

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**BENCH AT AURANGABAD.****ORIGINAL APPLICATION NO. 142 OF 2011****DIST. : NANDED**

Nivrutti s/o Gangaram Davane,
Age. 59 years, Occ. Pensioner,
R/o At & Post Vaishali Nagar,
Nanded, Dist. Nanded.

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APPLICANT**VERSUS**

- (1) The State of Maharashtra,
Through Secretary,
Public Health Department,
Mantralaya, Mumbai – 32.
(through Chief Presenting
Officer, MAT Aurangabad).
- (2) The Joint Director,
Public Health (Malaria & Fileria)
Department, Alandi Road,
Pune.
- (3) Regional Deputy Director,
Public Health Department,
Gandhi Chowk, Latur,
Dist. Latur.
- (4) District Malaria and Fileria Officer,
Nanded, Dist. Nanded.

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RESPONDENTS

APPEARANCE : Shri P.B. Salunke, learned Advocate for
the Applicant.

: Shri I.S. Thorat, learned Presenting Officer for respondents.

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

DATE : 16.12.2016.

O R D E R

(PER : HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN)

1. Heard Learned Advocate Shri P.B. Salunke for the Applicant and Learned Presenting Officer Shri I.S. Thorat for the Respondents.

2. The Applicant in this O.A. is seeking appointment in a Class-III post from 18.3.1985, when a person less meritorious than the Applicant was appointed to Class III post on that date while the Applicant was appointed in 1985 as a Field Worker, Class-IV. In the alternative, the Applicant is seeking deemed date of promotion in Class-III cadre from 1997, on completion of 12 years of service.

3. Learned Counsel for the Applicant argued that the Applicant secured 40 marks in the selection process

conducted by Fileria Officer, Nanded on 21.11.1984. The Applicant was appointed as a Field Worker, a Class-IV post, by order dated 18.3.1985. One Shri G.N. Panchal had obtained 32 marks in the same selection process, but he was appointed as Superior Field Worker in Class-III. Learned Counsel for the Applicant argued that seniority list for S.S.C. passed Class-IV workers was prepared on 27.11.1997. However, the list was not prepared after following due procedure of Law. Shri G.M. Bhosikar was promoted as Superior Field Worker, Class-III on the basis of seniority-cum-merit in 2003 though he was at Sr. No. 73, while the Applicant was at sr. no. 69. The Applicant was not promoted.

3. The Applicant is seeking deemed date of promotion to Class-III cadre from 27.11.1997, when he completed 12 years of service.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Fileria Officer, Fileria Control Unit, Nanded selected the Applicant for the post of Field Worker, Class-IV. A call letter dated 22.10.1984 was issued

to him. Learned P.O. stated that the allegation of the Applicant that Shri G.N. Panchal, was appointed to Class-III post, though he secured less marks than the Applicant is incorrect. Shri Panchal was appointed as Multipurpose Worker, Class-III by the District Malaria Officer, Nanded by order dated 23.4.1985. As Shri Panchal was appointed by a different Officer, the Applicant has no locus-standi to challenge his appointment order. Fileria Officer, Nanded had not given any appointment to a person less meritorious than the Applicant to a Class-III post. Learned P.O. further argued that those persons who were appointed as Field Worker, Class-IV by the Fileria Officer, were all more meritorious than the Applicant. The Applicant cannot claim any deemed date of promotion in Class-III post as no person junior to him was promoted before him. In any case, the Applicant has not placed any material in support of his claim that he is eligible to get deemed date of promotion in Class-III from 27.11.1997, which according to him was the date on which he completed 12 years of service. A Government servant cannot claim promotion merely on completion of 12 years unless he is eligible for promotion. Learned P.O. argued that the

Applicant retired in 2008, and he never made any efforts to seek reliefs, which he is seeking in this O.A. This is an attempt to revive dead cause of action.

5. We find that the Applicant has placed two lists on page 12 and Page 13 of the Paper Book. List on page 12 is Merit List of candidates interviewed on 20.11.1984 for the post of Senior Field Worker (S.F.W.) Class-III. This list does not contain the name of the Applicant. As per his admission, he was called for the post of Field Worker on 21.11.1984 and he secured 40 marks in the selection process. It is, therefore, clear that the Applicant was never considered for appointment for the post of Senior Field Worker, Class-III. The Applicant claims that one Shri G.N. Panchal obtained 32 marks in the selection process for the post of Field Worker. The Applicant was appointed as Field Worker, Class-IV on 25.3.1985 (as stated in para 6 (a) of the O.A.). However, the Applicant has placed a copy of appointment letter dated 18.3.1985 as Field Worker at Exhibit 'B' at page 11 of the Paper Book. It is significant to note that the Applicant has not placed a copy of appointment letter of Shri Panchal on

record, though he is seeking appointment to Class-III post on the basis of that appointment. In the affidavit in reply dated 16.12.2013, the Respondents have stated in para 7 that Shri Panchal was appointed as Multipurpose Worker, Class-III, by Dist. Malaria Officer, Nanded and not by Filaria Officer, Nanded. The Applicant has claimed that in 1984, there was no separate offices of Filaria Officer and District Malaria Officer, Nanded. This contention of the Applicant cannot be accepted. The appointment letter of the Applicant dated 18.3.1985 (Exhibit 'B' at page 11 of the Paper Book) as well as call letter dated 22.10.1984 (Exhibit 'A' on page 10 of the Paper Book) are both signed by Filaria Officer, Filaria Control Unit, Nanded. While the appointment of Shri Panchal was given by District Malaria Officer, Nanded. Shri Panchal had applied for the post of Multipurpose Worker (M.S.W) on 4.4.1985. A copy of that application is at Exhibit R-1 page 58 of the Paper Book. Shri Panchal joined on 24.4.1985 as M.S.W. and Medical Officer, Kurb P.H.C. had reported to Malaria Officer, Nanded accordingly. A copy of that letter is at page 61 of the Paper Book. From the correspondence on record, it is clear that there were two separate posts of Filaria

Officer and District Malaria Officer in Nanded. The Applicant's claim that it was the same office is not supported by material on record. As Shri Panchal was appointed by a separate authority, the Applicant cannot seek parity with him. Even for the sake of argument, if it is accepted that Shri Panchal should not have been appointed to Class-III post, as he had appeared for selection process for Class-IV post, the Applicant cannot be given the same benefit. A wrong appointment to Shri Panchal in Class-III post cannot be a ground to commit the same mistake in respect of the Applicant. The Applicant had never appeared for selection process for Class-III post and the question of giving him appointment in Class-III post retrospectively from 1985 just does not arise. This demand of the Applicant is clearly misconceived and has to be firmly rejected.

6. Let us now consider the claim of the Applicant that he is eligible for deemed date of promotion to Class III cadre from 1997. Applicant has placed on record (Page 29 of the Paper Book) a Circular dated 2.5.1997, issued by Deputy Director of Health Services, Aurangabad. It is regarding

seniority list of S.S.C. passed Class IV employees as on 1.1.1997. This is a provisional list and objections and suggestions were invited within 30 days. Name of the Applicant is at Sr. No. 69. One Shri G.M. Bhosikar is at Sr. No. 73. In para 6(c) of O.A., the Applicant has claimed that Shri Bhosikar was promoted to Class III in 2003 and the promotion was denied to the Applicant. The Applicant claims that he was eligible to get promotion after 12 years i.e. in the year 1997. The Applicant is claiming that he was eligible to get Time Bound Promotion in terms of G.R. dated 9.6.1985 in the year 1997. However, under that G.R., a person is eligible to get Time Bound Promotion, if he is eligible to be promoted to Class III post. Just because a Government servant has completed 12 years of service, he is not eligible to be given Time Bound Promotion. The Applicant has not placed any material on record to show that he was eligible to get Time Bound Promotion in 1997. He obviously, cannot seek promotion on the basis of seniority list published on 2.5.1997, as it was a provisional seniority list. The Respondents in the affidavit in reply have stated in para 9 that the Applicant was also given promotion to Class III post

in 2003, but he refused the promotion by letter dated 12.08.2005 which is at page 67 of the Paper Book. In the reference in the aforesaid letter order of promotion dated 23.12.2003 is mentioned. From this, it is clear that the Applicant is not eligible to get deemed date of promotion from 2003 as he refused the promotion offered to him.

7. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)

Kpb/DB OA No 58 of 2013 Agarwal 2016