

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 626 OF 2016

DISTRICT : NANDED

Savita Uttamrao Hake,)
Age : 36 years, Occu. : Service,)
(As Sr. Grade Clerk, S.P. Office, Nanded))
R/o : Datta Nagar, Near Datta Temple, Nanded.)

.. **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Home Department, Maharashtra State,)
Mantralaya, Mumbai 400 032.)
2. **The Director General of Police,**)
Maharashtra State, Mumbai.)
3. **The Inspector General of Police,**)
Nanded Range, Nanded.)
4. **The Superintendent of Police,**)
Nanded.)
5. **Mr. Avinash Govindrao Pagade,**)
Senior Grade Clerk, C/o: S.P. Office, Hingoli.)

.. **RESPONDENTS**

APPEARANCE : Shri Avinash Deshmukh, Advocate for
Applicant.

: Shri B.S. Deokar, P.O. for respondent
Authorities.

CORAM : **Shri V.D. Dongre, Member (J)**
and
Shri Bijay Kumar, Member (A)

Reserved on : **13.03.2023**

Pronounced on : **13.04.2023**

ORDER**(Per : Shri Bijay Kumar, Member (A))**

1. This Original Application has been filed by one Ms. Savita Uttamrao Hake on 07.08.2016 invoking provisions of Section 19 of Administrative Tribunals Act, 1985, upon being aggrieved by impugned order dated 15.01.2016 passed by respondent No. 3.
2. The impugned order speaks of the background facts that a temporary promotion was given to the applicant by respondent No. 3 vide order No. आस्था-२/वश्रेलि-पदोन्नती/२०१४/४४२६, dated 26.05.2014 for a period of 11 months. However, the said temporary promotion was regularized by respondent No. 3 vide order No. आस्था-२/पदोन्नती/हाके/२३१३, dated 23.04.2015. This order of regularization of temporary services of the applicant was cancelled by impugned order. In addition, the applicant was ordered to be treated as having been given one day break in temporary service and given temporary promotion again for a period of 11 months or until regular promotion order is issued on the basis of recommendation of Departmental Promotion Committee. It was also mentioned that the period of temporary promotion shall not be taken in to account for the purpose of seniority and shall be governed by provisions of Government

Resolution No. General Administration Department, शासन परिपत्रक
क्रमांक : एसआरव्ही-२००३/सीआर-१८/२००३/१२, dated 22.09.2003.

3. Interim Order was passed in the matter on 16.03.2016 in following terms :-

“ORAL ORDER :

Shri AS Deshmukh, learned counsel for the applicant and Shri D.T. Dewane, learned Chief Presenting Officer for the Respondents.

2. *Heard learned counsel for the respective parties.*

3. *It appears from the proceeding that, notices in the present matter were issued on 18.02.2016, and made returnable after two weeks. Accordingly, opportunity was given to the respondents to file affidavit in reply on the adjourned date i.e. on 4.3.2016. On 4.3.2016 learned counsel for the applicant pointed out that, by issuance of order dated 15.1.2016 (page 47), which is impugned in the present OA, the applicant apprehends her reversion on 26.3.2016, if she is not continued on the ad-hoc promotional post after giving one day's break, as done earlier. Thereupon, at the request of the learned CPO, time was granted for filing affidavit in reply positively, and accordingly present OA is adjourned to today's date i.e. on 16.3.2016. However, today also learned CPO sought time to file affidavit in reply, on the basis of the communication dated 15.3.2016 received from Spl. I.G. Nanded. Hence, learned counsel for the applicant requested for passing of the interim order.*

4. *Learned Counsel for the applicant pointed out that, by order dated 26.5.2014 (page 37) the applicant was granted temporary promotion to the post of Senior Grade Clerk as per the recommendations made by Civil Services Board No. 2 (page 37). Thereafter, learned counsel for the applicant further pointed out that, the respondent No. 3 issued an order dated 23.4.2015 (page 44) and thereby stated that, since the applicant has completed 3 years service in the cadre of Junior Grade Clerk on 25.6.2014 she has been given regular promotion in the cadre of Senior Grade*

Clerk from 26.6.2014. However, it is the grievance of the applicant that, thereafter an order was passed by the respondent No. 3 on 15.1.2016 (page 47), and thereby the regular promotion given to the applicant as Sr. Grade Clerk was cancelled, and since her services were required she was given temporary promotion in the cadre of Senior Grade Clear for the period of 11 months from 27.4.2015. According to the learned counsel for the applicant, the said temporary promotion would expire on 26.03.2016, and the applicant has got apprehension that, she may be reverted back on the said date, if she is not continued on the ad hoc promotional post after giving one day break, as done earlier.

5. Having regard to the above referred facts and circumstances, the prayer made by the learned C.P.O. for adjournment for filing affidavit in reply is granted.

6. S.O. after 4 weeks, for filing affidavit in reply. However, in the meantime, status quo be maintained, till the next date.

7. Steno copy is allowed to the learned CPO, at his request.”

4. Contents of para No. (6) (xviii) to para No. (6) (xx), page 13 to 15 of the paper-book of the present Original Application reveal that the present Original Application is second round of litigation against the same impugned order dated 15.01.2016. During the first round the original application, that was filed, had registration No. 124/2016 which was withdrawn with permission of this Tribunal vide Oral Order dated 27.07.2016 [Coram:- Hon'ble Shri A. H, Joshi, Chairman] with liberty to file fresh O.A. for same and additional relief and in proper grounds. Operating part of the order is quoted below for ready reference :-

“ORAL ORDER:

1. *Heard Shri AS Deshmukh, learned Advocate for the applicant and Shri MP Gude, learned Presenting Officer for the Respondents.*
2. *Pursuant to the order passed on 25.7.2016, today the case was called out.*
3. *Learned P.O. has produced and delivered a copy of letter dated 22.11.2015, which is the foundation of impugned order.*
4. *Learned Advocate for the Applicant states as follows:-*
 - (a) *In the background that letter dated 21.11.2015 was not procured by the applicant along with O.A., and now its copy is available, the applicant wants to avail the remedy of withdrawing the O.A. with liberty to file fresh O.A. by incorporating appropriate challenges.*
 - (b) *If interim relief is vacated the applicant may have to suffer irreparable loss, hence interim order which was granted in O.A. 124/2016 may please be continued for two weeks, which will enable the applicant to file fresh O.A. and move for interim relief.*
5. *Hence, the O.A. is disposed of as follows :-*
 - (a) *The O.A. is disposed of with liberty to file fresh O.A. for same and additional relief and in proper grounds.*
 - (b) *Interim order passed by this Tribunal on 16.3.2016 in present O.A. shall continue to operate for two weeks from today and shall automatically come to an end thereafter.*
 - (c) *If fresh O.A. is filed, the prayer of interim relief if made, shall be heard on its own merits.*
 - (d) *No costs.”*

5. Brief Facts on the Matter:- Most of the background facts are admitted by the two sides of the dispute except interpretation of relevant rules. Admitted background facts are as follows :-

(a) The applicant joined service in the office of Superintendent of Police, Gondia District as a Junior Clerk on 19.11.2009. She passed Post-Recruitment Departmental Examination on 16.11.2010 and therefore, she could retain her seniority in the cadre of Junior Clerks in District Police, Gondia, Nagpur Range. However, the applicant applied for inter-district transfer to Nanded district and accordingly, was transferred as a Junior Clerk in the cadre of Junior Clerk in District Police Nanded in Nanded Range vide order dated 21.05.2011. Seniority list of cadre of Junior Clerks in Nanded district as on 01.01.2013 was prepared. The applicant has no grievance regarding her being placed at zero seniority in the said seniority list in cadre of Junior Clerks of Nanded District, as on date of joining in Nanded district.

(b) Applicant passed post-recruitment departmental examination in 1st attempt within one year in year 2010 whereas the respondent No. 5 passed the post-recruitment departmental examination in 2nd attempt, within seven years in April 2015. Therefore, seniority of both the applicant and respondent No. 5 in the cadre of Junior Clerks remained intact as both of them passed post-

recruitment departmental examination within given number of chances, within given number of years. These facts too, are undisputed by contesting parties. Seniority positions given to the applicant and respondent No. 5 in the combined seniority list of Junior Clerks are undisputed.

(c) Posts of Junior Clerks are in district cadre and the posts of Senior Clerks are in range-cadre. Therefore, combined seniority list of Junior Clerks working in districts under a police range is prepared for the purpose of promotion to the post of Senior Clerks.

(d) In the year 2014, the respondents called for information for Junior Clerks in Zone of Consideration for promotion to the post of Senior Clerks for clearing backlog of reservation quota in promotion. There were 23 vacancies to be filled up in cadre of Senior Clerks out of which 10 posts were reserved for various caste categories. One post of Senior Clerk was reserved for VJNT-C category.

(e) Combined seniority list of Junior Clerks in Nanded range for promotion to the post of Senior Clerks as on a date prior to date of meeting of Departmental Promotion Committee is relevant in the present matter. However, both

the applicant and the respondent belonged to the same district cadre and they have no dispute regarding combined seniority list of the said period.

(f) The applicant has annexed combined seniority list of Junior Clerks as on 01.01.2015 as Annexure A-10, page No. 62-66 of paper-book, the same being truncated and incomplete, it does not show who all were senior to the applicant at the time of promotion to the post of Senior Clerk. However, from the copy of internal communication between respondent No. 3 and the Deputy Director General of Police, Nanded range bearing dated of 21.11.2015 (page No. 71 of paper book) it appears that the respondent No. 5 had seniority of 14.09.2009 in district cadre of Nanded on the post of Junior Clerk and therefore, he is senior to the applicant in Nanded District Cadre.

(g) Departmental Promotion Committee (in short, DPC) met on 25.05.2014 to finalize the list of recommended candidates for filling vacancies in the cadre of Senior clerks by promotion from the feeder cadre of Junior Clerks. The minutes of meeting of the DPC shows that addition to the applicant, four other Junior Clerks, who were senior to the

applicant from VJNT-C category, were also in zone of consideration as per details below :-

Seniority Position under VJNT-C category	Name of Junior Clerk from VJ NT-C category	Whether Passed post Recruitment Exam
1	Smt. Seema P. Devkate	No
2	Smt. M. G. Kendre	No
3	Shri A. G. Pagade	No
4	Shri R. G. Vagdare	No
5	Smt. S. U. Hake	Yes

(h) As the applicant was the only candidate from VJNT-C category of Junior Clerk cadre in the zone of consideration, she was recommended for promotion by the DPC. Other four Junior Clerks from VJNT category senior to applicant were not considered eligible for promotion to the cadre of Senior Clerk for reason of not having passed the post-recruitment examination by that date. However, regular continuous services of the applicant on the post of Junior Clerk was counted from the date of her joining in Nanded district on inter-district transfer, i.e. 26.06.2011 even though the applicant joined on the post of Junior Clerk on regular appointment in Gondia district police on 19.11.2009. Therefore, the applicant was given temporary promotion for 11 months' period only purportedly applying

provisions of Government Resolution No. General Administration Department, शासन परिपत्रक क्रमांक : एसआरव्ही-२००३/सीआर-१८/२००३/१२, dated 22.09.2003. The applicant's 3 years regular service in Nanded district on the post of Junior Clerk was going to be completed on 25.06.2014, in absence of information regarding exact date of her promotion to the post of Senior Clerk based on recommendation of DPC held on 25.05.2014, the rationality of granting temporary promotion cannot be examined. Moreover, the applicant too, has not raised this point at any stage of adjudication of the matter.

(i) The applicant's temporary promotion was regularized by an order passed by Respondent No. 3 vide his order 23.04.2015 w.e.f. 26.06.2014 on completion of three years' regular service on the post of Junior Clerk. It appears that the respondent No. 3 had counted period of temporary promotion too as the applicant was holding post of Junior Clerk as her substantive posting. A copy of the aforesaid order of respondent No. 3 is at Annexure A-6, page 52 of the paper-book.

(j) Respondent No. 2 had received a representation dated 17.08.2015 from respondent No. 5 claiming promotion to the post of Senior Clerk as he had his seniority in the cadre of Junior Clerk intact after passing post-recruitment examination within given chances and number of years and he was senior to the applicant. Accordingly, respondent No. 2 vide her D.O. letter dated 21.11.2015 directed Deputy Inspector General of Police, Nanded Circle to review the decision regarding promotion of the applicant and respondent No. 5 in the light of rule position and take further necessary action within 15 days, under intimation to her. A copy of this letter is appended as Annexure A-12, page 71-72 of the paper-book. In response to the instructions received from respondent No. 2, the respondent No. 3 issued impugned order dated 15.01.2016 which is the main cause of action in the present original application.

(k) Respondent authorities have submitted that respondent No. 5 Shri Pagade has been promoted to the post of Senior Clerk by an order of respondent No. 3, dated 27.05.2016 as per recommendations of DPC meeting held on 27.05.2016; a copy of minutes of meeting of the said

DPC held on 27.05.2016 has been appended as Exhibit R-3 by the respondent No. 3 and a copy of promotion order of respondent No. 5 has been appended by the applicant as Annexure A-15, page 80 of the paper-book.

6. Relief Prayed For:- The applicant has prayed for relief in terms of para 12 of the O.A. which is reproduced verbatim for ready reference-

“12) THE APPLICANT, THEREFORE, PRAYS THAT

- A) *This Original Application may kindly be allowed thereby quashing and setting aside the impugned D.O. letter dtd. 21.11.2015 (Annex. A-12) of Resp. No. 2 as also the impugned order dtd. 15.01.2016 of Resp. No. 3 15.01.2016 (Annex. A-8) issued by Resp. No. 3.*
- B) *This Original Application may kindly be allowed thereby directing the Respondents to continue to extend all the service benefits to the applicant to which she has become entitled in view of the order dtd. 23.4.2015 (Annex. A-6) issued by Resp. 3 regularizing her promotion to the cadre of Sr. Grade Clerks.*
- C) *This Original Application may kindly be allowed thereby further directing the respondents to extend to the applicant all the service benefits to which she would become entitled in view of grant of Prayer Clauses “A” and “B” in her favour.*
- D) *Costs of this Original Application may kindly be awarded to the applicant.*
- E) *Any other appropriate relief as may be deemed fit by this Hon’ble Tribunal may kindly be granted.*

INTERIM RELIEF

- F) *Pending the admission, hearing and final disposal of this Original Application the effect and operation of the impugned order dated 15.01.2016 (Annex. A-8) issued by Resp. No. 3 may kindly be stayed and the Respondents*

may kindly be stayed and the Respondents may kindly be directed to continue the applicant on the promotional post of Sr. Grade Clerk.”

7. Chronology of Pleadings and Final Hearing: Affidavit in reply on behalf of respondent No. 3 was filed on 14.09.2016 which was taken on record and a copy thereof served on other side. Respondent Nos. 1, 2, 4 and 5 did not file affidavit in reply. The applicant also did not avail opportunity to file rejoinder affidavit to the affidavit in reply filed on behalf of respondent No. 3. The matter was finally heard on 13.03.2023 and then reserved for order.

8. Analysis of facts on record and brought out during oral submissions :-

(a) Upon analysis of facts two critical issues of interpretation of rules emerge as follows which are analyzed in subsequent paras:-

(i) Whether an employee, who is not eligible for promotion on the date of meeting of D.P.C. due to not having passed mandatory departmental examination by such date, is entitled to protection of his seniority on the post of promotion also?

(ii) Whether service rendered by an employee on a post in his/her original district cadre is to be counted along with service rendered on the same post in a new

district/cadre after inter-district transfer on request, for the purpose of determining length of continuous regular service on the said post for the purpose of promotion or not ?

(b) In the present case, as the respondent No. 5 had not exhausted total number of chances and number of years prescribed for passing post- recruitment departmental examination on the date of the meeting of DPC i.e. 25.05.2014, he deserved protection of his seniority in the cadre of Junior Clerk. Accordingly, the name of respondent No. 5 was incorporated in Zone of Consideration. However, that did not confer on respondent No. 5 eligibility for promotion on the designated date when in fact, he had not acquired such eligibility. Therefore, in our considered opinion, respondent No. 5 was not eligible for promotion.

(c) Coming to the definition of length of continuous regular service on the post of Junior Clerk is concerned; reference is made to rules governing inter-cadre transfer. The relevant rules provide for loss of seniority to those who were already on establishment in new cadre on the same post on the date of inter district transfer. Those rules do not prescribe loss of service length rendered in parent

cadre. If the proposition of loss of service length, as put forth by the respondents is accepted, then any employee getting inter cadre transfer will have to be treated as a fresh appointee leading to re-fixation of pay to basic level, effect on annual increments earned, time bound promotion and qualifying services for purpose of pension etc. Will it not be same as an employee resigning from earlier service and getting fresh appointment on the similar post in the new cadre? Such a proposition by respondents does not conform to recruitment rules too and MCS (Regulation of Seniority) Rules, 1982. Therefore, counting length of continuous regular service of the applicant on the post of Junior Clerk from the date she joined Nanded district police is, in our considered opinion, ultra vires to the relevant extant rules.

9. Conclusion:- Based on above analysis, in our considered opinion, the applicant had met eligibility criterion of three years continuous regular service on the post of Junior Clerk counted from her first appointment on the said post in Gondia District Police. In our opinion, the applicant had also acquired eligibility for promotion on the exclusive ground of having passed post-recruitment departmental examination within prescribed time

limit and number of chances, before the meeting of DPC was held. Respondent No. 5 had equal opportunity to acquire the eligibility on the count, which he failed to do. Respondent authorities or anybody else cannot be expected justifiably to compensate the respondent No. 5 for what the respondent No. 5 has himself lost as an opportunity. Through, the respondent No. 5 has not put his defence during the process of adjudication of the matter before us; however, based on above analysis, we do not find any apparent reason, which may have potential to adversely affect our aforesaid findings. Hence, the following order :-

ORDER

- (A) Original Application No. 626 of 2016 is allowed in terms of prayer clause 12 (A), 12 (B) and 12 (C).

- (B) No order as to costs.

MEMBER (A)

Kpb/D.B. O.A. No. 626/2016 promotion

MEMBER (J)