

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 953/2019 (D.B.)**

Shri Bhagwan Pandurang Kamble,
Aged about 42 years, Working as Tahsildar,
Office address- Tahasil Office,
Dhamangaon Railways, Dist. Amravati.

Applicant.

Versus

- 1) State of Maharashtra,
through Additional Chief Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-400 032.
- 2) Principal Secretary (Services),
General Administration Department,
Mantralaya, Mumbai-400 032.

Respondents.

Mrs. Punam Mahajan, Advocate for the applicant.

Shri M.I. Khan, P.O. for respondents.

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

Date of Reserving for Judgment : 21st January, 2020.

Date of Pronouncement of Judgment : 13th February, 2020.

JUDGMENT

Per : Anand Karanjkar : Member (J).

(Delivered on this 13th day of February, 2020)

Heard Mrs. Punam Mahajan, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. The substantial question involved in this application is whether the Government servant loses his next promotion permanently for the reason that a Government servant has once taken benefit of the Government G.R. dated 25/05/2004.

3. The facts are that the applicant was selected by the MPSC and he was appointed in service as Naib Tahsildar (from the Scheduled Caste (S.C.) category) on 7/11/2001. The Government of Maharashtra issued G.R. dated 25/5/2004 and by this G.R. decision was taken by the Government to promote the Government servants of categories वुढी (प्र. त. र. ह.) वुढी (प्र. त. र. ह.) फो. प्र. त. र. ह. ¼व. ½] HKVD; क. त. र. ह. ¼क. ½] HKVD; क. त. र. ह. ¼द. ½] HKVD; क. त. र. ह. ¼म. ½] फो. क. स. क. ए. क. क. ल. इ. ड. ख. र.

4. It is case of the applicant that promotion was given to him on the basis of the G.Rs. dated 25/5/2004 and on 4/4/2008 the applicant was promoted as Tahsildar. The Writ Petition No. 2797/2015 was filed challenging the constitutional validity of the G.R. dated 25/5/2004 and the Hon'ble Bombay High Court was pleased to hold that the G.R. dated 25/5/2004 was unconstitutional and accordingly quashed the said G.R.

5. After this decision in the Writ Petition the Government filed Special Leave Petition (SLP) in the Hon'ble Supreme Court and challenged the order passed in the Writ Petition. The Hon'ble Supreme Court did not grant stay to the order passed by the Hon'ble High Court. In this situation, the question before the Government was, whether the candidates of the reserved category who were promoted as per G.R. dated 25/5/2004 were entitled for second promotion on the basis of their seniority after first promotion. It was view of the Government that the Government servants who were promoted as per G.R. dt/ 25-5-2004 had superseded their seniors while getting first promotion therefore, the question was whether such Government servants be permitted to take advantage of their seniority after the promotion as per the G.R. dt/ 25-5-2004 while considering them for the second promotion. In order to clarify the doubts letter dated 29/12/2017 was issued by the G.A.D., Government of Maharashtra and the instruction was issued that the promotional posts be filled only in the open quota as per the Rule seniority cum fitness, subject to outcome of SLP No.28306/2017. It was also directed that while giving the promotion on the basis of seniority cum fitness, it must be ascertained whether the Government servant has taken benefit of the G.R. dated 25/5/2004 at the time of previous promotion and has superseded his seniors.

6. In the present matter, it is grievance of the applicant that as he has taken benefit of the G.R. dated 25/5/2004, now the Government has refused him next promotion as Deputy Collector, putting finger on the G.A.D. letter dated 29/12/2017 observing that as the advantage of the G.R. dt/ 25-5-2004 was taken by the applicant at the time of first promotion, therefore, he was not entitled for the next promotion. It is contention of the applicant that the respondents have promoted Tahsildars juniors to him in the cadre of Naib Tahsildar.

7. The learned counsel for the applicant invited our attention to the seniority list of the Naib Tahsildars in which the applicant was at Sr.No.47 (when he initially entered the service). It is contended that the Naib Tahsildars at Sr.Nos. 48,49,50,52,53,54,55,56,57,58,59 & 60 were juniors to him in the cadre of Naib Tahsildar. The learned counsel for the applicant contended that even if the applicant was promoted on the basis of the G.R. dated 25/5/2004, the respondents were bound to consider him for the next promotion as Deputy Collector, before all these candidates, as they were juniors to him and were not superseded by the applicant. It is contended that the candidates from Sr.Nos. 50 to 60 joined services as Naib Tahsildars in the year 2002. The entire batch joined the service subsequent to the batch of the applicant.

8. There is no dispute about the facts that as per the promotion order Annex-A-20, Shri Rajesh S. Adpawar (1150), Shri Nirbhay S. Jain (1173), Shri Sudhir T. Rathod (1174), Shri Ram A. Lanke (1175), Shri Rajendra S. Jadhav (1176), Shri Ashish R. Bijwal (1177), Shri Suresh R. Bagle (1179) and Shri Vivekanand D. Kalkar (1180) were promoted as Deputy Collector on ad-hoc basis.

9. Our attention is invited to the seniority list of Naib Tahsildars of Amravati Division. In this seniority list, name of the applicant was at Sr.No.47, name of Shri Rajesh S. Adpawar was at Sr.No.49, name of Shri N.S. Jain was at Sr.No.52, name of S.T. Rathod was at Sr.no.53, name of Shri R.A. Lanke was at Sr.No.54, name of Shri R.S. Jadhav was at Sr.no.55, name of Shri A.R. Bijwal was at Sr.no.56, name of Shri S.U. Kale was at Sr.no.57, name of Shri S.R. Bagle was at Sr.No.58, name of Shri V.D. Kalkar was at Sr.no.59 and name of Shri S.R. Madnurkar was at Sr.no.60. All these candidates (except No.49) were appointed in the cadre of Naib Tahsildar in the year 2002. Thus, it seems that the Government promoted Shri N.S. Jain, S.T. Rathod, Shri R.A. Lanke, Shri R.S. Jadhav, Shri A.R. Bijwal, Shri S.U. Kale, Shri S.R. Bagle, Shri V.D. Kalkar and Shri S.R. Madnurkar as Tahsildars.

10. On perusal of the seniority list of the cadre of Tahsildars, it seems that name of the applicant in the cadre of Tahsildar was at

Sr.no.961 and in this cadre of Tahsildar Shri Rajesh S. Adpawar was at Sr.no.1150, Shri N.S. Jain was at Sr.no.1173 , Shri S.T. Rathod was at Sr.no.1174, Shri R.A. Lanke was at Sr.no.1175, Shri R.S. Jadhav was at Sr.no.1176, Shri A.R. Bijwal was at Sr.no.1177, Shri S.U. Kale was at Sr.no.1178, Shri S.R. Bagle was at Sr.no.1179, Shri V.D. Kalkar was at Sr.no.1180 and Shri S.R. Madnurkar was at Sr.no.1181. Thus, it is apparent that all these persons were promoted and brought in the cadre of Tahsildar in the year 2009.

11. On the basis of this fact, it is contention of the applicant that the respondents have promoted the Tahsildars who were juniors to the applicant in the cadre of Naib Tahsildar as well as in the cadre of Tahsildar.

12. The learned counsel for the applicant vehemently submitted that it is undisputed that benefit of the G.R. dated 25/5/2004 was taken by the applicant, even then in view of the G.A.D. letter dated 29/12/2017 it is not possible to say that the applicant has lost his right to the next promotion for ever.

13. We have also heard submissions of the learned P.O. The learned P.O. has justified the action of the Government on the ground that the applicant has taken benefit of G.R. dated 25/5/2004 and it is

submitted that the applicant is rightly not considered for the promotion on the post of the Deputy Collector.

14. In order to decide the controversy, we think it just to read the G.A.D. letter dated 29/12/2017 and the intention for writing this letter. After reading the entire letter, it seems that it was noticed by the Government that the Government Officers who were promoted on the basis of the G.R. dated 25/5/2004, have already superseded their Senior Officers in their cadres and if they are considered for the next promotion, then they would be permitted to take disadvantage. In this situation, decision was taken by the Government to fill the open quota posts by promotion as per the rule seniority subject to fitness. It is nowhere mentioned in the letter that the Government Officer who has taken benefit of G.R. dated 25/5/2004, should not be considered for next promotion till decision of SLP which was pending before the Hon'ble Apex Court. In our opinion, the motive behind writing this letter dated 29/12/2017 was not to give next promotion, to a Government servant who has taken benefit of the G.R. dt/25-5-2004 and superseded his seniors, before such superseded seniors.

15. The learned counsel for the applicant rightly submitted that even in the cadre of Naib Tahsildar the candidate at Sr.No.49, Shri Rajesh S. Adpawar was junior to the applicant as the applicant was at Sr.No.47. It is submitted that though the applicant was promoted

giving benefit of the G.R. dated 25/5/2004, even though he was entitled for the promotion before Shri Rajesh S. Adpawar and others, because, all these Officers were juniors to the applicant in the cadre of Naib Tahsildar and in the cadre of Tahsildar. In our opinion, there is no fallacy in the submission canvassed on behalf of the applicant. Even if it is held that the applicant has taken benefit when he was promoted as Tahsildar on the basis of the G.R. dated 25/5/2004, then also it was necessary for the respondents to consider the applicant for the next promotion as Deputy Collector after taking care to see whether any senior person was superseded by the applicant when he was promoted as Tahsildar. Undisputedly, Shri Rajesh S. Adpawar and all other Officers whose names are discussed above, were juniors to the applicant in the cadre of Naib Tahsildar when the applicant was promoted as Tahsildar, consequently, it was incumbent on the respondents to consider the applicant when Shri Rajesh S. Adpawar and others were considered for promotion on the post of Deputy Collector.

16. After hearing the submissions of the learned P.O. and after reading the orders of rejection of the various representations made by the applicant, we are of the firm view that the stand taken by the respondents that the applicant was not entitled for promotion even before his juniors officers is contrary to the law.

17. It is contention of the learned P.O. that in view of the pending SLP No.28306/2017 before the Hon'ble Apex Court, it is not permissible to give any relief to the applicant as status-quo order is passed. The learned counsel for the applicant submitted that right of the applicant cannot be defeated and she has placed reliance on the order dated 20/1/2020 by which the respondents have promoted the Tahsildars who are at Sr.nos. 1195 to 1208 in the gradation of Tahsildars. After perusing this order, it does not lie in the mouth of the respondents that there is total ban to promote the Government Officers. The learned P.O. has conceded that the order dated 20/1/2020 was issued by the Government and Tahsildars at Sr.nos. 1195 to 1208 are promoted though they were juniors to the applicant..

18. After considering these aspects, we are of the view that injustice is caused to the applicant as he was not considered by the DPC when his juniors were promoted as Deputy Collector and in view of the promotion order dt/ 20-1-2020 we do not see any merit in the contention of the respondents that there is a total stay to the promotions.

19. In view of entire circumstances, there appears no reason to deny the relief to the applicant. In the result, we pass the following order –

ORDER

The O.A. is partly allowed in terms of Prayer Clause 9 (b).
The respondents shall comply this order within a period of 30 days
from the date of this order. No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 13/02/2020.

*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 : 13/02/2020.

Uploaded on : 13/02/2020.

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