

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

**ORIGINAL APPLICATION NO.514 OF 2011
(Subject : Promotion)**

DISTRICT : LATUR

Khandu Narayan Kalbande,)
R/o. Chincholi Ballalnath,)
Tq. & District Latur.)

..APPLICANT

VERSUS

1. The State of Maharashtra,)
Through its Principle Secretary,)
Water Conservation Department,)
Mantralaya, Mumbai.)
2. The Superintending Engineer,)
Mechanical Circle, Yantriki Bhavan,)
Nanded, District Nanded.)
3. The Executive Engineer,)
Mechanical Division, Osmanabad,)
District Osmanabad.)
4. The Hon'ble Deputy Engineer,)
(Mechanical) Sub Division, Latur,)
District Latur.)
5. Vinayak Narayan Kendre,)

R/o. Prakash Nagar, Chandraudy Colony,
Tq. & Dist. Latur.)

....RESPONDENTS

Shri A.M. Nagarkar holding for Shri K.M. Nagarkar, learned Counsel for the Applicant.

Shri M.S. Mahajan, learned Chief Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN
SHRI J.D. KULKARNI, MEMBER (J)

DATE : 18.10.2016.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

J U D G M E N T

1. Heard Shri A.M. Nagarkar holding for Shri K.M. Nagarkar, learned Counsel for the Applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant seeking deemed date of 21.03.1985 for being appointed as Driver on the Converted Regular Temporary Establishment (C.R.T.E.) of the Water Resources Department.

3. Learned Counsel for the Applicant argued that the Applicant was appointed as Cleaner on daily wages in

1977 but actual order of appointment was issued on 21.08.1978. One Shri V.N. Kendre was also appointed as Cleaner on 21.03.1980. The Applicant was actually working as Driver, though he was appointed as Cleaner. After 5 years of working on daily wages establishment, the Applicant was brought on the C.R.T.E. on 21.08.1983, while Shri Kendre was brought on C.R.T.E. on 21.03.1985. By Government Resolution (G..R.) dated 29.09.2003, Government accepted the principle of 'designation as per work and pay as per designation'. As the Applicant was working as Driver since 1978, in terms of this G.R. dated 29.09.2003, he was entitled to be given designation and pay of Driver. Learned Counsel for the Applicant states that the Applicant made a representation dated 14.09.2009 to the Respondents seeking parity with Shri Kendre, who was appointed as Cleaner, 3 years after him and who was given pay and designation of 'Driver' on being brought on C.R.T.E. This benefit was not given to the Applicant. By this representation, the Applicant sought appointment as Driver from 21.08.1983 or promotion as Driver on 23.03.1985 when Shri Kendre was appointed as Driver. As no reply was received to the representation dated 14.09.2009, the Applicant filed Writ Petition No.1831/2010 before Aurangabad Bench of Hon'ble High Court, which was disposed of by order dated 05.03.2010 with direction to the Respondent No.1 to consider and decide the representation of the Applicant dated 14.09.2009. By impugned order

dated 26.05.2011, the Applicant's representation was rejected. Learned Counsel for the Applicant argued that the Respondents did not consider any of the issues raised by him in his representation and rejected it without assigning any reasons.

4. Learned Chief Presenting Officer (C.P.O.) argued on behalf of the Respondents that the Applicant is seeking relief from 21.08.1983, when he was absorbed in C.R.T.E. By his own admission, he made first representation on 14.09.2009 i.e. after 26 years. Before that the Applicant claims that a letter dated 14.02.2006 addressed by Superintending Engineer, (Mechanical Circle) Nanded to the Government shows that the claim of the Applicant was being considered by the Respondents. This letter (Exhibit-E at page 17 of the paper book) has no mention of the Applicant and it is regarding general policy. It is clear that the Applicant had not made any representation before 14.09.2009. This claim is time barred and stale. The Applicant was brought on C.R.T.E. on 21.08.1983 as a 'Cleaner'. By order dated 23.09.2008, issued by the Respondent No.2, the Applicant was given pay scale of Driver's post w.e.f. 18.03.2008 and the Applicant had unequivocally accepted it. He never challenged that order. Learned C.P.O. argued that the Applicant never worked as Driver from 21.08.1978 to 20.08.1983 and therefore, there was no question of granting his pay and designation of Driver from 20.08.1983. The case of Shri Kendre is quite

different as he was brought on C.R.T.E. as Driver, as he was discharging duties of a Driver. Hon'ble High Court by order dated 05.03.2010 has directed the Respondent no.1 to consider the representation dated 14.09.2009 of the Applicant. The representation was duly considered and was rejected by impugned order dated 26.05.2011.

5. We find that the Applicant's claims are two fold, viz (i) he was working as Driver though he was appointed on 21.08.1978 as Cleaner. He, therefore, should have been absorbed as 'Driver' on C.R.T.E. after 5 years on daily wages w.e.f. 21.08.1983. It is seen that the Applicant did not protest any time till his representation dated 14.09.2009 that he should have been absorbed in C.R.T.E. as Driver. He waited for 26 years. Obviously, his claim was stale and time barred. Hon'ble Bombay High Court in W.P.No.1831 of 2010 filed by the Applicant, have observed that :-

“The learned A.C.P. submits that the attempt of the Petitioner is to revive his claim which is already barred by limitation. We are not expressing any opinion on the said contention. It will be open for the authority concerned to reject the representation on that basis, if so advised.”

Hon'ble High Court directed the Respondent No.1 to take a decision on the representation of the Applicant. The decision of the Respondent No.1 dated 25.05.2011 is at page 108 of the paper book. This read :-

“श्री. खंडू नारायण कळंबडे, स्वच्छक यांनी दिनांक २१.८.१९७८ ते २०.०८.१९८३ या कालावधीत वाहनचालक पदी काम केल्याचे त्यांच्या सेवापटात दिसून येत नाही. त्यांनी सदर कालावधीत स्वच्छक या पादाचे काम केल्याचे दिसून येते. त्यामुळे त्यांनी याचिका क्र.१८३१ /२०१० अन्वयं वाहनचालक पदावर रुपांतरीत अस्थाची अस्थापनेवर घेण्याबाबत केलेली मागणी नियकबाहय आहे. त्यामुळे श्री. कळंबडे यांची मागणी अमान्य करण्यात येत आहे. त्याबाबत आपल्या स्तरावर श्री. कळंबडे यांना कळविण्यात यावे.”

The representation has been rejected on merits and communicated to the Applicant by impugned letter dated 26.05.2011. In the present O.A., the Applicant has placed no material on record to show that he was actually working as Driver during the period from 21.08.1978 to 20.08.1983. The impugned decision is perfectly legal and valid.

6. The second grievance of the Applicant appears to be that one Shri Kendre was absorbed as Driver on completion of 5 years of service in 1985. He has not produced any material on record to show that his case was identical with the case of Shri Kendre. In para 8 of the affidavit-in-reply of the Respondent Nos.1 to 3, dated 13.12.2011, it is stated that :

“Shri Vinayak Kendre brought in C.R.T.E. as a driver w.e.f. 21.03.1985 on the contrary the said Shri Kendre was waged as driver on the work charged establishment w.e.f. 21.03.1985 and accordingly brought on C.R.T.E. on work charged establishment w.e.f. 21.03.1990” (Sic.)

7. Though language leaves much to be desired, the Respondents claim that Shri Kendre was appointed as 'Driver' on 21.03.1985 on daily wages /work charge establishment and was brought on C.R.T.E. on 21.03.1990 as Driver. Copy of the aforesaid order dated 22.09.1992 is at page 88 of the paper book. Name of Shri Kendre is at Sr. No.68 and he is brought on C.R.T.E. w.e.f. 21.03.1990 by the Respondent No.2. The information furnished by the Applicant regarding Shri Kendre is not correct. The Applicant cannot claim any parity between himself and Shri Kendre. The Applicant is claiming that he should have been granted time bound promotion from 21.08.1995 after completion of 12 years of service. However, there is no material placed in the O.A. for seeking this relief and we are unable to consider it.

8. The Applicant has not been able to establish that he is entitled to any relief sought by him in this O.A.. Accordingly, this O.A. is dismissed with no order as to costs.

(J.D. KULKARNI)
MEMBER(J)

(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 18.10.2016
Typed by : PRK