

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

ORIGINAL APPLICATION NO.1065 OF 2014

DISTRICT : NAVI MUMBAI

Shri Sharad Laxmanrao Andhare. )  
Working as Inspector of Legal Metrology )  
(Selection Grade), Having office at Kurla )  
III Division, Mumbai and residing at )  
Keshav Kunj, Vashi, Navi Mumbai. )  
Address of Service of Notice : )  
Shri A.V. Bandiwadekar, Advocate, )  
Having Office at 9, "Ram-Krishna", )  
Lt. Dilip Gupte Marg, Mahim, )  
Mumbai 400 016. )...Applicant


**Versus**

The Controller of Legal Metrology )  
(M.S), Mumbai, having office at Barrack )  
No.7, Free Press Journal Marg, )  
Mumbai - 400 021. )...Respondent

**Shri A.V. Bandiwadekar, Advocate for Applicant.**

**Shri N.K. Rajpurohit, Chief Presenting Officer for Respondents.**

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)  
R.B. MALIK (MEMBER-JUDICIAL)**

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**DATE : 02.08.2016**

**PER : R.B. MALIK (MEMBER-JUDICIAL)**

### **JUDGMENT**

1. The Original Applicant (OA) seeks upgradation in the final seniority list of Inspector of Legal Metrology (Selection Grade) as well as in Lower Grade.

2. The case of the Applicant is that his date of birth is 30.03.1963. He is DME and BA. He joined as Inspector of Legal Meteorology on 04.11.1986. The sole Respondent is the Controller of Legal Metrology. A copy of the order of appointment (Exh. 'B', Page 27 of the Paper Book (P.B.)) is dated 22.12.1986. But it had already become effective from 04.11.1986. His name at that time was recommended by the Employment Exchange. He appeared for the interview for the said post on 01.03.1986. It seems to be the case of the Applicant that there was a good deal of mess very early in his career when truly speaking his career had yet not taken off. It so happened that even till October, 1986, the Applicant had not reported to take charge of the said post. The Government informed the Employment Exchange, Osmanabad thereabout, who in turn wrote to the Applicant on 17.10.1986 seeking his explanation for having not joined duties (Exh. 'D', Page 32



of the P.B.). On 24.10.1986, the Applicant wrote to the Respondent endorsing a copy to the Employment Exchange. He informed that he had not received any communication from anybody asking him to join and intimated his readiness to join and requesting that his appointment be not cancelled (Exh. 'E', Page 33 of the P.B.).

3. Thereafter, the Respondent informed the Applicant vide Ex. 'F' (Page 34 of the P.B.) dated 28.10.1986 that he had been selected to the said post pursuant to the interview held on 01.03.1986. He was asked to report immediately for joining at 9.30 a.m. In that background, the Applicant joined as already mentioned on 04.11.1986 though the formal order effective from that date were issued only on 22.12.1986.

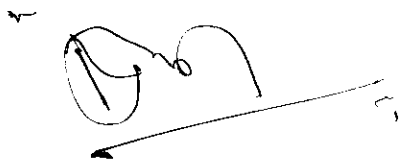
4. Therefore, the fact as a fact is proved that the Applicant was selected in March, 1986 itself. The conduct of the Applicant reflected from the correspondence discussed hereinabove would make it manifestly clear that he was dying to get the job and living for it. The dates of the correspondence would fortify this conclusion. There is practically nothing on record to hold that there was any reason for the Applicant to delay the date of joining far less

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is the probability that he was toying with the idea of letting the job go abegging. In fact, even till date, he is not only clinging on to it but longing for betterment there.

5. No doubt, there is no direct evidence to show that the Respondent sent any communication to the Applicant in March, 1986 or even sooner than October that year. But then, that by itself can be no ground to totally disbelieve the Applicant. We have referred to above two communications, one each from the Employment Exchange and the Respondent. In the contemporaneous state of affairs, it can safely be presumed that the events were fresh and the record intact. Quite pertinently, it was mentioned in neither of the two letters that the Applicant was already informed about his selection any time in or around March, 1986 that he had been selected and should, therefore, report for work. There is no recital to that effect.

6. In fact, based on the above discussion, it can safely be concluded that the Applicant was selected in March, 1986. Equally true is the fact situation that the Applicant was not informed till October, 1986 that he had been selected. Now, as between the two, the Respondent had and has dominating powers and circumstances making the Applicant completely vulnerable. That aspect

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of the matter has got to be borne in mind. Now, though Mr. N.K. Rajpurohit, the learned Chief Presenting Officer (CPO) strongly defended the Respondent and we shall deal with his submissions presently but even he had to grudgingly admit that the Applicant's name was there in the list prepared pursuant to the test held in March 1986. Therefore by a common sense point of view the then young Applicant hunting for a job stood to gain nothing by delay in assuming the charge of the said post. Therefore the conclusion drawn by us gets fortified further.

7. It would appear from Exh. 'C' (Page 30 of the P.B.) dated 24.08.1995 that the Applicant and two others came to be temporarily given selection grade from that date. It, however, appears from Exh. 'J' (Page 47 of the P.B.) dated 07.07.2014, a communication from the Applicant to the Respondent that the selection grade given to the Applicant was withdrawn vide the order no. वैमाशा- ८/ आस्था/निरिक्षक/निम्नश्रेणी/९६/२०१२, दि.१५.०३.१९९६.

8. The Applicant has been making representation seeking redressal. The first such representation was made on 11.11.2001 (Exh. 'G', Page 35 of the P.B). It was truly a detailed one. He claimed the deemed date from the date the others who were selected pursuant to the test held on 1.3.1986 got it. He mentioned the names of Shri K.V.



Rathod and R.V. Lendge. It was mentioned by him that those whose interviews were held on 1.3.1986 were given 20.3.1986 as the date of appointment. Shri Lendge just named, got it from 21.3.1986. The Applicant set out in great details as to how he got the unjust treatment when he was informed by the employment exchange in October 1986 about his selection. We have already discussed that aspect of the matter.

9. The Respondent addressed a communication dated 13.01.2009 (Exh. 'I' Colly., Page 43 of the P.B.). It was mentioned therein that the seniority of the Inspectors should be fixed treating 1<sup>st</sup> January as the relevant date. That was in keeping with a certain office order dated 21.04.1987. The provisional list as on 1.1.2009 was prepared and a copy thereof was thereto annexed. Directions were given to seek claims and objections by 3.2.2009. On 30.01.2009 the Applicant lodged his objection (protest) against that list. He pointed out that his name was shown at Sr.No.212 by treating him as an appointee of June 1986 as against March 86. He then gave out the details of how in 1986 he could not get the intimation about his selection in March 1986. On 7.7.2009 the Applicant addressed another representation

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to the Respondent (Exh. 'K', Page 48 of the P.B.). He asked for deemed date of promotion from 24.08.1995.

10. **O.A.No.1357 of 2009 (Shri AnandMahadeo Sawant and 3 Others Vs. State of Maharashtra and One Another)** was brought by Sarvashri Anand Mahadeo Sawant, Shankar B. Jamale, Shrikrishna V. Apte and Dhonduram S. Paradkar. A copy of the order dated 22.10.2010 is there at Exh. 'L' (Page 50 of the P.B.). Those Applicants were also Inspectors of Weight and Measurement. The present Applicant was so similarly placed and situated as the Applicants in O.A.No.1357 of 2009. It would appear that those Applicants earlier brought an O.A. being O.A.No.569 of 2008. Corrective measures in the seniority list were directed to be adopted. A proposed revised seniority list was circulated. In Para 3 of the order in O.A.No.1357 of 2009, it was found that the said list in good measure took care of the concerns of the Applicants of that O.A. But there was still a hitch and it was expressed by the Tribunal thus in Paragraph no. 3.

“However, the date of grant of Selection Grade to the Applicants who have now become seniors were not corrected with the reason that the juniors in the cadre of Inspectors received selection grade on earlier dates. This has also adversely affected the promotion avenues to the



post of Assistant Controller (Weights & Metrology). Hence the Applicants have approached this Tribunal.”

11. Paragraphs Nos.5, 6 and 10 of the order in O.A.No.1357 of 2009 can also be reproduced for facility.

“5. After filing of the Original Application, Respondents by order dated 18.11.2009, modified the final seniority list dated 10.6.2009 and also granted deemed date of selection grade to the applicants as 15.2.1993. The Original Application was amended by the applicants seeking direction to Respondent no.2 to issue written order regarding rectified selection grade granting deemed date as 15.2.1993 to the applicants. The main grievance now remaining is that monetary benefits of deemed date have not been granted to the applicants, though they were entitled to the same and should not be denied without any fault on their part.


6. In the affidavit-in-reply filed on behalf of Respondent No.2, it is stated that the grievances of the applicants have now been redressed by recasting seniority of selection grade Inspectors and granting earlier date of promotion. However,





for posting of Assistant Controller of Legal Metrology, the rules prescribed vide circular dated 15.7.2000, which are strictly followed by Government. Therefore, the applicants will have to wait for their turn to be posted as such.

**10.** The Respondents have admitted the earlier mistake of wrong seniority shown as per date of joining and have rectified the same to reflect the original inter-se seniority. The dates of selection grade have also been corrected and the applicants have no grievance any longer on that count. The only remaining grievance now is regarding the arrears for the period of wrongful supersession. As per the decision of the Apex Court in the case of JANKIRAMAN and the decision of the Hon'ble High Court, Bombay in Writ Petition No.6821/1998, it was held that the arrears of salary be paid on the assumption that the person had worked on the post he was entitled to work, from the date on which his juniors had been promoted. The argument by the Respondents that juniors who were wrongly shown as seniors have already drawn higher salary and hence double payment will be involved

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if the applicants are now paid retrospectively, is difficult to uphold. As per the decision of the Apex Court in JANKIRAMAN's case and the decision of the Bombay High Court in Writ Petition No.6821/1998, it is settled law that for the period of wrongful supersession, the person concerned is entitled to arrears of higher emoluments. If others have been wrongly paid, it is for the Respondents to examine whether it can be legally recovered and if so, to do so. However, that cannot be a reason for denying the applicants their just dues."

12. Thereafter, the modified seniority list (Draft) came to be circulated on 02.02.2010. The Applicant made another representation (Exh. 'O', Page 63 of the P.B.). He claimed parity with the Applicants of O.A.No.1357 of 2009.

13. On 4.7.2013, the Respondent wrote to all his deputies (Exh. 'P', Page 65 of P.B.). Again claims and objections were invited by 23.07.2013. The Applicant again responded on 06.06.2014. He referred to all the facts discussed above and was aggrieved by the fact that while his batch-mates were placed in the list as per the orders of this Tribunal, he was left languishing.

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14. Thereafter, the final seniority list came to be published on 15.05.2014 (Exh. 'A', Page 22 of the P.B.). To its annexure, there are three columns. First is the name, second one is the objection and third one is the decision of the Regional Promotion Committee. Let us reproduce the entire details in Marathi about the Applicant.

क्र.	कर्मचा-यांचे नांव	आक्षेप	विभागीय पदोन्नती समितीने ज्या वर्षात निवडश्रेणी देण्याचा विचार केला तो दिनांक
१०	श्री.श. ल. अंधारे	<p>श्री. अंधारे यांचे नाव निवड श्रेणी जेष्ठता यादी क्र. १९५ व निरिक्षक जेष्ठता यादीत क्र. १९७ वर लिहिले आहे व शेरा या रकान्यात निवड समितीच्या गुणवत्ता यादीनुसार (जून, १९८६) असे लिहिले आहे.</p> <p>त्यांची नियुक्ती जून, १९८६ मध्ये झालेली नाही. जून १९८६ मध्ये त्यांनी मुलाखत दिलेली नाही किंवा निवडसमिती समोर हजर झालेले नाही तर निवडसमिती गुण कसे काय देणार ? त्यामुळे त्यांचे गुण कोणते धरून त्यांचा क्रमांक जून, १९८६ च्या गुणवत्ता यादीप्रमाणे लिहिला आहे. हे समजून येत नाही असे त्याने नमूद केले आहे. त्यांची लेखी व तोंडी मुलाखत १९८६ मध्ये झालेली आहे त्यामध्ये ०१/०३/१९८६ रोजी मुलाखत घेण्यात आलेल्या उमेदवारातून निरिक्षक, वजने व मापे या पदासाठी त्यांची निवड करण्यात आलेली आहे. तसेच या कार्यालयाने पत्र क्र. वमाअ-५/आस्था/मुलाखत/८६/६०२३, दि.२८/१०/१९८६ अन्वये त्यांना कळविले आहे.</p> <p>तरी त्यांनी विनंती केली की, जेष्ठता सूचीमध्ये मार्च, १९८३ च्या निवड समितीच्या गुणवत्ता यादीनुसार त्यांना</p>	<p>श्री. अंधारे यांनी उपस्थित केलेला मुद्दा विभागीय पदोन्नती समितीच्या कक्षेत येत नाही. त्यांची जेष्ठता १९८६ मधिल निरिक्षक निम्नश्रेणी पदावर नियुक्त झालेल्या कर्मचा-यांच्या गुणवत्ता यादीनुसार लावण्यात आला आहे. त्यांच्या भटक्या जमाती ब या प्रवर्गानुसार त्यांना निरिक्षक निवड श्रेणी ०९/१०/१९९७ ही पुर्नविलोकन विभागीय पदोन्नती समितीने दि. १०/०४/२०१४ रोजी देय केलेली आहे.</p>

	जेष्ठता क्रमांक देण्यात यावा. त्याप्रमाणे इतर लाभ त्यांना मिळावेत.	
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15. The above decision is impugned in this O.A. Mr. Bandiwadekar, the learned Advocate for the Applicant told us that there was no reason why the seniority from March 1986 should have been denied to the Applicant. We have discussed the evidence in *extenso* and we are quite clearly of the view that Mr. Bandiwadekar is on a strong ground. We find that the Applicant can quite clearly claim parity with the Applicants in O.A.No.1357 of 2009. In that order (Para 8), reliance was placed on **Union of India Vs. K.V. Jankiraman, AIR 1991 SCW 2276** and a Judgment of our High Court in **Writ Petition 6821 of 1998 dated 18.03.2010 (names of the parties not mentioned)**. But in Para 10 of the order, this Tribunal in O.A.No.1357 of 2009 discussed both the authorities. We, therefore, hold that there in no way, the benefit of Applicant's service could be denied to him from March 1986. He cannot be made to pay for what he was not accountable to.

16. Shri N.K. Rajpurohit, the learned Chief Presenting Officer in strongly resisting this O.A. castigated the Applicant for the lax manner in which he went about conducting his matter. In fact, the learned CPO told us that the OA is clearly barred by limitation. Now, we are unable to agree with the submissions of the learned CPO.

In fact, at no point in time except by way of the impugned order finally issued in the year 2014, did the Respondent give a clear indication of what their stand was with regard to the claim of seniority. This claim was not only of the Applicant, but several others as already pointed out above. The submission of the learned CPO that the Applicant could at the most have waited for six months and then he should have rushed to this Tribunal, fails to impress us at all. The crux of the matter is accrual of the case of action, and therefore, there would be no occasion for a litigant to presume against his claim being under consideration unless he has a clear idea about the final rejection thereof. This is not the matter wherein the Applicant by an artificial exercise by way of repeated representations just kept the pot boiling as they say. In fact, there are two aspects of the matter which are very clear. In the first place, as discussed above, the Respondent themselves have been asking for claims and objections and naturally that was so because they wanted to finalize the seniority list, and therefore, it can by no stretch of imagination be said that the Respondents had at any point in time taken a final decision before making the impugned order. Secondly, there is material to show that the DPC was not convened for quite a duration of time. In fact, it was apparently not convened after the year 2003. That is all the more the

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reason why the Applicant could not be faulted for indolence much less inexcusable as contended by the learned CPO. In this behalf, we are aware of the law laid down by the Hon'ble Supreme Court in **Union of India Vs. Tarsem Singh, (2008) 8 SCC 648 (Para 7)**. The application of the said principle hereto would fortify our findings against the Respondent in so far as the bar of limitation is concerned. In fact, even if we were to consider this aspect of the matter on the anvil of conduct, there is nothing to show that the Applicant had ever resigned himself to the fate and then suddenly woke up to start agitating. In Para 31 of the Affidavit-in-reply (Page 85 of the P.B.), the Respondent themselves have clearly admitted that there was no DPC after 2003 till 2015. In Para 13, it is pleaded thus :

“.... Since then DPC now has been conducted in 2015 and detailed proposal indicating seniority of Inspectors and above has been sent on 09/07/2015 and is under consideration of the Government.”

17. There are two aspects of the matter which emerge from the above quotation. In the first place, there is still a clear possibility that the claim of the Applicant can be considered and secondly, if the claim is still alive, there is no question of there being any Bar of limitation. The



submissions of the learned C.P.O. in that behalf are, therefore, rejected.

18. The upshot is that the OA will have to be allowed in the manner we are going to indicate presently.

19. The order herein impugned dated 15.5.2014 (Exh. 'A', Page 22 of the P.B.) stands hereby quashed and set aside. The Respondent is directed to reconsider the case of the Applicant in accordance with the observations hereinabove by considering him to be an appointee from the Batch of March, 1986 and then work out the case of his seniority in the list of appointees of March, 1986 and also consider the case of his promotion. Compliance within three months from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**02.08.2016**

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**  
**02.08.2016**

Mumbai

Date : 02.08.2016

Dictation taken by :

S.K. Wamanse.

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