

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 38/2018 (D.B.)

Arvind S/o Mukund Dhobaley,
Aged about 48 years,
Occ. Service as Auditor Grade-II
in the office of Special Auditor, Class-I,
Co-operative Societies (Sugar),
Badkas Chowk, Mahal Nagpur
R/o Plot No.132, Durga Chowk,
near Hanuman Mandir Jaywant Nagar,
Ring Road, Nagpur-27.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Co-operative Department,
Mantralaya, Mumbai-400 032.
- 2) The Commissioner for Cooperation & Registrar,
Cooperative Societies, Maharashtra State,
Central Building, near Pune Railway Station, Pune.
- 3) The Divisional Joint Registrar,
Cooperative Societies (Audit),
Nagpur Division, Nagpur.
office at 8th floor, Administrative Building No.2,
'B-Wing', Civil Lines, Nagpur.

Respondents.

Shri G.M. Shitut, Advocate for the applicant.

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

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Justice M.G. Giratkar,
Member (J).**

Date of Reserving for Judgment : 11th January,2022.

Date of Pronouncement of Judgment : 31st January,2022.

JUDGMENT

Per : Vice Chairman.

(Delivered on this 31st day of January, 2022)

Heard Shri G.M. Shitut, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. The applicant was appointed on compassionate ground in General / Open category as Junior Clerk vide order dated 7/12/1990 (A-1,P-17) w.e.f. 19/12/1990 under the Special Auditor Cooperative Societies (LDB), Akola under the Divisional Joint Registrar, Cooperative Societies (Audit), Amravati Division, Amravati as per page no.3 of the O.A.

3. The applicant is physically handicapped (Orthopaedic category) as per the medical certificate dated 29/4/2003 (A-3,P-23). As per the hierarchy of posts in the Department is Junior Clerk, then Sub Auditor, then Auditor Grade-II, then Auditor Grade-I.

4. As submitted by the learned P.O., as on today the applicant was promoted on the post of Auditor Grade-I as per order dated 31/5/2019 (P-259) and he joined on 1/6/2019 and since then he is working on the same post.

5. The applicant has filed the present O.A. with a following prayer –

“(9) (i) Issue an appropriate order or direction and hold that the reservation for physically handicapped persons is required to be maintained “post-wise” in accordance with G.R. dated 05/03/2002.

(ii) By issuance of an appropriate order or direction, the respondent nos.1 to 3 may kindly be directed to consider request of the applicant for promotion to the post of Auditor Grade-I from physically handicapped (orthopedically) category on the basis of the resolution dated 5th March, 2002 w.e.f. the date when the point no.67 fell vacant to be filled in from the said category.

(iii) Grant deemed date and other consequential benefits of the post of Auditor Grade-I w.e.f. 5/3/2009 as per the guidelines in G.R. dated 5/3/2002.”

6. The grievance of the applicant is that as per the Govt. GAD G.R. dated 5/3/2002 (A-2,P-19 to 22) in various Govt. departments, 3% quota is reserved for physically handicapped person which has not been considered for the applicant. As per this G.R. in 100 point roster, point nos.1,34 & 67 are marked for physically handicapped persons. The applicant claims that when point no.67 was vacant that time the applicant should have been considered for Auditor, Grade-I.

*7. As per Annex-A-14,P-144 to 159 the minutes of meeting dated 21/2/2009 has been filed by the applicant. On page no.153 it is

mentioned about post of Auditor Grade-II. On page no.155 the applicant's name appears in the last table at Sr.No.3 and Seniority is shown at sr.no.42 and as per this DPC the applicant's name has been considered for promotion to Auditor Grade-II on temporary post against Open category.

8. The respondents in their reply in para-6 of page no.40 have admitted that in view of pendency of some writ petition, the applicant was promoted in the DPC dated 21/2/2009 (wrongly mentioned 27/2/2009) against direct quota on temporary post and finally on permanent post he was promoted to the post of Auditor Grade-II vide order dated 9/7/2010 (A-5,P-25). The Id. P.O. submitted that the person working as Auditor Grade-II is eligible for further promotion to the post of Auditor Grade-I, has to complete four years service in Auditor Grade-II post as per the Recruitment Rules. So it is crystal clear that the applicant was temporary promoted on the post of Auditor Grade-II after the DPC meeting held on 21/2/2009 at page no.144. Ultimately permanently the applicant was promoted on Auditor Grade-II as per order dated 9/7/2010 (Annex-A-5 Page no.25). As per document filed by the applicant, the applicant has to be promoted on the post of Auditor Grade-I after completion of four years regular service on the post of Auditor Grade-II, i.e., 9/7/2014 only.

9. Thereafter on 8/9/2014 at page no.225, the DPC took place for promotion of Auditor Grade-I. In this minutes of meeting at page no.226 it is mentioned that in promotion quota, 20 posts were available for Auditor Grade-I. On page no.227 it is mentioned that total vacant post in the cadre of Auditor Grade-I was 27, out of which 7 posts are kept for direct recruitment quota and 20 posts from promotion quota from the feeder cadre. Out of 20 posts, 17 persons were already working and as per roster point in SC category one post is excess and in ST category one post is less and in open category 3 posts are less.

10. The respondents have submitted in para-9 of the reply that *“taking into account total 20 sanctioned posts in the promotion quota in the cadre of Auditor Grade-I for purposes of promotion to the post of Auditor Cadre-I in that relevant year and the calculation of reservation quota of total 3% of the available promotional posts, 1% for each category of physically handicapped persons, (0.2 i.e. 0 post for the visually handicapped, 0.2 i.e. 0 post for the hearing handicapped and 0.2 i.e. 0 post for orthopedically handicapped), as no post was available for the said categories in the relevant year on the date of the meeting of the DPC (dtd. 8/9/2014) no post was vacant in reservation quota for the category of orthopedically handicapped person, in which the applicant falls, for being promoted to the post of Auditor Grade-I,*

his name was not considered in the DPC dated 8/9/2014. Thereafter, the DPC held on 27/04/2017 and considered the candidature of the applicant for promotion to the post of Auditor Cadre-I from the category of orthopedically handicapped, but it was decided that it is not possible to grant promotion to the applicant due to lack of post."

*11. In the DPC meeting dated 8/9/2014 the contention stated in the para no.9 of the reply has been already considered by the respondents. Subsequently, in the minutes of meeting dated 27/4/2017 also at Annex-A-14 at page nos.247 to 258. As per internal discussion at page no.257, it is mentioned that the applicant had submitted application for promotion under handicapped quota and decision has been taken not promoting as physical handicapped challenged person as per the representation of the applicant, because, as per discussion of the members of committee from 1% of physically challenged quota of applicant's it will be 0.2 which cannot be treated as one post that's why the applicant was not considered.

12. However, the applicant was considered in the DPC dated 21/5/2019 as per his promotion order in reference no.12 and he is promoted on the post of Auditor Grade-I vide order dated 31/5/2019 (P-259) in open category physically challenged (orthopaedic) quota.

13. In view of discussions in above paras, it is crystal clear that when the post was available in open category physically challenged (orthopaedic) quota, the applicant was promoted on the post of Auditor Grade-I. In this background, the relief cannot be granted to the applicant as prayed for in the O.A. Hence, the following order –

ORDER

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

(Justice M.G. Giratkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 31/01/2022.

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 : 31/01/2022.

Uploaded on : 01/02/2022*