

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO. 1081 OF 2014**

**DISTRICT :THANE**

Shri Suresh Ramchandra Jadhav, )  
Clerk/typist, Directorate of Information )  
and Public Relations, Maharashtra State, )  
Mumbai and residing at Adarsha )  
Cooperative Housing Society, D-13/3, )  
Sector 48-A, Nerul, Navi Mumbai. )...**Applicants**

**VERSUS**

1. Government of Maharashtra, )  
Through Secretary, )  
General Administration Department )  
Mantralaya, Mumbai – 400 032. )  
2. Directorate of Information and )  
Public Relations, Maharashtra )  
State, Mumbai 400 032. )....**Respondents**

RM

Shri M.D. Lonkar, learned Advocate for the Applicant.

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal, Vice-Chairman  
Shri R.B. Malik, Member (J)**

**DATE : 19.07.2016**

**PER : Shri Rajiv Agarwal, Vice-Chairman**

**ORDER**

1. Heard Shri M.D. Lonkar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 13.3.2014 issue-dby the Respondent no. 2. The Applicant has sought directions to the Respondents to consider his case for deemed date of promotion as a Clerk on the date Shri Meshram was so promoted.

3. Learned Counsel for the Applicant argued that the Applicant was appointed as a Group 'D' (Class-IV) employee with the Respondent No.2 w.e.f. 1.8.1992 (this date is actually 1.8.1982). He had passed S.S.C. examination in

March, 1985. As per the relevant G.R. dated 23.9.1975, the Applicant became eligible to be promoted as a Clerk on completion of 3 years of service. The Applicant was, however, not considered for promotion, so he made a representation on 25.4.1992, that he was eligible to be promoted to Group 'C' post after passing S.S.C. examination, as he had completed 3 years of service in Group 'D'. The Applicant belongs to S.C. category. He was promoted to Group 'C' post on 9.9.1991, on purely temporary basis. The promotion to Group 'C' post has been treated as regular by order dated 16.1.1995 from 1.12.1993. As the Applicant's request for promotion was not considered, he filed O.A.No.22 of 2009 before this Tribunal. By order dated 15.6.2009, this Tribunal directed the Respondent No.2 to decide the representation of the Applicant expeditiously, preferably within a period of three months from the date of order. The Applicant did not file representation in time as he was collecting information under the Right to Information Act to make effective representation. He submitted representation on 16.8.2013 for deemed date of promotion. The Applicant received reply dated 13.3.2014, rejecting his request for deemed date of promotion. Learned Counsel for the Applicant argued that the Respondents have admitted that out of 25 posts of Clerks, filled by promotion, only 4 posts were filled by promoting backward class candidates from 1977 to 1990. Learned Counsel for the Applicant argued that 5 posts from S.C. were available way back in 1985. However, persons from Open category were appointed. In 1991, when the Applicant was given temporary promotion, there was backlog

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of 3 posts of S.C. Learned Counsel for the Applicant argued that the Applicant is eligible to be granted deemed date of promotion from the date Shri Meshram was so promoted.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant has already been granted deemed date of promotion in Group 'C' by order dated 16.1.1995, when he was granted deemed date of promotion in Group 'C' post from 1.12.1993. The Applicant cannot seek any other date, as no person junior to him has been promoted before him. Learned P.O. argued that G.R. dated 23.9.1975 provides that class-IV employees, who have passed S.S.C. examination are eligible for promotion to Class-IV posts on completion of 3 years or from the date of passing S.S.C. examination, whichever is later. By G.R. dated 7.7.1976, 25% of the vacancies in class-III occurring in a year were to be filled by promotion.

5. Learned P.O. argued that no clear vacancies in clerical cadre were available for promotion so the Applicant could not be promoted. However, the Applicant was temporarily promoted as Clerk for three months by order dated 9.9.1991. Such temporary promotions were fortuitous and the Applicant cannot claim seniority on the basis of such promotion as per G.R. dated 15.4.1991. The Applicant passed Typing Examination on 31.7.1994, and his service has been regularised as per G.R. dated 15.4.1991. Learned P.O. stated that the claim of the Applicant for any earlier deemed date of promotion is unfounded.

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6. We find that the Applicant was appointed in a class-IV post by order dated 2.8.1982 (the appointment letter is at Exhibit R-1, page 42 of the paper book) and not on 1.8.1992. As per G.R. dated 23.9.1975, class IV employees, on completion of 3 years in service and from the date of passing S.S.C. examination whichever is later, are eligible to be promoted to class-III post. This G.R. provided that upto 10% of the vacancies could be filled by promotion. This G.R. was amended by G.R. dated 7.7.1976, and the limit was increased from 10% to 25%. By G.R. dated 15.4.1991, 25% class-III posts every year were required to be filled by promotion of Class-IV employees. This G.R. has following clause; viz.

“ (२) चतुर्थ श्रेणीतील पात्र कर्मचा-यांना त्यांनी टंकलेखनातील आवश्यक गती (प्र.मि.४० शब्द इंग्रजी आणि ३० शब्द मराठी) असल्याचे नियमानुसार विहित केलेले प्रमाणपत्र (गव्हर्नमेंट कमर्शियल सर्टिफिकेट) सादर करणाऱ्या अटीवर तृतीय श्रेणीतील लिपिक-नि-टंकलेखक या पदांवर पदोन्नती देण्यात यावी.”

Learned P.O. has placed before us the 100 point roster kept by the Respondent No.2 for appointment to the post of Cler-Typist. Different rosters for direct recruitment (52% posts are reserved) and promotion (33% posts are reserved) are required to be maintained. It is seen that the roster presented for our perusal is for promotion.

7. Let us examine impugned letter dated 13.3.2014. It states regarding issue no. 1(b) that as per G.R dated 16.6.1964, there is provision of promotion of Class-IV to

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Class-III posts. The Respondents with the affidavit in reply dated 15.10.2015 enclosed G.R.s of 23.9.1975 and 7.7.1976. It appears that some more G.R.s has since been issued revising the limit of promotion from Class IV to class III further. The Applicant was appointed in Class IV post on 2.8.1982 and G.R.s dated 23.9.1975 and 7.7.1976 will be applicable to determine his seniority and eligibility for promotion. As he joined service on 2.8.1982 and passed S.S.C. on 22.6.1985, his seniority has to be reckoned from 2.8.1985. As he completed 3 years of continuous service in Class IV on 2.8.1985, he become eligible to be considered for promotion to Class III from that date from S.C. category. The 100 point roster maintained by the Respondent no. 2 has entries from 1971. In the year 1986, 2 posts were filled by promotion, one from open and another from S.C. (Shri C.N. Karande). The register shows that there were backlog of 4 from S.C. category. If there was backlog of 4 from S.C., 7 for S.T. and 5 for D.T/N.T. category, why a person from Open category was promoted is not explained. The same situation appears year after year. In 1987, one Class III post was filled by promoting an open candidate, while there was backlog of 3 (this is later corrected to 4) S.C. In 1989, two posts were filled, one each from S.T. & S.C. candidate (Shri V.K. Kakde from S.C. category), the backlog of S.C. remained 3 (later corrected to 4). In 1990, one vacancy was filled by promoting open candidate, with backlog position remained unchanged. In 1991, the Applicant was promoted and backlog of S.C was reduced to 2(3). It is noted that the 100 point register states:-

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“ पदोन्नतीसाठी १०० बिंदू नामावली नोंदवही ”

However, on first 9 pages, पदोन्नतीसाठी has been scored off and replaced in ink by “नियुक्तीसाठी”. In the rest of pages for the year 1981 onwards, it is for “पदोन्नतीसाठी”. These facts are mentioned as there are no initials whenever entries are changed, even regarding backlog. From the above discussion, it is clear that the Applicant was promoted in a vacancy for S.C category in 1991. There was back log for S.C category even after he was promoted. G.R dated 15.4.1991 provides that for promotion to the post of Class-III, a Class-IV employee has to submit the Certificate of Marathi Typing (30 wpm) / English Typing (40 wpm). In the affidavit in reply dated 15.10.2015, in para 6, it is stated that the Applicant passed Government Commercial course in typing on 31.7.1994, implying that he was not eligible for regular promotion before that date. This argument cannot be accepted as before the G.R dated 15.4.1991 was issued, apparently, there was no stipulation of production of Certificate in Marathi / English typing. The Applicant had become eligible for promotion to Class-III on 2.8.1985, on completion of 3 years' service in Class-IV, as he had passed S.S.C on 22.6.1985. He should have been considered for promotion from S.C category at least in 1986, when Shri C.N Karande from S.C category was promoted, having back log of 4 from S.C category after his (Karande's) promotion. At least, one more post was available, which was filled from open category. Only other person senior to the Applicant from S.C category appears to be Shri V.K Kakade, who was promoted

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in 1989. (It is presumed that promotions were given on the basis of seniority in respective vertical reservation categories). Before that in 1987, one person from open category was promoted, though S.C backlog was 4. If only S.C backlog is considered, the Applicant appears to be eligible for promotion in 1987, when there was no requirement of Typing Examination. If backlog from other categories like S.T and D.T/N.T is considered, we do not know whether eligible candidates <sup>from</sup> were these categories were available. Depending on availability of eligible candidates from those categories, the Applicant's deemed date of promotion has to be worked out in terms of G.R dated 6.6.2002. Schedule 'A' of the aforesaid G.R has the following entry regarding reasons for granting deemed dates, viz:-

“ (४) मागासवर्गीयांच्या पदोन्नती संदर्भातील आरक्षण धोरणाची काटेकोरपणे अंमलबजावणी न करणे.”

It is quite clear, that the Applicant appears to eligible for grant of deemed date. The claim of the Respondents that the Applicant was required to pass requisite Marathi / English Typing test, before he could be considered for promotion, will become relevant only after 15.4.1991, i.e. if he is held eligible for deemed date of promotion after that date and that too in the light of any further G.Rs, if any, which give some time to the candidates to pass typing test after promotion.

8. It is clear that the letter dated 13.3.2014 issued by the Respondent no. 2 to the Applicant is not based on



correct facts as discussed hereinabove and it is quashed and set aside. The Applicant's case for deemed date of promotion in Class-III should be considered afresh by the Respondent no. 2 in the light of discussion in preceding paragraph, within a period of 3 months from the date of this order. This Original Application is allowed accordingly with no order as to costs.

Sd/-

**(R.B. MALIK)**  
**MEMBER (J)**

Sd/-

**(RAJIV AGARWAL)**  
**VICE-CHAIRMAN**

**Date : 19.07.2016**

**Place : Mumbai**

**Dictation taken by : SBA**