

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO. 616/2009.

Amarnath Purnamal Mishra (since deceased),
Through his nominee
Smt. Usha wd/o Amarnath Mishra,
Aged about 59 years,
Occ-Household,
R/o C/o Dr. Kishor Sontakke,
Gandhi Nagar, Yavatmal.

APPLICANT.

-Versus -

1. State of Maharashtra,
Through : Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai.
2. The Divisional Commissioner,
Amravati Division, Amravati.
3. The Collector,
Yavatmal.

RESPONDENTS.

Shri P.H. Gulhane, Advocate for the applicant.
Shri A.M. Ghogre, P.O. for the Respondents

CORAM : HON'BLE SHRI JUSTICE A.P. DESHPANDE :
VICE CHAIRMAN AND
HON'BLE SHRI B. MAJUMDAR ,MEMBER (A)

DATED: 23rd January, 2013.

ORDER**PER:VICE-CHAIRMAN**

Heard Shri P.H. Gulhane, the learned counsel for the applicant and A.M. Ghogre, the learned P.O. for the respondents.

2. One Shri Amarnath s/o Puranmal Mishra (since deceased) entered the Government service as a Junior Clerk in the year 1966 (hereinafter referred to as "an employee"). A criminal prosecution was instituted against the employee in the year 1982 on account of defalcation of Government money and as such he was prosecuted under Sections 409 & 477 (A) of the Indian Penal Code. The Trial Court convicted the employee vide its judgment and order dated 18.5.1994. Relying on the judgment of conviction, the respondents dismissed the employee from service by an order dated 3.8.1994. The employee preferred an appeal before the Sessions Court. The Sessions Court acquitted the employee vide its judgment dated 27.5.1999 by giving benefit of doubt. Consequent upon the acquittal of the employee by the Sessions Court,

though an appeal was filed by the State Government against the acquittal before the High Court, the employee was reinstated in service by an order dated 10.4.2000, however subject to the outcome of the appeal against the acquittal, then pending before the High Court. The employee retired from service on 31.5.2003 and expired in the year 2006. After the death of the employee, his wife has filed the present O.A. in the year 2009.

3. By filing the present O.A., very many reliefs are claimed. In the first place, the grievance ^{is} that the juniors ~~to~~ [^] the employee ^s by name [§] Shri Kariya and Mankar have superseded the claim of the employee as they were promoted in the year 1982 as First Grade Clerks and thereafter to the post of Naib Tehsildar. Thus, it is claimed in the O.A. that the employee be granted notional promotion firstly to the post of First Grade Clerk and then to the post of Naib Tehsildar. Suffice it to state at this juncture that the employee did not object to the supersession of his claim by Shri Kariya and Mankar till he retired from service or for that

matter till he expired. The said two employees viz. Shri Kariya and Mankar were promoted to the post of First Grade Clerk way back in the year 1982. Belatedly by filing the present O.A. in the year 2009, the applicant ^{is} challenging their promotion on the ground of supersession of the employee's claim and hence prayed for notional promotion. The two candidates who allegedly superseded the claim of the applicant are not impleaded as party respondents. The relevant particulars are not ^{stated} available in the O.A. O.A. does not even make it clear as to what ^{were} ~~was~~ the criteria prescribed under the promotion rules for grant of promotion. The dates on which the said two employees viz. Shri Kariya and Mankar were promoted to the post of Naib Tehsildar, are also not available on record. Thus, in our considered view, there is hardly any justification for the applicant to either challenge the promotion granted to Shri Kariya and Mankar or for that matter to claim the notional promotion for the employee. According to the learned counsel for the applicant, the employee had made a representation in the year 2005 i.e. two years after his

retirement allegedly objecting to the promotion granted to the two employees. Making of this representation, hardly advances the case of the applicant any further, as it does not extend the period of limitation. The O.A. is hopelessly barred by time for claiming the relief of grant of notional promotion and it deserves to be rejected on this ground as well. It is to be noted that even an application of ^{condonation of} delay has not been filed by the applicant.

4. In the second place, the applicant is claiming promotional pay scale on completion of 12 years of service, made available vide G.R. dated 8.6.1995. Perusal of the said G.R. reveals that with a view to tackle problem of stagnation on account of non availability of promotional post, the said G.R. has been issued. According to the said G.R., on satisfactory completion of 12 years of service in the ^{post an} ~~cadre, the~~ employee is to be granted salary in the promotional pay scale, subject to the terms and conditions laid down in the G.R. It will not be out of place to mention that the benefit of the promotional pay scale is not made

available to each and every employee, but has been made available to such of the employees who are fit for grant of regular promotion, but could not be so granted because ~~on~~ ^{of} ~~account of~~ non availability of sufficient number of posts in the promotional cadre. Perusal of the Clause-2 clearly reveals that for granting benefit under the G.R. dated 8.6.1995, the employee has to satisfy the condition contained in the said G.R. and to be more precise condition contained in Clause 2 (b) thereof. The said clause categorically lays down that for earning promotional pay scale, an employee needs to satisfy the criteria of fitness, eligibility, passing of examination, seniority etc., which are the requirements for earning a regular promotion by an employee.

It so happened that, though the applicant's ^{late husband} qualified himself for consideration of his case under the G.R. dated 8.6.1995 w.e.f. 1.10.1994, the applicant's fitness for granting promotional pay scale could not be tested on account of applicant's conviction in a criminal case on 18.5.1994 followed by his dismissal from service by an order

dated 3.8.1994. At the relevant point of time, the employee was not in employment. The applicant was thereafter reinstated in service on 10.4.2000 and retired from service on 31.5.2003. The order of reinstatement reveals that his reinstatement was subject to the outcome of the appeal against the acquittal preferred by the State Government in the High Court which was pending till the employee expired in the year 2006 and thereafter the appeal against acquittal came to be disposed of as abated. Having regard to the observations made hereinabove, we do not see any merit in the applicant's claim for releasing benefits under the G.R. dated 8.6.1995. Touching this aspect as well, it is undisputed that till retirement of the applicant in the year 2003, he did not make any claim in that regard. The claim^s in the present O.A. ^{is} ~~are~~ made by the wife of the deceased employee. It can be safely assumed that the employee was not aggrieved either on account of denial of promotion or on account of denial of the benefit under the G.R. dated 8.6.1995. Belatedly these claims are set up by the wife of the deceased employee.

8. The last claim is for grant of benefit of leave encashment, which accrued to the employee for the period commencing from 4.8.1994 to 11.4.2000 (viz. ^{from} the date of dismissal of the applicant till the date of reinstatement in service.) According to the learned counsel for the applicant, applicant's service from 4.8.1994 to 11.4.2000 has been regularized. Perusal of the order dated 31.1.2008 clearly reveals that the period of suspension has been regularized. The order also categorically mentions that the said period shall be treated as duty period. If this be so, submits the learned counsel for the applicant, the said period ought to count for earned leave. The prayer for counting of the said period for earned leave is opposed by the respondents. Perusal of the affidavit in reply and to be more precise Paragraph 5 mentions that as the period from 4.8.1994 to 11.4.2000 (i.e. period from dismissal till the date of reinstatement) cannot be calculated for grant of leave, ~~hence~~ the same will not be available for leave encashment. To so contend, reliance has been placed on Rule 22 (3) of the M.C.S. (Leave) Rules, 1981. Perusal of

the Rule 22 of the Leave Rules reveals that it deals with the leave which is already to the credit of a Government servant, who is dismissed or removed or who resigns from service. Whereas sub-rule (3) reads thus—

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 “~~The~~ Government servant who is dismissed or removed from service, but is reinstated in appeal or revision, shall be entitled to count for leave ^{his} ~~as~~ service prior to dismissal or removal as the case may be”.

The above extracted sub-rule also covers a situation wherein there is some leave to the credit of an employee who is dismissed or removed, ^{and} at a later point of time reinstated in appeal or revision. Such an employee would be entitled to have his ^{service} (leave) counted which was available to him prior to his dismissal or removal. In our considered view, reliance placed by the respondents on Rule 22 of the Leave Rules is wholly misplaced. Rule 22 of the Leave Rules does not deal with counting of leave accruing from the date of dismissal to the date of

reinstatement. The said rule regulates leave which is already to the credit of an employee at the time of his dismissal. Having regard to the fact that the period from 4.8.1994 to 11.4.2000 has been regularized and treated as duty period, we have no iota of doubt that the applicant would be entitled to the benefit of earned leave and consequently leave encashment for the said period and hence to that extent, the claim in the present O.A. must succeed. It is undisputed that the employee/applicant has been paid 48 days' leave encashment. Allowing the O.A., we proceed to pass the following order:-

- (1) O.A. to the extent it relates to prayer Clauses (i), (ii,) (iii), (v), (vi) and (vii) stands rejected.
- (2) O.A. to the extent it relates to Prayer Clause (iv) , wherein claim for leave encashment is made, is allowed and we direct the respondents to treat the period commencing from 4.8.1994 to 11.4.2000 for the purpose of counting earned leave and release the amount of leave encashment for the said period, in favour of the applicant together with interest as admissible under the

rules, as expeditiously as possible and preferably within a period of three months from the date of service of copy of this order on the respondents.

(3) There shall be no order as to costs.

Sd/-
(B.Majumdar)
Member (A)

Sd/-
(Justice A.P.Deshpande)
Vice-Chairman

Pdg