

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.147/2011

Radhesham S/o Anandrao Shinde,
Aged about 56 years,
R/o 56/B Netaji Housing Society,
Behind Nisarg Lawn, Katol Road,
Nagpur-13.

Applicant

Versus

- 1) State of Maharashtra through its
Secretary, Dairy Development,
(Agriculture Animal Husbandry, Dairy Development &
Fisheries Department), Mantralaya, Mumbai-32.
- 2) The Commissioner,
Dairy Development Department,
Administrative Building, Varli Sea Face,
Abdul Gaffarkhan Marg, Mumbai-18.
- 3) Shri A.R. Jadhao,
Regional Dairy Development Officer,
Nashik Division, Nashik.
- 4) Shri D.P. Mishra,
Diary Development Officer,
Presenting officiating Assistant Commissioner (Quality Control),
office of the Commissioner Dairy Development, Administrative
Building, Varli Sea face, Abdul Gaffarkhan Marg,
Mumbai-18.

Respondents

Shri Bharat Kulkarni, Advocate for the applicant.

Shri A.P. Sadavarte, P.O. for respondent nos. 1 & 2.

Shri R.Y., R.R. Rajakarne, Advocate for R-3.

**Coram :- Hon'ble Shri B. Majumdar, Vice Chairman
&
Hon'ble Shri S.S. Hingne, Member (J).**

Dated :- 06/05/2016.

ORDER -

Per : Member (J).

The applicant /Dairy Development Officer (Grade-I) has filed the O.A. challenging his placement in the seniority list as on 1-1-2010 and to quash the list.

2. Heard Shri Bharat Kulkarni, Id counsel for the applicant and Shri A.P. Sadavarte, Id. P.O. for respondent nos. 1 & 2. None for R-3 & 4.

3. The dispute relates to the inter-se seniority amongst applicant, A.R. Jadhao (R/3) and D.P. Mishra (R/4). In order to appreciate the controversy the chart giving service details of all concerned officers is as follows –

Sr. No	Name of officer	Date of appointment	Date of first promotion	Date of second promotion	Date of regular promotion
1	D.P. Mishra (R/4)	19-3-1977	27-3-1986	15-4-2008	8-4-2008
2	A.R. Jadhao (R/3)	1-10-1980	30-4-1986	1-4-2008	1-4-2008
3	R.A. Shinde (Applicant)	7-11-1981	12-12-1993	11-4-2008	20-1-2009

4. The grudge and grievance of the applicant is that in the provisional seniority list as on 1-1-2010 published on dated

6-8-2010 (P-17) the applicant was shown at sr.no.9, D.P. Mishra (R/4) at sr.no. 11 and A.R. Jadhao (R/3) was shown at sr.no.13. Thus the applicant was shown above R/3 and R/4 in the said provisional seniority list. However, the department published the final seniority list as on 1-1-2010 (P-14) on 30-12-2010. In the said list the R/4 is shown at sr.no.8, R/3 is shown at sr.no.9 and applicant is shown at sr.no.18. Thus the applicant is shown junior to R/3 and R/4. The applicant has raised the objection to this seniority list vide his representation dated 20-8-2010 (A-2,P-20), but that is not considered. The respondents' case is that the final seniority is published considering all the objections raised and all other aspects.

5. The applicant's stand is that he was promoted vide order dated 17-10-2001 (A-3,P-30) prior to the R/3 and R/4. Therefore, he ought to have been shown senior to the R/3 and R/4. According to the respondents promotion vide order dated 17-10-2001 was temporary for one year. The learned counsel for the applicant urged that the applicant is continuously working on the said post.

6. The learned P.O. submits that the promotion orders were issued temporary and the applicant has not worked continuously, but he was reverted from time to time that is firstly on 16-11-1993 and thereafter on 16-10-2002 as mentioned in the chart (P-82 & 83). It is the case of the respondents that such temporary

appointment does not confer any right to employee to get the seniority when the temporary arrangement was made by giving the promotion. The date of regular promotion is material to decide the inter-se seniority amongst the employees. From this view point, it is manifest that R/3 and R/4 are appointed earlier to the applicant and they are promoted as Class-II officer prior to the applicant. Not only that but R/3 and R/4 are promoted to the next post even earlier to the applicant. Thus by no stretch of reasoning it can be said that the applicant become senior to R/3 and R/4.

7. As per provisional seniority list as on 1-1-2007 published on 30-7-2007 (P-92) also the applicant was shown junior to the R/3 and R/4. The final seniority list as on 1-1-2007 was published on 29-4-2008 (P-76) and the applicant, R/3 and R/4 are shown at the same numbers. In the DPC dated 10-2-2000 (P-44), R/3 is considered as senior to the applicant.

8. According to the respondents, this seniority list is legal and valid and issued as per rule 4 of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. In the representation dated 20-8-2010 (A-2,P-20) the applicant has raised the objection relying on temporary promotion given to him. The learned counsel for the applicant submits that since the applicant continued on the post for a considerable period, he gets the seniority since joining. In

support of submission reliance is placed on a case The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others [(AIR 1990, SC 1607)]. In the cited case, the issue of seniority of the employee from the initial date of appointment is considered. The initial appointment was made following the procedure as laid down and employees continued uninterruptably till regularization of their services. The appointments were made since the direct candidates were not available. The issue of seniority was between two types of recruits. Whereas, in the case in hand the applicant is promoted temporarily and not regularly and he was discontinued twice. As such, the cited case does not help the applicant.

9. From the above discussion, it is crystal clear that temporary promotion cannot be a ground for the applicant to get seniority above R/3 and R/4. Thus the case propounded by the applicant is devoid of merit and it deserves to be rejected. In effect, it cannot be said that the seniority list prepared by the department is illegal. Consequently, the applicant is not entitled to get any relief. Resultantly, the O.A. is rejected with no order as to costs.

sd/-

(S.S.Hingne)
Member (J).

sd/-

(B.Majumdar)
Vice-Chairman.