

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.53/2012.

(D.B.)

Mohammad Asrafkhan Pathan,
Aged Adult,
Occ-Service,
O/o Executive Engineer,
Chandrapur Irrigation Department,
Chandrapur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Irrigation Department,
Mantralaya, Mumbai-32.
2. The Superintending Engineer
and Circle Officer (Vigilance),
(Nagpur Region), Nagpur.
3. The Superintending Engineer,
Irrigation Department,
Chandrapur.

Respondents

Dr. (Mrs.) R.S. Sirpurkar, the Ld. Advocate for the applicant.
Shri H.K. Pande, the learned P.O. for respondent Nos. 1 and 2.
None for respondent No.3.

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J) and
Shri Shee Bhagwan, Member (A)

ORAL ORDER

(Passed on this 24th day of October 2018.)

Per:Vice-Chairman (J)

Heard Dr. (Mrs.) R.S. Sirpurkar, the learned counsel for the applicant, Shri H.K. Pande, the learned P.O. for the respondent Nos. 1 and 2. None for respondent No.3.

2. Shri P.V. Thakre, the learned counsel for respondent No.3 requests that he shall be discharged from the case since he has already handed over the documents to respondent No.3. His request is accepted.

3. This is a peculiar case wherein the applicant was required to approach not only to the level of the Hon'ble High Court but also up to the level of the Hon'ble Apex Court for getting relief. The applicant was appointed on compassionate ground in place on his father as Clerk-cum-Typist. However, he was subsequently reverted to the post of Peon. This order was challenged by the applicant before this Tribunal and upto the Hon'ble Supreme Court. The Hon'ble Supreme Court vide order dated 15.2.2010 was pleased to allow the appeal with following observations:-

“We, therefore, allow the appeal in part and direct that the appellant be given a fresh appointment in a

Class-IV post, and such appointment would relate back to the date of his initial appointment as Typist-cum-Clerk on 1.6.1994. We also make it clear that the respondent will not be entitled to recover the emoluments which the appellant had received during this period. We may also indicate that since the appellant had, in fact, worked during this period, may be on the strength of interim orders, and since we have directed that his fresh appointment is to relate back to the date of his initial appointment as Typist-cum-Clerk, he may also be given the benefit of service during this period for this purpose of considering him for promotion to a Class-III post, if the Rules so permit.”

4. In view of the above observation, the respondents have issued order dated 21.8.2010 (Annexure A-5 at pages 42 & 43) whereby the directions of the Hon'ble Apex Court have been complied with. The applicant was appointed in Class-IV post, giving him full seniority from the date of earlier appointment as Typist-cum-Clerk and again by the same order, he has been promoted to the Class-III post i.e. Typist-cum-Clerk. The applicant accordingly joined in Class-III post. But suddenly on 4.9.2010, the said order of promotion of the applicant was stayed for no reason. Subsequently on 26.9.2012, the applicant was again promoted to Class-III post as

Junior Clerk. Simple relief claimed by the applicant is that, there was absolutely no reason to stay the order of promotion which was passed on 21.8.2010 and in fact, he should have been treated to be promoted w.e.f. 21.8.2010 and, therefore, this deemed date of promotion shall be granted to the applicant in the cadre of Jr. Clerk. In reply affidavit, the respondent No.3 tried to justify the deeds of the respondents.

5. The reply affidavit of the respondent No.1 is filed on record. The respondent No.2 has also filed reply affidavit and submitted that the order of promotion of the applicant was stayed, because the promotion was not according to the roster and there was a complaint made by the senior employee on 1.9.2010 and, therefore, the order was stayed. Except this mere vague statement, the respondents could not justify as to why the order was stayed.

6. From the facts referred to above, it is clear that the Hon'ble Apex Court has already directed the respondent authorities to treat the applicant to be continued on the post of Jr. Clerk by granting initial date of appointment and it was also directed that the continuity of service shall be maintained alongwith seniority and not only that, the applicant shall also be considered for promotion to Class-III post of Jr. Clerk, if he was otherwise eligible. Accordingly,

the applicant was found eligible and was promoted vide order dated 21.8.2010. There was absolutely no reason to stay this promotion and, therefore, the impugned order of stay dated 4.9.2010 is absolutely illegal and the same is required to be quashed and set aside.

7. Since the applicant was already promoted in regular cadre of Class-III vide order dated 26.9.2012, the only question remains is as to whether he shall be continued on the said promotional post w.e.f. 21.8.2010, when he was earlier promoted. We are satisfied that the applicant ought to have been promoted rightly vide order dated 21.8.2010 and, therefore he is entitled to get deemed date of promotion from that date. Hence, we proceed to pass the following order:-

ORDER

- (i) The order dated 4.9.2010 issued by respondent No.2 whereby the promotion order of the applicant dated 21.8.2010 was stayed, is quashed and set aside.
- (ii) The respondent No.2 is directed to give effect to the order of promotion to the applicant in Class-III cadre w.e.f. 21.8.2010.
- (iii) It is needless to mention that the applicant will be entitled to all financial benefits for the said post

accordingly and the same shall be paid to the applicant within three months from the date of this order.

(iv) No order as to costs.

(Shree Bhagwan)
Member (A)

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

Dated:- 24.10.2018.

