

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION NO.828/2012.**

Gulabrao Kisanrao Kshirsagar,  
Aged about Major,  
R/o Om Nagar, Ward No.11,  
Behind Deepak Hotel, Tq. Nandura,  
District-Buldhana.

**Applicant**

**-Versus-**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of Agriculture, Animal Husbandry,  
Dairy Development and Fisheries,  
Mantralaya, Mumbai-440 032.
- 2) The Regional Dairy Development Officer,  
Amravati Division, Congress Nagar,  
Amravati.
- 3) The Regional Dairy Development Officer,  
Nagpur Division, Telangkhedi Road,  
Nagpur.
- 4) The Commissioner,  
Dairy Development Department,  
Abdul Gaffar Khan Road, Worli Seaface,  
Mumbai.

**Respondents**

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Shri S.O. Ahmed, Ld. Counsel for the applicant.  
Shri P.N. Warjekar, learned P.O. for the respondents.

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

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**JUDGMENT**

**(Delivered on this 11<sup>th</sup> July 2017.)**

Heard Shri S.O. Ahmed, the learned counsel for the applicant and Shri P.N. Warjekar, the learned P.O. for the respondents.

2. The applicant Gulabrao Kisanrao Kshirsagar was appointed as Electrician on 1.3.1978. He was due for promotion to the post of Senior Electrician. However, one Mr. O.R. Sharma who was junior to the applicant has been promoted and the applicant's name was not considered. The applicant got retirement on superannuation on 30.6.2010. On his representation, respondent No.3 made an enquiry as regards deemed date of promotion to be granted to the applicant and respondent No.3 submitted his report to respondent No.4 on 18.3.2011 and recommended applicant's case for deemed date of promotion w.e.f. 10.8.1983 i.e. the date on which applicant's junior Mr. Sharma was promoted.

3. The applicant was hoping for the order of promotion on the recommendation of the Enquiry Committee. However on 19.7.2012, the applicant received communication whereby his claim was rejected. The said rejection letter issued by respondent No.3 is at Annexure A-5 and it is stated in the said letter as under:-

“उपरोक्त ँषयावरल संदभाषीन पढावये पाठलेया अनुषंगाने कळवयात येते ँ, ँी. जी.के. रसागर हे ँय पदोती

अभ्यापूव सेवावृ झाले आहेत. तसेच सामाय शासन वभाग प दनांक १४.९.२००९ मधील जदेशामाणे हे यायालयीन करण नसयामुळे ताव माय करता येत नाह असे सामाय शासन वभागाने अभ्याय दले आहेत.”

4. Thus, it is clear that the applicant's claim was rejected on two grounds- (i) That he has already got retired on superannuation and (ii) No litigation is pending as regards his deemed date of promotion. The applicant has claimed that the communications dated 1.9.2012 and 9.7.2012 issued by respondent Nos. 2 and 4 respectively rejecting his request for grant of deemed date of promotion be quashed and set aside and the respondents be directed to implement the recommendation on the Enquiry Report of respondent No.3 dated 18.3.2011 alongwith all monetary benefits.

5. According to respondent No.3, the applicant never challenged an order of promotion of Shri O.P. Sharma and, therefore, his claim is barred by limitation. It is further stated that, the vacancy of the post of Senior Electrician in Amravati region was not available till the date of retirement of the applicant and, therefore, there was no occasion to promote the applicant. It is stated that, there was no post available in Amravati region and Shri Sharma was promoted and posted in Nagpur region. The applicant has given option for Amravati

region and, therefore, it was not possible to give promotion to the applicant.

6. Perusal of documents and particularly the impugned communication vide which the claim of the applicant has been rejected nowhere states the reason mentioned in the reply affidavit. Had it been the fact that the applicant has given option for Amravati region and no post was available in Amravati region and, therefore, the applicant was not given promotion, this fact should have been mentioned by respondent No.1 in the impugned communication.

7. So far as the promotion of Shri Sharma is concerned, it is material to note that the applicant has not challenged the said promotion. But at the same time, the applicant has no grievance against Shri Sharma. He went on making representations for grant of deemed date of promotion and his representations came to be dismissed vide communication dated 9<sup>th</sup> July 2012 which is at Annexure A-5. Application is filed immediately thereafter and, therefore, the contention that the O.A. is barred by limitation, cannot be accepted.

8. So far as the claim of the applicant for getting deemed date of promotion w.e.f. 10.8.1983 is concerned, it will be material to note that, for the first time applicant's representation was

rejected on 9<sup>th</sup> July 2012 and prior to that his case seems to have been recommended by the competent authority. The applicant has placed on record the report of respondent No.3 dated 18<sup>th</sup> March 2011 and a letter dated 22<sup>nd</sup> November 2011 i.e.at Annexures A-3 & A-4 respectively. It is material to note that, vide both these letters, it was accepted that the applicant was eligible and fit for promotion prior to Shri Sharma. It is admitted that, the applicant should have been granted promotion w.e.f. 10<sup>th</sup> August 1983. It is also admitted that, on that date i.e. on 10<sup>th</sup> August 1983, Shri Sharma who was junior to the applicant was promoted and, therefore, recommendation was made to grant deemed date of promotion to the applicant. Instead of accepting the said recommendation, vide impugned communication dated 9<sup>th</sup> July 2012, claim was rejected on the ground that the applicant has already retired and that his case is not under the consideration before the Court or the Tribunal. In my opinion, merely because the employee has retired, his claim for deemed date of promotion should not have been rejected. Similarly, merely because the applicant had not filed litigation, his claim for promotion should not have been rejected on that ground. The impugned communication, therefore, is not legal and proper. On the contrary, when it was brought to the notice of the Govt. that the claim of the applicant was wrongly not considered earlier and that it should have been considered, the State should have *suo motu*

granted deemed date of promotion to the applicant and should have rectified the mistake.

9. The learned counsel for the applicant submits that the applicant was not extended the benefit of even time bound promotion during his service period and, therefore, the Ld. P.O. was directed to take instructions in this regard. The Ld. P.O. submitted that during the service period of the applicant, the applicant was granted first as well as second time bound promotional pay scale. He has also placed on record the documents to that effect which are marked %%+ and %%-1+ for identification. From Exh. %%+ and %%-1+, it seems that the applicant was granted first time bound promotional pay scale as well as second time bound promotional pay scale. It seems that the first time bound promotional pay scale has been granted to the applicant w.e.f. 1.8.2000. In fact, the applicant was already due for promotion in the year 1983 and he should have been granted promotion from the date on which his junior Shri Sharma was promoted i.e. from 10.8.1983. In such circumstances, even accepting that the time bound promotional pay scale was given to the applicant, in fact he should have been promoted w.e.f. 10.8.1983.

10. In view of the above discussion, I proceed to pass the following order:-

**ORDER**

- (i) The O.A. is allowed.
- (ii) The communications dated 1.9.2012 and 9.7.2012 issued by respondent Nos. 2 and 4 rejecting applicant's request for grant of deemed date of promotion is quashed and set aside.
- (iii) The respondents are directed to implement the recommendation in the Enquiry Report submitted by respondent No.3 on 18.3.2011 and shall grant deemed date of promotion to the applicant w.e.f. 10.8.1983.
- (iv) The respondents are also directed to pay admissible monetary benefits to the applicant as per rules and regulations.
- (v) No order as to costs.

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