

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 03 of 2014

Ashok S/o Narayan Shambharkar,
Aged about 58 years, Occ. Retired Chief Engineer,
R/o Plot no.96, Matru Kunj, Empress Mill Cooperative
Society, Sri Nagar, Ring Road, Nagpur-440015.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Chief Secretary,
Mantralaya, Mumbai.
- 2) The Additional Chief Secretary,
Government of Maharashtra,
Mantralaya, Mumbai-400032.
- 3) The Secretary,
Department of Public Works, Mantralaya,
Mumbai-400032.
- 4) The Secretary,
Department of General Administration,
Mantralaya, Mumbai-400032.

Respondents

Shri P.D. Meghe, Arvind Dubey, H.B.Gaikwad, Advs. for the applicant.
Shri A.M. Ghogre, Id. P.O. for the respondents.

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

JUDGEMENT

(Delivered on this 11th day of August,2017)

Heard A. Dubey, Id. Counsel for the applicant and A.M. Ghogre, Id. P.O. for the respondents.

2. The applicant Ashok Narayan Shambharkar is claiming deemed date of promotion for the post of Secretary, Department of Public Works, Government of Maharashtra w.e.f. 1/5/2012 with further directions to grant all monetary benefits including pensionary benefits arising from such promotion with interest @ 18% p.a.

3. The applicant was appointed as Junior Engineer by the respondents in the year 1977. He was promoted to various posts such as Executive Engineer, Superintending Engineer and finally to the post of Chief Engineer on 28/5/2009.

4. According to the applicant, a Chief Engineer has three promotional avenues open and these avenues are (1) Secretary (Roads), (2) Secretary (Works) & (3) Joint Managing Director, Maharashtra State Road Development Corporation. According to the learned counsel for applicant, the first post of Secretary became vacant in December,2010, whereas, the second post of Secretary became vacant on 30/4/2012. The first post was reserved for S.T. candidate. However, S.T. candidate was not available. It is further stated that as per the G.R. dated 5/12/1994, if the post of reserved

category is not available for S.T. category, the same can be interchanged with S.C. category. The applicant made number of representations such as on 17/2/2012, 20/6/2012, 21/9/2012 & 8/10/2012 and requested that he be promoted to the post of Secretary, but nothing was done and finally on 5/12/2012 the respondent no.1 informed to the applicant that his claim cannot be considered unless the stay granted by the Hon'ble High Court is vacated. The applicant has therefore filed this O.A. and has claimed deemed date of promotion to the post of Secretary as already stated.

5. The respondents submitted that the applicant's claim for deemed date is not tenable since the applicant was never promoted to the post of Secretary, there is no question of granting deemed date of promotion.

6. As regards availability of the post of Secretary in Public Works Department, it is stated that there are three posts of Secretary, out of which two posts are for PWD Mantralaya and third one is allotted to the Maharashtra State Road Development Corporation (MSRDC), Mumbai which is designated as Joint Managing Director. It is stated that for the first time in reserved post of Secretary, PWD one Shri Jagnade was promoted as per 100 point roster. It is stated in para-5 to 8 as under :-

“5. It is further submitted that as per the provision of the Reservation Act,2004 one post of reserved category under the said Act, a copy of the said act is annexed here with and marked it as Exhibit-1. For the first time in the Reserve post of Secretary, PWD, Shri Jangade belonging to the Scheduled Caste was promoted as per point no.1 in the 100 point roster, as a Secretary on 23/4/2007. Subsequently, Shri Jangade was appointed as a member of the MPSC. In view thereof the said posts of Secretary, PWD fell vacant on 27/5/2008. At the point of time as per point no.2 in the roster i.e. Schedule Tribe category was entitled to be promoted on the said vacancy as ever marked for the ST category. However, no eligible ST candidate was available at that time. In view of the G.R. dated 27/10/2008 it becomes necessary for Government verify the category for whom the post is reserved and if the candidate of that particular category is not available then to consider the next category as per Rotation (a copy of G.R. dated 27/10/2008 is annexed here with and marked as Exhibit-2). Due to non availability of ST candidate for the promotion on the post of Secretary, in Public Works Department, the post again was filled in by promoting Schedule Caste candidate namely, Shri S.L. Jadhav on 20/12/2008 and he retired on 31/01/2009. Thereafter because of non availability of the ST candidate for the promotion the post of Secretary, in Public Works Department, was again filled in by promoting Schedule caste candidate namely Shri G.M. Kandhare on 23/7/2009 who also retired on 31/12/2010. Since then, the reserve post of Secretary in Public Works Department was laying vacant. The details are given as under for filing up the post of Secretary in Public Works Department since from 2007.

<i>Sr.No.</i>	<i>Name of the Officer</i>	<i>Cadre from filled post of Secretary</i>	<i>Date of Appointment on the post of Secretary</i>	<i>Date of Retirement</i>
1	<i>Shri K.S. Jangade</i>	SC	23/4/2007	27/5/2008
2	<i>Shri S.L. Jadhav</i>	SC	20/12/2008	31/1/2009
3	<i>Shri G.M. Kandhare</i>	SC	23/7/2009	31/12/2010

6. *It is further submitted that Shri G.M. Khandare was retired by superannuation on 31/12/2010 who belongs to SC category had worked as Secretary of PWD. After his retirement, this department has taken initiative to fill up the said post. The post of Secretary is filled up from amongst the senior most Chief Engineer (Civil) were considered and included in the said proposal.*

- 1) *Shri P.G. Godbole (Open)*
- 2) *Shri D.N. Potdukhe (Open)*
- 3) *Shri S.M. Ramchandani (Open)*
- 4) *Shri P.D. Mandapure (Open)*
- 5) *Shri S.M. Sabnis (Open)*
- 6) *Shri S.M. Panchagalle (SBC)*
- 7) *Shri V.R. Naik (VJ-A)*

I say that, Shri P.G. Godbole, Shri D.N. Potdukhe, Shri S.M. Ramchandani, Shri P.D. Mandapure and Shri S.M. Sabnis belongs to open category. At present two Secretaries are from open category and the vacant post is obviously goes to reserved category. Since no eligible candidate was available in the ST category and the said post goes to VJ-A category. Mr. V.R. Naik is a Chief Engineer Civil and

within the zone of consideration belongs to VJ-A category however Mr. Naik has not completed three years of service on the post of Chief Engineer Civil, as mandated. The Committee under the Chairmanship of Additional Chief Secretary (Home) relaxed the condition of three years experience as per the provisions of the Circular, dated 27/2/2007. Being aggrieved with this decision of the Government about promotion to the VJ-A Shri Naik, Mr. Panchagalle, Chief Engineer (Vivil), PWD who belongs to SBC category approached the Hon'ble MAT Mumbai and challenged the said decision of the Government and filed O.A.No.671 of 2011. Thereafter, after heard the matter from time to time and dismissed the same on 24/5/2012 and passed the order against Mr. Panchagalle. As on today as he has already completed 3 years on Chief Engineer (Civil).

7. It is further submitted that Shri V.R. Naik belongs VJ-A category filed the O.A.No.927/2012 with the prayer to direct that Government to appoint him as Secretary in Public Works Department on the ground that the remaining one post goes to VJ-A category.

8. It is further stated that, during the aforesaid period Magasvarga Karmachari Adhikari Surksha Mahasangha was challenged the circular of the Government dated 27/10/2008 by filing of Writ Petition no.3077/2011. The Hon'ble High Court Bench at Aurangabad stayed its implementation vide interim order dated 29/9/2011 and same issued was informed by GAD its letter dated 21/3/2012 therefore the post of Secretary PWD could not be filled. Thereafter the Hon'ble High Court Aurangabad Bench subsequently struck down circular dated 27/10/2008 by its final order dated 9/5/2013. A copy of the said order of the Hon'ble High Court Aurangabad Bench in the said petition is annexed and marked it as Exhibit 3. Accordingly the Government in General Administration Department issued the G.R. for withdrawing

the said circular as per the said order of the Hon'ble High Court Bench at Auraganbad."

7. The learned P.O. submits that the applicant has got retired before granting any promotion to him and he was never promoted as Secretary and therefore the applicant's claim for deemed date of promotion is not maintainable. It is material to note that the applicant has not challenged the action on the part of respondents in not promoting him to the post of Secretary. The applicant should have waited for six months from the date of representation which he made for the first time for promotion to the post of Secretary and should have challenged inaction within one year thereafter before this Tribunal. The applicant, however, did not challenge the non action and on the contrary got retired on superannuation and therefore in such circumstances the claim for deemed date of promotion cannot be accepted.

8. The respondents have stated in their reply-affidavit that the post for S.T. candidate was available for the first three years from 27/5/2008 till 26/5/2011 one Shri V.R. Naik was fully eligible to be promoted to the said post and therefore the O.A. filed by Shri V.R. Naik was allowed. Being aggrieved by said order one Shri Pradip Ganvir who belongs to S.C. category and who was not party in the O.A. filed by Shri Naik, filed W.P.No.10463/2013. In the said W.P.,

Shri V.R. Naik was respondent no.4 and the said W.P. was disposed of by the Hon'ble High Court vide order dated 12/2/2014 and thereby liberty was granted to the petitioner to approach this Tribunal for filing Review Petition. Accordingly, Review Application no.5/2014 was filed but, it was dismissed.

9. In the reply-affidavit it is further stated that after decision of the Hon'ble High Court, Mumbai in W.P. No. 10463/2013 the departmental again submitted a proposal to GAD and the GAD fixed the roster point as VJ (A). The Law and Judiciary also concurred the said proposal. Accordingly, Shri V.K.Naik who belongs to VJ (A) was promoted as Secretary on 3/6/2014. The post of Secretary in PWD thus goes to reserved category of VJ (A) and therefore the applicant's case for deemed date of promotion to the post of Secretary cannot be considered as he belongs to SC and not to VJ (A) category.

10. The respondents have tried to justify as to why the applicant is not entitled to be promoted as Secretary in their reply-affidavit. However, the fact remains that the applicant should have challenged non action on the part of respondents in not granting him promotion to the post of Secretary. The applicant however remains silent and got retired on superannuation and now he is claiming deemed date of promotion to the post of Secretary. Since the applicant was never promoted to the post of Secretary and since he

never challenged non action on the part of respondents to promote him to the post of Secretary, the applicant cannot claim deemed date of promotion to such post. 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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