

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 748/2020 (D.B.)

Shri Pramod Bhaurao Gawande,
Aged 55 years, Occ. Service, R/o Plot No.431,
Shrinagar, Near NIT Playground, Nagpur-440 015.
e-mail: gawandepramod5@gmail.com.

Applicant.

Versus

- 1) State of Maharashtra,
through the Principal Secretary,
Department of Town Planning, Madame Cama Road,
Hutatmah Rajguru Square, 4th floor, Mantralaya,
Bombay-32.
e-mail : nitin.shelke@nic.in
- 2) Deputy Secretary,
Department of Town Planning,
State of Maharashtra Madame Cama Road,
Hutatmah Rajguru Square, 4th floor, Mantralaya,
Bombay-32.
e-mail : nitin.shelke@nic.in
- 2A. The General Administration Department,
State of Maharashtra, Madame Kama Road,
Hutatma Rajguru Chowk, Mumbai through its Principal Secretary.
- 3) Mr. Momin Mohammed Owise,
Ejajas Hussain, aged 44 years,
Assistant Director, Town Planning, Alibaug Branch,
Old Administrative Building, LT, Bhausahaeb Lele
Square, PNP Nagar, Alibaug,
Maharashtra-402 201.
e-mail : adtp.alibaug@maharashtra.gov.in

Respondents.

A.C. Dharmadhikari, R.P. Jog, Advocates for the applicant.
Shri S.A. Deo, C.P.O. for respondent nos.1&2.
Shri N.R. Saboo, Advocate for respondent no.3.

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Date of Reserving for Judgment : 4th January, 2021.

Date of Pronouncement of Judgment : 7th January, 2021.

JUDGMENT

Per : Anand Karanjkar : Member (J).

(Delivered on this 7th day of January, 2021)

Heard Shri A.C. Dharmadhikari, learned counsel for the applicant, Shri S.A. Deo, learned CPO for respondent nos.1&2 and Shri N.R. Saboo, learned counsel for respondent no.3.

2. In this application the applicant is challenging the decision taken by the Establishment Board that the applicant was not eligible for the promotion. The applicant is claiming that the communication dated 29/10/2020 (A-13) and the observations made by the Establishment Board that the applicant was ineligible for the promotion be quashed and set aside and direct the respondent nos.1&2 to promote the applicant.

3. The facts in brief are that the applicant entered the service in the year 1993 as Planning Assistant. Thereafter, the MPSC issued advertisement for filling the posts of Assistant Director, Town Planning. The applicant appeared in the examination, he successfully passed the examination, his name was recommended by the MPSC to the Government and the applicant was appointed as Assistant Director, Town Planning vide order dated 29/08/2012. In the

year 2015, the applicant completed the probation period. It is case of the applicant that in July,2017 he passed the M.Tech. examination.

4. It is contention of the applicant that he was eligible for the promotion as he had completed three years service in July,2020 after passing the M.Tech. examination. It is contended that he was in the zone of consideration as he was at Sr.No.3 in the seniority list as on 1/1/2020.

5. According to the applicant, the respondent nos.1&2 have shown undue favour to the respondent no.3 and for giving benefit to respondent no.3, illegal decision is taken that the applicant was not eligible for the promotion. The applicant has submitted that the respondent no.3 completed his probation period as per the order dated 2/9/2020 (A-9) and the probation period of the respondent no.3 was not completed on 1/9/2019 and therefore the respondent no.3 was not also eligible for the promotion. It is submitted that in the seniority list, the respondent no.3 was at Sr.No.25, whereas, the applicant was at Sr.No.3, therefore, the applicant was senior and holding the qualification. It is submitted that on 1/9/2019 the probation completion order of respondent no.3 was not in existence and therefore, name of respondent no.3 should not have been included in the select list. It is submitted that without considering the material aspects, the decision was taken, seniority of the applicant is not

considered so also his experience and therefore miscarriage of justice is caused.

6. The respondent nos.1&2 and respondent no.3 have filed their reply and they have justified the action. It is submitted that the applicant had not completed three years service after passing the M.Tech examination on 1/1/2019, the applicant completed three years service after passing the examination in the month of July,2020 and therefore, he was not eligible for the promotion. It is submitted that there is no unfair play in considering the respondent no.3 for the promotion and no injustice is caused to the applicant.

7. We have heard submissions on behalf of the applicant and the respondents. We have perused the seniority list. It is undisputed that on 1/1/2020 the applicant was at Sr.No.3 and the respondent no.3 was at Sr.No.25 in the seniority list. We have also perused the Notification issued by the Urban Development Department dated 1/8/2011 vide Annex-A-7. By issuing this Notification, the Government of Maharashtra bring in force the rules for the recruitment of the Director of Town Planning, Joint Director of Town Planning, Deputy Director of Town Planning etc. The Rule-5 is as under –

“(5) Appointment to the post of Deputy Director of Town Planning, Group-A shall be made either –

(A) by promotion of a suitable person on the basis of strict selection with due regard to seniority from amongst the persons holding the post of Assistant Director of Town Planning, in the Directorate having not less than three years regular service in that post after obtaining the qualification prescribed below –

(a) Master's Degree in Town Planning or City Planning or Town and Country Planning or Urban Planning or Regional Planning or Environmental Planning including specialisation if any, in Traffic and Transportation Planning or Housing or Institution recognised by Government obtained after securing a Degree in Civil Engineering or Architecture or Urban or Town Planning; or

(b) Post Graduate Diploma in Urban Planning or Town Planning or Town and Country Planning or Traffic and Transportation Planning or Urban Design or Environmental Planning from the School of Planning and Architecture, New Delhi or any other Statutory University or Recognised Institution, obtained after securing a Degree in Civil Engineering or Architecture or Urban or Town Planning;”

8. After reading Rule 5, it is clear that the essential requirement for eligibility for the promotion was, the person must possess Master's Degree and three years experience on the post of Assistant Director of Town Planning after acquiring Master Degree. It is undisputed that the applicant passed the examination and he acquired Master Degree M.Tech in July,2017. Now material question is whether the applicant was eligible and he had completed three years service after acquiring Master Degree.

9. In this regard, both the parties have placed reliance on the Govt. G.R. 1/8/2019 which is at Annex-A-12. This G.R. was issued by the Government for laying down the guidelines to be followed while promoting the Government Officers / employees. On page no.7 of the G.R. in clause 1.1 it is mentioned that the select list year means the period commencing from 1st September till 31st August. The select list means list of the Officers who became eligible for the promotion on 1st September of the year. On page no.9 in Clause-3.1.4, it is laid down that the establishment board's meeting if it is to be held in a year, then the select list shall be from 1st September of previous year till 31st August. After reading this, it is clear that as the meeting of the establishment board was held on 20/10/2020, therefore, the select list shall be from 1st September,2019 till 31st August,2020. Now as per this G.R., the Government Officers who were eligible for the promotion on 1/9/2019 were in zone of consideration.

10. The learned counsel for the applicant has placed reliance on Clause no.5.1.3, page no.12 of the G.R. which is as under –

5-1-3 fuEu I oxlirhy fdeku I sphx.luk&

I mHkZ dz11 ; fkyh fnukad 18@6@2016 o fnukad 13@4@2018 pk 'kkI u fu.kZ vfkdfcr d#u fuEu I oxlirhy fdeku I sphx.luk i qhyi ek.ksfuf'pr dj.; kr ; s vkg&

i fro"khz fuoMI ph o"kkp; k i fgY; k rkj [kd Eg.ktp fnukad 1 I IVæj ; k rkj [kd fopkj {ks=krthy vf/kdkjh@deþk&; kph fuEu inkojhy fdeku I ok rI p inkturhl kBhph brj vko'; d vgrk i qkz>kyh i kfg ts

ijarj] fnukad 1 I IVæj ; k rkj [kd fuEu inkojhy fdeku I ok i qkz dj.kkjs fopkj {ks=krthy inl d; brds i j d svf/kdkjh@ deþkj h mi yC/k gkr ul Y; kl] v'kk i d j.kh inkturhph i nsfjDr jkgwu; s Eg.kuu T; k fnukadkl I ferhph cBd vk; kstr d syh tkby R; k fnukadkl fuEu inkojhy fdeku I ok i qkz dj.kk&; k o inkturhl kBhph brj vko'; d vgrk i qkz dj.kk&; k vf/kdkjh@deþkj h; kpk fopkj dj.; kr ; kok-

*rI p I nHkz dz 6 ; Ekhy fnukad 17@2@1997 pk 'kkI u fu.kz vf/kdfer d#u vl s I tpor dj.; kr ; s vkgs dh] i jfo{kk/khu dkyko/kh I ek/kkudkj d i qkz dY; kps vknsk fuxfer >KY; kurj] i jfo{kk/khu dkyko/khrthy I ok] inkturhl kBh vko'; d vl yY; k vuþkkokl kBh xtg; /kj.; kr ; koh- ***

11. After reading the above clause, it is obvious that the Government Officer in the zone of consideration must acquire the educational qualification and minimum length of service on 1st September. It is clarified that if less numbers of Government Officers are available, then in order to fill the posts, the Officers who acquired the eligibility criteria before the meeting of the establishment board shall be considered for the promotion. The last part of the clause says that if Government servant completes the probation period satisfactorily, then the service during probation period shall be taken into account as experience for the promotion.

12. After reading this part of the G.R., it seems that the applicant was not eligible for the promotion on 1st September,2019 as

he had not completed the three years service after acquiring post graduation degree. The applicant completed the three years service which was mandatory requirement, in July,2020.

13. It is submission of the applicant that probation order of the respondent no.3 was issued by the Government on 2nd September,2020. This order was not in existence on 1st September,2019 and later event is taken into account and therefore the respondent nos.1&2 were bound to consider the applicant fit for promotion as the applicant also completed three years service after acquiring post graduation degree.

14. The submission of the applicant is attractive, but after reading Clause no.1.11 on page no.8, we do not see substance in the submission. The Clause no.1.11 is as under –

*^ 1-11 idj.k [kysBo.ks& inkturhl kBh vf/kdkjh@depljh ik= vl ugh dG izkl ukekQr inkturhl; k ik=rsI mHkz-hy dgh ckchpsvksk fuxfer >kysul Y; kl] R; kl kBh I c&/kr vf/kdkjh@depljh tckcnkj ul Y; keGs R; kyk inkturhi kl u ofpr Bo.ks ; k&; ul Y; kusj R; lpk I ekosk fuoMI phe/; sd#u inkturhl kBh in jk[ku Bo.ksEg.ktsi idj.k [kysBo.ks gks - mnk- emnk dzm ¼5½ e/; suen idj.k [kyh Bokoh- ***

15. Annex-A-9, dated 2/9/2020 is the order passed by the Government to the effect that the respondent no.3 completed his probation period satisfactorily on 3/8/2016 and he was regularly appointed on the post of Assistant Director on 4/8/2016. We would

like to point out that the probation period of respondent no.3 was never extended and he was not responsible for the delay in completion of the probation. If regular service of the respondent no.3 on the post of Assistant Director since 4/8/2016 is considered and as he was holding the educational qualification on 1/9/2019, then it must be accepted that the respondent no.3 was fulfilling the criteria for the promotion. The Clause no.7.6 on page no.15 of the G.R. says that the probation completion order shall be kept before the establishment board. If Clause no.7.6 and Clause no.1.11 are read together, it implies that it was obligation on the establishment board to take into account the probation completion certificate while deciding the case of such Officer. It is specifically mentioned in Clause no.1.11 that the Government Officer / employee should not be denied promotion only for the reason that probation completion certificate not received, because, it is not his fault. In the present case fact remains that the respondent no.3 was holding the educational qualification and the experience as per the Rule 5 on 1st September,2019, whereas, the applicant was not fulfilling the requirement of three years service on the post of Assistant Director after acquiring post graduate degree. In this case though the probation order is issued on 2/9/2020, but in fact it relates back to his regularisation in service w.e.f. 4/8/2016 and as per the G.R. the establishment board was bound to consider this fact.

16. We have perused Annex-A-16, page no.146-J of the record, it is the proposal for the promotion as per the select list of 2019-20. It seems that as per the select list 2019-20, 13 posts of Deputy Director, Town Planning were vacant. On page no.146-q at Sr.No.1 name of the applicant is mentioned and remark is given that the applicant passed the post graduation examination in July,2017, but he had not completed three years service after passing the post graduation examination, therefore, in terms of Clause no.5.1.3 of the G.R. dated 1/8/2019, the applicant was not completing three years service, but he would complete the three years service till the date of meeting of the establishment board. We have perused Annex-A-17, the Minutes of the meeting of the Establishment Board No.2. After examining the particulars of the Officers under the zone of consideration, the Establishment Board came to the conclusion that the applicant was not eligible for the promotion. There is a note which is as under –

^ Jh-i ekn HkkA jko xkoms%beko%T; sdz21½ %T; sdz3½ ; kauh ekgsty}2017 e/; si no; Brj i noh i qlz dsh vkg; R; keGs rs l oki dsk fu; ekuq kj 'k{kf.kd vgrk i klr dsh; kurjpk 3 o"kkpk dkyko/kh i qlzdjr ukgh vl sfoHkkxkusi Lrkokr uem dshsvkg; I nj ckchph vklFkki uk eMGkusn[ky ?kryh-

rl p l keku; izkkl u foHkkxklus l keku; izkkl u foHkkx] 'kk-fu- fnukad 1@8@2019 e/; s ifro"khz fuoMI ph o"kkp; k ifgY; k rkj [kd Eg.ktp fnukad 1 l IVaj ; k rkj [kd fopkj {ks=krhy vf/kdkjh@depk&; kph fuEu i nokjhy fdeku l ok rl p] i nklurhl kBhph brj vko'; d vgrk i qlz >kyh i kfgts i jrnfnukad 1 l IVaj ; k rkj [kd fuEu i nokjhy fdeku l ok i qlzdj.kkjsfopkj {ks=krhy

*inl d; brds ijd svf/kdkjh@depkjh mi yC/k ul Y; kl] v'kk ixdj.kh i nkslurhph i nsfjDr jkgwu; s
 Eg.kpu T; k fnukadkl I ferhph cBd vk; kftr dsyh tkby R; k fnukadkl fuEu inkojhy fdeku I ok
 i qkZ dj.kk&; k o i nkslurhl kBhph brj vko'; d vgrk i qkZ dj.kk&; k vf/kdkjh@depkjh ; kpk fopkj
 dj.; kr ; kok v'kh rjrm vkgs*

*I cc] mi l pkyd] uxj jpuk ; k inkoj i nkslurhl kBh Jh-i ekn HkkAjko xkoMs ¼beto½
 ¼T; sdz21½ ¼T; sdz3½ gs l oki osk fu; ekuq kj 'kqkf.kd vgrk i ktr ds; kurjpk 3 o"kkpk dkyko/kh
 i qkZ djr ul Y; kph foHkkxkus i Lrkokr ueq dsydh ckc rl p fnukad 1 I IVc; ; k rkj [kl fuEu
 inkojhy fdeku I ok i qkZ dj.kk&s fopkj {k=krhy inl d; brds ijd svf/kdkjh mi yC/k vkgs ; k I oz
 ckchpk fopkj d#u vLFlki uk eMGkus Jh-i ekn HkkAjko xkoMs ¼beto½ ¼T; sdz21½ ¼T; sdz3½ ; kulk
 vi k= Bjfoys**

17. After reading this remark, it is appears that specific reasons are recorded by the Establishment Board for arriving to the conclusion that the applicant was not eligible for the promotion and this conclusion drawn by the Establishment Board is based on the Government G.R., therefore, apparently we do not see any illegality in it.

18. So far as the respondent no.3 is concerned, we have already observed that though the probation completion order is issued by the Government on 2/9/2020, but as per the direction in the G.R. it was necessary to keep this order before the Establishment Board and considering the fact that the respondent no.3 completed the probation period satisfactorily on 3/8/2016, therefore, it was held that the respondent no.3 was eligible for the promotion. We have already discussed the Clause no.1.11 of the G.R. dated 1/8/2019. There is a

difference between the case of the applicant and respondent no.3. The applicant was not fulfilling the material criteria on 1/1/2019, whereas, the respondent no.3 was fulfilling the criteria on 1/1/2019. Though the probation completion order is issued by the Government on 2/9/2020, but the probation period is completed on 3/8/2016 and therefore, the establishment board rightly considered case of the respondent no.3 and considered him for the promotion. Here, we would like to point out that this case is not covered in the category that sufficient officers were not available for the promotion. The respondent no.3 is the last Officer whose name is recommended for the promotion.

19. The applicant has filed the additional affidavit which is at page no.217 and the applicant has also filed the letter dated 18/6/2018 written by the Director, Town Planning (M.S.), Pune to the Principal Secretary, Government of Maharashtra, Town Planning Department, Mumbai. We have read this letter, it must be remembered that this letter is dated 18/6/2018 and the Government has passed the order on 2/9/2020 and completed the probation period of the respondent no.3. In this situation, as the Government has already taken a decision and completed the probation period of the applicant on 3/8/2016, therefore, it cannot be said that the respondent no.3 himself was responsible for not completing the probation period.

Once it is held that the respondent no.3 had completed his probation period on 3/8/2016, the order dated 2/9/2020 will relate back to that date. In view of this, we do not see any merit in the O.A. Hence, we pass the following order –

ORDER

The O.A. stands dismissed. No order as to costs.

***(Anand Karanjkar)
Member(J).**

**(Shree Bhagwan)
Vice-Chairman.**

Dated :- 07/01/2021.

dnk..

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 7/1/2021.

Uploaded on : 7/1/2021.

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