The relevant communication giving details as to why the applicant was not promoted is as under:-

“ उपरोक्त विषया बाबत संदर्भीय अर्जांन्वये आपण सन २००६ पासूनची पदोन्नती देणे बाबत व वर्ग २ चे वेतन मिळणे बाबत अर्ज सादर केला आहे.

याबाबत आपणास कळविणेत येते की, सन २००६ ते सन-२०१० पावेतो नाशिक विभागात वेळोवेळी घेतलेल्या पदोन्नती समितीच्या बैठकीत आपली एकत्रित सरासरीची प्रतवारी पदोन्नती देण्याइतपत समाधानकारक आढळून न आल्याने आपणांस पदोन्नती समितीने अपात्र ठरविले आहे. तसेच नाशिक विभागातील पदसमूह २ संवर्गात पदोन्नती देणेकामी विभागीय पदोन्नती समितीची बैठक दिनांक २१.५.२०११ रोजी घेण्यात आली होती. सदर समितीच्या बैठकीत आपणांस पात्र ठरविण्यात आले होते मात्र जिल्हा अधिक्षक भूमि अभिलेख, अहमदनगर यांचे कडील क्र./वै श्री बाफना/शिस्तभंग/२३/२००६ दिनांक १७.४.२००७ चे आदेशान्वये आपण त्या दिवशी पदोन्नतीसाठी पात्र व्हाल तेव्हा पासून १ वर्षाकरिता आपली पदोन्नती रोखून ठेवावी असे आदेश पारित करण्यात आलेले आहे. त्यामुळे आपण शिक्षा अंमलाखाली असल्यामुळे आपणांस नियुक्तीचे आदेश पारित करण्यात आले नव्हते. शिक्षा अंमल संपुष्टात येण्या पूर्वीच आपण दिनांक ३१.१२.२०११ रोजी नियतवयोमानाने सेवानिवृत्त झालेले असल्याने आपणांस पदोन्नती देण्याचा प्रश्न उद्भवत नाही. तसेच आपणांस यापूर्वीही या कार्यालयाकडून दिनांक २३.२.२०१२ चे पत्रान्वये कळविले आहे. त्यामुळे संदर्भीय अर्जांनुसार सन २००६ पासून

*पदोन्नती व वर्ग २ चे वेतनाचे लाभ देणे बाबतची विनंती मान्य करता येत नाही.
सबब आपला संदर्भीय अर्ज विना कार्यवाही निकाली ठेवणेत आला आहे.”*

8. The only material point to be decided in this case is whether the impugned communication dated 22.9.2014 is legal and proper?

9. The learned Presenting Officer invited our attention to the reply affidavit filed by the respondents. In the said affidavit, the respondents have stated that the Departmental Promotion Committee meeting was held on 24.05.2006 and in the gradation list of Group-3, the applicant stood at Sr. No. 63. The A.C.Rs. of the applicant's from 2001 to 2006 were considered and the aggregate gradation of Confidential Reports of the applicant was not satisfactory for promotion and therefore, the applicant was not found fit for promotion.

10. Reply affidavit further states that in the 2007 and 2008 again applicant's case was considered for promotion and it was noticed that his confidential reports were unsatisfactory and he was not found fit for promotion. It is stated that the applicant is claiming that one Shri Sandeep Udhavpuri Gosavi, Maintenance Surveyor in the office of Deputy Superintendent of

Land Records, Navasa, was junior to him but he belongs to NT-B category.

11. It further reveals from the reply affidavit that in the year 2009, the meeting of the Departmental Promotion Committee was held on 7.10.2009. In the year 2010, the applicant was at Sr. No.4 and here also the confidential reports were found unsatisfactory and he was declared disqualified for promotion. Thereafter, in the year 2011, i.e. on 25.05.2011 meeting of the Departmental Promotion Committee was held and the applicant was found eligible for promotion. However, it was noticed that the applicant was undergoing punishment in the Departmental Enquiry vide order dated 17.04.2007. As per said punishment whenever applicant Shri Subash Jethmal Bafana becomes eligible for promotion, his promotion should be held for one year. In short, the applicant was not eligible for being promoted in the year 2011 as per departmental action taken against him. He was to undergo punishment in the departmental enquiry and as per that punishment from the date of entitlement to the promotion, promotion was to be kept on hold for one year from the date of eligibility for promotion. Thus, the applicant should have been promoted after disability period i.e. in the year 2012. However, he

came to be retired on superannuation on 31.12.2011 and therefore, there was no question of applicant being promoted.

12. The learned Presenting Officer has invited our attention to the order passed in the Departmental Enquiry on 17.04.2007. The copy of the said order is at paper book page nos. 81 and 82 (both inclusive) and the operative order is at page no. 82, which reads as under:-

“आदेश

- १) श्री बाफना एस.जे., परीरक्षण भूमापक, शेवगांव तालुका निरीक्षक भूमि अभिलेख, शेवगांव हे ज्या दिनांकापासून पदोन्नतीस पात्र होतील तेव्हा पासून १ वर्षाकरीता त्यांची पदोन्नती रोखून ठेवण्यांत येत आहे.
- २) सदरच्या आदेशाची नोंद त्यांच्या सेवा पुस्तकांत घेणे.
- ३) निर्णय संबंधीतांस कळवावा.”

13. It seems that the note of the said order has been taken in the service record of the applicant as per copy of the entry at paper book page no. 83. There is nothing on record to show that the applicant ever filed appeal against this order of punishment.

14. The learned Advocate for the applicant invited our attention to written notes of argument, in which the applicant has given chart of confidential reports of the applicant for the period from 1.4.2005 to 21.03.2011. Though it is stated that the applicant's confidential reports are good and satisfactory, the said

facts seems to be not true. The applicant himself has placed on record copies of the confidential reports from which it seems that the reports were reviewed by the reviving officer and as per said revive report, confidential reports of the applicant for the period from 1.4.2005 to 31.03.2006 was 'C' i.e. below average. The confidential report for the period from 1.4.2006 to 31.03.2007 it was 'B-' i.e. "साधारण" and it was observed that the applicant was an employee under category of "काम न करणारा कर्मचारी". The confidential report for the period from 1.4.2007 to 31.03.2008 though seems to be 'B-', it has been mentioned that he was undergoing punishment in the Departmental Enquiry. The confidential report for the period from 1.4.2008 to 30.04.2009 is incomplete. As already stated, the applicant was found fit for promotion in the year 2011 but since from the date of eligibility he was not eligible to be promoted for one year, since he was undergoing punishment in Departmental Enquiry, the applicant could not be promoted in the year 2010-11 and before his turn for promotion he came to be retired on superannuation.

15. The impugned communication issued by the respondent no. 3 i.e. the Deputy Superintendent of Land Records, Nasik Region, Nasik is self-speaking and we do not find any illegality in the said communication.

16. Learned Advocate for the applicant has placed reliance on order passed in O.A. No1017/2010. Said order is in respect of Smt. Smita w/o Sunil Dhodapkar and it has no relevance with the promotion of the applicant.

17. On a conspectus of discussions in foregoing paragraphs we are therefore, satisfied that the impugned communication dated 22.9.2014 is perfectly legal and proper and there is no need to interfere in the same. We therefore, do not find any force in the O.A. and hence, following order:-

ORDER

The Original Application stands dismissed with no order as to costs.

**J.D KULKARNI
(MEMBER. J)**

**RAJIV AGARWAL
(VICE-CHAIRMAN)**