

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 199/2020
WITH CIVIL APPLICATION No.106/2020 (D.B.)

Harishchandra S/o Pandurangji Maliye,
Aged about 55 years, Occ. Presently working as Circle Officer,
Nagpur City, Collector Office, Nagpur, R/o Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary for Revenue and Forest Department,
Madam Cama Road, Hutatma Rajguru Chowk,
Mantralaya, Mumbai-32.
- 2) Divisional Commissioner,
Nagpur Division, Civil Lines, Nagpur.
- 3) The District Collector,
Nagpur District, Nagpur.
- 4) Mr. R.H. Bamnote,
Presently working as a Circle Officer,
Nagpur Gramin, Collector Office, Nagpur.

Respondents.

S/Shri S.A. Marathe, Mrs. A.P. Murrey, Advs. for the applicant.
Shri A.M.Ghogre, learned P.O. for respondent nos.1 to 3.
Shri N.R. Saboo, Advocate for respondent no.4.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Dated :- 14th May, 2020.

JUDGMENT

Per : Anand Karanjkar : Member (J).

Heard Shri S.A. Marathe, learned counsel for the applicant, Shri A.M. Ghogre, learned P.O. for respondent nos.1 to 3 and Shri N.R. Saboo, learned counsel for respondent no.4.

2. The issue involved in this application is whether a Government servant loses his next promotion permanently for the reason that he has once taken benefit of the Government G.R. dated 25/05/2004 therefore, the Government servant junior to him can be promoted superseding him.

3. The undisputed facts are that the applicant was appointed in service on 16/03/1990 as Talathi and the applicant was confirmed on the post of Talathi on 28/12/1993. The respondent no.4 was appointed as Talathi and he joined the service on 06/08/1996. Both the applicant and the respondent no.4 were N.T. (B) category Government servants. In the cadre of Talathi, the applicant was senior to the respondent no.4. The controversy arises when the respondent no.4 was promoted on 26/02/2010 on the post of Circle Officer. The applicant was superseded for the reason that the departmental examination was not cleared by the applicant. The controversy arose as order was passed on 23/01/2010 by the incharge Collector, Nagpur and the incharge Collector, Nagpur was

pleased to set aside the order passed by the SDO, Saoner on 28/12/1993 and 29/12/1998. This order was challenged by the applicant and others before the Commissioner, Nagpur and the Commissioner, Nagpur was pleased to quash the order dated 23/01/2010 passed by the Incharge Collector, Nagpur observing that as the applicant entered the service on 16/03/1990 and before coming into force of the rules dated 29/10/1997, the applicant had completed the required length of service, therefore, the applicant was deemed to be confirmed on the post of Talathi. The order passed by the Commissioner, Nagpur is at Annex-A-6, it is dated 01/04/2011.

4. The applicant was promoted as Circle Officer vide order dated 20/12/2011 in the Open category. The applicant thereafter made representation to the respondent nos.2 and 3 contending that the applicant was senior to the respondent no.4 in the cadre of Talathi and disregarding applicant's seniority vide order Annex-A-3, dated 26/02/2010, the respondent no.4 was promoted as Circle Officer. Thus on the basis of the seniority the applicant claimed deemed date as he was senior to the respondent no.4. The representation of the applicant was considered and deemed date was given to the applicant upholding his contention regarding his seniority over the respondent no.4.

5. It is grievance of the applicant that the applicant was senior to the respondent no.4 in the cadre of Circle Officer, but disregarding his seniority, he was not considered for promotion in the cadre of Naib Tahsildar. The applicant has filed the order dated 12/03/2020 passed by the respondent no.1. As per this order, the Government was pleased to give sanction for promotion of the respondent no.4 on the post of Naib Tahsildar from the quota of the Circle Officer. It is contention of the applicant that the applicant was promoted as open category candidate and so he was entitled for promotion. The second submission of the applicant is that in the cadre of Circle Officer, the applicant was senior to the respondent no.4 and for this reason also the applicant is entitled for promotion as Naib Tahsildar. It is submission of the applicant that if the respondent nos.1 to 3 are permitted to promote the respondent no.4, then it will be grave injustice to the applicant.

6. The respondent nos.1&2 have filed their reply so also the respondent nos.3&4. The respondent no.4 has also filed application for vacation of the interim stay. The application is mainly attacked by the respondents on the ground that the respondent no.4 was promoted on 26/02/2010 in N.T. (B) category. The applicant was promoted later on in the open category and the representation was made by the applicant for the deemed date. It is submitted that as

deemed date was given to the applicant, the applicant was placed in seniority above the respondent no.4 and deemed date 26/02/2010 was given to the applicant, consequently, the applicant was treated as promoted on a post reserved for N.T. (B) category. It is submitted that as the applicant was promoted on a post which was reserved for N.T. (B) category and the respondent no.4 was promoted on a post for open category, therefore, as per the GAD letter dated 29/12/2017 the applicant is not entitled for any relief in this application. It is contended by the respondents that the applicant has taken advantage of the G.R. dated 25/05/2004 and sought promotion in the cadre of Circle Officer, therefore, as per the GAD letter, the respondent nos.1 to 3 have rightly not considered the applicant for promoting him on the post of Naib Tahsildar. According to the respondents, there is no illegality committed by them and the respondent no.4 is rightly promoted.

7. The respondents have also contended that apart from the respondent no.4, other junior Circle Officers are also granted promotion and their promotions are not challenged and they are not party to this O.A., therefore, the present application is not tenable. It is submission of the respondents that the applicant has suppressed the fact that there was a DPC held on 05/09/2019 and as per the decision in the DPC, the order at Annex-A-1, dated 12/03/2020 was

passed. It is submitted that this DPC is not challenged, therefore, the O.A. is not maintainable.

8. We have heard submissions on behalf of the respondent nos.1 to 3 & 4. We have also heard submission of the applicant. The learned counsel for the applicant raised contention that the reservation point cannot be changed. It is submitted that the applicant was promoted as Circle Officer in the Open category and thereafter merely because deemed date was given to him, it cannot be said that the applicant was promoted on a post reserved for N.T. (B) category. It is submission of the applicant that the respondent no.4 was expressly promoted on the post which was reserved for N.T. (B) category and merely because deemed date is given to the applicant, it would not change the situation.

9. We have gone through the circular dt/ 6-6-2002. After considering the guidelines in the Circular dated 06/06/2002, we do not see any merit in the contention of the applicant that the respondents No.1 and 2 have committed error in holding that the applicant was promoted in N.T. B. Category.

10. The second contention of the applicant is that in the cadre of Talathi, he was senior to the respondent no.4, similarly, in the cadre of Circle Officer, he was senior to the respondent no.4. It is submitted that the applicant never superseded the respondent no.4 and

therefore, the case of the applicant was not covered in the letter dated 29/12/2017. The learned counsel for the applicant invited our attention to the Judgment delivered by this Bench in the O.A.No.953/2019, dated 13/02/2020. The learned counsel for the applicant submitted that this Bench has considered and interpreted the GAD letter dated 29/12/2017 and made following observations in the para-14 of the order -

“14. In order to decide the controversy, we think it just to read the G.A.D. letter dated 29/12/2017 and the intention for writing this letter. After reading the entire letter, it seems that it was noticed by the Government that the Government Officers who were promoted on the basis of the G.R. dated 25/5/2004, have already superseded their Senior Officers in their cadres and if they are considered for the next promotion, then they would be permitted to take disadvantage. In this situation, decision was taken by the Government to fill the open quota posts by promotion as per the rule seniority subject to fitness. It is nowhere mentioned in the letter that the Government Officer who has taken benefit of G.R. dated 25/5/2004, should not be considered for next promotion till decision of SLP which was pending before the Hon’ble Apex Court. In our opinion, the motive behind writing this letter dated 29/12/2017 was not to give next promotion, to a Government servant who has taken benefit of the G.R. dt/25-5-2004 and superseded his seniors, before such superseded seniors”.

11. On the basis of this, it is contended that as the respondent no.4 was junior to the applicant in both the cadres, therefore, merely because the applicant was notionally promoted on the post which was reserved for N.T. (B) category, it does not mean that the applicant has

lost his right for the next promotion forever and the respondent nos. 1 to 3 had authority to promote other Circle Officer junior to the applicant.

12. In view of the undisputed facts, it must be mentioned that the applicant was senior to the respondent no.4 in the cadre of Talathi and in the cadre of Circle Officer. When the applicant was promoted, he did not supersede the respondent no.4, but he was senior to the respondent no.4. The object for which the letter dated 29/12/2017 was written by the GAD is already explained and it is specifically observed that the motive behind writing this letter was not to give next promotion to a government servant who has taken benefit of the G.R. dated 25/05/2004 and superseded his seniors. In the present case, the respondent no.4 was junior to the applicant and therefore it is not possible to hold that the applicant has superseded the respondent no.4 taking advantage of G.R. dt/ 25-5-2004, therefore, in our opinion it will unjust and illegal to refuse next promotion to the applicant merely on the ground that the respondent no.4 was promoted in the open category and the applicant who was senior to him was promoted in N.T. (B) category. In view of the discussion, we have no hesitation in granting the reliefs which are claimed in prayer clause nos.1&2.

13. So far as the prayer clause no.3 is concerned, in our opinion it is not possible to issue any direction in this regard because

there is no data before us as to how many seniors were superseded by the applicant when he was promoted as Circle Officer. In view of the above facts, we think it suitable to direct the respondent nos. 1 to 3 to consider the case of the applicant for promotion on the post of Naib Tahsildar as per seniority and these respondents shall take decision in view of the observations made in para-14 in the O.A.No. 953/2019, decided on 13/02/2020. In the result, we pass the following order -

ORDER

- (i) The O.A. is partly allowed in terms of prayer clause nos.1&2. The respondent nos.1 to 3 do comply the direction in last paragraph within a period of three months from the date of this order.
- (ii) The C.A. also stands dismissed.
- (iii) No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 14/05/2020.

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 18/05/2020.

Uploaded on : 18/05/2020.