

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 110 OF 2019

DISTRICT : SANGLI

Shri Sajid Hamid Pathan,)
Occ – Clerk, R/at Chaitanya Nagar,)
Opp Kheradkar Petrol Pump,)
Sangli.)...**Applicant**

Versus

1. The Revenue Commissioner,)
Pune Sandhu Waswani Chowk,)
Pune.)
2. The District Collector,)
Vijay Nagar, Miraj Road, Sangli.)...**Respondents**

Shri M.B Kadam, learned advocate for the Applicant.

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

**CORAM : Justice Mridula R. Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)**

DATE : 24.09.2021

PER : Justice Mridula R. Bhatkar (Chairperson)

J U D G M E N T

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

2. The applicant working as a Clerk in the office of Revenue Department, seeks directions against the Respondents that he should be considered for promotion to the post of Awal Karkun from 20.7.2016 when the applicant's juniors were first time promotion. Thus, he prays that Respondents be directed to grant him deemed date of promotion to the post of Awal Karkun on 20.7.2016.

3. Learned counsel for the applicant states that the applicant was appointed as a Clerk in open category on 18.1.2008 in the office of District Collector, Nasik. He passed the S.S.D Examination, i.e. Revenue Qualifying Examination on 19.7.2010. On his representation he was transferred from Nasik to Sangli on 22.11.2010. He resumed duty at Sangli, in the office of Respondent no. 2 on 25.11.2010. Thus, the seniority of the applicant is fixed from 25.11.2010. The applicant thereafter passed the Revenue Qualifying Examination on 12.8.2013 within the stipulated time and within stipulated chances. Unfortunately, due to illness the applicant was on medical leave from 19.1.2015 to 6.6.2017. However, his medical leave was sanctioned by orders dated 20.12.2018 and 31.12.2018. The seniority list of 1.1.2016 was published on 7.5.2016, wherein the applicant's placement was shown at serial No. 46, and his date of joining to the post of Clerk was shown as 6.8.2012. The applicant himself pointed out that his date of joining as Clerk due to his transfer is required to be

shown later, i.e. on 25.11.2010. In the seniority list dated 4.5.2018, applicant's placement was shown correctly as 25.11.2010 at serial no. 268.

4. It is the case of the applicant that when he was on medical leave his juniors were promoted by Respondent no. 2 from 20.7.2016. He filed representations on 3.5.2018 and 19.11.2018, for granting him promotion to the post of Awal Karkun and deemed date promotion from 20.7.2016. However, the representations were not taken into account. Hence the applicant has filed the present Original Application.

5. Respondent no. 2, filed affidavit in reply dated 16.7.2019 through Dr. Yogesh B. Kharmate, working as Tahsildar (Revenue) in the office of the Collector, District-Sangli, wherein all the contentions raised and the allegations made are denied. It was stated that it is necessary for the Clerk in the Revenue Department to pass the Revenue Qualifying Examination as well as Sub Services Departmental Examination. It is contended that though the applicant has passed the Revenue Qualifying Examination, he did not clear the Sub Services Departmental Examination, at the time when the seniority list of 1.1.2016 was prepared. It is also contended that there is a delay in raising objection. Due to pendency of departmental enquiry against the applicant till 2018, his name was not considered for promotion.

6. The applicant has filed rejoinder on 29.7.2019. He has specifically denied the statement that he has not passed the Sub Services Departmental Examination, but he has cleared the same on 6.8.2012. He has also refuted the cause of not considering the name of the applicant due to pendency of departmental enquiry against him.

7. Learned counsel for the applicant Mr Kadam has submitted that the applicant himself has pointed out to the authorities that his seniority should be fixed not from 18.1.2008, but on account of his transfer on request from Nasik to Sangli, it should be fixed on 25.11.2010. The applicant's confidential report is excellent and the statements made by the Respondents about the pendency of departmental enquiry at the time of the Departmental Promotion Committee meeting is false. Learned counsel for the applicant has submitted that in the departmental enquiry he was held guilty and minor punishment of stoppage of three increments was imposed on the applicant on 27.7.2018 and he has claimed grant of deemed date of promotion to the post of Awal Karkun from 20.7.2016. No charge sheet was served on the applicant when the seniority list was prepared. He further has submitted that punishment of stoppage of three increments is over on 28.7.2021. Therefore, learned counsel for the applicant has submitted that the said punishment should not be reason for not considering the case of the applicant for promotion from 20.7.2016, when his juniors were first promoted.

8. Learned counsel for the applicant produced a chart, wherein the applicant is shown at serial no. 1. The table shows that he has cleared the examination on 6.8.2012 and his seniority is shown as 25.11.2010. The last column discloses that the applicant has cleared the Sub Services Departmental Examination on 6.8.2012. Learned counsel for the applicant further relied on the order dated 6.8.2012, passed by the Collector, Sangli, which is marked as Exh.4, wherein the name of the applicant is mentioned in the list of employees, who had cleared the Sub Services Departmental Examination. Further, he produced the chart showing the how the other employees who are junior to him were promoted on different dates and the supersession of the applicant is unjust.

9. Learned P.O has submitted that the applicant in the beginning join the service in the office of District Collector, Nasik. Thereafter, on his request, he was transferred to the office of District Collector, Sangli by order dated 9.9.2010. Thus, his seniority was fixed from 25.11.2010, the date on which he joined the office of District Collector, Sangli. Initially the date of joining was mentioned as 18.1.2008, but then corrected in the seniority list for the year 2018 as 25.11.2010. Learned P.O has submitted that the applicant did not raise his objection to the seniority list dated 1.1.2016 which was published on 7.5.2016. Learned P.O has further submitted that the applicant was absent from duty for nearly 2 ½ years. On account of absent from duty, departmental enquiry was initiated against him. He was held guilty and was imposed with the punishment of stoppage of three increments by order dated 27.7.2018. Learned P.O relied on the G.R dated 15.12.2017, wherein it is stated that Government servant is not eligible for promotion when departmental enquiry is initiated against him. Learned P.O has submitted that the juniors of the applicant were promoted in between to the post of Awal Karkun. Thus, as on today the claim of the applicant stand at serial No. 1 in the seniority list of Clerks, who are promoted to the post of Awal Karkun. Learned P.O on instructions has submitted that now the applicant will be considered for promotion and is entitled to promotion to the post of Awal Karkun in near future. However, neither he can be given earlier deemed date of promotion nor he can be shown senior to his juniors who are already officiating in the post of Awal Karkun.

10. Assessment:-

All the facts, except the grievance and prayer made by the applicant are admitted by both the parties. The applicant's name was shown at serial no. 24 in the seniority list of 2014, when his

date of joining was mentioned as 25.11.2010. The applicant has cleared both the examinations Sub Services Departmental Examination and Revenue Qualifying Examination. In the seniority list of 2015, his seniority was wrongly shown at serial no. 55 and his date of joining as 6.8.2012. In the seniority list of 2016, the error was carried forward and applicant's seniority was shown at serial no. 46, and his date of joining was again shown as 6.8.2012. The said seniority list was published on 7.5.2016. Thereafter, the seniority list dated 4.5.2018 was published, wherein his date of joining was corrected as 25.11.2010, but he was shown at serial no. 268. However, the other employees for e.g. at serial no. 273-Smt Bhakti K. Gurav, 274-Shri Viroba K. Gade, 275-Smt Dhanshree S. Pawar, 276-Ulhas V. Hake, 277-Sachin M. Sagar, 278-Sachin A. Jadhav, 280-Supriya S. Khade, 282-Shri V.G Kamble, were promoted on different dates till now. But the first promotion to the Respondent was given on 20.7.2016. Therefore, the applicant claims that he is deemed to be promoted w.e.f 20.7.2016, when his juniors were promoted.

11. The Respondent-State has admitted this mistake in change of the date of the seniority of the applicant. However, there is a substance in the submission of learned P.O that the applicant ought to have pointed out this error to the office within 15 days when the seniority list of 2016 was published on 7.5.2016. It is a known procedure that when the provisional seniority list is published and before the final seniority list will be published, if at all anybody has objection to such seniority list, he should raise objection in writing within 15 days from the date of publication of provisional seniority list. The applicant did not raise any objection during that period. He cannot claim before the Tribunal now that he had no knowledge of the publication of the seniority list because he was sick and was on medical leave. The applicant was absent from 19.1.2015 to 6.7.2017. Thus, he was not on duty for nearly 2 ½ years. For this long leave, the applicant has submitted medical

leave and his long absenteeism of 2 ½ years was sanctioned as medical leave. Thus, there was no break in his service and he continued to remain as Clerk in the service without break. The applicant after joining service in July, 2017 submitted the first representation on 2.5.2018. However, the applicant was undergoing departmental enquiry which was conducted by the Respondents under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. He was held guilty in the departmental enquiry and was given the punishment of stoppage of three increments on 27.7.2018. The punishment got over on 28.7.2021. The Government servant cannot be promoted when departmental enquiry is initiated as per the ratio laid down by the Hon'ble Supreme Court in the case of **Union of India Vs. K.V Jankiraman & Ors, (1991) 4 SCC 109**. As per G.R dated 15.12.2017, the Government servant should not be promoted when he is undergoing departmental enquiry and till his punishment is over. The said G.R is also referred in the subsequent G.R dated 30.8.2018, wherein it is clarified that the case of the delinquent Government Officer facing departmental enquiry, which is kept in sealed cover is to be opened after the punishment imposed on him is over and if at all he is eligible for promotion, then only he is to be promoted. The case of the applicant is covered under the above referred G.Rs. The departmental enquiry is ordinarily said to be initiated only when the charge sheet is issued. In the present case, the charge sheet is served on the applicant on 17.2.2017.

12. From the above facts and chronology of events though the contentions of the applicant that department has committed mistake while giving him a wrong deemed date of seniority in the seniority list published on 7.5.2016, is correct, it is also true and correct that the applicant failed to put up his grievance about his

seniority within the stipulated time. We made specific query to the learned counsel for the applicant what type of disease/ailment the applicant had suffered, as he was compelled to take such a long leave of 2 ½ years. We also wanted to see the medical papers about such long leave to verify whether the situation was really beyond the control of the applicant. It was needed to inquire and ask for the medical papers because we do come across often the cases of Government servants of regular absenteeism without any good and just cause. However, neither the medical papers were produced nor we got satisfactory answer to our query.

13. Hence, though the medical leave was approved by the Respondents, we hold that the applicant failed to put up his grievance within the stipulated time and therefore, the Respondents could not take steps in time to correct the seniority list, which was done in the year 2018. A person who slumbers over his right cannot be granted any relief by putting the clock back, thereby causing injustice to others who are sincere in their duty. We do appreciate that the applicant was punished for his misconduct by stoppage of three increments and the punishment is over on 28.7.2021. So he cannot be punished twice. Non correction of seniority list is not a fall out of his punishment, but it is a repercussion of his long absenteeism and incommunicado situation.

14. Thus, in view of the decision of the Hon'ble Supreme Court in K.V Jankiraman's case, supra, when he put up his grievance by submitting his first representation dated 3.5.2018, as at that time he was undergoing departmental enquiry. We agree that there was a mistake in writing joining date while fixing seniority list in respect of the applicant by the Respondents.

15. Hence we allow the Original Application partly in following terms:-

- (a) Respondents are directed to consider the name of the applicant for promotion to the post of Awal Karkun.
- (b) If at all, he is promoted, he be given the deemed date of promotion, a day before he was served with the charge sheet, i.e. on 16.2.2017 (charge sheet served on 17.2.2017).
- (c) He cannot be given the seniority from 20.7.2016, and to that extent the prayer is rejected.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 24.09.2021
Dictation taken by : A.K. Nair.