

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**MISC APPLICATION NO. 344 OF 2017  
IN  
ORIGINAL APPLICATION NO 169 OF 2016  
WITH  
ORIGINAL APPLICATION NO. 169 OF 2016**

**DISTRICT : AURANGABAD**

Shri Bhaginath S. Nikam, )  
Occ : Service as Office Superintendent, )  
Having office at Dt. Vaishampayan Memorial )  
Government Medical College, Solapur. )  
R/o: Flat no. 18, Karmveer Dadasaheb )  
Gaikwad Hsg. Soc. Near Kranti Chowk, )  
P.S, Aurangabad. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through Principal Secretary, )  
Medical Education and Drugs Dept, )  
Mantralaya, Mumbai 400 032. )
2. The Director, )  
Medical Education & Research, )  
Having office at Government Dental )  
College and Hospital Bldg, )  
4<sup>th</sup> floor, St. Georges' Hospital Compound )  
Mumbai 400 001. )
3. Mr Sanjay R. Waghmare, )  
Office Superintendent, )  
Directorate of Medical Education & )

Research, having office at )  
Government Dental College & Hospital )  
Bldg, 4<sup>th</sup> floor, St. Georges' Hospital, )  
Compound, Mumbai 400 001. )...**Respondents**

Shri B.A Bandiwadekar, learned advocate for the Applicant.

Ms Archana B.K, learned Presenting Officer for the Respondents.

**CORAM** : **Shri P.N Dixit (Vice-Chairman) (A)**

**DATE** : **09.09.2019**

### **ORDER**

1. Heard Shri B.A Bandiwadekar, learned advocate for the Applicant and Ms Archana B.K, learned Presenting Officer for the Respondents.

Misc Application for delay condonation and Original Application are heard together.

2. The applicant has made a prayer as under:-

9. Reliefs sought:-

(a) By a suitable order, this Hon. Tribunal may be pleased to direct the Respondent nos 1 to 3 in general and the Respondent no. 3 in particular to forthwith consider Petitioner's case for grant of retrospective promotion to the cadres of Senior Clerks, Senior Assistants and Office Superintendent with effect from 2.11.1998, 14.2.2008 and 30.4.2011 respectively at par with Mr. Ramteke and the Respondent no. 4 and accordingly the Petitioner be granted all the consequential service benefits, as if the impugned order had not been passed.

(b) By suitable order, this Hon. Tribunal may be pleased to direct the Respondent nos 1 to 3 in general and the Respondent no.3 in particular to consequentially grant retrospective promotions to the Petitioner to the cadres of Senior Clerks, Senior Assistants and Office Superintendents with effect from 2.11.1998, 14.2.2008 and 30.4.2011 respectively at par with Mr. Ramteke and the Respondent no. 4.

(Quoted from pages 32 and 33 of O.A)

Brief facts:-

3. The applicant submits that he was working as a Receptionist from 7.1.1982. Following the order by the Tribunal, his post as a Receptionist was converted as a Junior Clerk and this order was issued on 5.8.2005. The applicant completed 45 years on 1.7.2002 and was exempted from passing the Post Joining Examination for promotion and became entitled for the Senior Grade Clerk from 1.7.2002.

4. The applicant has sought to compare his case with one Shri Prakash Ramteke, who had joined on 14.4.1982. The applicant contends that as Shri Ramteke was junior to him he deserves to be given the same date as of Shri Ramteke, while granting senior scale.

5. The Respondents have contested the claim made by the applicant and filed their affidavit in reply. In the affidavit in reply it is stated that Shri Ramteke who was born in 1951 and completed 45 years on 28.10.1995. Therefore, as per existing rules as he belonged to S.C category, he was promoted on 2.11.1998.

6. The case of Shri Ramteke and applicant was examined by the Respondents and after examining the same, the Respondents came to the conclusion that there is no comparison between Shri Ramteke and the applicant. Shri Ramteke who completed his 45 years and hence was promoted and given the deemed date of 2.11.1998. On the other hand, applicant completed his 45 years on 1.7.2002, and therefore, was given the exemption from passing the examination. As such, he was given the deemed date of 29.6.2003, by order dated 24.7.2008. The Respondents submit that his deemed date is correct and there is no error committed regarding the same.

7. The applicant had filed Original Application for change of deemed date of promotion, but preferred to withdraw the same from the bench at Aurangabad with liberty to file the same at Principal Bench at Mumbai. Thereafter, he submitted an application under R.T.I on 7.10.2014 to know the outcome of the same. The applicant submits that he did not

get any reply regarding the same and hence filed the Original Application.

8. The Respondents have submitted an enclosure along with their affidavit in reply, internal communication from the Government to the Director, Medical Education and Research, confirming the facts stated in the above paragraphs and reiterating that the applicant cannot be given the deemed date of 2.11.1998 given to Shri Ramteke, for the stated reasons.

9. Misc Application 344/2017 is for condonation of delay of one year and six months in filing the Original Application. The reason given by the applicant for the delay is as follows:-

“5. That in the alternative and without prejudice to above, the Petitioner states that on 25.7.2013 he made representation seeking the deemed date of promotion in three posts as referred in the O.A., in response to the liberty give to him by the Hon. Tribunal on 17.7.2013. That admittedly no reply has been given till this date to the said representation by the Respondents.

6. The Petitioner states that in the circumstances stated above, he waited for a period of 6 months from 25.7.2013 to receive decision on his representation by the Respondents, i.e. upto 25.1.2014. That within one year thereafter the Petitioner was expected to file on 29.1.2016. Thus, there is a delay of 1 year and 5 days.

7. The Petitioner states that as stated above the Petitioner was allowed to withdraw the O.A with the liberty to file fresh O.A for which order came to be passed on 8.5.2014 by the Hon'ble Tribunal at Aurangabad Bench in O.A no. 241 of 2014. That accordingly within reasonable time thereafter (say 3 months), the Petitioner was expected to file the O.A which he did on 29.1.2016. Thus prima facie there may be delay of 1 year 6 months after excluding the period of 3 months as referred to above.”

(Quoted from pages 4 & 5 of M.A)

10. The Respondents have contested the same and filed their affidavit in reply. The reply given by the Respondents is as under:-

“3.3 Thereafter once again without making any representation to the department applicant has filed O.A 241/2014 before the Maharashtra Administrative Tribunal, at Mumbai claiming three

promotions as a Senior Clerk, Senior Assistant and Office Superintendent respectively w.e.f 2.11.1998, 14.2.2008 and 30.4.2008. But the same was withdrawn by the applicant by taking liberty to file similar O.A before Principal bench of Hon. Tribunal at Mumbai. Thus, it can be seen that claim of relief of deemed date promotion which neglect back to almost 13 years of the past.

3.4 Further respondent submitted that as per the directions of the Hon. Tribunal in O.A 347/2001 respondent has passed conversion order of the applicant dated 5.8.2005. Applicant is very well known about the same order. And applicant is misusing the judicial forum for his own benefit by hook or crook to get the order from the Hon. Tribunal. Applicant is filing proceeding unnecessarily and without any cause as which was already decided at adjudicated by the competent court. Therefore, in such circumstances, heavy cost may be imposed on the applicant for unnecessarily filing multiple litigations for similar reliefs.

3.5 It is submitted that applicant's claim a relief deemed date promotion, which dates relegate back to almost 13 years of the past. The law is for the persons who are well aware of their rights and approach the Hon. Court within the stipulated period and not for the persons who slumber over their rights."

(Quoted from pages 12 and 13 of M.A)

11. According to the Respondents the impugned order being challenged by the applicant has been issued on 5.8.2005. The applicant has challenged the same after 13 years and therefore, the delay is more than the period of limitation and hence the Misc Application needs to be rejected.

#### Observations and Findings:-

12. I have perused the records furnished by the applicant as well as the orders issued by the Tribunal from time to time in various O.As filed by the applicant. I have also seen the record furnished by the Respondents.

13. Examination of the case of the applicant with Shri Ramteke reveals the only similarity between Shri Ramteke and the applicant is both of them did not pass the necessary examination for promotion. But since Shri Ramteke was born in 1951, on completion of 45 years, he has

been given the exemption from 1996 and deemed date of promotion from 2.11.1998. On the other hand applicant completed his 45 years in 2002 and hence he has been given the deemed date of 20.6.2003.

14. The applicant as well as his advocate have failed to demonstrate any satisfactory reason to compare his case with Shri Ramteke and grounds furnished in pleading 6.28 to justify interference by this Tribunal is his dream and not supported by any facts.

15. In the above circumstances the Misc Application which has been filed after a prolonged period of 13 years after the impugned order is debarred by limitation and hence is rejected. The Original Application filed by the applicant claiming deemed date of promotion at par with Shri Ramteke is rejected for reasons after examining relevant facts mentioned in para 13 above, on merits.

16. Original Application is therefore, dismissed as it is devoid of any merits. No order as to costs.

**(P.N Dixit)**  
**Vice-Chairman (A)**

**Place : Mumbai**  
**Date : 09.09.2019**  
**Dictation taken by : A.K. Nair.**