

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO. 84/2002

Meghraj S/o Haribhau Deogade
Aged about 51 years, Occupation : Service,
R/o : Wild Life Division,
Rangers' College Premises,
Mul Road, Chandrapur.
District : Chandrapur.

Applicant

- **Versus** -

- (1) The State of Maharashtra
Through its Secretary,
Department of Forest,
Mantralaya, Mumbai -32.
- (2) Principal Chief Conservator of Forest,
Ambedkar Bhawan, Seminary Hills,
Nagpur.
- (3) Conservator of Forest,
Forest Department (South Circle),
At & Post : Chandrapur.

Respondents

Shri N. R. Saboo, 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, who retired as a Chief Accountant in the Forest Department has filed this O.A. praying for grant of deemed date of 4-12-1987 in that cadre.

2. The applicant joined as a Clerk on 9-1-1970. He passed the Departmental Examination for Clerks in August, 1975. On promotion as Accountant vide order dated 24-8-1981, he joined on 1-9-1981. This was the deemed date in the cadre of Accountant that was granted to him vide order dated 9-5-1989. He was placed under suspension on 5-8-1988 and a Departmental Enquiry (D.E.) was initiated against him. He was reinstated on 20-5-1989. The DPC for promotion of Accountants as Chief Accountants cleared him in its meeting held on 22-7-1989. He was however not promoted. On completion of the D.E., vide order dated 3-12-1993, a punishment was inflicted on him bringing him to the minimum of the pay scale of Accountant. He was promoted as Chief Accountant on 4-4-2001. On 13-6-2001, he submitted a representation to the Conservator

of Forest, South Chandrapur Circle, Chandrapur (R-3) for grant of deemed date of 4-12-1987 as an Accountant, which is the same date given to Shri. N. T. Patil. The respondent no. 3 vide order dated 29-6-2001 published the final seniority list of Accountants as on 1-1-1998, in which the applicant's deemed date is shown as 1-9-1981. On 10-12-2001, respondent no. 3 informed the applicant that his request for grant of deemed date as Accountant of 4-12-1987 cannot be granted as the seniority list of Accountants as on 1-4-1989 is not yet finalized. It is this communication which is challenged in the O.A.

3. The applicant has sought the deemed date as Accountant as that of Shri. N. T. Patil. It is to be noted that said Shri. N. T. Patil has not been impleaded as a party respondent in the present O.A. for the stated reason that he had retired when the O.A. was filed. However, the personal particulars of Shri. Patil are stated as below.

Shri. Patil was appointed as a Clerk on 4-10-1958. He was granted exemption from passing the Departmental Examination on attaining the age of 45 years and thereafter he was promoted as Accountant and granted the deemed date of 1-10-1981 (applicant's deemed date was 1-9-1981). In its meeting held on 4-10-1987, DPC had cleared him for promotion as Chief Accountant based on his seniority in the provisional seniority list

of 1-4-1987, in which he appears at serial no. 32 while the applicant is at 42. On 21-7-1989, respondent no. 3 issued an order vide which Shri. Patil was placed at serial no. 24-A with deemed date of 1-10-1981 in the provisional gradation list of Accountants as on 1-4-1989. He retired on 31-12-1996. On 20-1-2002, respondent no. 3 issued another order stating therein that the above order dated 21-7-1989 is cancelled as the seniority list of Accountants as on 1-4-1989 is yet to be finalized.

4. The applicant's main grievance is that although he is senior to Shri. Patil yet the latter had superseded him for promotion as Chief Accountant. The applicant's deemed date as Accountant is 1-9-1981 whereas that of Shri. Patil is 1-10-1981. The applicant had passed the Departmental Examination whereas Shri. Patil was granted exemption therefrom on 20-6-1973. Vide order dated 21-7-1989, respondent no. 3 had placed Shri. Patil at serial no. 24-A in the seniority list of Accountants as on 1-4-1989. In that list, the applicant appears at serial no. 14. Although subsequently, respondent no. 3 withdrew that order, he did not finalize the seniority list of 1-4-1989 and on that account, undue advantage was given to Shri. Patil for his promotion as Chief Accountant. The applicant made several representations for being granted his rightful place above

Shri. Patil for promotion as Chief Accountant. However, these had remained unanswered.

5. The Conservator of Forest, South Chandrapur Circle (R-3) in his reply to the O.A. submits that the applicant has no case for being granted seniority above that of Shri. Patil due to several reasons. Shri. Patil was appointed as a Clerk on 24-9-1958 whereas the applicant was appointed on 8-1-1970. Shri. Patil was granted exemption from passing of Departmental Examination on 20-6-1973 whereas the applicant passed the examination in August, 1975. Both the applicant and Shri. Patil were promoted as Accountant on 24-8-1981. However, the applicant joined on 1-9-1981 and Shri. Patil joined on 1-10-1981. These are the deemed dates in the cadre of Accountants given to them. In the gradation list of Accountants, as on 1-4-1986, the applicant is at serial no. 43, whereas Shri. Patil is at 33. The applicant was placed under suspension for various irregularities for the period from 5-8-1988 to 28-5-1989. Shri. Patil was cleared fit by the DPC for promotion as Chief Accountant on 14-11-1987 and was promoted on 4-12-1987. In case of the applicant, he was cleared by the DPC as fit for promotion on 22-7-1989. The Departmental Enquiry against the applicant was decided on 3-12-1993 when he was inflicted with the punishment of bringing him to the minimum of the pay in the Accountant's scale. The

applicant was promoted as Chief Accountant on 4-4-2001. Thus, according to the respondent no. 3, Shri. Patil was promoted earlier to the applicant as Chief Accountant as he was senior to the applicant in the gradation list of Accountants as on 1-4-1986. The seniority list of Accountants published on 1-4-1989 did not contain the name of Shri. Patil as he was already promoted as Chief Accountant in 1987. Shri. Patil was promoted based on the seniority list that existed in 1986 in which the applicant was placed much below him.

6. We have heard Shri. N. R. Saboo, learned counsel for the applicant and Shri. S. C. Deshmukh, learned P.O. for the respondents. We have also gone through the various documents placed on record.

7. The learned counsel for the applicant reiterated the issues mentioned by the applicant in the O.A. He submitted that the applicant having been granted deemed date as Accountant above Shri. Patil, he could not have been promoted as Chief Accountant later than Shri. Patil, specially so as both he and Shri. Patil were promoted as Accountant on the same date.

8. The learned P.O. also reiterated the averments made by respondent no. 3 in his reply to the O.A. According to him, the applicant has relied mainly on the seniority list of 1989,

specially on the order dated 21-7-1989 in which Shri. Patil has given a position which is below that of the applicant. This reliance is unwarranted as the said order letter came to be cancelled and more importantly, Shri. Patil was promoted on the basis of the earlier gradation list of 1986 which the applicant has not challenged. The learned P.O. further submitted that the applicant is estopped from raising the issue of seniority vis-à-vis that of Shri. N. T. Patil for the sole reason that he has not joined the latter as a party respondent.

9. We have given careful consideration to the submissions made by the respective counsels and we have also gone through the documents before us. We find that the applicant's main grievance is that he has been superseded by Shri. N. T. Patil, who according to him is his junior in the cadre of Accountant. He has however, not made Shri. Patil a party respondent in the O.A. As stated by the applicant in para 6, sub para (b) of the O.A., he has not impleaded Shri. Patil as the latter has retired from service. We do not find it a valid reason for not impleading Shri. Patil, specially as the applicant has attributed certain malafides against this person by stating that he had used his influence in getting promoted as Chief Accountant. Thus, on this ground of non-joinder of necessary parties, this O.A. deserves to be rejected. We have however examined the matter

on merit by ignoring the fact that the applicant has failed to join Shri. Patil as a party respondent.

10. From the records, it appears that Shri. N. T. Patil was cleared by the DPC held on 14-11-1987 for promotion of Accountants as Chief Accountants. The minutes of the said DPC are placed in file (page 54 of P.B.). The DPC considered for promotion two candidates from the category of SC for promotion to one post reserved for SC. The Committee relied on the provisional gradation list of Accountants as on 1-4-1987, which is also seen from the internal communication dated 1-7-2008 from respondent no. 3 to Divisional Forest Officer (Planning) (page 53 of P.B.). The Committee considered names of two SC employees from the gradation list at positions 32 and 36. Shri. Patil is the candidate at position no. 32. It is to be noted that in the same gradation list, the applicant is at serial no. 42. Thus, he was not in the zone of consideration for promotion as Chief Accountant against the post reserved for SC for which Shri. Patil was cleared. It is relevant to note that this list has not been challenged by the applicant anywhere in the O.A. In fact the applicant has been relying on the action of the respondent no. 3 in not finalizing the provisional seniority list of 1-4-1989, which was not in existence when the DPC met on 14-11-1987. The applicant's representations to respondent no. 3 have all along been with

regard to his position in the 1989 seniority list vis-à-vis that of Shri. Patil. Under these circumstances, we are neither in a position, nor do we intend, to examine the issue whether the 1987 provisional gradation list relied on by the DPC on 14-11-1987 correctly reflects the *inter se* seniority of the applicant and Shri. Patil. It is also relevant to note that the applicant was placed under suspension from 1988-89 and the D.E. conducted against him came to be finalized on 3-12-1993 when he was inflicted with the punishment bringing him to the minimum of the pay scale of Accountant. The applicant was promoted as Chief Accountant as late as in 2001 and it is very likely that his delayed promotion was on account of the suspension and D.E. during the earlier years. Thus, we are unable to find any merit in the present O.A. and the same therefore deserves to be rejected.

Hence the O.A. stands rejected with no orders as to cost.

sd/-

(B. Majumdar)
Member(A)

sd/-

(Justice A. P. Deshpande)
Vice Chairman

ayw/-