

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**

**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 205 OF 2013**

DIST. : BEED

Babu s/o Shetiba Londhe,  
Age. 67 years, Occ. Pensioner,  
R/o Quarter no. 26-19/4,  
Near Swami Ramanand Tirth Rural  
Medical College, Channi Road,  
Ambejogai, Dist. Beed.

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APPLICANT

**VER S U S**

1. The State of Maharashtra,  
Through Secretary,  
Medical Education and  
Medicine Department,  
Mantralaya, Mumbai.
2. The Secretary of  
Finance Department,  
Mantralaya, Mumbai.
3. The Director,  
Govt. Dental College and Hospital,  
St. George Hospital Compound,  
Mumbai 400 001.
4. The Dean,  
S.R.T. Rural Medical College,  
and Hospital, Ambejogai,  
Dist. Beed.
5. The Pay Verification Unit,  
Aurangabad.

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RESPONDENTS

APPEARANCE : Shri D.N. Gilche, learned Advocate for the  
applicant.

: Shri M.P. Gude, learned Presenting  
Officer for the respondents.

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**CORAM** : **Hon'ble Shri Justice M.T. Joshi,**  
**Vice Chairman**

**DATE** : **28<sup>th</sup> April, 2017**  
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**ORAL - ORDER**

1. Heard Shri D.N. Gilche, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for respondents.

2. By the present original application the applicant is seeking quashment and setting aside of the letter issued on 25.2.2005 by the res. no. 4 - the Dean, S.R.T. R. Medical College and Hospital, Ambejogai, Dist. Beed - and also prayed for issuance of direction to the respondents to declare the deemed date of promotion of the applicant of the post of Laboratory Assistant as 1.12.1978.

3. The record would show that the present applicant was appointed in the Class-IV category as a Peon on 24.1.1975. He was promoted by the respondents in a higher scale in Class-IV category on 17.6.1975. Thereafter, he was promoted by the respondents as a Laboratory Assistant on 14.12.1976. Lastly he was promoted to the post of Laboratory Technician by the res. no. 4 on 12.2.1996. The record would also show that in the meantime junior to the applicant viz. Shri M.M. Khan was promoted to the post of Laboratory Technician on 1.11.1978 and, therefore, res. no. 4 vide

order dated 1.6.2002 (Exh. F page 16 of the O.A.) was pleased to grant deemed date of promotion to the applicant to the said post of Laboratory Technician with effect from 1.11.1978. Thereafter the applicant was superannuated on 31.8.2004.

4. When the issue of grant of retiral benefits upon superannuation arose, the res. no. 4 vide letter dated 25.2.2005 (Exh. P paper book page 24-A of the O.A.) had passed the order. He found that the Pay Verification Unit, Aurangabad had raised an objection regarding this deemed date of promotion, and, therefore, the order of granting deemed date of promotion to the applicant earlier, was cancelled by the res. no. 4 vide the said order. He accordingly directed for recovery of excess payment paid to the applicant as mentioned in the said order. In the circumstances, the applicant is before this Tribunal.

5. The respondents have opposed the claim of the applicant. It was submitted that, only the Secretary of Medical Education & Drugs Department is the competent authority to pass the order of deemed date of promotion and the wrong entry taken in the service book of the applicant by the res. no. 3 would be of no effect. It was further submitted that first of the promotion was granted prematurely.

6. The learned Advocate for the applicant submits that in the similarly situated employee's case [T.A. No. 1385/1991

(W.P. no. 806/1988)] [Shri A.M. Shinde Vs. the State of Maharashtra & Ors.] this Tribunal has delivered a judgment on 29.3.2001. In the said case the respondents raised a plea that the applicant therein was wrongly promoted to the post of Laboratory Assistant before completion of 2 years and in effect the promotion granted to him was taken away after the period of 12 years, though in the meantime he earned second promotion. The learned Presenting Officer submits that the fact in the present case is different than the case decided by the Tribunal earlier and here the incompetent authority has granted promotion to the applicant.

7. Upon hearing both the sides, in my view, the observations made by the Tribunal in the order of earlier matter would be squarely applicable herein. In the present case, the applicant was not only promoted but upon promotion he worked on the said post and thereafter he earned next promotion and worked on these posts till his superannuation and during these years no objection was taken by any of the respondents regarding granting deemed date of promotion to the applicant by the incompetent authority and on his retirement only, now the decision is taken where under recovery is directed vide communication dated 30.1.2010 from the retiral benefits granted to the applicant.

8. In view of above facts I pass following order –

(A) The original application stands allowed without any order as to costs and the impugned communication dated 25.2.2005 issued by the res. no. 4 is hereby quashed and set aside.

(B) Consequential action upon quashment of the impugned order shall follow.

**VICE CHAIRMAN**

ARJ-O.A. NO. 205-2013 JUS. MT Joshi (DEEMED DATE)