

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.96/2016.

Smt. Aruna Sheshrao Tekam,
Aged about 66 yrs.,
Occ-Retired Assistant Chemical Analyzer,
R/o Manish Nagar, Nagpur.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-440 032.
- 2) The Director of Forensic Science Laboratory,
Home Department, Santacruz, Mumbai-98.
- 3) The Deputy Director,
The Regional Forensic Science Laboratory,
Dhantoli, Nagpur-12.

Respondents

Shri Bharat Kulkarni, Ld. Counsel for the applicant.
Smt. S.V. Kolhe, learned P.O. for the respondents.

Coram:- Hon'ble Shri Rajiv Agarwal,
Vice-Chairman (A) and
Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).

Per:-Vice-Chairman (J)

JUDGMENT

(Delivered on this 11th day of August 2017.)

Heard Bharat Kulkarni, the learned counsel for the applicant and Smt. S.V. Kolhe, the learned P.O. for the respondents.

2. The applicant is claiming directions to the respondents for grant of regular promotion of Assistant Director with deemed date alongwith arrears of pay and allowances. She is also claiming directions to the respondents to grant further promotion to a higher post in the reserved category of Scheduled Tribe (ST) with all consequential benefits after fixation of seniority and also interest on the delayed payment and the arrears of pay and allowances, pension, gratuity etc. The applicant is also claiming directions to the respondents to issue a fresh revised seniority list as on 1.1.1988 onwards in respect of Assistant Chemical Analyzer.

3. From the record, it seems that the applicant earlier filed O.A. No. 150/2009 and the said O.A. was disposed of on 29.4.2015 by this Tribunal at Nagpur. In para 13 of the said order, this Tribunal was pleased to observe as under:-

On the light of the above judgment, we consider the facts that the applicant was appointed as Assistant Chemical Analyzer on 8.10.1987 and the respondents have not disputed that she fulfilled all the conditions of eligibility for appointment to the post. Thereafter she continued to hold the post till she was granted regular promotion on 23.5.2003 and during this period, she was also granted all the benefits of the post, including pay and increments. Hence, her

service for the period from 8.10.1987 to 23.5.2003 is required to be treated as regular service for the purpose of seniority and all other benefits including retiral benefits. We, therefore, direct the respondents to grant regular appointment / promotion to the applicant to the post of Assistant Chemical Analyzer from 8.10.1987 alongwith all consequential benefits including retiral benefits within six weeks of receipt of this order. The O.A. stands disposed of in terms of these directions. No costs.+

4. It seems that the order passed in O.A. No.151/2009 was not complied with within time and, therefore, the applicant filed C.A. No. 239/2015 for Contempt of Court. In the said C.A., order was passed on 22.1.2016 which is as under:-

The respondent No.3, Director of Forensic Science Laboratories, Mumbai alongwith an affidavit dated 19.1.2016 has submitted a copy of order dated 18.1.2016 vide which the applicant has been given regular promotion as Assistant Chemical Analyzer from 8.10.1987 and also further promotion under Assured Progressive Scheme in the pay scale of 15600-39100 with grade pay of Rs. 6600/- w.e.f. 1.8.2001. The respondent in his reply has also stated that granting retiral benefits means release of pension of the applicant will be done within a period of three months from the day as directed by this Tribunal in its order date d 29.4.2015+.

In view of the above, we are satisfied that the respondents have complied with the order of this Tribunal. Liberty is granted to the applicant to approach this Tribunal in case he is not satisfied with subsequent development after issue of the above order. Accordingly, C.A. stands disposed of.+

5. According to the applicant, this Tribunal was pleased to grant liberty to the applicant to approach the Tribunal again in case she was not satisfied with the subsequent development after issue of order by this Tribunal. With this observation, the Tribunal came to the conclusion that the order passed by this Tribunal in O.A. No. 150/2009 was complied with.

6. According to the applicant, the order passed in O.A. No. 150/2009 was in fact not complied with and, therefore, she has filed this O.A. It is stated in the synopsis that this Tribunal has erred in disposing of the contempt proceedings without full compliance of the order dated 29.4.2015. This contention of the applicant cannot be accepted. Had it been the fact that the applicant was not satisfied with the observations of this Tribunal that the order in O.A. No.150/2009 was complied with, she should have challenged the said order before the proper forum.

7. The learned counsel for the applicant submits that in the final order passed in C.A. No.239/2017, this Tribunal was pleased to grant liberty to the applicant to approach this Tribunal and, therefore, the applicant approached this Tribunal.

8. In this O.A., it is stated that it was necessary that the seniority list as on 1.1.1988 was to be corrected in view of the fact that

the name of the applicant should have been included as per his correct date of seniority i.e. 8.10.1987. It is material to note that, the seniority is as on 1.1.1988 and the said seniority was never a subject matter of O.A. No.150/2009. The applicant is challenging the seniority list of 1.1.1988 on the ground that proper procedure as per the Maharashtra Civil Services (Preparation of Seniority) Rules, 1982 has not been followed. This issue was never challenged in O.A.No.150/2009 nor any direction has been issued in this regard in the said O.A.

9. In C.A. No. 239/2015, liberty was given to the applicant to approach this Tribunal in case she is not satisfied with the subsequent development. The seniority of the year 1988 cannot be said to be the subsequent development. The applicant is claiming that she should have been considered for promotion to the post Assistant Director and onwards higher post in the reserved category of ST. It is material to note that, this cause of action was very much in existence when the applicant has filed O.A. No. 150/2009. But the said issue was never raised by the applicant in O.A. No. 150/2009 and, therefore, by filing such fresh application, the applicant cannot be allowed to agitate the issue which she should have raised in O.A. No. 150/2009.

10. We have already referred to the relevant order passed in O.A. No. 150/2009 and the order passed by this Tribunal on 22.1.2016 in C.A. No.239/2015. This Tribunal has come to the conclusion that the order in O.A. No. 150/2009 has been complied with and there is nothing on record to show that, the issues now raised by the applicant, any manner be said to be subsequent development. In fact, all these points were open for the applicant to be raised in O.A. No. 150/2009 itself.

11. In views of the discussion in foregoing paras, we are satisfied that there is no merits in this O.A. Hence, the following order:-

ORDER.

The O.A. stands dismissed with no order as to costs.

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

(Rajiv Agarwal)
Vice-Chairman (A)