

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 173 /2011

Prabhakar S/o Karudas Thaware,
Aged about 72 yrs., Occu : Retired Govt. Employee,
R/o Vaishali Nagar, Khat Road, Bhandara,
Distt. Bhandara.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Department of School Education & Sports, Mantralaya,
Mumbai-32.
- 2) Director of Education,
Secondary & Higher Secondary Education,
Maharashtra State, Pune.

Respondents

Shri N.R. Saboo, Advocate for the applicant.

Shri M.I. Khan, Id. P.O. for respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGEMENT

(Delivered on this 11th day of April,2017)

Heard Shri N.R. Saboo, Id. counsel for the applicant and
Shri M.I. Khan, Id. P.O. for the respondents.

2. The applicant was appointed as Education Officer in the
office of respondent no.2 in the cadre of Maharashtra Education
Services (Group-A). He was due for promotion to the post of Dy.

Director of Education on 24/06/1994. On 24/06/1994 the respondent no.1 issued promotion order on the post of Dy. Director of Education and vide said order one Shri V.R. Kamble, G.T. Deshmukh, N.R. Kalamkar and one V.G. Joshi were promoted.

3. On 20/08/1994 the respondent no.1 published a seniority list of the Maharashtra Education Services, Group-A. The applicant noticed that Shri Kamble, Deshmukh, Kalamkar and Joshi who were promoted, were not included in the said seniority list. The applicant has therefore filed a representation on 1/10/1994 and raised objections about his supersession. However the applicant was kept under suspension on 18/10/1994 and his representation was never decided. In the meantime the applicant got retired on superannuation on 31/12/1996.

4. The respondent no.1 did not take any action on the inquiry initiated against the applicant. But on 03/10/2002 a warning was issued to the applicant. There was no punishment as provided in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

5. The respondents thereafter regularised the pension case of the applicant in August,2004, but did not consider the fact that the applicant was entitled to be promotion as Dy. Director and pension

should have been granted for the said post. On 07/01/2005 the applicant again made a representation and requested that he be granted the deemed date of promotion to the post of Dy. Director of Education w.e.f. June, 1994. Vide communication dated 18/7/2005 the respondent no.1 refused to grant promotion to the applicant. The applicant again filed representation on 7/8/2005 and vide communication dated 1/10/2008 his representation for interest on delayed payment was rejected and it was intimated that the claim for deemed date of promotion will require some time and ultimately vide impugned communication dated 10/2/2011, the respondent no.1 intimated the applicant that the promotion on the post of Dy. Director of Education cannot be granted to him in view of the Circular dated 6/7/2002 issued by the GAD.

6. The material question in this case is to be considered as to whether the applicant can be denied promotion on the basis of circular dated 6/6/2002 though he got retired earlier in the year, 1996.

7. The applicant has claimed that the communications dated 10/2/2011 (A-17,P-59) and 18/7/2005 (A-7,P-44) issued by respondent no.1 be quashed and set aside and it be hold that the applicant is entitled for deemed date of promotion on the post of Dy. Director of Education w.e.f. 24th June,1994 and further to grant all

consequential reliefs including difference of salary etc. and that the respondents be directed to consider the applicant's claim for promotion on the post of Dy. Director of Education with deemed date and all consequential benefits.

8. The respondent no.1 resisted the claim and admitted fact that the applicant was not considered for promotion in the year 1994. It is also admitted that the applicant got retired on superannuation during pendency of the inquiry. It is also admitted that the said inquiry resulted into issuance of warning to the applicant that too after his retirement. It is really surprisingly to note that the applicant has already got retired on superannuation in the year 1996 i.e. on 31/12/1996 and the circular which is applied to his case is of the year, 2002. There is nothing in the circular to show that it can be applied retrospectively.

9. The respondents submitted that promotion granted to Shri Kamble, Deshmukh, Kalamkar and Joshi etc. were considered as fortuitous promotion in 1993. This fact is denied by the applicant by filing counter affidavit. There is nothing on record to show that these promotions were fortuitous. On the contrary it seems that the names of these four persons were not included in the seniority list. The applicant has placed on record the Minutes of the Meeting of the

promotion committee dated 5/3/1994 and 11/5/1994 along with rejoinder affidavit. It seems that even though the names of these four persons were not in the seniority list, they have been considered. The Minutes of the Meeting shows that the applicant's case was not considered at all. Even for argument it is accepted that the applicant was kept under suspension for some departmental action, his case ought to have been considered for promotion and should have been placed under sealed cover. Not considering at all the case of the applicant for promotion is definitely prejudicial to the interest of the applicant. There are circulars in the field to show that if the departmental inquiry / criminal proceedings are pending against the employee, their cases have to be considered on merits and then the same will have to be kept in the sealed cover and granting of promotion will be subject to decision of the criminal proceedings / departmental inquiry. In the present case the applicant's case was not at all considered and this has definitely caused injustice on the applicant. Admittedly the respondent no.1 has considered even the cases of the persons who were not in the seniority list for promotion. Admittedly the applicant got retired on superannuation and thereafter no action has been taken against the applicant in the departmental inquiry except issuance of some warning that too after so many years after his retirement. Such action cannot be said to be legal.

10. The learned counsel for the applicant has invited my attention to the impugned communication dated 18/7/2005 which is at P.B. of page no.44. In the said communication it is stated that Shri N.R. Kalamkar and other officers though were promoted prior to applicant, their promotion was Ad-hoc. That cannot be a ground to deny deemed date of promotion to any employee including the applicant.

11. Vide impugned communication dated 10/2/2011 which at P.B. of page no. 59 the applicant has been intimated that since he has not received the order of promotion, he is not entitled to deemed date of promotion in view of the G.R. dated 6/6/2002. It is true that a person cannot be granted deemed date of promotion, unless he is actually promoted on that post. But this G.R. came into operation on 6th June,2002 and at that time the applicant was not in service and as he already got retired on superannuation in 1996 and therefore the G.R. dated 6th June 2002 cannot be applied retrospectively. Thus rejection of the claim for consideration for the promotional post on the basis of such G.R. cannot be said to be legal. The applicant was entitled to be considered for promotion in 1994 when some persons who were even not included in the said seniority list, were promoted and therefore both the impugned communications are illegal and required to be quashed and set aside.

12. The learned P.O. submits that promotion was rejected to the applicant vide communication dated 18/7/2005 and the O.A. is filed in the year 2011. He placed reliance on the Judgment reported in **(2014) 6 SCC, 460 State of Tripura & Ors. Vs. Arabinda Chakraborty & Ors.**, wherein it has been held that period of limitation commences from the date on which the cause of action arises for the first time.

13. In this case vide communication dated 18/7/2005 it was intimated to the applicant that his case for deemed date of promotion cannot be considered since Shri Kalamkar and others were promoted on ad-hoc basis. Thereafter the applicant filed the representations and pointed out that said statement is not correct. From the correspondence it seems that the applicant's claim was under consideration and ultimately it was rejected vide impugned communication dated 10/2/2011 on the basis of G.R. dated 6/6/2002 which was not applicable to the applicant's case. I therefore do not find any bar of limitation in the present case considering the circumstances. I therefore pass following order

ORDER

The O.A. is partly allowed. The impugned communications dated 10/2/2011 passed by respondent no.1 (A-17)

and dated 18/7/2005 (A-7) are quashed and set aside. The respondents are directed to consider the case of the applicant for promotion to the post of Dy. Director of Education and if the applicant is found to be entitled to such post grant deemed of promotion as per rules. Since the applicant has already got retired in 1996, the applicant will not be entitled to any monetary relief of the post of promotion if found fit. However, he will be entitled to claim pensionary benefits i.e. revised pension on the basis of such promotion if granted in his favour and arrears thereof since the date of his retirement. Necessary order shall be passed within three months from the date of this order. It shall be communicated to the applicant in writing.

(J.D. Kulkarni)
Vice-Chairman (J).

dnk.