

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.646 OF 2020

DISTRICT : MUMBAI

Shri Ashwinikumar D. Kakatkar.)
Age : 57 Yrs., Additional Commissioner of)
Labour, Having Office at Kamgar Bhavan)
BKC, Mumbai – 400 051 and residing at)
1104, Daffodil Maitri Gardens, Pokhran)
Road No.2, District : Thane.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
General Administration Department,)
Mantralaya, Mumbai – 400 032.)
2. Government of Maharashtra.)
Through Secretary (Labour),)
Industry, Energy and Labour Dept.,)
Mantralaya, Mumbai – 400 032.)...**Respondents**

Mr. M.D. Lonkar, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 20.08.2021

JUDGMENT

1. The Applicant has filed the present Original Application seeking declaration of entitlement of deemed date of promotion in the post of Additional Commissioner of Labour w.e.f.01.06.2017 invoking

jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this O.A. are as under :-

While Applicant was serving in the cadre of Commissioner of Labour, he was temporarily promoted in the post of Additional Commissioner of Labour and accordingly, posted at Kamgar Bhavan BKC, Mumbai. He contends that the vacancy for the post of Additional Commissioner of Labour occurred on 31.05.2017 due to retirement of Mr. Kadam and consequently, the said post was required to be filled in on 01.06.2017 by promoting him as Additional Commissioner of Labour being eligible for the said post. However, the Respondents did not take steps in right earnest and belatedly, he was promoted by order dated 29.09.2018. According to him, had he promoted on 01.06.2017 i.e. the date of vacancy, he would have got three years' tenure in the post of Additional Commissioner of Labour so as to claim further promotion in the post of Joint Commissioner (Labour). However, because of delay on the part of Respondents in holding meetings of DPC and decision, he is belatedly promoted by order dated 27.09.2018. Therefore, it caused serious prejudice to him and deprived of consideration for next promotional post of Joint Commissioner (Labour) since he retired on 31.12.2020. He, therefore, made representation to the Respondents for claiming deemed date of promotion w.e.f.01.06.2017, but in vain. On this background, he has filed the present O.A. for claiming deemed date of promotion in the post of Additional Commissioner of Labour.

3. The Respondents resisted the O.A. by filing Affidavit-in-reply by raising following pleas in Para No.4, 4.1 and 4.2, which are as under :-

“4. With reference to paragraph no.5.6, I say and submit that this is the fact that the meeting of Establishment Board no.2 was conducted on 31.10.2017. The notice of the meeting was issued on 27.10.2017 but the meeting was postponed. Meanwhile on the background of the decision of High Court in W.P. no.2797/2015 the letter dated 29.12.2017 was

issued by General Administration Department (Desk 16-B). As per the letter dated 29.12.2017 (copy enclosed and marked as Exhibit R-1), Respondent no.1 sought information from Respondent no.2 that whether the officers belonging Backward class included in zone of consideration had taken the benefit of reservation in promotion vide letter dated 24.1.2018 (copy enclosed and marked as Exhibit R-2). Then Respondent no.2 vide letter dated 1.2.2018 (copy enclosed and marked as Exhibit R-3) stated that no officer belonging Backward class included in zone of consideration had taken the benefit of reservation in promotion. Then the meeting of Establishment Board no. was conducted on 21.2.2018. The notice of the meeting was issued on 20.2.2018. In the same meeting, the Establishment Board asked Respondent no.2 to submit the revised proposal considering the vacancies created in the year 2016-17 and the year 2017-18. Copy of letter dated 26/02/2018 regarding meeting of Establishment Board dated 21/02/2018 is annexed hereto and marked as Exhibit -R-4.

4.1 Then, Respondent no.2 submitted the proposal of the select list of the year 2017-18 considering the vacancies created in the year 2016-17 and the year 2017-18 collectively vide the letter dated 30.5.2018- copy enclosed and marked as Exhibit R-5. The meeting of the Establishment Board no.2 was conducted on 25.6.2018 regarding meeting of Establishment Board, copy of letter dated 29/06/2018 is enclosed hereto and marked as Exhibit R-6. The notice of the meeting was issued on 22.6.2018. The Original Applicant was included in the zone of consideration. The recommendations of the Establishment Board no.2 vide letter dated 29.6.2018 and the applicant was promoted by the order dated 27.9.2018.

4.2 The applicant had given the promotion after completion of administrative process and did not get deprived from promotion. The applicants Junior did not get promotion before him and there is no provision to give the date of vacancy as a deemed date. Hence, the applicant is not eligible for deemed date of promotion.

4. Shri M.D. Lonkar, learned Advocate for the Applicant sought to contend that since vacancy occurred on 01.06.2017 and Applicant being eligible for promotion, he ought to have been promoted at the earliest but because of delay on the part of Respondents to process the matter and due to postponement of DPC meetings, he was belatedly promoted by order date 27.09.2018 without any fault on his part. In alternative, he claims deemed date on which firstly meeting of DPC was convened, but postponed to next date. He further submits that it is because of delay on the part of Respondents, the Applicant did not get three years' tenure in the cadre of Additional Commissioner of Labour for claiming next promotional post of Joint Commissioner of Labour in view of his

retirement on 31st December, 2020. On this line of submission, he made a fervent plea that where employee was ready, willing and eligible to work on promotional post and is deprived of the same for no fault on his part, he is entitled to deemed date of promotion.

5. Per contra, Mrs. A.B. Kololgi, learned Presenting Officer submits that the Applicant cannot claim deemed date of promotion from the date of vacancy and for administrative reasons, as set out in the reply, meetings of DPC were postponed and ultimately, in last meeting dated 25.06.2018, the Applicant's case was considered and promoted to the post of Additional Commissioner of Labour. She has pointed out that because of decision of Hon'ble High Court in Writ Petition No.2797/2015, dated 04.08.2017, the issue of reservation in promotion was in issue, and therefore, after taking opinion of Law and Judiciary, the Government had decided to proceed with the promotions from Open category and accordingly, by order dated 27.09.2018, temporary promotion was given to the Applicant. She has further pointed out that no person junior to the Applicant is promoted, and therefore, the Applicant's claim for deemed date of promotion is devoid of merit.

6. In view of submissions advanced at the Bar, the issue posed for consideration is whether the Applicant is entitled to deemed date of promotion w.e.f.01.06.2017 or 30.10.2017 and in my considered opinion, the answer is in emphatic negative for the reasons to follow.

7. The factual aspects, as adverted to above are not in dispute. Needless to mention that a Government servant have no vested right of promotion. All that, he has right of consideration by DPC for the promotional post. No employee has any semblance of right to have vacancy in promotional post filled in as soon as vacancy occurs. It is prerogative of the Department to fill-in the vacancy and for certain reasons, the Government may keep such post vacant for reasonable time. There could be several reasons for not filling the vacancy immediately or

within reasonable time. Unless such action of the Department to keep the post unfulfilled is malafide or arbitrary, the interference by the Tribunal would be unwarranted.

8. Turning to the facts of the present case, there is no denying that after vacancy occurs, the Department had taken steps by calling meeting of DPC. Firstly, DPC made was convened on 31.10.2017, as seen from communication dated 27.10.2017 (Page No.57 of PB), but it was postponed. Second time, the meeting of DPC was convened on 31.02.2018, as seen from communication dated 20.02.2018 (Page No.59 of P.B.), but it was also postponed. Finally, the meeting was convened on 25.06.2018, as seen from communication dated 22.06.2018 (Page No.61 of P.B.) and it is in that meeting, the Applicant's case was considered and promoted from Open category, that too, as a temporary promotion. The Respondents in reply made it clear that because of decision of Hon'ble High Court in Writ Petition No.2797/2015 wherein reservation in promotions was quashed and due to pendency of Special Leave Petition before Hon'ble Supreme Court, a decision whether to proceed with the promotions was on hold for some time and ultimately, GAD by letter dated 29.12.2017 instructed all the concerned Departments to fill-in the promotional post from Open category and it is on that basis, in final DPC meeting dated 25.06.2018, the decision to promote the Applicant was taken. Here, significant to note that as per promotion order, the Applicant was at Serial No.2 in the list of three candidates. True, the Applicant is from Open category and not from reserve category, so as to affect his promotion in the light of decision of Hon'ble High Court in Writ Petition No.2797/2015, decided on 04.08.2017. However, the fact remains that being aggrieved by the said decision, the Government of Maharashtra had filed Special Leave Petition No.28306/2017 before Hon'ble Supreme Court and it is still subjudice. It is because of this legal hurdle, the promotions in the entire state of Maharashtra were on hold for some time and ultimately, the Government came with a decision

to fill-in promotional post of Open category purely on temporary basis subject to final decision of Hon'ble Supreme Court.

9. As seen from record, there were three promotional post in the cadre of Additional Commissioner of Labour, out of which two posts were from Open category and one post from reserved category. It is on this background, the DPC meetings were postponed and ultimately, the Applicant was given promotion by order dated 27.09.2018. Suffice to say, it is because of administrative difficulties and legal issues, the issue of promotion was not materialized for some time. This being the case, it cannot be said that Applicant was kept out of promotional post deliberately or for unjustifiable reasons. As stated above, this is not a case where somebody else junior to the Applicant was promoted or Applicant is superseded for some other reasons or he was denied promotion because of pendency of departmental enquiry or criminal case in which he is acquitted later on. Suffice to say, this is not a case that Applicant's case was considered, but promoted was denied wrongly. The principle of deemed date of promotion cannot be stretched to the extent to claim it from the date of vacancy. No such proposition of law is brought to the notice nor any Rule in this behalf is forthcoming.

10. At this juncture, it would be apposite to refer Circular dated 06.06.2002 issued by GAD, Govt. of Maharashtra which enumerates the instances wherein deemed date of promotion can be considered and reasons for not giving deemed date of promotions. It also enumerates the procedure to be followed while giving deemed date of promotion which are as under :-

“परिशिष्ट - अ

मानीव दिनांक देण्याची प्रकरणे उदभवण्याची कारणे

9. गोपनीय अहवालातील प्रतिकूल श्रे वेळेवर न कळविणे, त्यांची वस्तुनिष्ठ प्रतवारी न होणे, विभागीय पदोन्नती समितीच्या बैठकीच्या वेळी अदययावत गोपनीय अहवाल उपलब्ध नसणे व त्यामुळे त्यांची प्रकरणे खुली ठेवणे.

२. सेवाजेष्ठता यादी अदययावत नसणे, शिवाय सर्व अधिका-यांना /कर्मचा-यांना सेवाजेष्ठता यादी वेळीच उपलब्ध न झाल्यामुळे अधिकारी /कर्मचारी यांना सेवा ज्येष्ठता यादीतील त्यांचे स्थान माहित नसणे.
३. विभागीय परीक्षा उत्तीर्ण / अनुत्तीर्ण झाल्याच्या कारणास्तव तसेच उत्तीर्ण होण्यापासून सूट मिळाल्यानंतर परीक्षा नियमांनुसार सेवाजेष्ठता यादीत वेळीच सुधारणा न करणे.
४. मागासवर्गीयांच्या पदोन्नती संदर्भातील आरक्षण धोरणाची काटेकोरपणे अंमलबजावणी न करणे.
५. पदोन्नतीसाठी विचार करताना विभागीय चौकशी प्रलंबित करणे, काही कालावधीनंतर विभागीय चौकशीचा निर्णय घेऊन त्यामध्ये निर्दोष सूटणे वा किरकोळ शिक्षा होणे.
६. पदोन्नतीसाठी विचार झालेला असताना अधिकारी / कर्मचारी निलंबित असणे व त्यानंतर तो अंशतः किंवा पूर्णतः दोषमुक्त होणे.
७. भ्रष्टाचार /लाललुचपत प्रकरणी न्यायालयात गुन्हा दाखल असल्याने पदोन्नती न देणे व निर्दोष सुटल्यानंतर मानीव दिनांक देणे.
८. निवडसूच्यांना आयोगाची मान्यता न घेणे, परिणामी दीर्घकाळ पदोन्नती तात्पुरत्या स्वरूपात चालू राहणे - पदोन्नत्या नियमित झाल्याशिवाय मानीव दिनांकाचा विचार करणे शक्य नसते.
९. पदोन्नतीच्या नियमित कोटयाखेरीज नामनिर्देशनाकरिता असलेल्या कोटयातील पदांवर पदोन्नत्या दिल्या जातात व भविष्यात पदोन्नतीसाठी उपलब्ध होणा-या पदांवर त्या समायोजित केल्या जात नाहीत.

परिशिष्ट - ब

मानीव दिनांक देण्याबाबतच्या प्रस्तावाची तपासणी करताना लक्षात घ्यावयाचे मुद्दे.

- १) सेवाकनिष्ठ कर्मचा-यास पदोन्नती देण्यात आली, त्यावेळी संबंधित कर्मचा-यांचा कोणत्या कारणास्तव विचार झालेला नाही. यास जबाबदार कोण व त्याविरुद्ध करावयाची कार्यवाही.
- २) अर्जदाराचे निवडसूचीच्यावेळी अस्तित्वात असलेल्या सेवाजेष्ठता यादीतील स्थान, त्यास सेवाकनिष्ठ (पदोन्नतीसाठी आरक्षण असल्यास त्याच्या आधारे) असलेल्या त्याच्या प्रवर्गातील कोणत्या कर्मचा-यास नियमित पदोन्नती दिली आहे.
- ३) सेवाकनिष्ठ कर्मचा-यास पदोन्नती देण्यात आली त्या दिनांकास (निवडसूचीत) अर्जदार गोपनीय अहवाल व इतर आवश्यक त्या अटीनुसार पदोन्नतीस पात्र आहे किंवा कसे? याबाबतची पात्रता विभागीय पदोन्नती समितीमार्फत तपासून घेण्यात यावी व ते जर पदोन्नतीस पात्र ठरले तरच मानीव दिनांक देण्यात यावा.
- ४) मानीव दिनांक हा एकास - एक तत्वावर देण्यात यावा.
- ५) ज्या निवडसूचीच्या आधारे ज्या प्रवर्गाच्या कर्मचा-यास/अधिका-यास मानीव दिनांक देण्यात आला आहे, त्या प्रवर्गाच्या सर्वात सेवाकनिष्ठ कर्मचा-याचे नाव संबंधित निवडसूचीतून कमी करून, पुढील निवडसूचीत रिक्त पदे व त्या प्रवर्गाच्या वाट्याला येणा-या पदांमध्ये प्रमाणात समावेश करणे आवश्यक असते.''

11. As such, the case of the Applicant does not fall in Circular dated 02.06.2002. No doubt, the instances mentioned in Circular dated 06.06.2002 are not exhaustive and it is illustrative and there could be some more instances for denying deemed date of promotion. However, in the present case, the Applicant is claiming deemed date of promotion

from the date of vacancy, which is totally unpalatable since he has no right to claim promotion from the date vacancy occurs. The Respondents have already explained the reasons for postponing DPC meetings. Suffice to say, this is not at all a case where the Applicant is denied promotion wrongly, so as to claim deemed date of promotion. His claim for deemed date of promotion is *dehors* the law and liable to be rejected. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 20.08.2021
Dictation taken by :
S.K. Wamanse.

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