

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 609/2020 (D.B.)

Kavita D/o Haridas Chavan
(Kavita W/o Ashok Dahake).
Aged about 29 years, Occ. Service at District Supply Office,
Buldana, R/o Government Quarter No.1/22,
Vishnu-Wadi, near District Collector's Residence,
Buldana, District Buldana.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary, Food, Civil Supply and Consumer
Protection Department, Mantralaya, Mumbai-32.
E-Mail : napu22Mhpds@gov.in
- 1) (A) The State of Maharashtra,
through its Secretary, General Administration Department,
Mantralaya, Mumbai-32.
- 2) The Divisional Commissioner /
President, Divisional Promotion Committee,
Amravati Division, Amravati.
E-Mail : amravati_divcom@rediffmail.com
- 3) The Deputy Commissioner (Supply)/
Member Secretary, Divisional Promotion Committee,
Amravati Division, Amravati
E-Mail : dycomms.amt@gmail.com
- 4) Giridhar Ananatrao karankar,
Age : 30 years, Occ. Service
R/o C/o Food Supply Department,
Tahsil Office, Ner, Tahasil Ner, District Yavatmal.
- 5) Sadanand Gulabrao Thorve,
Age : 36 years, Occ. Service,
R/o C/o Food Supply Department, Tahasil Office, Darva,
Tahasil : Darva, District Yavatmal.
- 6) Rameshwar Ninaji Bhopale
Age: 36 Years, Occupation: Service
R/o .C/o. Food Supply Department,
Tahasil Office Tel hara, Tahasil: Telhara, District: Akola

- 7) Sachin N. Thakre Age: 33 Years, Occupation: Service
R/o.C/o. District Supply Office, Yavatmal, District: Yavatmal
- 8) Shubhangi Dadarao Kumbhekar
Age: 33 Years, Occupation: Service
R/o. C/o. Food Supply Department, Tahasil Office Yavatmal,
District: Yavatmal
- 9) Pankaj Devidasrao Sadatpure
Age: 39 Years, Occupation: Service
R/o.C/o. Food Supply Department,
Tahasil Office Ner, Tahasil: Ner, District: Yavatmal
- 10) Shital Nilesh Damodhar
Age: 32 Years, Occupation: Service
R/o.C/o. District Supply Office, Akola, District: Akola
- 11) Yogesh Prabhakar Dalke
Age: 35 Years, Occupation: Service
R/o C/ o. District Supply Office, Akola, Tahasil & District: Akola
- 12) Yogesh Baburao Satav
Age: 36 Years, Occupation : Service
R/o.C/ o. District Supply Office, Akola , District Akola.
- 13) Niranjan Tulshiram Kurwade
Age : 43 Years, Occupation : Service
R/o C/o. District Supply Office, Yavatmal, District: Yavatmal
- 14) Kamlesh Kashinath Wankhede
Age : 30 Years, Occupation: Service
R/o . C/o. Food Supply Department, Divisional Commissioner
Office Amravati, District: Amravati
- 15) Nilesh Nandkishor Jadhav
Age: 31 years, Occupation: Service
R/ o. C/ o. Food Supply Department, Tahasil Office Deulgoan Raja,
Tahasil: Deulgoan Raja, District: Buldana
- 16) Shayarn Ramrao Aakhre
Age: 31 Years, Occupation: Service
R/o. C/o Food Supply Department,
Tahasil Office Jalgaon Jamod,
Tahasil : Jalgaon Jamod, Dist. Buldana.

- 17) Kisan Tryambak Kene
Age: 31 Years, Occupation : Service
R/o. C/o. District Supply Office, Buldana,
District: Buldana
- 18) Shekh Vikar Ahemad Shekh Gafar,
Age : 41 years, Occ. Service,
R/o C/o Food Supply Department, Tahasil Office,
Sindkhed Raja, Tahasil : Sindkhed Raja, District Buldana.
- 19) Vishnu Punjabrao Ambhore,
Age : 31 Years, Occ. Service,
R/o c/o District Supply Office, Buldana, District Buldana.

Respondents.

**Shri V.B.Gawali, Advocate for the applicant.
Shri S.A. Sainis, P.O. for respondent nos.1 to 3.
S/Shri M.A. & S.M. Vaishnav, Advs. for respondent nos.4 to 14.
None for other respondents.**

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

Date of Reserving for Judgment : 14th March,2022.

Date of Pronouncement of Judgment : 23rd March,2022.

JUDGMENT

Per : Member (J).

(Delivered on this 23rd day of March, 2022)

Heard Shri V.B. Gawali, learned counsel for the applicant,
Shri S.A. Sainis, learned P.O. for respondent nos.1 to 3 and Shri M.A.
Vaishnav, learned counsel for respondent nos.4 to 14. None for other
respondents.

2. The case of the applicant in short is as under –

The applicant was initially appointed as Peon by order dated 15/05/2012 by the Collector, Buldana and posted her in Food Supply Department. The applicant belongs to OBC category and appointed in the said category. Thereafter, the applicant was promoted in Open category as Junior Clerk-cum-Typist by order dated 26/2/2018 by Collector, Buldana and posted her at Tahsil Office, Motala. The applicant is presently working on the same post at Collector Office, Buldana in Food Supply Department.

3. The respondent no.2 published the seniority list of Junior Clerk-cum-Typist cadre on 7/7/2020. The name of applicant is at Sr.No.13 at division level and at Sr.No.8 in district level. The respondent nos. 4 to 19 are Juniors to the applicant. They are promoted on the post of Godwun Manager / Awwal Karkun / Supply Inspector etc. The main grievance of the applicant is that she is senior to the respondent nos. 4 to 19. The respondent nos.4 to 19 were in service in other Districts. They were transferred to Buldana District on their requests by way of inter district transfers and therefore, they are juniors to the applicant as per the rules. They are rightly shown as juniors to the applicant. The applicant is not promoted on the ground that she has not completed three years continuous service on the post of Clerk-cum-Typist. It is contention of the

applicant that the respondent nos. 4 to 19 have not completed three years continuous service on the post of Clerk-cum-Typist in Buldana district. Their earlier services cannot be counted. Hence prayed to quash and set aside the promotion order of respondent nos. 4 to 13 (as prayed).

4. The respondent nos.2&3 filed their reply. As per contention of respondent nos.2&3, the applicant is not eligible for promotion on the post of Godwun Manager / Awwal Karkun / Supply Inspector etc., because, she has not completed three years service on the said post. The respondent nos.4 to 19 have completed more than three years by counting their earlier services in the earlier establishment before absorption in the Buldana district by inter district transfer. Hence, they are promoted on the post of Godwun Manager / Awwal Karkun / Supply Inspector etc.

5. Heard Shri V.B. Gawali, learned counsel for the applicant. He has pointed out various G.Rs. He has pointed out the documents which show that the respondent nos. 4 to 19 are transferred from their original district to Buldana district on their own request. They have given undertaking stating that they shall not claim the seniority. Their seniorities shall be counted from the date on which they joined at the transferred place. They have also given undertaking that they will not claim earlier seniority for any benefit. They have also given

undertaking that they will be juniors to the earlier appointed employees in the same cadre at the transferred place.

6. The learned counsel for the applicant has also pointed out seniority list at page nos.19. As per the seniority list, the applicant is senior to the respondent nos. 4 to 19. The respondent nos. 4 to 19 absorbed in Buldana district on the post of Clerk-Typist. On 2/4/2018, 6/4/2018,27/4/2018,2/5/2018,8/5/2018,18/5/2018,2/7/2018,5/9/2018, 18/1/2019,27/2/2019,31/7/2019,7/9/2019,8/11/2019, whereas, the applicant is working on the post of Clerk-Typist from 27/2/2018, therefore, she is senior to the respondent nos. 4 to 19.

7. The learned counsel for the applicant has submitted that as per G.R. dated 1/8/2019 for the promotions from Group-C upto Group-A, the employees shall have completed three years continuous service and there shall not be any relaxation. The learned counsel for the applicant has pointed out information supplied by the GAD (P153). As per this information, it is a condition precedent of completion of three years continuous service for promotion to the higher post and the employees who are inter district transferred, are not entitled to count their earlier services as there is no any Govt. Circular.

8. The learned counsel for the applicant has pointed out the Govt. Notification dated 24/6/2021 and submitted that in case of absorption in other establishment on his/her own request, their

services are governed by original Appointing Authority shall not be re-counted as continuous service for the purpose of seniority.

9. Heard Shri S.A. Sainis, learned P.O. for respondent nos.1 to 3. He has submitted that the respondent nos.2&3 rightly promoted the respondent nos. 4 to 19 as they have completed qualifying services. Therefore, the O.A. is liable to be dismissed.

10. Heard Shri M.A. Vaishnav, learned counsel for respondent nos.4 to 14 has pointed out the Judgment of Hon'ble Supreme Court in case of **Renu Mullick (Smt) Vs. Union of India & Ano., (1994) 1 SCC,373.** He has submitted that the applicant is not qualified for promotion as she has not completed three years of service on the post of Clerk-cum-Typist, therefore, she is not promoted. The respondent nos.4 to 14 were eligible for promotion from the post of Clerk-cum-Typist, because, they have completed more than three years service on the post of Clerk-cum-Typist. The Hon'ble Supreme Court has held that earlier service can be counted for promotion, even though inter district transfer, he/she has not completed the qualifying service.

11. There is no dispute that the applicant is senior to the respondent nos. 4 to 19. The applicant is not promoted on the post of Godwun Manager / Awwal Karkun / Supply Inspector etc. only on the ground that she has not completed three years service on the post of Clerk-Typist. The respondent nos.2&3 issued promotion order in

favour of respondent nos.4 to 13 though they are juniors to the applicant by calculating their earlier services. Now following points arise for determination –

(i) Whether juniors can be promoted by refusing promotion to the seniors.

(ii) Whether in inter-district transfer, the earlier services of the employee can be counted.

12. Heard Shri M.A. Vaishnav, learned counsel for respondent nos.4 to 14 has pointed out the Judgment of Hon'ble Supreme Court in the case of **Renu Mullick (Smt) Vs. Union of India & Ano., (1994)**

1 SCC,373. The Hon'ble Supreme Court has held as under –

“ The appellant was appointed as Lower Division Clerk (LDC) in Central Excise and Customs, New Delhi on 17-12-1974. She was promoted as Upper Division Clerk (UDC) on 10-5-1981. On her own request, she was transferred to the Central Excise Collectorate, Allahabad and joined that collectorate on 4-8-1987. She gave an undertaking to the office that on unilateral transfer, her seniority may be "fixed below the last temporary UDC in the Allahabad Collectorate" i.e. she may be "treated as a fresh entrant in the cadre of UDC" and that she may be adjusted against direct recruitment and against unreserved vacancy in the grade of UDC. This undertaking was obtained from the appellant on the basis of departmental instructions dated 20-5-1980 [para 2(ii)] which provided that "the transferee will not be entitled to count the service rendered by her in the former Collectorate for the purpose of seniority in the new charge. In other words, she will be treated as a new entrant in the Collectorate to which she is transferred and will be placed at the bottom of the list of temporary employees of the concerned cadre in the new charge".

In 1991, the appellant was initially promoted as Inspector but was later on reverted on the ground that she did not fulfil the eligibility conditions laid down in Rule 4 of the recruitment rules which contained the following provisions: "Promotion by selection from UDC with 5 years' service or UDC with 13 years of total service as UDC and LDC taken together subject to the condition that they should have put in a minimum of two years of service in the grade of UDC "Note 3 in the Schedule to the Rules, read with OM dated 19-7-1989 further provided that if a junior person is considered for promotion, his senior should also be considered even if the senior has not completed the prescribed length of service.

The contention of the respondents was that appellant's service from 4-8-1987 (date of joining Allahabad collectorate) only could be counted and therefore she did not have either 5 years service as UDC or 13 years service as composite service as UDC/LDC. Rejecting this contention

Held: The transferee is to be treated as a new entrant in the collectorate to which he/she is transferred for the purpose of seniority. It means that the appellant would come up for consideration for promotion as per her turn in the seniority list in the transferee unit after rendering 2 years' service as UDC in that unit but when she is so considered, her past service in the previous collectorate cannot be ignored for the purpose of determining her eligibility as per Rule 4. Her seniority in the previous collectorate is taken away only for the purpose of seniority but not for determining her eligibility for promotion under Rule 4 which is a statutory rule. If the instructions are interpreted otherwise, they may be open to challenge of arbitrariness".

13. In the cited Judgment, the Hon'ble Supreme Court has held that the earlier service of the employee, who came on inter district transfer can be counted, but the juniors shall not be promoted. In case of senior is not qualified by counting the service, then senior should be called for interview.

14. From the perusal of the G.R. pointed out by the learned counsel for the applicant Shri V.B. Gawali, there is no such provision that earlier service shall not be counted for the purpose promotion. But the G.Rs. issued from time to time show that earlier service shall not be counted for the purpose of seniority. In the Govt. Notification dated 21/6/2021, it is specifically mentioned as under –

“ Provided also that, in accordance with the provisions made regarding permanent absorption, if any Government servant, on his own request, is permanently absorbed in another post, cadre or service governed by another appointing authority, other than the post, cadre or service governed by original appointing authority, then earlier service of such Government Servant shall not be reckoned as a continuous service for the purpose of seniority in the absorbed post, cadre or service. The seniority of such Government Servant shall be determined on the date from which he is appointed by absorption to another post, cadre or service.”

15. The learned counsel for the applicant has pointed out G.R. dated 1/8/2019. The Clause 5.1.2 is as under –

निम्न संवर्गातील किमान सेवेची अट -

संदर्भ क्र.२ येथील दि.३१.५.१९८९ चा शासन निर्णय अधिक्रमित करून व संदर्भ क्र.२९ येथील दि. ५.१०.२०१५ च्या शासन निर्णयान्वये दिलेल्या सूचना विचारात घेऊन, निम्न संवर्गातील किमान सेवेची अट पुढीलप्रमाणे निश्चित करण्यात येत आहे: -

गट-क पासून गट-अ मधील सर्व टप्प्यांपर्यंतच्या पदोन्नती करताना निकटतम निम्न पदावर किमान तीन वर्षांच्या नियमित सेवेची अट पदोन्नतीसाठी पूर्व अट म्हणून राहिल व त्यामध्ये कोणतीही शिथिलता अनुज्ञेय राहणार नाही. मात्र, ज्या ठिकाणी विवक्षित कारणास्तव सेवा प्रवेश नियमात निम्नस्तरीय संवर्गातील सेवेचा किमान कालावधी तीन वर्षांपेक्षा जास्त नमूद केला असल्यास, सदर कालावधी विचारात घ्यावा. निम्न पदावरील सेवेचा किमान कालावधी हा सदर पदावर नियमित केल्यापासूनचा असला पाहिजे.

निम्न पदावरील कामाचा अनुभव हा पदोन्नतीनंतर वरिष्ठ पदावरील कामाच्या अनुषंगाने आवश्यक असल्याने, तीन वर्षांच्या किमान सेवेची अट पदोन्नतीसाठी विहित करण्यात आली आहे. त्यामुळे अकार्यदिन म्हणून घोषित केलेल्या कालावधीची किमान सेवेच्या कालावधीमध्ये गणना करू नये. त्याचबरोबर एखादा अधिकारी/कर्मचारी हा एक वर्ष किंवा अधिक कालावधीसाठी निम्न संवर्गातील पदावर काम न करता वैयक्तिक कारणास्तव प्रशिक्षण अथवा अध्ययन रजा अथवा असाधारण रजा इ.कारणांमुळे गैरहजर असल्यास, सदर गैरहजेरीचा कालावधी किमान सेवेच्या कालावधीमध्ये गणना करण्याबाबत समितीने गुणवत्तेनुसार प्रकरणपरत्वे निर्णय घ्यावा.

16. From the plain reading of the G.R., it is clear that the earlier service of the employee, who came on transfer on his/her own request, in inter-district transfer shall not be counted for the purpose of seniority, but there is no provision or bar to count their earlier services for other purpose. The Hon'ble Supreme Court has held that earlier service can be counted, provided that if the juniors are promoted, then the person who is senior shall be given promotion.

17. There is no disputed that the applicant is senior to the respondent nos.4 to 13. Hence, by not giving promotion to the applicant only on the ground that she has not completed three years service and promoting her juniors is nothing, but in contravention of the rules. The general rule is that the senior is to be given promotion and thereafter juniors are to be considered. The same view is taken by the Hon. Apex Court in the case of **Renu Mullick (Smt) Vs. Union of India & Ano., (1994) 1 SCC,373.** In that view of the matter, the promotion given to respondent nos.4 to 13 appears to be not proper. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The promotion order dated 12/1/2021 issued by respondent no.2 promoting the respondent nos. 4 to 13 (as prayed) is hereby quashed and set aside.
- (iii) No order as to costs.

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

(Shree Bhagwan)
Vice-Chairman.

Dated :- 23/03/2022.

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 : 23/03/2022.

Uploaded on : 24/03/2022*