

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 258 OF 2019**

**DISTRICT : PUNE**

Shri Vaijanath Ramchandra Joshi, )  
Occ : Retd from the post of Office )  
Superintendent on 30.6.2012. )  
R/at : Post House no. 1287, )  
Urali Kanchan, Dattawadi, Tal-Haveli, )  
Dist-Pune. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through the Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai 400 032. )
2. The Commissioner of Health )  
Services, Arogya Bhavan, )  
St. Georges Hospital Compound, )  
P' Dmello Rd, Near CST, )  
Mumbai. )
3. The Director of Health Services, )  
Arogya Bhavan, )  
St. Georges Hospital Compound, )  
P' Dmello Rd, Near CST, )  
Mumbai. )
4. The Joint Director of Health )  
Services, Malaria, Filaria & Water )  
Borne Diseases, New Central Bldg )  
Pune - 1. )...**Respondents**

Shri K.R Jagdale, learned advocate for the Applicant.

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

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

**DATE** : **18.12.2019**

**ORDER**

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

2. The applicant has filed the present application seeking deemed date of promotion for the post of Office Superintendent w.e.f 1.7.2008.

**Brief facts of the case:-**

3. The Respondents had published provisional seniority list as on 5.1.2007. The applicant figures at Serial No. 13 of the same and one Smt L.S Khandke, figures at Serial No. 14. The provisional seniority list as on 1.1.2008 was published on 1.1.2008 and in the same, name of Smt L.S Khandke figures at Serial No. 4, while the name of the applicant figures at serial no. 6. Aggrieved by the same, the applicant had made a representation on 29.8.2007. Accordingly, when the seniority list of 1.1.2009 was published, necessary correction was made and the applicant was informed accordingly on 14.7.2009. On 3.7.2009, order was issued promoting Smt Khandke as well as the applicant on the same date, i.e. 3.7.2009.

4. On 30.7.2010, applicant submitted a representation stating that he should be given deemed date of promotion of the post of Office Superintendent from 1.7.2008 instead of 3.7.2009. The representations remained under protracted correspondence and finally on 24.10.2018 his prayer was rejected. The relevant portion of the same reads as under:-

शासन परिपत्रक दि.६.६.२००२ नुसार शासन सेवेतील कर्मचारी / अधिकारी यांना ते ज्येष्ठ व पात्र असूनही पदोन्नतीच्या संदर्भात डावलले गेले असल्याचे निश्चित झाले तर त्यांना पदोन्नतीच मानीव दिनांक देण्याबाबत विचार करण्यात येतो. श्री जोशी

यांनी दि.१.७.२००८ पासून पद रिक्त असल्याने मानिव दिनांक मिळावा अशी विनंती केली आहे. दि.१.७.२००८ रोजी विभागीय पदोन्नती समितीची बैठक झालेली नसून त्यांचेपक्षा कनिष्ठ असलेल्या कोणालाही पदोन्नती देण्यात आलेली नाही. जरी ज्येष्ठतासुची सुधारित करणे आवश्यक असले तरी सदरील ज्येष्ठतासुची सुधारित केल्यानंतरच म्हणजे जुलै २००९ मध्ये अधिक्षक या पदावर एकाच वेळेस तिन्ही कर्मचा-यांना पदोन्नती देण्यात आली. सबब, श्री जोशी यांना दि. १.७.२००८ पासून मानिव दिनांक देता येणार नाही.

(Quoted from page 91 of the O.A)

5. The applicant has therefore prayed that in his opinion, there was a vacancy of the post of Office Superintendent and no D.P.C was held on schedule in the year 2008. That has resulted in his non-promotion to the post of Office Superintendent from the date 1.7.2008. The applicant therefore prays that he should be given deemed date of promotion of the post of Office Superintendent from 1.7.2008.

6. Learned advocate for the applicant has relied on following judgments:-

(i) Judgment of Hon'ble Supreme Court in A.Satyanarayana & Ors Vs. S. Purushotham & Ors, Civil Appeal No. 2963 of 2008. The relevant portion of the same is para 27, which reads as under:-

*“Although mere chance of promotion is not a fundamental right, but right to be considered therefore is. In that view of the matter, any policy whereby all promotional avenues to be promoted in respect of a category of employees for all time to come cannot be nullified and the same would be hit by Article 16 of the Constitution of India.”*

(ii) Judgment of Hon'ble Supreme Court in Union of India & Ors Vs. Hemraj Singh Chauhan & Ors, Civil Appeal No. 2651-52/2010. Relevant portions are para 44 & 45 and the same is reproduced below:-

*“44. Concurring with the aforesaid interpretative exercise, we hold that the statutory duty which is cast on the State Government and the Central Government to undertake the cadre review exercise*

*every five years is ordinarily mandatory subject to exceptions which may be justified in the facts of a given case. Surely, lethargy, in-action, an absence of a sense of responsibility cannot fall within category of just exceptions.*

*45. In the facts of this case neither the appellants nor the State of U.P. has justified its action of not undertaking the exercise within the statutory time frame on any acceptable ground. Therefore, the delayed exercise cannot be justified within the meaning of 'ordinarily' in the facts of this case. In the facts of the case, therefore, the Court holds that there was failure on the part of the authorities in carrying out the timely exercise of cadre review."*

7. The Respondents have filed their affidavit in reply and contested the submissions made by the applicant. Relevant portion of the same is as under:-

"2. At the outset, it is submitted that the Applicant prays to grant deemed date of promotion to the post of Office Superintendent w.e.f 1.7.2008, with all other consequential benefits forthwith. The State Government vide G.R dated 6<sup>th</sup> June, 2002 framed the procedure for deemed date of promotion in cases of non-consideration for promotion of senior Government Servant prior to the (in-spite of) juniors promotion. In the present case, the Applicant's claim of deemed date is devoid of provisions of G.R dated 6.6.2002. Hence, the present Original Application deserves to be dismissed.

15. It is submitted that the Applicant was promoted as Office Superintendent along with Smt Khandke. Although the promotion of Applicant and Smt Khandke was issued on 3.7.2009, in said promotion Smt Khandke was figured below the applicant in the Seniority List of 2010. Meanwhile no junior was promoted instead of the Applicant. Hence, there is no injustice caused to the Applicant. It is not acceptable that one of the post of Office Superintendent was vacant and the said post should be filled by giving promotion to the Applicant at the relevant time. However, belated promotion of Applicant and deprived from getting promotion w.e.f 1.7.2008 is mere imagination of the Applicant.

18. The Applicant cannot claim deemed date of vacant post since 1.7.2008 which is totally adverse of G.R dated 6.6.2002. No junior was promoted prior to the Applicant during the period 1.7.2008 to till issuance of promotion order dated 3.7.2009 of the Applicant.

30. It is not necessary to give promotion on occurrence of vacant post. So far as the Applicant claimed the deemed date of vacant post which occurred on 1.7.2008, the same deemed date can be allowed to Government servant where juniors were promoted prior to the senior Government servant. In the instant case, no junior has been promoted.”

8. The Respondents have therefore submitted that the Original Application is without any merits and may be dismissed.

Observations and Findings:-

9. The applicant was senior in the seniority list published on 1.1.2007. However, in the seniority list published on 1.1.2008 he was shown erroneously as junior to one Smt Khandke. Following his representation, the error was rectified and he was informed about the same on 14.7.2009. However, the promotion in the post of Office Superintendent was effected prior to the same on 3.7.2009. The order issued on 3.7.2009 mentions name of the applicant as well as Smt L.S Khandke. Both have been promoted on the same date.

10. The Respondents have submitted that the meeting of D.P.C was not held in the year 2008. The Respondents have clarified that there was no vacancy at that time. The D.P.C meeting was held in the year 2009 and orders issued on that date have promoted the applicant as well as two others who were in the seniority list. The applicant was considered for promotion and accordingly promoted. No junior to the applicant has been promoted prior to the date of promotion given to the applicant.

11. As underlined by the judgments referred to by learned advocate for the applicant, Hon'ble Supreme Court pointed out that the select list should be prepared every year for consideration of promotion. It further provides that it is a fundamental right of the Government employees to be considered for promotion. In the present case, the applicant has failed to point out whether any junior to him has been promoted prior to his date of promotion. He has also failed to point out any non-consideration of his case for being promoted.

12. Whether there existed a vacancy in the year 2008 or otherwise is best known to the Respondents and therefore when the Respondents have submitted that there was no vacancy, the same cannot be scrutinized or challenged in the present case.

13. Examination of the available facts indicates that the applicant as well as Smt Khandke, who was junior to him, have been promoted on the same date, namely 3.7.2009. As there is no valid reason to interfere in the impugned order, I see no reason for considering the prayers made by the applicant.

14. For the reasons stated above, the Original Application has no merits and therefore, the same is dismissed. No order as to costs.

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

**Place : Mumbai**  
**Date : 18.12.2019**  
**Dictation taken by : A.K. Nair.**