

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1179 OF 2019

**DISTRICT : NASHIK
SUBJECT : DEEMED DATE OF
PROMOTION**

Shri Chintaman Parabhat Patil,)
Age: 61 years, Occ. Retired Awwal Karkoon)
R/o N-32, R-4, 7/3, Baji Prabhu Chowk,)
New CIDCO, Nashik - 9.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
through the Secretary, Revenue Department,)
Mantralaya, Mumbai-32.)
- 2) The District Collector,)
Near Akashwani Kendra, Tall; and)
District Jalgaon – 425 001.)
- 3) The State of Maharashtra,)
General Administrative Department,)
Mantralaya, Mumbai-32.)...**Respondents**

Shri Rajesh M. Kolge, learned Advocate for the Applicant.

Smt. Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : A.P. KURHEKAR, MEMBER (J)

DATE : 07.11.2022.

JUDGMENT

1. Heard Shri R.M. Kolge, learned Advocate for the Applicant and Smt K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. The Applicant has challenged communication dated 15.02.2019 issued by Respondent No.2 – The Collector, Jalgaon thereby rejecting the

claim of the Applicant for grant of Deemed Date of Promotion and Pay and Allowances.

3. The Applicant stands retired as Awwal Karkoon w.e.f. 30.06.2016. On 17.09.2018 the Applicant made representation to the Collector that he is entitled to Deemed Date of Promotion for the post of Awwal Karkoon w.e.f. 15.02.2010 and claims monetary benefits. However, the Collector, Jalgaon rejected his representation by communication dated 15.02.2019 informing the Applicant as under:-

“ संदर्भ :- आपलेकडीलपत्र दि.१७/९/२०१८.

उपरोक्त विषयाच्या अनुषंगाने आपणास कळविण्यात येते की, आपण मानीव दिनांकानुसार अव्वल कारकून संवर्गातील पदोन्नतीचे आर्थिक लाभ मिळणेबाबत या कार्यालयास सदरचा अर्ज सादर केला आहे.

आपल्या विनंतीनुसार आर्थिक लाभ देणेची तरतुद शासन निर्णय व परिपत्रके तपासली असता सामान्य प्रशासन विभागाचे दि.२५/०२/१९६५ चे परिपत्रकात फरकाचा कालावधी दि. १ मे १९६० पुर्वीचा असल्यास सदर फरकाची रक्कम अदा करावी व दि.०१ मे, १९६० नंतरचे कालावधीतील फरक अदा करणेस प्रतिबंधित करण्यात आले आहे. यास्तव आपण मागणी केल्यानुसार नेमुन दिलेल्या मानीव दिनांकास वेतन निश्चिती करण्याची कार्यवाही करता येणार नाही. सबब आपला उक्त दिनांकीत अर्ज निकाली काढण्यात येत आहे.”

4. Thus the ground mentioned in the impugned order is that in terms of circular dated 25.02.1965 the Applicant is not entitled for benefits of Deemed date of Promotion.

5. Notably, circular dated 15.02.1965 which is referred in the impugned order is otherwise and there is no such prohibition for not granting monetary benefits of Deemed Date of Promotion after 01.05.1960 as stated in the impugned communication. Indeed, what circular dated 25.02.1965 states that where arrears is related to period prior to 01.05.1960, payment is restricted to the period after that date i.e. after 01.05.1960. The circular dated 25.02.1965 is as under:-

1. “A question has been raised whether in case in which Government servants who are superseded for promotion to higher posts are later promoted on the orders of higher authorities who consider the suppression unjustified and who having powers to set aside the orders of suppression do so, their promotion should be

effective from the date on which they are actually promoted or from the date they would have been promoted had they not being wrongly superseded. Government has considered this question and decided that in such cases the Government servants concerned should be deemed to have been promoted to higher posts from the date from which they would have been promoted to higher posts from the date from which they would have been promoted but for their wrongly supersession i.e. from the date from which their juniors who were promoted by superseding them started to officiate in such posts and they should be allowed pay in such posts as if they were promoted on the dates on which their juniors were promoted and also paid arrears of pay and allowances from such dates.

2. Orders in paragraph 1 above also the cases of persons who are superseded for promotion to gazetted posts within the purview of the Public Service Commission ordered by Government but are later promoted when their earlier supersession is considered in consultation with the Commission unjustified.
3. Pending cases should be regulated in accordance with these orders in paragraph 1 and 2 above and arrears of pay and allowances should be paid to the persons concerned provided that where the arrears relate to any period prior to the 1st May, 1960 the payment is restricted to the period after that date i.e. after the 1st May, 1960.
4. This Circular memorandum issues with the concurrence of the Finance Department vide that Department un-official reference NO.581/V, dated 2ndFebruary, 1965.”

Here, we are concerned with Para 3 of the circular dated 25.02.1965 which states that arrears of pay and allowances should be paid to the person concerned provided that where the arrears relate to any period prior to the 1st May 1960 the payment is restricted to the period after that date i.e. after the 1st May 1960. Suffice, to say as per this circular where the arrears relate to any period prior to 01.05.1960 arrears should be restricted onwards 01.05.1960. For example if arrears are claimed from 1955 in that event this circular would be attracted and arrears would be payable and restricted onwards 01.05.1960. This is the only interpretation of the circular dated 25.02.1965. However, strangely the Collector, Jalgaon in impugned communication stated that there is clear prohibition to grant monetary

benefits for period from 01.05.1960 which is *ex-facie* erroneous and incorrect. Learned P.O. also fairly concedes that there is no such prohibition for grant of pay and allowances for the period onward 01.05.1960 and impugned communication is improper in the light of circular dated 25.02.1965.

6. It is explicit that the Collector, Jalgaon misdirected himself while interpreting circular dated 25.02.1965 and interpretation done by him is totally erroneous. The impugned communication is therefore liable to be quashed and set aside and matter needs to be remitted back to Respondent No.2 – The Collector, Jalgaon to decide the representation dated 17.09.2018 made by the Applicant on its own merit. Learned Counsel for the Applicant and learned P.O. also concede it.

7. In the present case the Applicant has claimed Deemed Date of Promotion for the post of Awwal Karkoon w.e.f. 15.02.2010 inter-alia contending that his Junior namely Navinchandra A. Bhauskar was promoted w.e.f. 15.02.2010 as seen from minutes of D.P.C. (Page 159 & 160). Whereas, on instruction learned P.O. today fairly stated that the Applicant was given Deemed Date of Promotion w.e.f. 20.01.2011 and not w.e.f from 15.02.2010. Leaned Advocate for the Applicant fairly concedes that his client would be happy if his name is considered for pay and allowances w.e.f. 20.01.2011. In other words he is not pressing for pay and allowances from 15.02.2010.

8. Thus factual position has emerged the Applicant was given Deemed Date of Promotion from the post of Awwal Karkoon w.e.f. 20.01.2011 though he was actually promoted to the post of Awwal Karkoon w.e.f. 14.01.2016.

9. As stated above, impugned communication dated 15.02.2019 about interpretation of circular dated 25.02.1965 is totally incorrect. Respondent No.2 – The Collector, Jalgaon is therefore required to decide

the entitlement of the Applicant for monetary benefits for the post of Awwal Karkoon considering his Deemed Date of Promotion w.e.f. 20.01.2011 as claimed by the Applicant in his representation dated 17.09.2018. In representation he claimed monetary benefits w.e.f. 15.02.2010 but today learned Advocate for the Applicant fairly concedes that the Applicant would be happy if his claim is considered w.e.f. 20.01.2011. There is no dispute that the Applicant was given Deemed Date of Promotion w.e.f. 20.01.2011 as fairly stated by leaned P.O.

10. The totality of the aforesaid discussion leads me to sum up that impugned communication dated 15.02.2019 about the interpretation of circular dated 25.02.1965 is totally bad in law and liable to quashed and set aside. It is made clear that the Tribunal has not made any observation about the entitlement of the Applicant to monetary benefits on the basis of Deemed Date of Promotion from 20.01.2011 and it needs to be decided by the Collector in accordance of Rules on its own merit. Hence the Order.

ORDER

- A) The Original Application is allowed partly.
- B) Impugned communication dated 15.02.2019 is quashed and set aside.
- C) Respondent No.2 – The Collector, Jalgaon is directed to decide the entitlement to the Applicant for monetary benefits for the post of Awwal Karkoon from Deemed Date of Promotion i.e. from 20.01.2011 and shall take appropriate decision in accordance to law within two months from today and it shall be communicated to the Applicant within two weeks thereafter.
- D) If the Applicant felt aggrieved he may avail further legal remedy in accordance to law.

E) No order as to costs.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 07.11.2022
Dictation taken by: N.M. Naik.

Uploaded on: _____

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