

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1199 OF 2019

DISTRICT : NASHIK

Shri Yashwant Bhanudas Phad.)
Age : 55 Yrs, Working as Jailor,)
Grade-I, Nashik Road Prison,)
District : Nashik.)...**Applicant**

Versus

The Additional Director General of Police)
and Inspector General of Police [Prison],)
M.S, having Office at Old Central Building,)
2nd Floor, Pune – 411 001.)...**Respondent**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondent.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 22.10.2021

JUDGMENT

1. The Applicant has challenged the order dated 20.08.2019 whereby his claim for deemed date of promotion in the cadre of Jailor, Grade-I w.e.f. 14.03.2006 stands rejected invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant joined service as Jailor, Grade-II on 17.02.1992. He was promoted to the post of Jailor, Grade-I on 12.02.2008. Later, he made representation on 19.09.2008 for grant of deemed date of promotion alleging that in DPC of 2006, he was wrongly denied promotion. According to him, that time promotion was denied solely on the ground that he did not pass departmental examination within time which was incorrect, since he had already passed departmental examination in 2005. He again made representations on 18.08.2010 and 27.07.2019, but in vain. However, ultimately, the Respondents by order dated 20.08.2019 rejected the claim of deemed date of promotion, which is challenged in the present O.A.

3. In impugned order dated 20.08.2019, it is stated that by order dated 07.06.2005, the punishment of withholding one increment was imposed which was in force till 01.02.2006 and secondly, he has submitted Caste Validity Certificate belatedly on 12.02.2008. With this reason, the request of the Applicant for deemed date of promotion was rejected further stating that he was not fulfilling necessary requirement for promotion on 14.03.2006, which is claimed by the Applicant by way of deemed date of promotion.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to contend that as per DPC minutes (Page No.130 of Paper Book), only reason for denying promotion was non-passing of departmental examination, though in fact, the Applicant has already passed the examinations in 2005. He, therefore, urged that DPC does not examine the record properly and it is a case of non-application of mind. According to him, in view of this sole specific reason mentioned in the minutes of DPC about non-passing of departmental examination within time, the Respondent cannot go beyond it, and therefore, additional reasons mentioned in impugned order dated 20.08.2019 cannot be the ground to reject the claim of deemed date of promotion. In respect of delay in non-filing of O.A. within the period of limitation, he tried to

contend that in view of representations made by the Applicant, he had no cause of action to file O.A. unless representation are decided by the concerned authority, and therefore, point of limitation raised by learned P.O. is unsustainable in law.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer submits that in view of various punishments imposed upon the Applicant, he was found not fit for promotion in DPC of 2005 and promotion was given after the expiration of period of punishment. He has pointed out that Applicant though required to pass departmental examinations within two years in view of Maharashtra Prison Department (Executive Officers' Post Recruitment Examination) Rules, 1977 (hereinafter referred to as 'Rules of 1977' for brevity) but admittedly, though Applicant joined Government service in 1992, he passed the examination in 2005. Apart he had submitted Caste Validity Certificate on 12.02.2008 quite belatedly, and therefore, the claim of deemed date of promotion is totally unsustainable in law and facts.

6. In view of submissions advanced at the Bar, the issue posed for consideration is whether the impugned order denying deemed date of promotion w.e.f. 14.03.2006 as claimed by the Applicant suffers from any illegality and the answer is in emphatic negative for the reasons to follow.

7. Indisputably, the Applicant was promoted to the post of Jailor, Grade-I on 12.02.2008, but he claimed deemed date of promotion w.e.f. 14.03.2006. There is no denying that in terms of Rule 3 of 'Rules of 1977', the Applicant was required to pass the examination within two years and within three chances, but he passed the examination in 2005. Apart, there were several punishments to his discredit. During the tenure of his service from 1993 to 2007, the punishment of stoppage of increments for different defaults for different periods on 13 occasions were inflicted upon the Applicant, as described in Chart at Page No.76 of

P.B. The DPC in its meeting (Page No.130 of P.B.) also noted these aspects. When Applicant's case for grant of promotion was considered by the DPC, he was found already undergoing punishment of withholding of increment. As such, the DPC has noted all these facts, as seen from minutes of DPC (Page No.130 of P.B.).

8. True, in last column, it is stated 'सदर अधिकारी यांनी खाते अंतर्गत भरती पश्चात परीक्षा पास न झाल्यामुळे अपात्र'. Shri Bandiwadekar, learned Advocate for the Applicant was harping on this remark mentioned in last column and tried to contend that it was the only reason for non-promoting the Applicant but since Applicant has already cleared the examination in 2005, the endorsement made to that effect by the Committee is erroneous. I find no substance in his submission. The minutes of DPC needs to be considered as a whole. Other remarks/reasons mentioned in the minutes of DPC are also equally important and it cannot be said that promotion was denied only on the ground of non-passing of departmental examination. It was one of the reasons along with other various important reasons viz. punishments imposed upon the Applicant from time to time, secondly, though Applicant was required to pass departmental examination within two years in terms of 'Rules of 1977', he admittedly failed to clear it in terms of Rules and passed the examination in 2005 only. Most importantly, he was subjected to 13 punishments and last punishment of withholding of increment was in force and the Applicant was undergoing the said punishment when DPC meeting was held. As such, where a Government servant was undergoing punishment and found unfit for promotion, such decision of DPC can hardly be questioned. All that, a Government servant has right of consideration for promotion and no one have a vested right of promotion. The promotion depends upon various factors viz. seniority, suitability, performance and entire service record, etc. There were various punishments at his discredit and it is on this background, the DPC opined that he is not fit for promotion particularly when he was already undergoing the said punishment.

9. Apart, he has produced Caste Verification Certificate belatedly on 12.02.2008 which he was required to submit much earlier. Therefore, the DPC in its next meeting having noticed that Applicant has submitted his Caste Validity Certificate and had already completed the period of punishment of withholding of increment on 01.12.2007, the DPC found him fit and suitable for promotion and accordingly granted promotion on the post of Jailor, Grade-I which he joined on 12.02.2008. His last punishment of withholding of increment came to an end on 01.12.2007 and immediately thereafter, he was promoted w.e.f. 12.02.2008. This being the position, his claim for deemed date of promotion w.e.f. 14.03.2006 when he was undergoing punishment is totally unsustainable in law. If a Government servant undergoing punishment is promoted during the period of punishment, it would be definitely contrary to probity in public life and administration as a whole. It would have deleterious effect on public administration.

10. Apart, as stated above, the Applicant was promoted w.e.f. 12.02.2008. However, he did not take any steps in this behalf except making representations. He ought to have filed O.A. within a period of limitation of total 18 months [1 year plus 6 months] from the date of making representation in terms of Section 21 of Administrative Tribunals Act, 1985, which is as under :-

“21. Limitation.— (1) A Tribunal shall not admit an application,—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.”

11. The Applicant has no doubt made representations claiming deemed date of promotion on 14.02.2008, 18.08.2010 and 27.02.2019.

However, the question would be whether filing of such representations would keep the period of limitation in abeyance and obviously, the answer is in negative. Even if no order has been passed on representation, the Applicant ought to have filed O.A. within total period of 18 months as contemplated under Section 21 of Administrative Tribunals Act, 1985. However, the Applicant chose to remain silent spectator and filed the O.A. only on receipt of communication dated 20.08.2019 which cannot be said gives fresh cause of action to the Applicant in the light of express and unambiguous provisions of law contained in Section 21 of Administrative Tribunals Act, 1985.

12. Shri Bandiwadekar, learned Advocate for the Applicant sought to place reliance on **2004 (3) Mh.L.J. 151 (Diwakar P. Satpute Vs. Zilla Parishad, Wardha & Ors.)**. In that case, the Petitioner therein has filed Writ Petition before Hon'ble High Court in 1992 challenging the order passed by Education Officer dated 24.03.1986. The ground of delay and latches was raised by Zilla Parishad. However, the Hon'ble High Court held that objection on the ground of delay and latches said to be raised at the stage of final hearing of Writ Petition and such objection being not taken at the stage of admission of Writ Petition, the Petitioner cannot be said non-suited on hyper-technical plea. In so far as facts of present case are concerned, material to note that this Tribunal by order dated 11.12.2019 passed by the learned Administrative Member has directed the Applicant to satisfy the delay caused in filing O.A. and thereafter, the Applicant has filed Additional Affidavit stating that the order is passed on his representation only on 20.08.2019, and therefore, O.A. is within limitation. This submission holds no water.

13. Suffice to say, this is not a case where a point of limitation is raised belatedly. When the matter was taken up for hearing at the stage of admission that time itself by order dated 11.12.2019, the issue of limitation was raised, and therefore, the decision in **Diwakar Satpute's** case (cited supra), in my considered opinion, is of no assistance to the

Applicant in view of settled legal position in the light of decisions of Hon'ble Supreme Court about law of limitation vis-à-vis representations made by a Government servant.

14. Reliance placed on **(1976) 4 SCC 853 [Sualal Yadav Vs. State of Rajasthan & Ors.]** is totally misplaced. In that case, a Government servant was dismissed from service, but he filed Review Application before the Governor belatedly. The Governor, however, entertained Review Application on merit and dismissed it. When matter went before Hon'ble High Court, the Government raised objection of lapses of two years in making Review Application before Governor and dismissed the Writ Petition on the ground of laches. However, the Hon'ble Supreme Court held that since Governor has decided review on merit and has not dismissed the Review Application on the ground of delay, set aside the order of Hon'ble High Court and remitted Writ Petition for disposal afresh in accordance to law.

15. Shri Bandiwadekar, learned Advocate for the Applicant further placed reliance on the decision rendered by this Tribunal in **O.A.No.886/2012 (Suresh H. Sakharwade Vs. State of Maharashtra) decided on 30.04.2019**. All that, in that case, directions were given to the Respondent to consider the case of Applicant for promotion. Therefore, this decision is of no help to the Applicant.

16. Indeed, the legal position is no more *res-integra* in view of the decision of the Hon'ble Supreme Court in **S.S. Rathore Vs. State of Madhya Pradesh, reported in (1989) 4 SCC 582**. In this Judgment, the Hon'ble Supreme Court (Judgment of Hon'ble 7 Judge Bench) considered the point of limitation in filing suit or declaration against the order of dismissal from service vis-à-vis the provisions of Administrative Tribunals Act. It has been held that, repeated unsuccessful representations not provided by law will not extend the period of limitation. The principle laid down is that right to sue accrues not when

the original order was passed by the authority, but when that order was finally disposed of by higher authority on appeal or representation made by the aggrieved employee in exhaustion of statutory remedy and where such final order was made on expiry of six months from the date of appeal or representation and time spent on representations cannot be considered and such representations are not contemplated by law. In that case, Appellant was dismissed from service by Collector. Thereafter, his appeal to the Divisional Commissioner was also dismissed. The Appellant served notice under Section 80 of CPC and then filed Civil Suit for setting aside the dismissal. It is in that context, it has been held that the order of dismissal given by Collector did merge in the order of Divisional Commissioner, and therefore, the limitation would start from the date of final order. It would be useful to reproduce Para Nos.20, 21 and 22 are as follows :

“20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been available of, a six months’ period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation under Section 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The civil court’s jurisdiction has been taken away by the Act and, therefore, as far as government servants are concerned, Article 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

22. It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to

the head of the establishment shall not be taken into consideration in the matter of fixing limitation.”

Thus, the ratio laid down in this authority is in case of statutory appeal only, the limitation would start from the date of order passed in appeal finally and mere filing of representations to the Department will not extend the period of limitation. The present case is fully governed by this principle.

17. At this juncture, it would be apposite to refer the Judgment of the Hon'ble Supreme Court in ***State of Tripura & Ors. Vs. Arabinda Chakraborty & Ors. reported in (2014) 6 SCC 460*** wherein again, the same principle as regards law of limitation has been reiterated. The Hon'ble Supreme Court held that the period of limitation commences from the date on which cause of action arises for the first time and simply making of representations in absence of any statutory provision, the period of limitation would not get extended. It is further held that, in absence of any provision with regard to statutory appeal simply making of representations, the period of limitation would not get extended. This authority holds the field and clearly attracted to the present case.

18. Even assuming for a moment that O.A. is within limitation, in that event also, as discussed above, the claim of deemed date of promotion is totally unsustainable in law, since on the date which is claimed by way of deemed date of promotion, the Applicant was already undergoing the punishment. Needless to mention, the deemed date of promotion can be granted where a Government servant for no fault on his part is kept away from the promotional post or his junior is promoted though he is fit and suitable for promotion in all respect. Whereas, in the present case, the DPC in its meeting having noted various punishments imposed upon the Applicant found him unfit for promotion. This being the position, the claim for deemed date of promotion is totally devoid of law and deserves to be rejected.

19. The cumulative effect of aforesaid discussion leads me to conclude that the claim of deemed date of promotion is devoid of merit and I see no illegality in the impugned order. The O.A, therefore, deserves to be dismissed. Hence, the order.

ORDER

The Original Application is dismissed with no order as to costs.

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

Mumbai

Date : 22.10.2021

Dictation taken by :

S.K. Wamanse.

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