

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 511 OF 2015

DISTRICT : MUMBAI

Dr Mangala M. Thombare,)
Presently working as I/C Draftsman-cum)
Joint Secretary, Government of Maharashtra)
Law & Judiciary Department, Mantralaya,)
Mumbai 400 032.)
R/at 15, Darshna, Dr. Annie Besant Road)
Worli, Mumbai 400 030.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Chief Secretary,)
Mantralaya, Mumbai 400 032.)
2. The Addl. Chief Secretary [Services])
General Administration Department,)
Mantralaya, Mumbai 400 032.)
3. The Principal Secretary & R.L.A,)
Law & Judiciary Department,)
Mantralaya, Mumbai 400 032.)
4. Shri R.G Bhagwat,)
Presently working as)
Draftsman-cum-Joint Secretary,)
Law & Judiciary Department,)
Mantralaya, Mumbai 400 032.)...**Respondents**

Shri V.B Joshi, learned advocate for the Applicant.

Shri S.K Nair, learned Special Counsel for Respondents no 1, 2 and 3.

Shri M.D Lonkar, learned counsel for Respondent no. 4.

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

DATE : 11.01.2022

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicant was working as I/C Draftsman-cum-Joint Secretary in Government of Maharashtra, Law & Judiciary Department, Mantralaya, Mumbai. Respondents No. 4 is a private party working a Draftsman-cum-Joint Secretary in the Law & Judiciary Department.

2. The applicant has challenged the order of promotion dated 13.5.2015 promoting the Respondent No. 4 and further prays for declaration that the promotion granted to Respondent no. 4 is illegal, ultra vires and in contravention of the Recruitment Rules of 2012. She also prays that she being more meritorious than Respondent no. 4, she is to be considered for promotion to the post of Draftsman-cum-Joint Secretary.

3. The applicant along with Respondent no. 4 was appointed by a common order dated 8th August, 1996 as Assistant Draftsman-cum-Under Secretary. Both were promoted to the post of Deputy Draftsman-cum-Deputy Secretary by a common order dated 8th September, 2004. Her colleagues Smt P.S Tawde, retired on 30th April, 2013 as Draftsman-cum-Joint Secretary and Smt R.V Natu, Draftsman-cum-Joint Secretary, retired on 31st October, 2013. Thus at that time two posts of Draftsman-cum-Joint Secretary was vacant. The applicant requested to give one post of Draftsman-cum-Joint Secretary, which fell vacant on retirement of Smt P.S Tawse, and which was reserved for the persons belonging to Scheduled Caste. By order dated 17.1.2014, the applicant and

Respondent no. 4 both by common order were entrusted with the additional charge of the post of Draftsman-cum-Joint Secretary. The Establishment Board in its meeting held on 6.12.2014 recommended the name of Respondent no. 4 for inclusion in the select list of 2013-14 for consideration for promotion to the post of Draftsman-cum-Joint Secretary. Subsequently, Respondent no. 4, who belonged to open category was promoted to the post of Draftsman-cum-Joint Secretary on 13.5.2015, and that is the subject matter of this Original Application.

4. Learned counsel for the applicant Mr Joshi and learned Senior counsel Mr S.K Nair, for the Respondents No. 1, 2 & 3 have filed their written submissions and the case laws relied by them. Mr Nair, who was present, has summarized certain factual as well as legal points in short.

5. Learned counsel for the applicant submitted that the Respondents No 1 to 3 have given a go-by to the Recruitment Rules of 2012 framed by the Government under Article 309 of the Constitution of India regulating the Recruitment Rules to the post of Draftsman-cum-Joint Secretary in the Law & Judiciary Department. It is contended by the learned counsel for the applicant that the applicant is more meritorious than the Respondent no. 4 as she has secured the gradation as 'A', 'A' and 'A+' in the preceding years of consideration for recommendation for promotion to the post of Draftsman-cum-Joint Secretary. As per Rule 3 of the Recruitment Rules of 2012, the criteria for promotion to the post of Draftsman-cum-Joint Secretary is merit-cum-seniority. However, Respondents No 1 to 3 have committed blatant violation of the said rules by giving preference to the seniority and not the merit.

6. Learned counsel for the applicant has relied on various ruling, especially on the mandate of the Rules, which are framed under Article 309 of the Constitution of India, as under:-

- 1) Judgment of the Hon'ble Supreme Court in Guman Singh & Ors Vs. State of Rajasthan & Ors, 1971(2) SCC 452.
- 2) Judgment of the Hon'ble Supreme Court in Sant Ram Sharma Vs. State of Rajasthan & Ors, AIR 1967 SC 1910.
- 3) Judgment of the Hon'ble Supreme Court in Central Counsel for Research in Ayurveda and Siddha Vs. Dr K. Santhakumari, AIR 2001 SC 2306.
- 4) Judgment of the Hon'ble Supreme Court in Union of India & Ors Vs. Lt. Gen Rajender Singh Kadyan & Anr, (2006) 6 SCC 698.
- 5) Judgment of Hon'ble Supreme Court in Haryana State Warehousing Corporation & Ors Vs. Jagat Ram & Anr, (2011) 3 SCC 422.
- 6) Judgment of the Hon'ble Madhya Pradesh High Court dated 6.2.2008 in the case of Dr R.S Mehta V. State of M.P & Ors.
- 7) Judgment of the Hon'ble Supreme Court in Union of India & Ors Vs. Shri Somasundaram Vishwanath & Ors, AIR 1988 SC 2255.
- 8) Judgment of the Hon'ble Supreme Court in Dr Rajinder Singh Vs. State of Punjab & Ors, AIR 2001 SC 1769.
- 9) Judgment of Hon'ble Supreme Court dated 23.3.2010 in Civil Appeal No. 2651-52 of 2010 (Arising out of SLP © No. 6758-6759/2009) in the case of Union of India & Anr Vs. Hemraj Singh Chauhan & Ors.

Most of these rulings are on service law and how to apply the principles of merit-cum-seniority or seniority-cum-merit at the time of giving promotion.

7. Learned Senior Counsel Mr Nair for Respondents No 1, 2 & 3 while opposing the Original Application has submitted that the

Respondents have followed a proper procedure and there is no violation of the Recruitment Rules of 2012. The representation made by the applicant requesting to de-reserve the post in the cadre of Draftsman-cum-Joint Secretary, which was reserved for Scheduled Caste was rightly turned down by G.A.D as it was required to keep the said reservation alive for three years, i.e. up to 7.9.2014. Learned counsel submitted that the applicant has secured grading in last erstwhile preceding years 'A', 'A' and 'A+', while Respondent no. 4 has secured gradation of 'A', 'A' and 'A' for those respective years.

8. It is necessary to reproduce the Rule 3 of the Recruitment Rules dated 31.5.2012 to the post of Draftsman-cum-Joint Secretary, Group-A in the Law & Judiciary Department.

“3. Appointment to the post of Draftsman-cum-Joint Secretary shall be made by promotion of a suitable person strictly on the basis of merit-cum-seniority from amongst the persons holding the post of Deputy Draftsman-cum-Deputy Secretary having not less than three years regular service in that post.”

9. Rule 3 lays down two criteria for promotion to the post of Draftsman-cum-Joint Secretary. First a person should be suitable and second he is to be appointed on the basis of merit-cum-seniority. In order to understand the term seniority-cum-merit, we rely on the policy decision of the General Administration Department which was communicated by the Deputy Secretary by letter dated 21.2.1994. It is to be noted that the said order was issued in the name of the Governor of Maharashtra and so it carried a force of delegated legislature framed under proviso to Article 309 and Article 166 of the Constitution of India. The Government has cleared how to appreciate the cases for promotion of two officers who have graded “A+” and “A” on the basis of their

Confidential Reports. We reproduce clause 3 of the said letter dated 21.2.1994 as under:-

“3. Vide Government Resolution G.A.D No. SRV-1077/C.R 343/79/12 dated 18.5.1983 and Government Resolution G.A.D No. SRV-1088/C.R 11/8812, dated 18.10.1988, the instruction given that supersession by officer who were granted as A+ and A on the basis of confidential reports will be placed above by 6 and 2 places in the select list respectively.

The instructions in respect of 2 places will be taken back by this order. The placement by 6 places of officers who were graded A+ in the select list will continue till further orders, but if the gradation of officer is ‘A’ who is senior to such officers, then officer having gradation as ‘A+’ should not be given placed above that officer, i.e. above ‘A’.”

The second portion of the said clause is the answer to the present issue. On the basis of this policy decision, Rule 3 of Recruitment Rules of 2012 is to be understood and implemented. It is to be kept in mind that suitability is also one more criteria required to be applied while selecting the officers to the post of Draftsman-cum-Joint Secretary. Had Respondent no. 4 not received gradation ‘A’ for e.g. ‘A’, ‘A’ and ‘B+’ or ‘A+’, ‘A+’ and ‘B’, then his selection would have been illegal and violative of Articles 14 and 16 of the Constitution of India. However, it is not so. Respondent no. 4 has fulfilled the criteria of having the gradation of ‘A’, ‘A’ and ‘A’ for the last three years. The applicant had though secured ‘A+’ in one year, this cannot place the case of the applicant as more meritorious than Respondent no. 4. Thus all the Government servants who reaches the optimum gradation of ‘A’, ‘A’ and ‘A’ then the rule of seniority will come into force, as per the policy decision of the Government dated 21.2.1994.

10. None of the ratio laid down by the Hon’ble Supreme Court in the cases relied on by the learned counsel for the applicant is on

the point which is the real crux of the matter. Hence, we cannot rely on in this matter as the point is totally different. In the present case the principle of merit-cum-seniority is only applied once the requisite bench mark is reached by the Government employee than further superlative degree of the merit will not be considered and then the basic principle of seniority will be applicable. It is necessary to take into account that gradation is given by the higher authority based on his or her perception and the assessment of the Government employee working under him/her. It is a known fact that some higher officers are generous, some are over generous and some are strict and wiser in giving gradation. Therefore a particular bench mark is stated in the Rules of 2012 for recruitment to the post of Draftsman-cum-Joint Secretary.

11. It is further to be mentioned that when the applicant retired on 30.9.2017, she was holding the regular post of Draftsman-cum-Joint Secretary and Respondent no. 4 is not in the service of Law & Judiciary Department and he has left the same.

12. In view of the above, the Original Application has otherwise become infructuous and for want of merit it is dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 11.01.2022
Dictation taken by : A.K. Nair.