

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO. 486 OF 2014

DISTRICT :Nashik

Shri Taterao Mahadu Bagul,)
Working as Deputy Commissioner)
[Resettlement] in the office of)
the Divisional Commissioner,)
Nasik Division, Nasik.)
Address For Service Of Notice:)
Shri Gaurav Arvind Bandiwadekar,)
Shri Bhushan Arvind Bandiwadekar,)
Shri Arvind V. Bandiwadekar,)
Advocate, Having Office at 9,)
"Ram-Kripa", Lt. Dilip Gupte Marg,)
Mahim, Mumbai – 400 016.)...**Applicant**

VERSUS

The State of Maharashtra,)
Through the Additional Chief)
Secretary, [Revenue],)
Revenue and Forest Department,)
Having Office at Mantralaya,)
Mumbai – 400 032.)....**Respondent**

Shri A.V. Bandiwadekar, learned Advocate for the Applicant.

Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 10.08.2016



ORDER

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant seeking deemed date of promotion in the cadre of Additional Collector either on 26.8.2008 or on 16.1.2010.

3. Learned Counsel for the Applicant stated that by order dated 30.3.2016 in O.A.No.290 of 2014, delay in filing this O.A. has been condoned by this Tribunal.

4. Learned Counsel for the Applicant argued that the Applicant is a direct recruit Deputy Collector and he joined Government service on 19.7.1995. He belongs to S.C. category. He was promoted as Selection Grade Deputy Collector by order dated 14.8.2008 and promoted as Additional Collector on 28.3.2011. The Respondent published provisional seniority list of Deputy Collectors as on 1.4.2009 (for the period from 1.1.1990 to 31.12.2008) on 24.9.2009. The Applicant was at Sr.No.121, while the name of Smt. P.A. Bhosale was at Sr. No.87. The final seniority list was published on 12.11.2009. In annexure 'C', Smt. Bhosale's name was at Sr. No.13, while the Applicant was at Sr. No.63. Smt. Bhosale also from S.C. category was promoted as Additional Collector along with 13 others on

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16.1.2010. This was cleared by the Establishment Board in the meeting held on 15.12.2009. The Applicant claims that he should have been promoted as Additional Collector in 2007 itself considering the provisions of the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, Denotified Tribes, (Vimukta Jatis), Nomadic Tribes, Special Backward Category and other Backward Classes), Act 2001 (the Reservation Act), G.R.s dated 25.5.2004, 26.10.2004 and 18.10.1998 and the judgment of Hon'ble Supreme Court in the matter **of R.K. Sabharwal Vs. The State of Punjab**. The Applicant made a number of representations and also complained to the National Commission for Scheduled Castes at Pune (for Maharashtra and Goa) in November 2010. The Respondent furnished false and wrong information to the Commission and as a result, the Applicant didnot evoke favourable response ~~from~~ the Comission. On 13.10.2010, the Applicant sought information under the Right to Information Act regarding promotion to the post of Additional Collector from 2004 to 2010. The Applicant also got minutes of the meeting of Establishment Board held on 21.6.2006, 27.2.2007, 24.5.2007, 19.1.2009, 22.5.2009 and 29.12.2009. The Applicant again made representations but to no avail. He has therefore filed this O.A.

5. Learned Counsel for the Applicant argued that the Reservation Act, 2001 provides for reservation in promotion at all stages. In the meeting of Establishment Board held on 16.6.2006, there were 43 vacancies for the post of Additional

Collector, 29 being Open and 14 posts for backward candidates. 29 candidates were promoted to fill open posts and post reserved for Backward Classes were kept vacant. Out of 29 persons promoted, the breakup was S.C.-4, S.T.-4, N.T.-1 and N.T-D-1, and the rest belonged to Open category. Learned Counsel for the Applicant argued that Backward class candidates promoted against Open vacancies should not have been counted against roster point for that categories as per judgment of Hon'ble Supreme Court in Sabharwal's Case (supra). Learned Counsel for the Applicant argued that if this principle was applied the Applicant would have been eligible for promotion in the meeting of Establishment Board which was held on 26.8.2008. At the most the Applicant will be eligible for deemed date of promotion of 16.1.2010 in the cadre of Additional Collector.

6. Learned Presenting Officer (P.O.) argued on behalf of the Respondent that the Applicant is given promotion as the provisions of relevant G.R.s and the Reservation Act of 2001. Learned P.O. stated that Sabharwal's judgment of Hon'ble Supreme Court is applicable for direct recruitment. A person belonging to backward class, if he is selected on merit is not counted against the post reserved for the backward class. No doubt, Reservation Act of 2001, provides for reservation in promotion at every stage and 33% posts are reserved for Backward Classes (excluding OBC) for promotion. As per G.R. in the field, a candidate belonging to backward classes, is eligible to be promoted against Open vacancy as per his merit. However, he is adjusted against

the roster point against vertical reservation category to which he belongs as and when that roster point is available. The Applicant is claiming that backward class candidates promoted in Open posts should not be counted against roster point, when such point become available. This contention of the Applicant is wrong. Learned P.O. stated that this O.A. has no merit.

7. It is seen that the issue involved in the present O.A. is how to apply reservation in promotion. The Applicant's claim is that as per Sabharwal's judgment of Hon'ble S.C. a backward candidate, if promoted against Open vacancy, need not be adjusted against roster point in his vertical reservation category in future as and when such roster point becomes available. The Respondent claims that the aforesaid judgment of Hon'ble S.C. does not apply for reservation in promotion. In fact, originally there was no reservation for promotion as per Article 16(4) of the Constitution of India. By seventy-seventh Constitutional amendment, Article 16(4A) was inserted which provides for reservation in promotion for Scheduled Casts and Schedules Tribes. However, Article 16(4A) is an enabling provision and states are required to pass suitable legislation to implement this provision. In Maharashtra, Reservation Act of 2001 provides for reservation in promotion for backward classes at all stages. However, as per executive instructions of the Government, the mode of implementation has been fixed and it cannot be said that the instructions of the Government in this regard are wrong. In fact the same have not been



challenged in this O.A. The Applicant is presuming that the reservation in promotion should be applied as suggested by him.

8. The Respondent in para 9.4 of the affidavit in reply dated 17.11.2014 has explained as to how reservation in promotion is applied. This is reproduced below:-

“ I say and submit that, as mentioned herein above para, out of 43 posts available for Select List, 2005, only 32 posts available for the open category were filled up because, there was “status quo” order passed by the Hon’ble High Court on 14.2.2005. I further say and submit that, Hon. Bombay High Court, vacate their stay order and permitted to fill up the reserve posts, belongs to S.C. and S.T. Category vide their order dated 17.8.2006. After considering the order, passed by Hon’ble High Court, the Department decided to fill up the reserve post belongs to the B.C. Category i.e. S.C. and S.T. and necessary proposal was submitted to the Establishment Board with consultation to the B.C. Cell in G.A.D. As such proposal was considered by the Establishment Board in their meeting held on 30.8.2006 and decided to adjusted the 10 Officer belongs to Backward Class category against the roster point which was fixed for their category in the Roster. Such as Backward Class Officer, out of 13 Officer, who were recommended earlier for promotion were adjusted after the approval of the B.C. Cell and 4 posts were kept vacant as there is no provision of jumping promotion. I crave leave to refer to and reply upon the relevant record as and when produced.”

The Applicant was also informed by the Maharashtra Scheduled Caste Tribes Commission, to whom he has approached with his grievance in this regard, by order dated 25.8.2010 accordingly. This order reads as follows:-

“आपले दि.९/८/२०१० चे निवेदन पाहता असे दिसून येते की, आपण अपर जिल्हाधिकारी संवर्गात पदोन्नतीसाठी विनंती केली आहे. आपल्या अर्जावरून दिसते की, जे अनुसूचित जाती जमातीचे अधिकारी सेवा ज्येष्ठतेनुसार पदोन्नतीस पात्र ठरत आहेत, त्यांना खुल्या प्रवर्गात दाखविण्यांत यावे, जेणेकरून इतर अनुसूचित जाती जमातीच्या अधिका-यांना पदोन्नती देता येईल. हा मुद्दा सध्या शासनाला मान्य नाही व त्यासाठी न्यायालयात प्रकरण प्रलंबित आहे, असे शासनाचे म्हणणे आहे. या मुद्दावर आपल्याला पदोन्नती देणे शक्य होणार नाही. इतर काही मुद्दा असेल तर आपण तो स्पष्टपणे नमूद करावा, जेणेकरून आयोगाला पुढील कार्यवाही करता येईल.”

The Applicant has not been able to show that the Reservation Act 2001 or any G.R. provides for promoting backward class candidates in open posts without adjusting them against roster point of their vertical reservation category as and when such point is available. There is no challenge to the aforementioned Government policy also.

9. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

Sd/-

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 10.08.2016

Place : Mumbai

Dictation taken by : SBA

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