

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH, NAGPUR
ORIGINAL APPLICATION NO 300 OF 2004**

DISTRICT : WARDHA

Shri Purushottam Tulsiram Shende,)
Occ : Service, R/o: Hanuman Ward,)
Ward No. 16, Hinganghat,)
Tahsil-Samudrapur, Dist-Wardha.)...**Applicant**

Versus

1. The Secretary,)
Revenue & Forest Department,))
Government of Maharashtra,)
Mantralaya, Mumbai.)
2. The Collector,)
Wardha, Tah & Dist-Wardha.)
3. The Commissioner,)
Nagpur Division, Nagpur.)
4. The Sub Divisional Officer,)
Tah-Hinganghat, Dist-Wardha.)
5. Shri M.N Shrawane,)
Talathi, Occ:Retd,)
At Post Waigaon (Haldya),)
Tal-Samudrapur, Dist-Wardha)...**Respondents**

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Shri G.G Bade, learned advocate for the Applicant.

Shri V.A Kulkarni, learned Presenting Officer for the Respondents no 1 to 4.

None for Respondent no. 5.

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 G.G Bade, learned advocate for the Applicant, Shri V.A Kulkarni, learned Presenting Officer for the Respondents no 1 to 4 and None for Respondent no. 5.

2. This Original Application has been filed by the Applicant challenging the order of the Respondent no. 2 dated 25.8.1993 and the order of the Respondent no. 3 dated 13.4.2004 in appeal. The Applicant is seeking benefit of deemed date of promotion as Circle Officer from the date on which the Respondent no. 5 was so promoted, as the Respondent no. 5 was junior to him.

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3. Learned Counsel for the Applicant argued that the Applicant was senior to the Respondent no. 5 in the seniority list of Talathis as on 1.1.1993 published by the Respondent no. 2. The Respondent no. 5 was promoted as Revenue Inspector by order dated 25.8.1993, while the Applicant was not promoted. The Applicant filed an appeal against the order dated 25.8.1993 passed by the Respondent no. 2 before the Respondent no. 3. The Appeal was dismissed by order dated 13.4.2004. The Respondent no. 2 promoted Shri R.S Karemore and Shri J.M Junghare by order dated 1.7.1995 as Revenue Inspectors. These persons also did not join. However, they were again promoted as Revenue Inspector by order dated 15.6.1996. However, the Applicant was not promoted along with S/Shri Karemore and Junghare. This is discriminatory and the Respondent no. 2 ought to have promoted the Applicant also. The Applicant retired as Talathi on 28.2.1997, while his junior Shri Shrawane, the Respondent no. 5 retired as Revenue Inspector. In fact, the Applicant should have been promoted before Shri Shrawane.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents no 1 to 4 that the present Original Application is totally misconceived. The Respondent no. 2 had promoted the Respondent no. 5 superseding the Applicant in the year 1993 (25.8.1993) as the Annual Confidential Report (ACRs) of the

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Applicant for the year 1988-89, 1990-91 and 1991-92 were below average. He was not eligible to be promoted. However, he was promoted in the year 1994 to the post of Circle Officer. Shri Karemore and Shri Junghare were promoted in 1995. All of them declined to accept the promotion. In the year 1996, the Departmental Promotion Committee (D.P.C) again considered the cases of the Applicant and S/Shri Karemore and Junghare for promotion. The Applicant was not found fit for promotion as his three ACRs were below average, while Shri Karemore and Shri Junghare were found fit. As such, the Applicant is not entitled to any relief. There was no discrimination against the Applicant and he was superseded in 1993 and 1996 due to his below average ACRs. The question of granting deemed date of promotion in 1993 or 1996 does not arise.

5. WE find that the Applicant had filed appeal before the Respondent no. 3 against the order of Respondent no. 2 promoting the Respondent no. 5 by order dated 25.8.1993. The Appeal was dismissed by the Respondent no. 3 by order dated 13.4.2004. In the affidavit in reply dated 28.7.2008, the Respondent no. 2 has stated that ACRs of the Applicant for the years 1988-89, 1990-91 and 1991-82 were below average, so he could not be considered for promotion. We have no reason to disbelieve this contention of the Respondent no. 2. The Applicant has not placed any material on

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record to show that the decision of the Respondent no. 2 not to promote him was wrong. The Applicant's claim that he is eligible to get deemed date of promotion of 25.8.1993 when the Respondent no. 5 was promoted as Revenue Inspector is without any foundation. It is also worth noting that the Respondent no. 2 promoted the Applicant as Revenue Inspector by order dated 26.12.1994. However, the Applicant did not accept the promotion. In such circumstances, how he can seek deemed date of promotion from 25.8.1993 is not understood.

6. The Applicant claims that two other Talathis viz. Shri Karemore and Shri Junghare were promoted as Revenue Inspectors and they also did not accept promotion in 1995. However, they were subsequently promoted as Revenue Inspector in 1996, while the Applicant was not considered for such promotion. In the affidavit in reply dated 28.7.2008, the Respondent no. 2 has stated that the D.P.C has considered the case of the Applicant for promotion in 1996, but his ACRs for three years were below average and he was found ineligible for promotion. This fact has not been controverted by the Applicant and we are inclined to accept it.

7. The Applicant has failed to make out any case to challenge the promotion order of the Respondent no. 5 dated 25.8.1993. He is not eligible to get deemed date of

promotion as Revenue Inspector from that date, when he was not found eligible for promotion by D.P.C. Subsequently, he was promoted as Revenue Inspector in 1994 and the Applicant refused to accept the said promotion. He has forfeited his right to claim any benefit of promotion to the post of Revenue Inspector earlier than that date. Subsequently also, D.P.C did not found him fit for promotion in 1996 and the Applicant is not entitled to get any relief on the ground that Shri Karemore and Shri Junghare were promoted as Revenue Inspectors in 1996.

8. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed 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.