

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.164 OF 2017**

**DISTRICT : NASHIK**

Mr. Yogesh Narayan Kapse, )  
Working as Senior Clerk, in the )  
Office of Assistant Registrar, )  
Co-Op. Niphad, Dist. Nashik. )  
Add : A-303, Hari Vihar Swami )  
Samrath Nagar, Jail Road, )  
Nashik Road, 401 101 )

**....APPLICANT**

**VERSUS**

1. The State of Maharashtra, )  
Through Secretary, )  
Co-Operation, Marketing & )  
Textile Department, )  
Mantralaya, )  
Mumbai 400 032 )
2. Divisional Joint Registrar, )  
Co-Operation, Nashik )  
Division, Gruhnirman )  
3rd floor, Gadkari Chowk, )  
Nashik 422 002 )
3. Mr. V.S. Gosavi (Buwa) )  
Co-Operative Officer, )  
Grade-II, Office of the )  
Deputy Registrar, )  
Co-operation, At/P. Tal. )  
Dist. Jalgaon )

**...RESPONDENTS.**

Mr. C.T. Chandratre, learned Counsel for the Applicant.

Ms. K.S. Gaikwad, learned Presenting Officer for the Respondents

**CORAM : Justice Mridula Bhatkar (Chairperson)  
Ms. Medha Gadgil, Member (A)**

**DATE : 21.02.2024.**

### **J U D G M E N T**

1. Applicant working as Senior Clerk in the office of Assistant Registrar, Co-Operation, Niphad, Nashik is aspiring for promotion to the post of Head Clerk/ Co-Operative Officer, Grade-II. Applicant belongs to N.T. (B) Category. Applicant prays that record and proceedings of D.P.C. is to be called for examination and thereafter it is to be declared that it was obligatory on the part of Respondent No.2 to hold the review of D.P.C. meetings held on 15.02.2015 & 28.12.2016 and include the name of the Applicant in the select list immediately for further promotion on the post of Head Clerk.

2. Learned Counsel has submitted that in pursuance of the proceedings of D.P.C. meetings held on 15.02.2015 & 28.12.2016, order dated 16.10.2015 came to be issued and Respondent No.3 is selected and was promoted to the post of Head Clerk and posted at Jalgaon. Learned Counsel has pointed out the letter dated 19.10.2015 written by Mr. V.S. Gosavi, Sr. Clerk who belongs to N.T. (B) Category wherein he refused the said promotion on account of his domestic difficulties. However, Mr. Gosavi has

requested in the letter that he be considered for promotion in future. Learned Counsel has submitted that the Applicant is the next candidate in NT (B) Category who is eligible for promotion after Mr. Gosavi. Thereafter Applicant made representation dated 08.12.2016 (Exhibit A-4) and he prayed that under such circumstances promotion was to be given to him. Learned Counsel has relied on the G.R. dated 30.04.1991 (Exhibit A-8) which pertains to the consequences on refusal of promotion and how it is to be implemented. Learned Counsel has also relied on G.R. dated 12.09.2016 which is modification of earlier G.R. dated 30.04.1991. Sub Clause 9 of Clause 1 of G.R. dated 12.09.2016 is quoted below:

“९. पदोन्नती नाकारलेल्या अधिकारी/ कर्मचा-यामुळे रिक्त झालेल्या किंवा रिक्त होणा-या पदावर संबंधित अधिकारी / कर्मचा-याच्या प्रवर्गानुसार/ज्येष्ठतेनुसार पात्र ठरणा-या कनिष्ठ अधिकारी / कर्मचा-याचा निवडसूचीत समावेश करण्यात यावा.”

This Clause states that on account of refusal to accept promotion if the post falls vacant, then the next junior employee is to be considered and his name is to be added in the select list. Learned Counsel has relied on the order dated 07.07.2016 (Exhibit A-9) issued by the G.A.D. wherein one Mr. Kerkar working as Assistant Section Officer was promoted to Desk Officer.

3. We inquired with the learned P.O. that in the D.P.C. meeting held on 28.12.2016 the select list of which year was considered. Learned P.O. while replying to the said query has pointed out that in the D.P.C. meeting held on 28.12.2016 the select lists of the year 2011-12 and 2015-16 were considered and the select list of the

year 2016-17 was not considered. Learned P.O. has submitted that as per G.R. dated 12.09.2016 which is referred in the said D.P.C. meeting while considering the representation of the Applicant the Committee has held that the prayer of the applicant that he be promoted is not correct and found contrary to the provisions of the G.R. Learned P.O. has explained that the prayer is found contrary in view of Clause 2 of G.R. dated 12.09.2016.

4. As per Clause 2 of G.R. dated 12.09.2015 the G.R. is made applicable for the select list of the year 2016-17 and thereafter; it does not have retrospective effect. Thus, the benefit of Clause 1(9) of G.R. dated 12.09.2016 which states that the name of next junior most candidate is to be considered in the select list, if the promotion is refused by any employee, is also not applicable to the present applicant. The case of the Applicant can be considered only as per earlier G.R. dated 30.04.1991 (Exhibit A-8), the relevant portion is quoted below :

“वरच्या संदर्भात पदोन्नतीसाठी निवड झाल्यानंतर एखाद्या सेवकाने पदोन्नतीचे पद स्वीकारण्यास नकार दर्शविल्यास त्याचे नाव पदोन्नतीसाठी पात्र असणा-या सेवकांच्या निवडयादीतून काढून टाकण्यात यावे. पदोन्नतीसाठी पात्र असणा-या कर्मचा-यांची निवडयादी त्यानंतर जेव्हा बनविण्यात येईल, त्या वेळी कर्मचा-यांच्या प्रकरणांचा गुणवत्तेप्रमाणे पुन्हा विचार करावा.”

The said G.R. restricts itself about the consequences as such, if at all, the promotion is denied by the Government employee then his name cannot be considered for promotion. It does not further state what should be done in respect of vacant post or giving promotion and filling up the promotional post which is likely to fall

vacant. The procedure laid down in the G.R. dated 12.09.2016 is not applicable to the select list of 2015-16.

5. We are unable to appreciate the submissions made by learned Counsel that the G.A.D. has given promotion to one of the employees, who had refused the same therefore by following the doctrine of parity promotion is to be given to the Applicant with deemed date. We make it clear that if there is an incident where other employee is beneficiary on account of wrong interpretation of the provision that cannot lay example for parity.

6. In view of above, O.A. stands dismissed.

Sd/-  
**(Medha Gadgil)**  
**Member (A)**

prk

Sd/-  
**(Mridula Bhatkar, J.)**  
**Chairperson**