

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NO 138 OF 2009**

**DISTRICT : WASHIM**

Shri Sandeep Gopalrao Targe )  
Working as Junior Clerk with the )  
Office of Asst. Director Health )  
Services, Washim. R/o: Govt. )  
Quarters, 'Vishakha' Room no. 201 )  
Civil Lines, Washim, )  
Tal & Dist-Washim. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through its Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai. )
2. Dy Director of Health Services, )  
Akola Region, Akola. )
3. Assistant Director of Health )  
Services, Washim, )  
Tal & Dit-Washim. )

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4. Mr A.P Badhiye, )  
 Working as Senior Clerk in the )  
 Office of District Hospital, )  
 Darwaha. )...**Respondents**

Shri S.A Marathe, learned advocate for the Applicant.

Smt S.V Kolhe, learned Presenting Officer for the Respondents no 1 to 3.

None for the Respondent no. 4

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**Shri J.D Kulkarni (Member) (J)**

**DATE : 06.01.2017**

**PER : Shri Rajiv Agarwal (Vice-Chairman)**

**ORDER**

1. Heard Shri S.A Marathe, learned advocate for the Applicant and Smt S.V Kolhe, learned Presenting Officer for the Respondents no 1 to 3. None for the Respondent no. 4.

2. This Original Application has been filed by the Applicant challenging promotion of the Respondent no. 4 to the post of Senior Clerk by order dated 27.5.2004 and also the order dated 6.1.2009 issued by the Respondent no. 2 rejecting the representation dated 11.11.2008 of the Applicant in this regard.

3. Learned Counsel for the Applicant argued that as per the Senior Clerk in the Directorate of Health Services (Recruitment) Rules, 1985, the appointment to the post of Senior Clerk is inter-alia by promotion of Junior Clerks, on the basis of seniority subject to fitness. Such persons are also required to pass the Departmental Examination. Learned Counsel for the Applicant argued that a Junior Clerk can be considered for promotion after working as Junior Clerk for three years, provided he passes the Departmental Examination. The Applicant belongs to NT-D category and was appointed as Junior Clerk in May, 1997. He was confirmed in service in 1999. In the year 2004, there were five vacancies in the cadre of Senior Clerk and one of those vacancies was from NT-D category. The Applicant was eligible to be considered for promotion, except that he had not passed the Departmental Examination. However, that was not the fault of the Applicant as he was not sent for training leading to the appearance in Departmental Examination. Learned Counsel for the Applicant stated that as per Circular issued by the Director of Health Services, Maharashtra State, Pune on 18.5.1993, for promotion to the post of Senior Clerk, the Junior Clerks have to pass the Post Recruitment Departmental Examination in three chances. This Circular also provides that for sending Junior Clerks for training, seniority and roster, both should be considered. Learned Counsel for the Applicant argued that considering that vacancies arising in 2004 included one vacancy from NT-D category and the Applicant was the senior most Junior Clerk from that category, he should have been sent for training earlier. However, the Respondent no. 2 acted in accordance

with letter dated 28.2.2002 issued by the Principal, Health and Family Welfare Training Centre, Aundh, Pune, wherein it has been stated that only those Junior Clerks, who have completed 12 years of service should be sent for training. These instructions should not have been applied for reserved category candidates. As the Applicant was not sent for training in time, he was not considered for promotion by the Departmental Promotion Committee (D.P.C) who selected the Respondent no. 4, who belongs to NT-B category on the principle of inter transferability of posts from VJ/NT category as per G.R dated 18.7.1997. Learned Counsel for the Applicant argued that the Applicant is eligible to be promoted as Senior Clerk from the date on which the Respondent no. 4 was so promoted.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondent nos 1 to 3 that this Original Application has become infructuous as the Applicant has since been promoted as Senior Clerk by order dated 8.6.2009. Also, the principle of inter transferability for promotion is recognized by G.R dated 18.10.1997. As the Applicant was too junior compared to the Respondent no. 4, and other colleagues, he was not sent for training. Learned Presenting Officer argued that order dated 6.1.2009 is legal and proper.

5. We find that the main grievance of the Applicant was that he was not promoted as Senior Clerk. He has, however, been promoted as Senior Clerk by order dated 8.6.2009. Now, if he is seeking promotion from an earlier date, it will be a case for deemed date of promotion. The

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Applicant will be first required to approach the competent authority for grant of deemed date of promotion and depending on the decision of the Competent Authority, he would have to decide the further course of action.

6. The Respondents are directed to consider the representation of the Applicant for deemed date of promotion, if received within one month from the date of this order, within a further period of two months. This Original Application is disposed of accordingly with no order as to costs.

sd/-

**(J.D Kulkarni)**  
**Member (J)**

sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**

**Place : Nagpur**

**Date : 06.01.2017**

**Dictation taken by : A.K. Nair.**