

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION NO.133/2012.**

Ramkrishna Barkaji Mohekar,  
Aged about 60 years,  
Occ-Retired,  
R/o 58, Appu Colony, Rathi Nagar,  
Amravati-444 603.

**Applicant**

**-Versus-**

1) The State of Maharashtra,  
Through its Secretary,  
Department of Agriculture, Animal Husbandry,  
Dairy Development and Fisheries,  
Mantralaya, Mumbai-440 032.

2) The Commissioner of Dairy Development,  
Worli Sea Face, Mumbai-18.

**Respondents**

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Shri R.D. Dharmadhikari, Ld. Counsel for the applicant.  
Shri V.A. Kulkarni, learned P.O. for the respondents.

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**Coram:- Hon'ble Shri J.D. Kulkarni,**  
**Vice-Chairman (J).**

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**JUDGMENT**

**(Delivered on this 23<sup>rd</sup> day of June 2017.)**

Heard Shri R.D. Dharmadhikari, the learned counsel  
for the applicant and Shri V.A. Kulkarni, learned P.O. for the  
respondents.

2. The applicant Ramkrishna Barkaji Mohekar was appointed as Assistant Dairy Chemist in Dairy Development Department on 8.11.1997 on temporary basis. He was selected by Maharashtra Public Service Commission (MPSC) in Class-II category on 12.6.1979. He was promoted in Class-I category of Dairy Development Department on 25.1.1983.

3. According to the applicant, on 30.3.1995, new recruitment rules were introduced and it was specifically stated that for getting promotion to the cadre of Junior Class-I to the cadre of Senior Class-I, the employee must be in continuous service of three years and must hold a degree.

4. One Mr. V.R. Sathe was promoted to the cadre of Senior Class-I on 25.4.1995, though he did not possess the qualification i.e. degree. The applicant was holding such degree, even though he was not promoted.

5. Respondent No.2 issued a seniority list of Junior Class-I employees on 16.8.1995. The applicant, though at Sr. No. 2 in the said list was superseded for promotion as departmental enquiry was pending against him and he was under suspension. However,

applicant's junior Shri E.D. Dhomne who was at Sr. No.8, was promoted in similar circumstances. Again on 29.7.2000, the applicant was superseded. On 23.1.2002, the applicant was again superseded by his junior. The applicant made number of representations, but his case was not considered for promotion. On 18.3.2011, the applicant was acquitted in the criminal case pending against him bearing No.707/1999 by the Chief Judicial Magistrate, Nagpur. As per G.R. dated 3.6.2002, an employee against whom a criminal case is decided and the employee is acquitted, such an employee shall be promoted with deemed date of promotion. The applicant has, therefore, prayed that the deemed date of promotion to the post of Senior Class-I shall be granted to him w.e.f. 25.4.1995 i.e. the date on which Mr. Sathe was promoted.

6. The respondents filed affidavit-in-reply. It is stated that the name of the applicant was included from time to time in various proposal of promotion. But since departmental enquiry was pending against the applicant, a conscious decision was taken as per the G.R. dated 2.4.1976, as allegations against the applicant were serious in nature. A departmental enquiry against the applicant concluded in June 2005 and the applicant was found guilty of charges levelled

against him and punishment was imposed on the applicant as per order dated 22.6.2005 in the departmental enquiry and following order was passed:-

१) पी. आर. बी. मोहेकर, तत्कालीन महापंचायत, शासकिय दुध योजना, नागपूर यांची वेतनवाढ २ वर्षांसाठी कायमपणे रोखण्यात यावी.

२) शासकिय दुध योजना, नागपूर यांचे झालेले आर्थिक नुकसान रु. २४,०००/- फक्त पी. मोहेकर यांचेकडून वसूल करण्यात यावेत.”

7. As regards promotion of Mr. Sathe, it is stated that the revised recruitment rules were published on 20.2.1995 and prior to that a person without degree was eligible for promotion from the post of Jr. Class-I to the post of Sr. Class-I. Case of Mr. Sathe was considered by the competent authority as per the old rules and at that time the applicant was even not under the zone of consideration for promotion and, therefore, there is no question of re-opening the case of Mr. V.R. Sathe. Mr. V.R. Sathe was at Sr. No.7 in the select list and the first six candidates in the select list were promoted between September 1994 to December 1994. Promotion of Mr. Sathe was as per due procedure.

8. As regards the promotion of one Mr. Dhomne and others who are alleged to be junior to the applicant, it is stated that the

applicant is at Sr. No.1 and Mr. Dhome is at Sr.No.2. The D.P.C. meeting was held on 14.8.1996 and a conscious decision was taken that the applicant should not be considered for promotion, since a departmental enquiry and criminal case was pending against him as per G.R. dated 2.4.1976. It is further stated that the meeting of D.P.C. was held on 16.11.1999 and again a conscious decision was taken to keep open the case of the applicant subject to conclusion of departmental enquiry. The candidates who were junior and found fit for promotion, were given promotion. No departmental enquiry was pending against them. Again in the meeting dated 18.9.2001, applicant's case was considered and a conscious decision was taken to keep his case open subject to conclusion of departmental enquiry. Shri Nehate's case was considered since no departmental enquiry was pending against him. Charges against Shri Nehate were not serious.

9. The respondents submitted that the applicant has been punished in the departmental enquiry pending against him and, therefore, he was not promoted. The respondents submitted that, though the applicant has been acquitted in criminal case on 18.3.2011, the Government has discretion to initiate departmental enquiry independently, irrespective of the result of criminal case. The

applicant; as already stated, was not promoted due to result in the departmental enquiry and as he was found guilty. The decision has not been challenged.

10. The learned counsel for the applicant submits that, Shri Sathe was promoted, though he did not possess the degree. He invited my attention to the Recruitment Rules and particularly Rule 6 (a) of the Dairy Development Department (Recruitment), Rules 1999. The said rule reads as under:-

**“6. Appointment to the post of Junior Administrative Grade specified in Schedule-III in the Department shall be made either,-**

- (a) by promotion of a suitable person on the basis of selection from amongst the persons holding the posts in Class-I cadre specified in Schedule-IV having not less than three years continuous service in that cadre, and possess a degree.+

11. The learned P.O. frankly admitted that, Shri Sathe was not holding a degree when he was promoted. It is, however, stated that the case of Mr. Sathe was governed by earlier Recruitment Rules which do not require that a person to be promoted to Senior Class-I cadre, shall possess a degree. At that time, even Diploma holders were considered for promotion. It is stated that, the applicant was even not under the zone of consideration at the time of promotion of Shri Sathe. Admittedly, the applicant has not challenged the

promotion of Shri Sathe in this O.A. nor Shri Sathe is made party respondent to this O.A. In such circumstances, the applicant cannot agitate the promotion given to Shri Sathe.

12. So far as the case of the applicant that his juniors were promoted and he was not considered, it must be noted that the applicant has not challenged the promotion orders of his juniors such as Shri Dhomne and others, these persons are not made party to this O.A. and, therefore, the applicant cannot now say that Shri Dhomne and others were promoted illegally. The applicant got retired on superannuation and after retirement he is claiming deemed date of promotion to Senior Class-I grade. Since the applicant has not been promoted to Senior Class-I grade, he cannot claim deemed date of promotion.

13. The learned P.O. has invited my attention to the fact that the case of the applicant was time and again considered for promotion. But that time, a conscious decision was taken against the applicant not to promote him, since the criminal case was pending so also a departmental enquiry was also pending against the applicant. The order passed in the departmental enquiry is placed on record at Exh. R.2. From Exh. R.2 dated 22.6.2005, it seems that the applicant

was found guilty in the departmental enquiry and, therefore, his two increments were stopped permanently and not only that an amount of Rs.24,000/- which was alleged to be the financial loss caused to the Government, was recovered from the applicant. There is nothing on record to show that, this order was ever challenged by the applicant or that it was set aside by the competent authority. It seems that, every time the case of the applicant has been considered on merit and a conscious decision has been taken. Even for the sake of argument, it is accepted that the applicant was acquitted from the criminal charges in 2011, that itself will not entitle the applicant to claim deemed date of promotion, since his case was considered on merit every time and he was found guilty in departmental enquiry. The submission made by the learned P.O. that the case of the applicant was not considered for promotion, since he was punished in departmental enquiry, seems to be quite strong and supported by documentary evidence on record.

14. On a conspectus of discussion in foregoing paras, I am, therefore, satisfied that the applicant's case that he be considered for promotion from 25.4.1995 i.e. the date on which Shri Sathe was promoted, has no substance. Since the applicant was not promoted to Senior Class-I grade, there is no question of granting him

deemed date of promotion that too w.e.f. 25.4.1995 and hence I do not find any merit in this O.A. Hence, the following order:-

**ORDER**

The O.A. stands dismissed with no order as to costs.

(J.D.Kulkarni)  
Vice-Chairman (J)

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