MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO. 758/2000

Ghanshyam Janraoji Thakre
Aged about 64 years, Occupation : Retired,
R/o : Sahakar Nagar, Ward No. 1,
Wardha (M.S.). **Applicant**

- **Versus** -

(1) The State of Maharashtra
Cooperation Department
Through its Principal Secretary,
Mantralaya, Mumbai -32.

(2) The Commissioner for Cooperation,
and Registrar for Cooperative Societies,
Central Administrative Building,
Pune - 1.

(3) The Divisional Joint Registrar,
Cooperative Societies,
Nagpur Dvision, Nagpur in
Shri Ghatate's Building,
Near Bhide Girls High School,
Behind Anand Talkies, Sitabuldi,
Nagpur. **Respondents**

Shri S. K. Tambde, Advocate for the applicant

Shri S. C. Deshmukh, P.O. for respondents

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

Dated :- 4th. JANUARY, 2013

ORDER **Per : Member(A)**

The applicant, a retired Cooperative Officer (Group I) is aggrieved that he has not been granted proper deemed dates for various promotional posts and he has also not been promoted as Assistant Registrar prior to his retirement. He has therefore filed the present O.A seeking reliefs as below.

(i) To direct the respondent no. 3 to grant promotion to the applicant in the grade of provisional promotion as per the orders dated 20-11-1977, 1-6-1981 and further grant him the deemed date of promotion as Cooperative Officer w.e.f. 7-10-1971 as per order dated 31-5-1993, further grant him promotion as Cooperative Officer, Grade-I w.e.f. 12-11-1974 with all consequential benefits by re-fixing his salary and also the further benefits of pension, gratuity and retirement benefits ;

(ii) Direct the respondents to grant promotion to the applicant as Assistant Registrar prior to the date of promotion of Shri. P. D. Chopade as Assistant Registrar with deemed date effect and also with all consequential financial benefits thereto reflecting the same on the retirement benefits.

(iii) Further direct the respondent no. 3 to remove the injustices made on the face of the record in the light of the 'Annexures-D, E, F & H' filed along with the application and also in the light of the letter of the respondent no. 2 dated 25-7-2000.

2. The applicant, who was initially appointed as a Clerk on 15-5-1959, had cleared the GDCA examination in 1975. Thereafter on being promoted as Senior Clerk and having been granted exemption from passing the GDCA examination, he was granted deemed date of 11-12-1965 in the cadre of Senior Clerks. On 22-3-1990, the seniority list of Senior Clerks as on 1-4-1983 was published. In the said list, the applicant is placed at serial no. 277 and Shri. P. D. Chopade was placed at 311. The applicant came to be promoted as Cooperative Officer, Grade I on 7-6-1979 and was granted the deemed date of promotion as 12-11-1974. He retired as Cooperative Officer, Grade I on 30-9-1993. On 2-6-1999, the Government issued a G.R. vide which the applicant

was granted all the benefits of the deemed date of 12-11-1974. On 25-7-2000, in response to the legal notice issued by the applicant, the Commissioner for Cooperatives (R-2) directed the Divisional Joint Registrar of Cooperatives (R-3) to fix the pay of the applicant in Grade-I as per the above G.R., to pay him all the arrears on the basis of the deemed date of 12-11-1974 and also to send the revised pension proposal to the Accountant General.

3. It is relevant here to mention some salient aspects of service records of Shri. P. D. Chopade, who retired as Assistant Registrar of Cooperatives, as the applicant has relied on his case for justifying his own grievances. Shri. Chopade was appointed as a Junior Clerk like the applicant on 9-11-1959. However, on having acquired the necessary qualification in stenography, he was appointed as a Steno-Typist with the deemed date of 1-4-1961 in the pay scale which is same as that of the Senior Clerk. On the basis of his seniority in the grade of Steno-Typist/Senior Clerk, he was promoted as Head Clerk on 17-6-1971. Thereafter on being promoted as a Cooperative Officer, Grade-I, he was granted the deemed date in that cadre of 12-11-1974, which is same as the one granted to the applicant. Shri. Chopade subsequently came to be promoted as Assistant Registrar on 8-3-1983 and retired on 31-1-1996.

4. The applicant submits that as per the seniority list as on 1-4-1983 published in 1990, he is placed at serial no. 271, much above Shri. Chopade, who is at serial no. 311. He was granted seniority as Cooperative Officer, Grade II/Head Clerk with the deemed date of 7-10-1971. Subsequently, on promotion to Grade I (Cooperative Officer), he was granted the deemed date of 12-11-1974 in that grade. Shri. Chopade does not find a place in that seniority list as he had been appointed as a Steno-Typist. Thus, according to the applicant, right from the very beginning, he has been senior to Shri. Chopade. However, Shri. Chopade has been promoted to the grade of Assistant Registrar (Gazetted II) whereas he was not promoted till his retirement. It is also the grievance of the applicant that in spite of the directions being issued by the respondent no. 2 to respondent no. 3 vide his letter dated 25-7-2000, his pay has not revised on being promoted and granted the deemed date in Grade I, nor has his pension been refixed accordingly.

5. The Divisional Joint Registrar of Cooperatives (R-3) in his reply to the O.A. submits that the applicant cannot compare his case with that of Shri. Chopade. Shri. Chopade was appointed as Junior Clerk on 9-11-1959. On having acquired the qualification in stenography, he was promoted as a Steno-Typist, which is equivalent to the grade of Senior Clerk, on 1-3-1961. He

was then transferred as Senior Clerk and subsequently promoted as Head Clerk, Cooperative Officer Grade I and as Assistant Registrar of Cooperatives before he retired. His promotion as Assistant Registrar was on the basis of his seniority at the State level in the cadre of Cooperative Officer, Grade-I. Thus, according to respondent no. 3, Shri. Chopade was placed ahead of the applicant in seniority in the cadre of Senior Clerk on being directly appointed as a Steno-Typist on 1-3-1961. Subsequently, he remained senior to the applicant in the higher cadres. Although the applicant was granted the deemed date in the cadre of Cooperative Officer, Grade-I on 12-11-1974, which is a same as that of Shri. Chopade, by the time this was done, there was too little a period left for the applicant to retire and hence he could not be promoted as Assistant Registrar. It is further stated by respondent no. 3 that a Steno-Typist has an option of claiming the pay scale of Senior Clerk and accordingly, Shri. Chopade's seniority was fixed in the cadre of Senior Clerk. With regard to the applicant's grievance that his pay, on being promoted to Grade I and being granted the deemed date of 12-11-1974, was not refixed, the respondent no. 3 has filed a detailed statement showing as to how the applicant's pay was refixed from time to time beginning with his appointment as a Junior Clerk and till 1-6-1993, prior to his retirement. According to the respondent no. 3, on being granted the deemed date, the basic pay of the

applicant in the grade of Cooperative Officer, Grade I (pay scale of Rs. 1640-2900) comes to Rs. 2480/- as on 1-11-1992, whereas he was already drawing the pay of Rs. 2540/- with effect from 1-6-1993. As the applicant retired on 30-9-1993, no further increments could be granted to him. As regards the period from 1979 to 1992, pay fixed due to grant of deemed date of promotion and actual pay fixation are identical. If the applicant was granted the pay fixed on promotion, he would have drawn less than what he was actually drawing. Thus, by not refixing his pay on being granted the deemed date of promotion, no injustice has been caused to him.

6. We have heard Shri. S. K. Tambde, learned counsel for the applicant and Shri. S. C. Deshmukh, learned P.O. for the respondents. We have also gone through the records placed before us.

7. The learned counsel for the applicant reiterated the submissions made in the O.A. According to him, Shri. Chopade was appointed afresh (as a direct recruit) in the grade of Steno-Typist and hence he cannot be treated to be continued in the cadre of Junior Clerk, Head Clerk and Cooperative Officer. Thus, he cannot claim seniority in the promotional cadres riding on his date of appointment as a Steno-Typist. The applicant was finally granted the same deemed date of 12-11-1974 in the cadre

of Officer Superintendent/Cooperative Officer Grade-I. In spite of there being sufficient time remaining in his service, the respondents chose not to promote him on the basis of his deemed date while they promoted Shri. Chopade. Admittedly, according to the learned counsel for the applicant, the delay was due to the time taken in granting the applicant an exemption from passing of GDCA exam which was a pre-requisite for promotion as Head Clerk/Office Superintendent as per the G.Rs of 1991. This delay cannot be the ground for denying promotion to the applicant.

8. The learned P.O., opposing the O.A., submitted that the respondent no. 3 in his reply has adequately and elaborately explained as to how Shri. Chopade, on being appointed as a Steno-Typist in the common cadre of Steno-Typists and Senior Clerks became senior to the applicant, which benefit he continued to receive for subsequent promotion to the higher cadres. The applicant could not be promoted as Assistant Registrar before he retired, as by the time his seniority was fixed on being granted exemption from GDCA, he was on the verge of retirement. It was also stated by the learned P.O. that the applicant had not made Shri. Chopade a party respondent in the present O.A. and hence this Tribunal may not entertain any pleadings made by relying on the case of Shri. Chopade.

9. Having heard the arguments on both sides and after going through the documents on record placed before us, we find that the applicant's main grievance is that he has not been granted due seniority vis-à-vis Shri. Chopade and thereby he was denied opportunity to be promoted as Assistant Registrar prior to his retirement. Hence, the issue that requires adjudication is whether the respondents had rightly granted the deemed date of 1-3-1961 to Shri. Chopade in the cadre of Head Clerk. Shri. Chopade, on being initially appointed as a Junior Clerk, was appointed as a Steno-Typist on 1-3-1961 on obtaining qualification in stenography. According to the respondent no. 3, the Senior Clerk/Steno-Typist carry the same pay scale and their cadre also is common. The seniority list of Class III employees of the Cooperative Department as on 1-4-1983 which was published on 22-3-1990 shows Shri. Chopade to be at serial no. 311 with his current designation as Assistant Registrar. In the remarks column against his name, the following is recorded.

> "Directly appointed as Steno-Typist and promoted as Assistant Registrar vide order dated 8-3-1983."

This clearly shows that Shri. Chopade continued to be a member of the cadres of Head Clerk/Cooperative Officer/Assistant Registrar even after he was appointed as a Steno-Typist. The applicant has contested the claim of the respondent no. 3 that the

post of Steno-Typist is not equivalent to the post of Senior Clerk and the said post has a same pay scale that of a Junior Clerk. However, he has not substantiated the averment by relying on any document. It is also relevant to point out here that the applicant has not challenged the seniority list dated 22-3-1990 as above. Thus, we do not find any substance in the applicant's claim of seniority over that of Shri. Chopade in the cadre of the Head Clerk on the ground that he was granted the same seniority in the cadre of Office Superintendent/Cooperative Officer, Grade I as that of Shri. Chopade. As regards the applicant's grievance regarding fixation of his pay on being granted the deemed date in the cadre of Office Superintendent/Cooperative Officer, Grade I, the position has been adequately explained by the respondent no. 3 in his reply and the same has also not been contested by the applicant.

10. We however, find some substance in the applicant's claim for promotion as Assistant Registrar before he retired. The applicant was required to pass the GDCA exam to be eligible for promotion as Head Clerk and Office Superintendent. He passed the said examination in 1975. Based on G.Rs issued in 1991 granting exemption to employees of old Central Province and Bombay State from passing the examination, the respondents revised his deemed date in the cadre of Head Clerk and Office

Superintendent as 7-10-1971 and 12-11-1974 respectively. However, by the time this exercise was completed and the relevant orders were issued on 31-5-1993, the applicant was due for retirement and he stood retired on 30-9-1993. Thus, there was no time left for considering his case for promotion as Assistant Registrar based on his revised seniority. It is to be observed that the relevant G.Rs were issued in 1991 and the applicant retired in 1993. Hence, if timely action was taken by the respondents, the applicant could have been granted promotion before he retired. What matters here is that the delay in fixing the applicant's seniority is not due to any fault in his part and it was purely a procedural delay. Hence, we feel that the applicant has a good case for being treated at par with Shri. Chopade for promotion to the cadre of Assistant Registrar as both of them have a common deemed date of 12-11-1974 as Office Superintendent. At this juncture, we wish to point out that we do not feel it relevant to consider the learned P.O.'s submission with regard to Shri. Chopade not having been made a party respondent in the present O.A. The applicant's only pleading is that he should be granted the benefits of promotion and pay fixation on the basis of the seniority being given to Shri. Chopade in different cadres. In the end, we therefore dispose of the O.A. in terms of the following orders.

(a) The O.A. is partly allowed.

(b) The respondents are directed to hold a DPC for the purpose of considering the applicant's eligibility for promotion to the cadre of Assistant Registrar based on the deemed date of 12-11-1974 granted to him. On being considered and found eligible, the respondents will promote the applicant as Assistant Registrar. In such an event, the applicant will be entitled only to the pensionary benefits of the post.

(c) There are no orders as to cost.

sd/-

(B. Majumdar)
Member(A)

sd/-

(Justice A. P. Deshpande)
Vice Chairman

ayw/-