

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO. 102/2002

Giridhar S/o Namdeorao Khapekar
Aged about 45 years, Occupation : Naib Tahsildar
R/o : Sanjay Gandhi Ward,
Bhandara.

Applicant

- **Versus** -

- (1) The State of Maharashtra
Through its Principal Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai -32.
- (2) The Commissioner (Revenue),
Nagpur Division, Nagpur.
- (3) The Collector, Bhandara.
- (4) Shri. N. S. Gajbhe, Tahsildar,
Sindewahi, Tahsil Office Sindewahi,
District Chandrapur.
- (5) Shri. N. D. Malode, Tahsildar,
Mauda, Tahsil Office Mauda,
District Nagpur.
- (6) Shri. R. K. Dhomne, Tahsildar,
Mohadi, Tahsil Office Mohadi,
District Bhandara.
- (7) Shri. P. K. Dharmik, Tahsildar,
Devri, Tahsil Office Devri,
District Gondia.

- (8) Shri. D. S. Wadibhasme, Tahsildar,
Sadak Arjuni, Tahsil Office Sadak Arjuni,
District Gondia.
- (9) Shri. A. S. Lohbare, Superintendent,
O/o Collector, Bhandara.
- (10) Shri. Y. W. Sonkusre, Upper Tahsildar,
O/o Collector, Gondia.
- (11) Shri. S. V. Bhise, Upper Tahsildar No. 3,
O/o Collector, Nagpur.
- (12) Shri. G. M. Jogi, Superintendent,
O/o Collector, Chandrapur.
- (13) Shri. Abdul Kader, Tahsildar Korpana,
O/o Collector, Chandrapur.
- (14) Shri. D. N. Bhalekar, Upper Tahsildar No. 5,
O/o Collector, Nagpur.
- (15) Shri. D. N. Baseshankar, Tahsildar,
Lakhni, Tahsil Office Lakhni,
District Bhandara.
- (16) Shri. T. R. Meshram, Tahsildar,
Tiroda, Tahsil Office Tiroda,
District Gondia.
- (17) Shri. D. M. Kamble, Tahsildar,
Pauni, Tahsil Office Pauni,
District Bhandara.
- (18) Shri. G. M. Khandate, Tahsildar,
Seloo, Tahsil Office Seloo,
District Wardha.

Respondents

Shri P. V. Joshi, Advocate holding for Shri A. P. Mamdalwar,
Advocate for the applicant
Shri A. P. Sadawarte, P.O. for the respondent nos. 1 to 3
None for respondent nos. 4 to 18

**Coram : - The Hon'ble Shri Justice A. P. Deshpande,
Vice Chairman and
Shri. B. Majumdar,
Member(A)**

Dated :- January 29, 2013.

ORDER

Per : Member(A)

Heard Shri P. V. Joshi, Advocate holding for Shri A. P. Mamdalwar, the learned counsel for the applicant and Shri A. P. Sadawarte, P.O. for the respondent nos. 1 to 3. None for respondent nos. 4 to 18. No return was also filed on behalf of these respondents.

2. The applicant, a Tahsildar, has filed this O.A. as he is aggrieved that he has not been granted deemed date of his promotion as that of his juniors. He has sought reliefs as follow.

- (i) Issue an appropriate writ, order or direction declaring the action of respondent nos. 1 to 3 in promoting respondent nos. 4 to 18 to the post of Tahsildar as illegal, violative of Articles 14, 15 and 16 of the Constitution of India ;

- (ii) set aside the promotion order dated 28-2-2002, whereby respondent nos. 4 to 18 were promoted to the exclusion of the applicant to the post of Tahsildar and require the respondent nos. 1 to 3 to consider and promote the applicant as Tahsildar w.e.f. 28-2-2002 with all consequential benefits ;
- (iii) grant any other or further relief including costs as may be deemed fit in the circumstances of the case ;
and
- (iv) issue appropriate direction to the respondents to grant deemed date promotion to the applicant from 28-2-2002.

3. The applicant was appointed as a Junior Clerk in 1981. He was promoted as Senior Clerk in 1988 and was further promoted as Naib Tahsildar with deemed date of 29-4-1994. The DPC for promoting Naib Tahsildars as Tahsildar held its meeting in 2000. However, the applicant who was in the zone of consideration was not promoted as the average of his last five years' C.Rs did not work out to be B (good) which was the benchmark. On 28-2-2002, respondent nos. 4 to 18 who were junior to the applicant in seniority came to be promoted. This order is challenged in the present O.A. The DPC in its subsequent meeting dated 7-4-2003 found the applicant to be

fit for promotion and the applicant came to be promoted as Tahsildar on 12-3-2004. The grievance of the applicant is that he has been wrongly superseded vide the impugned order dated 28-2-2002 although he was eligible for promotion in every respect. No adverse C.R. was ever communicated to him except for the year 1997-98 which was communicated to him in 2002.

4. The respondents in their reply to the O.A. submit that the applicant was not promoted because in the DPC held in 2000, his average rating of last five years' ACRs' was (B-). The entries in his C.Rs for the year 1997-98 were communicated to the applicant. In view of this, the applicant could not be promoted.

5. Shri. P. V. Joshi, Advocate holding for Shri. A. P. Mamdalwar, the learned counsel for the applicant, submitted that the applicant was wrongly superseded by his juniors who were promoted vide the impugned order dated 28-2-2002. There is no basis in the respondents' stand that he was not promoted in spite of his seniority and eligibility in all other aspects only because of adverse entries in his C.Rs. The facts remains that no such adverse entry was communicated to the applicant except for the year 1997-98. This C.R. was communicated to the applicant as late as on 20-5-2002, that is, after a gap of four years and that too after the meeting of the DPC was held in 2000. It is a clearly stated legal position that

uncommunicated entries in an employee's C.Rs cannot be the basis for denying promotion.

6. Shri. A. P. Sadawarte, learned P.O. for the respondent nos. 1 to 3 submitted that the applicant's case for promotion was rejected in 2000 based on adverse entries in his C.Rs.

7. After having heard the arguments on both sides and after going through the documents on record, we find that it is an admitted fact that the applicant is senior to respondent nos. 4 to 18, who were promoted vide the impugned order dated 28-2-2002. The applicant was not promoted for the reason that the average of his five years' C.Rs was below B (Good). This can be seen from the following.

Year	Gradation
1994-95	B
1995-96	B
1996-97	B-
1997-98	C
1998-99	B

Thus, there is no dispute that the applicant's average of these five years' C.Rs considered by the DPC in 2000 was below B and hence he did not meet the benchmark of eligibility for promotion. However, it is also not disputed that out of these five

C.Rs, only the C.R. for the year 1997-98 was communicated to the applicant and this was done as late as in May, 2002. Such belated communication of adverse entries in C.Rs defeats the very purpose of its communication which is to afford an opportunity to the employee to improve his performance. In our clear view, therefore, such belated communication of entries in a C.R. is as good as or rather as bad as not communicating them at all. There is a catena of judgments of the Supreme Court and the High Courts which stress that the principles of natural justice require the reporting authority to communicate the adverse entries to the government servant to enable him to improve his work and conduct. Such an opportunity is not an empty formality, its object partially being to enable the superior authorities to consider the explanation offered by the concerned employee to examine whether the adverse entry is justified. In *U.P. Jal Nigam and Ors Vs. Prabhat Chandra Jain and Ors* [1996 SCC (L & S) 519], *Gurdial Singh Fijji Vs. State of Punjab* [1979 (3) SCR 518] and *Dev Dutt Vs. Union of India and Ors* [(2008) SCC 725], the Apex Court has held that an entry in the C.R. that may come in the way of an employee's promotion and other service benefits must be communicated to him as otherwise such an entry cannot be considered against him. We thus find that the respondents by not communicating the adverse entries in the applicant's C.R. in respect of one year i.e. 1997-98 and by doing

so at a very belated stage have denied him an opportunity to represent against these adverse entries and to improve his performance. In view of legal position as discussed above, the respondents had clearly erred in denying him promotion. We therefore order as follows.

ORDER

- (a) We declare that the applicant's claim to the promotional post of Tahsildar was illegally superseded by respondent nos. 4 to 18 when they were granted promotion by an order dated 28-2-2002.
- (b) We direct respondent nos. 1 to 3 to grant deemed date of promotion to the applicant in the cadre of Tahsildar with effect from 28-2-2002, it being the date on which the respondent nos. 4 to 18, who were juniors to the applicant, were granted promotion with all consequential benefits.
- (c) The O.A. is allowed and disposed of in above terms.
- (d) There shall be no order as to costs.

sd/-

(B. Majumdar)
Member (A)

ayw/-

sd/-

(Justice A. P. Deshpande)
Vice Chairman