

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.313/2014.

Gautam Ramchandra Dhongde,
Aged about Major,
Occ.as Head Clerk in the Co-operative Court,
6th floor, Administrative Building No.1,
Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through Commissisoner for Co-operation
and Registrar of Co-operative Societies,
New Administrative Building, Pune.
2. The Divisional Joint Registrar,
Co-operative Societies, Dhanwatey Chambers,
Near Bhide Kanya Shala, Phule Market,
Sitabuldi, Nagpur.
3. Smt. Mala Sudarshan Dongre,
Aged about Major,
Occ.as Head Clerk under Assistant Registrar,
Co-operative Societies, Tumsar,
Distt. Bhandara.

Respondents.

Shri S.K. Tambde, Ld. Advocate for the applicant.
Shri A.M. Ghogre, Ld. P.O. for the respondents 1& 2.
None for respondent No.3.

Coram:-Hon'ble Shri R.B. Malik,
Member (Judicial)

Date : 20th February 2017..

Oral order

This O.A. is made for grant of deemed date of promotion from 20.7.2009. The issue arose because at the relevant time the applicant was facing Departmental Enquiry (D.E. hereinafter)

2. I have perused the record and proceedings and heard Shri S.K. Tambde, the learned counsel for the applicant and Shri A.M. Ghogre, the learned P.O. for respondent Nos. 1 and 2. None appeared for respondent No.3.

3. The applicant came to be promoted as Senior Clerk in the office of respondent No.2 and was appointed in the Co-operative Court at Nagpur. Issue, however, relates to deemed date of promotion. According to the applicant, he was entitled to be given deemed date from 2009 of which the date has been set out hereinabove. The applicant was facing a D.E. at the point relevant hereto and he made, post promotion representation vide Exh. A-8 (P.39 of P.B.) dated 29.3.2012 with deemed date of 2009. It was replied to by respondent No.1 dated 16.12.2013. That communication was addressed to respondent No.2. It is in Marathi. It was mentioned therein that in the Departmental Promotion Committee (DPC) of 8.7.2009, the applicant was held to be ineligible for being promoted, because he was facing a D.E. and, therefore, his case was kept in a sealed cover. The

punishment of stoppage of one increment without cumulative effect was imposed on him on 28.1.2011 and, therefore, he was not held eligible or entitled for deemed date from 20.7.2009. The learned P.O. invites reference to Rule 5 of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, which reads as follows:

Where a Government servant whose name is included in a Select List is not actually promoted according to his rank in that Select List owing to a disciplinary proceedings then pending against him and is promoted subsequently on the conclusion of such disciplinary proceedings, [on recommendation of the Competent Authority, the Government may,] having due regard to the circumstances of the case and the result of the disciplinary proceedings, assign to him a deemed date of appointment determined otherwise than in accordance with his rank in the Select List.+

4. The entitlement to the deemed date of promotion from 20.7.2009 would be inextricably linked up with entitlement to promotion. There is a Circular of 2.4.1976 which takes care of the said situation and also a G.A.D. G.R. dated 22.4.1996. The first instrument has been referred to in the judgment of the Hon'ble Bombay High Court at Aurangabad Bench in the matter of **Prabhakar s/o Jagguji Rangari V/s Hon'ble Minister for Industries, 2016 (1)**

Mh.L.J. 827 (DB). It is clearly held therein that merely because of pendency of the D.E. the promotion cannot, as a matter of law or rules be necessarily withheld. 1976 Circular has been reproduced in the order of the Hon^{ble} High Court in the above referred matter. It is very clear to me that all these aspects of the matter have not received the kind of treatment and attention from the respondents in the manner it should have been done. It appears to me that the fact of pendency of the D.E. was *ipso facto* considered a reason enough to necessarily deny to the applicant the relief claimed by him. That really runs into the teeth of the binding precedent above cited as well as the two instruments of the Government above referred to. Rule 5 of the Seniority Rules which is fully quoted hereinabove and heavily relied upon by the learned P.O. does not in my view give to the Government unbridled powers when there a binding precedent from the Hon^{ble} High Court and also the Government's own instruments. In this view of the matter, therefore, in my view the impugned orders will have to be quashed and set aside. However, presiding over this Tribunal at this stage in the context of the facts and the events that have happened, it would not be appropriate for me to directly make an order of grant of deemed date. The matter will have to be remitted to the respondent No.2 for re-considering the case of the applicant in the matter of grant of deemed date and carefully follow the principles enunciated by the

Honble High Court in the matter above referred to as well as the Circular of 1976 and a G.R. of 1996.

5. The communications referred to in Clause 8 are quashed and set aside and the matter is remitted back to respondent No.2 to re-consider the case of the applicant with regard to the deemed date of promotion from 20.7.2009 in the light of judgment of the Honble High Court of Bombay in **Prabhakar Jagguji Rangari** (supra) and observations made herein above specially in the light of the Circular of 1976 and the G.R. of 1996. An appropriate decision in view of the above after giving an opportunity of being heard to the applicant be taken within two months from today.

6. The O.A. is allowed in these terms with no order as to costs.

(R.B.Malik)
Member (J)

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