

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH, NAGPUR
ORIGINAL APPLICATION NO 146 OF 2008**

DISTRICT : NAGPUR

Dr Vinod Ramchandra Aloni,)
Retired Live Stock Development Officer,)
R/o: 587, Gore Peth,)
NAGPUR 440 010.).. **Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Animal Husbandry Department,)
Mantralaya, Mumbai 400 032.)
2. Commissioner of Animal Husbandry,)
Central Building, Pune-1.)
3. Backward Class Cell,)
Social Welfare Department,)
Mantralaya, Mumbai 400 032.)
4. Maharashtra Public Service)
Commission, through its Secretary,)
Bank of India Bldg, Fort,)
Mumbai.).. **Respondents**

Smt S.W Deshpande, learned advocate for the Applicant.

Shri P.N Warjurkar, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman) (A)
Shri J.D Kulkarni (Vice-Chairman) (J)

DATE : 11 .08.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Smt S.W Deshpande, learned advocate for the Applicant and Shri P.N Warjurkar, learned Presenting Officer for the Respondents.
2. This Original Application has been filed by the Applicant seeking deemed date of promotion to the post of Assistant Director of Animal Husbandry, when persons junior to him from S.C category were promoted to that post on 29.7.1995, though the promotion quota of 13% for S.C category was already over utilized.
3. Learned Counsel for the Applicant argued that the Applicant was initially appointed on 23.8.1971 as Veterinary Officer, Class-III. The Government took a policy decision to upgrade the post of Veterinary Officer, Class-III to that of Live Stock Development Officer, Class-II w.e.f 1.4.1981. The Applicant retired from service on attaining the age of

superannuation on 31.5.2004, without getting even one promotion. As per the selection list as on 1.4.1981, the Applicant was at Sr. No. 389 in the cadre of Live Stock Development Officer. The person from S.C category junior to the Applicant is one Dr C.N Gedam at Sr No. 539 and Shri A.D Mirajkar at Sr. No. 540. Learned Counsel for the Applicant argued that there were a total of 322 posts of Assistant Directors in the State. 2/3rd of the posts were to be filled by promotion and 1/3rd by nomination. The reservation for promotion was 13% for S.C, 7% for S.T and 4% for VJ/NT for the first level of Class-I posts as per G.R dated 23.5.1974. For promotion posts of 241, 13% comes to 33. The Respondents had already promoted 33 persons as on 11.11.1993 when Dr Dinesh Vinayakrushna Majumdar was promoted as Assistant Commissioner. The quota for S.C was fully used up. However, 12 S.C candidates were promoted in 1993 and 21 in 1995. The Applicant was, therefore, eligible to be promoted from open category, when persons from S.C category junior to him were promoted, when there was no reason to promote any one from S.C category after 13% quota was fully utilized.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the present Original Application is totally misconceived. The only ground in which the Applicant is seeking deemed date of promotion is that 13% quota of promotion from S.C category to the post of Assistant Director was fully utilized. However, the Applicant has not been able to show that any one junior to him from open or S.C category was promoted. As no one junior to the Applicant was ever

promoted, question of granting deemed date of promotion to the Applicant does not arise. A candidate belonging to S.C category can be promoted on the basis of his seniority against an open post. However, he has to be adjusted against S.C category as and when the roster point for S.C category becomes available. The Applicant has not been able to make out any case that he is eligible for getting deemed date of promotion.

5. We find that the Applicant has stated in para 6(vi) of the Original Application that in the year 1993, the Respondents promoted persons excess to the quota in S.C category by promoting 13 S.C candidates as Assistant Director, which resulted in 12 excess S.C candidates being promoted from S.C category. The Applicant has stated in para 6(xx) as under:-

“That after perusal of the information supplied by the Respondent under RTI Act, it is clear that in the year 1995 the Respondent promoted 5 S.C candidate exceeding the S.C quota and also promoted on the open point 4 S.C category employees recruited in open category. Thus, in all 9 S.C candidates were promoted in excess of quota in 1995. Had this not been done, the Applicant would have been promoted on 29.7.1995 in place of Smt Panchshila Deoraoji Durge on the post of Assistant Director, Animal Husbandry, as the Applicant is senior to all these candidates.”

This paragraph was added to the Original Application by amendment as per this Tribunal's order dated 3.12.2008 in C.A no. 383/2008. The Respondents no 1 & 2 filed the affidavit in reply on 28.1.2009.

6. In the affidavit in reply filed on behalf of the Respondent nos 1 & 2 on 28.1.2009, it is stated that:-

“1. It is submitted that Dr (Sau) P.D Durge, belongs to Scheduled Cate Category. As per the seniority list dated 1.1.1990 of the Live Stock Development Officer, the name of Dr (Sau) Durge has been recommended by the Departmental Promotion Committee held on 13.1.1995 for the post of Assistant Commissioner, Animal Husbandry and accordingly she has been promoted. The Applicant belongs to Open category and in the said Departmental Promotion Committee meeting Dr A.B Naktode who is Sr. No. 202 in the Seniority List came to be recommended for the post of Assistant Commissioner, Animal Husbandry. It is submitted that the Applicant Dr Aloni is at Sr. No. 354 and nobody from the Open category has been promoted as per the recommendation of Departmental Promotion Committee held on 12th and 13th January, 1995.”

It is clear that the Respondents have not given any direct reply to the averment made by the Applicant in para 6(xx) of the Original Application that in the overall seniority list, he was senior to Dr Durge. It is mentioned that Dr Durge was considered from S.C category. However, the claim of the

Applicant is that the S.C quota was fully utilized and this fact is admitted by the Respondents that against 24 posts reserved for S.C, 29 persons were promoted. The Applicant in his rejoinder dated 5.2.2009 has stated that:-

"6. It is submitted that, the Annexure VII filed by the applicant received from respondents no 1 and 2 under the Right to Information Act on page 91, the extract clearly denotes 5SC surplus and if counted from the bottom, i.e. on page 89 and 87, the S.C employees who are shown +5 are as under:-

1. Dr Manpe A. Ramesh - Promoted on 31.07.1995
2. Dr Salve M. Laxman - Promoted on 01.08.1995
3. Dr Sahare R. Bahudas - Promoted on 14.12.1995
4. Dr Bhaisare R. Chaitram - Promoted on 07.08.1995
5. Dr Durge P. Dewaji - Promoted on 29.07.1995

7. The Applicant has been able to establish that he was senior to Dr Durge in overall seniority list. The quota of S.C was already full and therefore, a junior S.C candidate could not have been promoted in preference to a senior open candidate. The Applicant is eligible to get deemed date of promotion in the post of Assistant Director of Animal Husbandry from the date on which Dr Durge, was so promoted, i.e. from 29.7.1995. However, his claim for deemed date for promotion to the post of Deputy Director of Animal Husbandry is not established.

8. The Applicant will be eligible to get his pay notionally fixed on the basis that he was eligible to get the deemed date of promotion as Assistant Director w.e.f 29.7.1995. He will be eligible to get his pension fixed notionally on that basis. However, actual financial benefits would be limited from 3 years prior to the date of filing of this Original Application. This Original Application is allowed accordingly with no order as to costs.

Place : Nagpur
Date : 11.08.2017
Dictation taken by : A.K. Nair.

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