

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO 533 OF 2008
WITH
MISC APPLICATION NO 45 OF 2009
IN
ORIGINAL APPLICATION NO 533 OF 2008

DISTRICT : AKOLA

Shri Prakash Dagadu Bharambe,)
Occ : Service, R/o: A-1, Dudh)
Ganga Apartment, Opp. Jyoti)
Vidyalaya, Gorakshan Road,)
Akola 444 001.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Ministry of Dairy Development,)
Mantralaya, Mumbai – 32.)
2. Maharashtra Public Service)
Commission, Bank of India)
Building, 3rd floor, M.G Road,)
Hutatma Chowk, Mumbai.)
Through its Secretary)

3. Shri Prashant P. Mohod,)
 Occ : Manager,)
 R/o: Amraoti Zilla Dudh)
 Utpadak Sangh, Avinash)
 Colony, Congress Nagar,)
 Nagpur.)
4. Shri Manohar J. Gajbhiye,)
 Occ : Manager,)
 C/o: Dinshwa Ice cream,)
 Gorewada Road, Gittikhadan,)
 Nagpur.)
5. Shri Abhay Janardan Muley)
 Occ : Service, C/o National)
 Dairy Development Board,)
 Near I.T.I, Nanded.)
6. Shri Hemant G. Gadwe,)
 Occ : Assistant Production)
 Manager, R/O Balsad Dudh)
 Utpadak Mahasangh, Boisar,)
 Dist-Balsad, Gujarat.)
7. Shri Ranjit Kumar L. Rathod)
 Occ : Service, R/o Poharadeni,)
 Tah-Manor, Dist -Washim.)...**Respondents**

Shri P.D Meghe, learned advocate for the Applicant.

Smt M.A Barabde, learned Presenting Officer for the Respondents 1 & 2.

None for Respondents no 3 to 7.

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

DATE : 05.07.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri P.D Meghe, learned advocate for the Applicant, Smt M.A Barabde, learned Presenting Officer for the Respondents no 1 & 2 and none for Respondents no 3 to 7. Misc Application was not pressed by learned advocate for the Applicant and Original Application was finally heard.

2. This Original Application has been filed by the Applicant challenging the communication dated 11.11.2008 from the Respondent no. 2 cancelling his candidature for the post of General Manager, (Dairy), Group-A.

3. Learned Counsel for the Applicant argued that the Respondent no. 2, Maharashtra Public Service Commission (M.P.S.C) had issued an advertisement on 30.1.12004 for 15 backlog posts of General Manager (Dairy) etc. in Group 'A' (Junior). The Applicant had applied for the post, as he fulfilled the requirement of educational qualifications and experience. The Respondent no. 2 by letter dated 11.11.2008 informed that the Applicant did not have 3 years experience of working in post equivalent to Group 'B' Technical post in Agriculture, Animal Husbandry, Dairy & Fisheries Department,

Government of Maharashtra. Learned Counsel for the Applicant argued that the Applicant was working as Assistant Quality Control Officer and Shift Manager in the pay scale of Rs. 6500-10500. As such, he was working in a Group 'B' post from 1.11.1994. The communication dated 11.11.2008 is contrary to facts. The Applicant was also holding additional charge of the post of Dairy Manager, Group 'B'. As such, he had requisite experience. The Applicant should have been considered for appointment to the post for which he had applied.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents no 1 & 2 that the Applicant was not given regular promotion to a post carrying the pay scale of Rs. 6500-10500. The Applicant was working in a post carrying pay scale of Rs. 5500-9000 and was given benefit of Assured Career Progression Scheme in the pay scale of Rs. 6500-10500. The claim of the Applicant that he was working in a Group 'B' post is unsubstantiated. Learned Presenting Officer further argued that experience of holding additional charge of a higher post is not considered as valid experience in the higher post. The Applicant did not have experience of working in a Group 'B' post and was rightly held ineligible to be considered for appointment in the post of General Manager (Dairy) Group 'A'.

5. We find that the post in the pay scale of Rs. 5500-9000 is a Group 'C' post as per G.R dated 2.7.2002. It is an admitted fact that the Applicant was working as Shift In-charge in the pre-revised pay scale of Rs. 1640-2900 in

Government Milk Scheme, Akola, which is a Group 'C' post. He was given Time Bound Promotion w.e.f.10.10.1994 and continued in the same scale of Rs. 6500-105000 (or equivalent) till he applied for the Group 'A' post of General Manager (Dairy). The moot question is whether a person, who was given Time Bound Promotion in the pay scale of Rs. 6500-10500 can be said to be occupying a Group 'B' post. In our considered opinion, the answer is an unqualified No. By very nature of Time Bound Promotion, an employee is given the pay scale of the next higher post, when he cannot be promoted to that post for want of vacancy. If the vacancy in the higher post in Group 'B' existed, the Applicant would have been entitled to regular promotion. The very fact that he was not given regular promotion, clearly establishes the fact, that he was not eligible for such promotion based on his seniority in the feeder cadre and/or there was no vacancy in the promotional cadre. The fact that he might have been holding charge of a higher post will not count, as there is nothing on record to show that he was promoted to a higher post in accordance with extant Recruitment Rules. The possibility that there were employees senior to him, who were not considered for giving additional charge of the higher post cannot be ruled out. The Respondent no. 2 was right in holding that additional charge of a higher post in Group 'B' or Time Bound Promotion in a scale which is applicable to a Group 'B' post cannot be counted as experience in Group 'B' post. The Applicant was rightly held to be ineligible for the post in question for which the following experience was required as per Rule 7 of the certain Gazetted posts in the

Dairy Development Department (Recruitment) Rules, 2010, which reads as follows:-

“(iii) posses experience in a dairy having processing capacity of not less than 50000 litres per day grained after acquiring the qualification specified in sub clause (ii) for a period of not less than five years, out of which three years experience shall be in the opinion of the commission, in post equivalent to Group-B technical posts in the Department”.

6. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs. Misc Application stands disposed of as not pressed.

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

(Rajiv Agarwal)
Vice-Chairman (A)

Place : Nagpur
Date : 05.07.2017
Dictation taken by : A.K. Nair.