

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 711 OF 2015

DISTRICT : MUMBAI

Shri Nandkumar Rajaram Parve,)
Senior Grade Clerk, office of)
Director General of Police,)
Maharashtra State, S.M Chowk,)
Colaba, Mumbai 400 001.)
Residing at 401, Sainath Wadi)
C.H.S Ltd, 4th floor, Asalfa Village)
Ghatkopar [W], Mumbai 400 084.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Additional Chief Secretary)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. Government of Maharashtra,)
Through Principal Secretary,)
G.A.D, [Services], Mantralaya,)
Mumbai 400 032.)



3. Director General of Police,)
Maharashtra State, S.M Chowk,)
Colaba, Mumbai 400 001.)...**Respondents**

Shri M.D. Lonkar, learned advocate for the Applicant.

Ms Neelima Gohad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 22.01.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER


1. Heard Shri M.D. Lonkar, learned advocate for the Applicant and Ms Neelima Gohad, leared Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 14.10.2014 rejecting the request of the Applicant dated 29.8.2012 for grant of deemed date of promotion in the post of Senior Clerk w.e.f 7.4.2006.

3. Learned Counsel for the Applicant argued that the Applicant joined Government service as Junior Clerk on the establishment of the Respondent no. 3 on 1.6.1990. His services were regularized by order dated 5.8.1996. The Applicant's services were terminated by order dated 12.11.1997 as a criminal case was filed against him. This order was stayed by this Tribunal by interim order dated 21.11.1997, in O.A no 626/1997. Liberty was given to the Respondent no. 3 to suspend the Applicant during pendency of criminal case against him. The Applicant was placed under suspension on 25.3.1998. The Original Application was later dismissed by order dated 26.6.1998 and the interim order was vacated. The Applicant filed W.P no 3550/1998 before the Hon'ble Bombay High Court on 29.8.1998 and by order dated 29.8.1998, order of termination of his service was stayed. The Applicant came to be acquitted in Sessions case no. 377/1998, pending which he was placed under suspension, by order of Learned Sessions Judge dated 9.12.2004. He was reinstated by order dated 1.4.2005. A D.E was, then started against the Applicant by order dated 16.1.2007 and by order dated 10.7.2007, he was dismissed from service. Appeal against the order of dismissal was allowed by the Respondent no. 1 on 21.6.2008 and the Applicant was reinstated in service on 2.8.2008. By order dated 22.6.2011, the Respondent no. 1 passed order treating the period from 10.7.2007 to 3.8.2008 as duty period. By order dated 14.7.2011, the

Respondent no. 3 issued order to treat the period from 13.11.1007 to 3.12.1997 and from 25.3.1998 to 14.2005 as duty period. The Applicant was promoted as Senior Clerk by order dated 16.5.2012. On 29.8.2012, the Applicant made a representation to the Respondent no. 3 to grant him deemed date of promotion as Senior Clerk with effect from 7.4.2006, when his junior was promoted to that post. The Respondent no. 3 has rejected the representation of the Applicant by impugned order dated 14.10.2014. Learned Counsel for the Applicant argued that the Applicant was acquitted in criminal case, which was filed against him. He was exonerated in the Departmental Enquiry (D.E) held against him. The period of suspension, in both the cases have been regularized as period spent on duty. For all purposes the Applicant has been on duty continuously after his appointment and he was eligible to be considered along with his colleagues for promotion as Senior Clerk. On 7.4.2006, his junior has been promoted. The Applicant is clearly eligible for the deemed date as requested by him. Non-availability of records cannot be a ground to deny promotion to the Applicant.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant was first considered for promotion to the post of Senior Clerk from the select list of 2005. The Departmental Promotion Committee decided to keep the case open as his Annual




Confidential Reports (ACRs) for the last five years were not written as he was under suspension from 25.3.1997 to 9.4.2005. Learned Presenting Officer contended that the Respondent no. 3 has sought guidance from the Government by letter dated 11.3.2013, who informed by letter dated 15.9.2014 that if ACRs of an employee for the relevant period were not available due to suspension or dismissal, his earlier ACRs may be considered. The Applicant was working on temporary basis from 1.6.1990 to 8.7.1996 so no ACR were written and he was given regular appointment by order dated 9.7.1996. His ACRs from 1996 to 2008 are not available as he was under suspension / was dismissed from service. Learned Presenting Officer argued that ACRs of the Applicant are not available from 1996 to 2008. He, therefore, cannot be considered for granting him deemed date of promotion.

5. We find that the Applicant joined service on temporary basis on 1.6.1990 and he was given regular appointment by order dated 5.8.1996. From the affidavit in reply of the Respondent no. 3 dated 17.11.2015 it appears that his ACRs from the period from 1.6.1990 to 8.7.1996 were not written as he was an ad hoc appointee. He was given regular appointment by order dated 9.7.1996. He was dismissed from service by order dated 21.11.1997. His ACRs for the period from 9.7.1996 to 31.3.1997 (96-97) and from 1.4.1997 to 21.11.1997 (97-98) should have been written. The Respondent no. 3

has not explained what happened to the Applicant's A.C.Rs for 1996-97 and 1997-98, if they were written at all and if not, why not. The Applicant's suspension was revoked by order dated 1.4.2005 and he was dismissed from service by order dated 10.7.2007. His ACRs for 2005-06 (full year) and 2006-07 (full year) should have been written. Even for the period of 1.4.2007 to 10.7.2007 (which is more than 3 months) his ACR should have been written. The affidavit in reply of the Respondent no. 3 dated 17.11.2015 merely states in para 7 that:-

“The Applicant first initially appointed on temporary basis on 1.6.1990 to 8.7.1996. The Applicant was appointed on regular basis as per order dated 9.7.1996. Thereafter, the Applicant was under suspension and dismissal from 13.11.1997 to 3.8.2008, hence his ACR was not available, therefore, administratively, it is not possible to consider his request.”

The Respondent no. 3 has no explanation as to why the Applicant's ACRs for 1996-97, 1997-98, 2005-06, 2006-07 and 2007-08 in full or part are not available. If these ACRs were available, as per State Government letter dated 15.9.2014 referred to in para 4 above, the case of the Applicant for deemed date of promotion could have been considered. However, it appears that no ACRs of the



Applicant were ever written, even when he was not under suspension/dismissal. It is an admitted fact that all periods of suspension/dismissal have been treated as period spent on duty. Legally, the Applicant has been in continuous and regular service from 9.7.1996 till date.

6. The Applicant in his representation dated 29.8.2012 has sought deemed date of promotion from 7.4.2006, when Smt S.P Prasade, who was junior to him, has been promoted as Senior Clerk. Learned Counsel for the Applicant has relied on the judgment of Hon'ble Supreme Court in the case of **UNION OF INDIA Vs. K.V JANKIRAMAN** etc reported in **AIR 1991 SC 2010**. It is held by Hon'ble Supreme Court that:-

“When an employee is completely exonerated in criminal / disciplinary proceedings and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the last, he should not be deprived of any benefits including the salary of the promotional post.”


7. This Tribunal in O.A no 230/2007 by judgment dated 30.9.2015 has held in the case of Shri S.S Jain Vs. State of Maharashtra that a Government servant cannot be denied deemed date of promotion in absence of ACRs for the relevant period presuming that the ACRs would have been less than good. This Tribunal

has relied on the judgment of Hon'ble Bombay High Court in the case of **AMRUT PUSAJI ILME Vs. STATE OF MAHARASHTRA & ANR, 2007 (6) Mh.L.J 330**. In the case of C.O Arumugam & others Vs. State of Tamil Nadu & others, 1991 Supp (2) SCC 199, Hon'ble Supreme Court has observed:-

“The promotion of persons against whom charges have been framed in the disciplinary proceedings or charge sheet has been filed in criminal case may be deferred till the proceedings are concluded. They, must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable, they shall then be given promotion with retrospective effect from the date on which their juniors were promoted.”

In **UNION OF INDIA & ORS Vs. K.B. RAJORIA (2000) 3 SCC 562**, Hon'ble Supreme Court has held that the period of suspension, if later treated as period spent on duty, has to be counted as period of qualifying service for the purpose of further promotion.

8. In the present case, the Respondents are responsible for not writing ACRs of the Applicant when he was actually working. Refusal to grant him deemed date of promotion presupposes that his ACRs for the period, when he was on duty would have been below par.



The presumption is obviously without any basis. If the ACRs of the period when the Applicant was working were not written, the Applicant cannot be blamed for that. If his juniors were promoted as Senior Clerk, he cannot be granted deemed date of promotion, just because the Respondents did not ensure that the Applicant's ACRs were written for the relevant period, or at least part of it.

9. Having regard to the aforesaid facts and circumstances of the case, this Original Application is allowed. The Applicant is eligible to be granted deemed date of promotion to the post of Senior Clerk when his juniors were so promoted. The Respondents are directed to issue necessary orders accordingly within a period of four weeks from the date of this order. There will be no order as to costs.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 22.01.2016

Dictation taken by : A.K. Nair.