

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.1084 OF 2012

Shri Suresh Sudhakar Shetye.)
Working as Office Peon in the Office of)
the Respondent.)
Address of Service of Notice :)
Shri A.V. Bandiwadekar, Advocate,)
Having Office at 9, "Ram-Krishna",)
Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)...**Applicant**

Versus

The Administrator General.)
Official Trustee (M.S), Mumbai, having)
Office at Old Sachivalaya,)
Opp. Elphinstone College, Fort,)
Mumbai 400 032.)...**Respondent**

Shri B.A. Bandiwadekar, Advocate for Applicant.

Shri K.B. Bhise, Presenting Officer for Respondent.

CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)



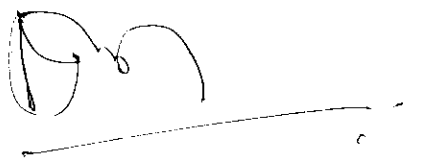
DATE : 27.06.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. The issue thrown up for determination in this Original Application (OA) is as regards the legally proper date to count the seniority of an employee found surplus in one Department and transferred to another for that reason in so far as the transferred Department is concerned.

2. The Applicant joined the Mother Dairy at Kurla as a Labourer commonly called "Mazdoor" on 1.4.1980. He claims to have been promoted to the post of Milk Distributor which was a Group 'D' post on 1.3.1984. As per a G.R. dated 10.9.2001, the Applicant came to be declared as surplus employee on the establishment of Mother Dairy, Kurla. The Applicant along with two others came to be recommended to a certain post for which the Respondent was directed to relieve him within seven days. He came to be relieved therefrom on 29.2.2008 and he started working as Office Peon in the Office of the Respondent though he was entitled according to him for being absorbed as "Daftari" in connection with which he has made some pleadings in Para 4 of the OA. It is the case of the Applicant that his seniority ought to have been



counted in Group 'D' cadre from the initial date i.e. 1.3.1984 when he was promoted as "Milk Distributor". In fact, w.e.f. 1.3.2008, he was given seniority in that cadre from that date which was the one on which he joined the Office of the Respondent by way of absorption.

3. In the above background, the issue that boils down to is as to the date relevant viz. whether the date of initial appointment in the transferee Department or the date on which he was absorbed in the transferred Department.

4. The Applicant lodged protest vide the representation dated 10.7.2012, a copy of which is at Exh. 'C' (Page 22 of the paper book). That representation came to be effectively rejected by ordering its filing by the communication at Exh. 'A' dated 1.9.2012 (Page 14 of the paper book). It is this particular communication which is the subject matter of challenge and dispute in this OA for which the fact at issue as condensed by the facts has already been set out hereinabove.

5. The Applicant in support of his case strongly relies upon a final common order of this Tribunal in **OA 361/2009 (Bombay) and OA 655/2005 (Aurangabad)**



Vijay Narwade and others Vs. State of Maharashtra and 3 others, dated 7.9.2009 presided by the Bench of the then Hon'ble Chairman. According to the Applicant, the reliance placed by the Respondent in support of their case on Para 20 of the G.R. dated 26.3.2004 in the manner they did it is out of place in as much as it is contrary to the interpretation thereto made by **Vijay Narwade's** case (supra).

6. It may also be noted, however, that **Vijay Narwade's** case was carried to the Hon'ble High Court in **Writ Petition Nos.1419/2011 (State of Maharashtra and others Vs. Vijay P. Narwade and others with Writ Petition No.6461/2007 (State of Maharashtra and other Vs. Uday L. Sawant)**. By an order dated 28th November, 2013, Their Lordships were pleased to make the following order.

"1. Having regard to the order passed on the review application, this writ petition requires admission.

2. Hence, Rule.

3. The respondents including the respondent no.1 appearing in person waives service. Hearing

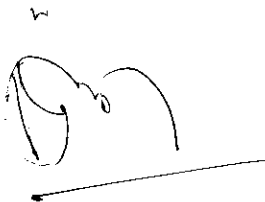


expedited. The Writ Petition be listed for peremptory hearing in the week commencing 13th January, 2014.

4. Having regard to the fact that the writ petition was dismissed and the dismissal recalled later so also order under challenge delivered in the year 2009, there will be no interim relief. However, the appointees and promotees must be informed that they shall continue to hold the post subject to final orders in the Writ Petition."

7. There are two aspects of the matter which need to be borne in mind. In the first place, there is no stay as such to the present OA that we are deciding. Secondly, in as much as there are directions of the Hon'ble High Court above quoted, we too will have to make it clear that the disposal hereof notwithstanding, it will be subject to the ultimate outcome of the two pending Writ Petitions above detailed and all concerned including this Tribunal will act in accordance therewith. With this, we may now proceed further.

8. To recapitulate the facts so as to have a proper focus, the Applicant came to be appointed initially in Mother Dairy, Kurla. He was declared surplus and was in



the manner of speaking transferred to the Office of the Respondent and the issue of his seniority arises for consideration on whether it would be from 1.3.1984 as claimed by him when he came to be appointed as "Milk Distributor" in the Mother Dairy or 1st March, 2008 as per the Respondent when he came to be absorbed in the Office of the Respondent. At this stage itself, it should be clearly understood that while still working for Mother Dairy, the Applicant received the benefit of what has been described as 'Career Progression Scheme' which should be like 'Time Bound Promotion'. That he got w.e.f. 7th May, 1991. It may be noted here that although the Applicant started working as Mazdoor w.e.f. 2nd April, 1979, it was as per the orders of the Hon'ble High Court that his date of appointment was fixed as 2.4.1980. With effect from 1.3.1984, he was appointed to the post of Milk Distributor and it seems that on 1st May, 1991, he was given the said post of Milk Distributor which the Affidavit-in-reply in Para 7 refers as, "further promoted". Examining the matter from every possible angle, we make it clear that the only appropriate course of action would be to treat the date relevant for the present purposes as 7.5.1991 and not 1.3.1984. Further, in the context of the facts such as they are, we do not think the case of the Applicant could be considered for the post of "Daftari". The reliance placed by

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the Applicant on the correspondence in the second limb of Para 4 of the OA will not in our opinion give rise to the ingredients which ultimately would metamorphose into a right for being considered for the post of Daftari. We may now turn to 2001 G.R.

9. The G.R. dated 10th September, 2001 was issued for the creation filling up and revival of posts and the matters akin thereto. Each and every clause thereof which we have perused need not necessarily be adverted to herein. The 3rd Schedule thereto annexed is with regard to the review of the posts and for making alternative provisions for those that were found surplus. The exact Marathi words need to be reproduced.

“पदांचा आढावा घेऊन अतिरिक्त कर्मचा-यांना पर्यायी सेवा उपलब्ध करून देण्यासंबंधीची योजना”

Clause 11 thereof reads as follows :

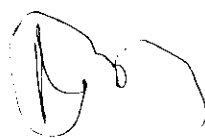
“११. अतिरिक्त ठरलेले अधिकारी/कर्मचारी यांना त्यांच्या संमतीने समकक्ष किंवा ते धारण करित असलेल्या पदापेक्षा कमी दर्जाच्या पदावर सामावून घेईपर्यंत ते ज्या कार्यालयातून अतिरिक्त ठरले आहेत त्याच ठिकाणी कार्यरत रहातील. तथापि, ते अतिरिक्त ठरलेले असल्याने त्या कार्यालयाच्या आस्थापनेवर त्यास वेतन देण्याची व्यवस्था म्हणून निर्माण केलेल्या अधिसंख्या पदाच्या आधारे कोणताही हक्क असणार नाही.”

Translated into English, it should mean that by the consent of the surplus employees if they were to be transferred to equivalent post or lower post, then during the time lag, they would continue to function in the transferee Department. Clause 20 deals with the seniority aspect of the matter and that is very significant and needs to be reproduced.

“२०. सेवा ज्येष्ठता - अशा प्रकारे सामावून घेतलेल्या अतिरिक्त ठरलेल्या व्यक्तीची समतुल्य/समकक्ष पदावर नियुक्ती झाल्यानंतर त्याची सेवा ज्येष्ठता तो ज्या संवर्गात अतिरिक्त ठरला त्या संवर्गातील नियमित नियुक्तीच्या दिनांकापासून नियमित करण्यात यावी.”

10. The said provision lays down that the transferred surplus employee shall maintain his seniority in his earlier Department which he was transferred from. If that be so, then the application of the said provision to the present facts would normally mean that the Applicant would maintain his seniority even in the transferred Department from 01.05.1991.

11. However, the Respondents relied upon a G.R. of 26th March, 2004 whereby 2001 G.R. above referred to has been in the manner of speaking amended. By Clause 4 thereof, the Clause 20 above quoted in 2001 G.R. has been substituted w.e.f. 10.9.2001. It is, therefore, a



retrospective amendment and it practically and totally substitutes the said Clause 20 of 2001 G.R. The said Clause 20 as amended reads as follows :

“२०. सेवाज्येष्ठता: अशा प्रकारे अतिरिक्त ठरल्यामुळे सामावून घेतलेल्या शासकीय कर्मचारी अथवा अधिकारी यांची इतर शासकीय विभागात अथवा शासकीय कार्यालयात समतुल्य/समकक्ष पदावर नियुक्ती झाल्यानंतर, अशा समायोजित करण्यात आलेल्या अतिरिक्त कर्मचारी अथवा अतिरिक्त अधिकारी यांची सेवाज्येष्ठता शासन अधिसूचना, सामान्य प्रशासन विभागा, क्रमांक-एसआरव्ही-१०७६/बारा, दिनांक २१ जून १९८२ च्या नियम ४(१) मधील तरतूदीनुसार, असा अतिरिक्त शासकीय कर्मचारी अथवा अधिकारी ज्या पदावर अथवा ज्या संवर्गामध्ये सामावून घेतला जाईल त्या पदावरील अथवा त्या संवर्गामधील त्याच्या नियमित नियुक्तीच्या दिनांकापासून निश्चित करण्यात यावी.”

12. It is clear that the just referred Clause provides that in the facts and circumstances like the present one, the seniority of the Applicant would be fixed from the date he took up the charge in the Office of the Respondent which is 1.3.2008.

13. Naturally, therefore, the above referred Clause as amended is the mainstay of the case of the Respondent and it is equally clear that left along with that particular provision, the Applicant has no real answer to the case of the Respondent. However, the stage is now set to refer back to **Vijay Narawade** (supra) which is a judgment as



already mentioned above rendered by a Division Bench of the then Hon'ble Chairman of this Tribunal. Writ Petitions thereagainst are now pending.

14. There was no dispute in that matter that all the Applicants were appointed on regular and substantive basis and were confirmed permanent employees. The same is the state of affairs in this OA also, when the Applicant was working with the Mother Dairy, Kurla. In **Vijay Narawade's** OA also, a G.R. of 10.9.2001 fell for consideration. Reference was made to Maharashtra Civil Services (Regulation of Seniority) Rules, 2002 with particular emphasis to Clause 4(1) thereof. Clause 4(2)(c) was reproduced in Para 9 which we can as well advantageously do.

"4.(2) (c) the seniority of a transferred Government servant vis-a-vis the Government servants in the posts, cadre or service to which he is transferred shall be determined by the competent authority with due regard to the class and pay scale of the post, cadre of service from which he is transferred the length of his service therein and the circumstances leading to this transfer."



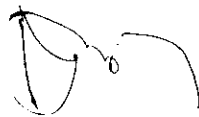
15. The judgment of the Hon'ble Supreme Court in **S.I. Rooplal and another Vs. Lt. Governor through Chief Secretary, Delhi and others 2000 LAB I.C 370** was referred to and relied upon in **Vijay Narwade's** case and Paras 15 and 16 thereof came to be reproduced. We too could do so for facility.

“15. We will now take up the question whether the appellants are entitled to count their service rendered by them as Sub Inspector in the BSF for the purpose of their seniority after absorption as Sub Inspector (Executive) in Delhi Police or not. We have already noticed the fact that it is pursuant to the needs of Delhi Police that these officials were deputed to Delhi Police from the BSF following the procedure laid down in Rule 5(h) of the Rules and subsequently absorbed as contemplated under the said Rules. It is also not in dispute that at some point of time in the BSF, the appellants' services were regularized in the post of Sub Inspector and they were transferred as regularly appointed Sub Inspectors to Delhi Police Force. Therefore, on being absorbed in an equivalent cadre in the transferred post, we find no reason why these transferred officials should

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not be permitted to count their service in the parent department. At any rate, this question is not res integra and is squarely covered by the ratio of judgments of this Court in more than one case. Since the earlier Bench of the Tribunal relied upon Madhavan's case to give relief to the deputationists, we will first consider the law laid down by this Court in Madhavan's case (AIR 1987 SC 2291) 1988 Lab IC 26) (supra). This Court in that case while considering a similar question came to the following conclusions (Para 21 of AIR, Lab. IC).

"We may examine the question from a different point of view. There is not much difference between deputation and transfer. Indeed, when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one government department to another. It will be against all rules of service jurisprudence, if a government servant holding a particular post is transferred to the same or an equivalent post in another government department, the period of his service in the post



before his transfer is not taken into consideration in computing his seniority in the transferred post. The transfer cannot wipe out his length of service in the post from which he has been transferred. It has been observed by this Court that it is a just and wholesome principle commonly applied where persons from different sources are drafted to serve in a new service that their pre-existing total length of service in the parent department should be respected and presented by taking the same into account in determining their ranking in the new service cadre. See R.S. Mokashi V. L.M. Menon (1982) 1 SCC 379 : (AIR 11982 SC 101 : 1982 Lab. IC 38) Wing Commander J. Kumar V. Union of India (1982) 3 SCR 453 (AIR 1982 SC 1064 : 1982 Lab. IC 1586).

16. Similar is the view taken by this court in the cases of R.S. Mokashi and Wing Commandant J. Kumar (supra) which judgments have been followed by this Court in Madhavan's case. Hence, we do not think it is necessary for us to deal in detail as to the view taken by this Court in those judgments. Applying the principles laid down in the above referred cases, we hold the

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appellants are entitled to count the substantive service rendered by them in the post of Sub Inspector in the BSF while counting their service in the post of Sub Inspector (Executive) in Delhi Police Force.”

16. By relying upon a judgment of the Hon'ble Supreme Court in **Tamil Nadu Khadi and Village Industries Board Vs. M.S. Krishnaswamy, AIR 2001 SC 2761**, the Bench concluded that if a person was appointed to Government service and for administrative reasons, he was transferred from one Department to another, his seniority and chances of promotion should not stand affected by the said transfer, “which is not his own making”.

17. Thereafter, a judgment of the Hon'ble Rajasthan High Court and another judgment in an OA of this Tribunal came to be referred to.

18. In **Vijay Narawade** (supra), reliance was placed on behalf of the present Respondent to the 2004 G.R. above referred to and it was emphasized that on its plain language, a situation would obtain whereby the surplus employee on transfer would lose the period of service



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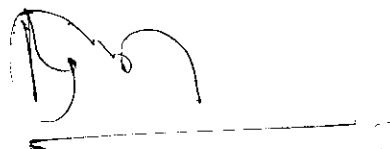
earlier rendered. It was further emphasized that the said G.R. was retrospective in operation, and therefore, it would lead to the seniority being revised upon transfer. Reliance was placed on **Renu Malik Vs. Union of India, 1994 (1) SCC 173 and Union of India Vs. K. Savitri and others, 1998 (4) SCC 358.** The Bench of the then Hon'ble Chairman discussed these two authorities in Paras 17 and 18 of the order and we think it appropriate to quote those Paragraphs in entirety.

“17. After hearing both the learned Counsel for the Applicant and the learned Presenting Officer Shri Rajpurohit for the Respondents the law is now very well settled as mentioned in **Rooplal's case** consisting of Three Judges Bench of the Hon'ble Supreme Court which is subsequent to the two judgments referred to by Mr. Rajpurohit. We are bound by the latter judgment of the Hon'ble Supreme Court which in no uncertain terms has laid down that persons like the applicants herein cannot suffer or lose their earlier service merely because they were absorbed in another department. The same view is expressed consistently by the Hon'ble Supreme Court in K.Madhavan Versus Union of India, AIR

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1987 SC2291, R.S. Mokashi Vs. L.M.Menon (1982) 1 SCC 379 and Tamil Nadu Khadi and Village Industries Board Versus M.S. Krishnaswamy, AIR 2001 SC 2761. The same view is also expressed by the Rajasthan High Court. In my event out Tribunal in an earlier judgment has clearly considered the said issue and has also considered the very same G.R. dated 26th March 2004 upon which the Respondents have relied and has held that the service rendered in earlier department before being absorbed in another department cannot be ignored and same will have to be taken in to account while revising the seniority.

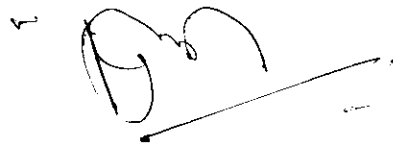
18. Reliance of Renu Malik Versus Union of India and Union of India Versus K. Savitri and Others by Mr. Rajpurohit is totally misplaced. In Renu Malik's case, she was transferred to another department, on her own request, hence it was held that the service rendered in an earlier department cannot be taken into account for seniority. In the present case, none of the Applicants had sought any transfer. Similarly in Union of India Versus K. Savitri and Others, the

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Hon'ble Supreme Court while dealing with a clear provision in paragraph no.11.1 of the Service Regulation, which clearly prohibited taking into account, the services rendered in an earlier department for the purpose of seniority, held that the earlier service cannot be taken into account for computing seniority. Whereas in the present case, when Seniority was finalized for the Applicants on 29.01.2004, there was no such provision."

19. It is, therefore, very clear that much as the Respondent would canvass to the contrary for all practical purposes the Bench of the then Hon'ble Chairman so construed even 2004 G.R. as to not affect the earlier service of the Applicant and it was to highlight this aspect of the matter that we read that order somewhat closely and in detail.

20. The upshot, therefore, is that the Applicant would have to be considered as an appointee in the transferred Department also w.e.f. 1st May, 1991. However, even though as a fiction or whatever, but it will have to be so worked out as to provide that in the transferred Department (the Respondent), he would be



shown below the last candidate in that cadre in the year 1991, so that those that were there already before him as in that year would not get adversely affected by the Applicant's transfer. The Original Application stands allowed to this extent with these directions and the impugned communication (Exh. 'A') stands hereby quashed and set aside.

21. It is, however, made clear that this judgment and its effect will be subject to the final outcome of the two pending Writ Petitions before the Hon'ble High Court for which Paragraphs 6 & 7 above may be carefully perused. No order as to costs hereof.

Sd/-

(R.B. Malik)
Member-J
27.06.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
27.06.2016

Mumbai

Date : 27.06.2016

Dictation taken by :

S.K. Wamanse.