

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.833/2012.

Salikram Vistari Jambulkar,
Aged about 59 yrs.,
Occ-Retired,
R/o Misal Layout, Nagpur.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Rural Development
and Water Resources,
Mantralaya, Mumbai-440 032.
- 1-a) The Secretary,
Department of Water Resources,
Mantralaya, Mumbai-440 032.
- 2) The Chief Engineer,
Command Area Development Authority (Local Sector),
Pune.
- 3) The Chief Executive Officer,
Zilla Parishad, Nagpur.
- 4) P.S. Khobragade,
Dy. Engineer, M.I. Division,
Zilla Parishad Sub-Division, Narkhed,
Distt. Nagpur.

Respondents

Shri A.L. Kawalkar, Ld. Counsel for the applicant.
Smt. M.A Barabde, learned P.O. for the respondent Nos.1,1-A & 2.
Shri P.N. Warjekar, learned counsel for respondent No.4.
None appeared for respondent No.3.

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

JUDGMENT

(Delivered on this 20th day of June 2017.)

Heard Shri A.L. Kawalkar, the learned counsel for the applicant, Smt. M.A Barabde, the learned P.O. for respondent No. 1, 1-A & 2. Shri P.N. Warjekar, learned counsel for respondent No.4. None appeared for respondent No.3.

2. The applicant Salikram Vistari Jambulkar was appointed as Junior Engineer through Maharashtra Public Service (Sub-ordinate) Selection board at Resettlement Sub-Division, Nagpur on 3.9.1982 and joined as such in Minor Irrigation Department, Zilla Parishad, Nagpur on 29.9.1982. A final select list was published by the Government on 19.11.2007 wherein the applicant was placed at Sr. No.351 in the seniority list of Junior Engineers as on 1.1.2004. Respondent No.4 Shri P.S. Khobragade was at Sr. No.352. The date of appointment of the applicant was shown as 29.9.1982 whereas that of respondent No.4 was shown as 1.10.1982. Respondent No.4 was thus rightly placed below the applicant being junior. The aforesaid seniority list which was objected, was subsequently corrected.

3. Respondent No.4 was promoted to the post of Deputy Engineer, though he is junior to the applicant. The applicant is,

therefore, claiming deemed date of promotion as Deputy Engineer from the date on which his junior i.e. respondent No.4 was promoted. He is also claiming directions to respondent No.1 to revise his pay accordingly on the promotional post and to pay arrears.

4. It seems that the applicant was earlier serving in the Department of Rural Development and Water Resources of the Government of Maharashtra which came to be bifurcated and new department i.e. the Department of Water Resources of the Government of Maharashtra was established. In view thereof, respondent No.1-a was added as party respondent to the O.A.

5. The original respondent No.1 filed its reply affidavit and submitted that, the seniority of respondent No.4 has been rightly corrected as per the recruitment rules. The newly added respondent No.1-a i.e. the Secretary, Department of Water Resources of the Government of Maharashtra also filed an affidavit in reply.

6. The sum and substance of the defence taken by the respondents is that, as per the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 (hereinafter referred to as ~~%~~ Regulation of Seniority Rules), seniority is to be fixed as per the principles laid down in Rule 4 of the Regulation of Seniority Rules. The persons from the same batch are to be given seniority as per their merit in the select list.

Respondent No.4 was senior to the applicant and, therefore, the seniority list was corrected and in the corrected seniority list, respondent No.4 stands at Sr. No. 181 whereas the applicant is at Sr. No.182 and, therefore, the applicant is junior to respondent No.4.

7. From the record; it is an admitted fact that, the applicant joined the service on 29.9.1982 as Junior Engineer whereas respondent No.4 joined the service on 1.10.1982 i.e. two days later. The applicant has placed on record the appointment order of the applicant as well as respondent No.4 which is at Annexure A-2, it is dated 3.9.1982. In the said list, respondent No.4 has been shown at Sr.No.1 whereas the applicant has been shown at Sr.No.2. It is, however, an admitted fact that respondent No.4 joined two days earlier to the applicant.

8. The learned P.O. has invited my attention to Rule 4 of the Regulation of Seniority Rules. The entire Rule 4 states about the general principles of seniority and it reads as under, since the same is material.

4. General principles of seniority:-

(1) Subject to the other provisions of these rules, the seniority of a Government servant in any post, cadre or service shall ordinarily be determined on the length of his continuous service therein :

Provided that, for the purpose of computing such service any period of absence from the post, cadre or service due to leave, deputation for training or otherwise, or on foreign service or temporary officiating in any other post shall be taken into account, if the competent authority certifies that the Government servant concerned would have continued in the said post, cadre or service during such period, had he not proceeded on leave or deputation or been appointed temporarily to such other post :

Provided further that, the service, if any, rendered by him as result of fortuitous appointment (except in a case whether the competent authority certifies that, it was not expedient / possible or practicable to make a regular appointment strictly in accordance with the ratio of recruitment as prescribed in relevant recruitment rules, with the brief reasons recorded therefor), shall be excluded in computing the length of service and for the purpose of seniority he shall be deemed to have been appointed to the post or in the cadre or service on the date on which his regular appointment is made in accordance with the provisions of the relevant recruitment rules.

(2) Notwithstanding anything contained in sub-rule(1),-

(a) the *inter se* seniority of direct recruits selected on one batch for appointment to any post, cadre or service, shall be determined according to their ranks in the order of preference arranged by the Commission, Selection Board or in the case of recruitment by nomination directly made by the competent authority, the said authority, as the case may be, if the appointment is taken up by the person recruited within thirty days from the date of issue of the order of appointment or within such extended period as the competent authority may in its discretion allow :

(b) the *inter se* seniority of Government servants promoted from a Select List shall be in the same order in which their names appear in such Select List. If the Select List is prepared in two parts, the first part containing the names

of those selected unconditionally and the second part containing the names of those selected provisionally. All persons included in the first part shall rank above those included in the second part :

Provided that, if the order in which the names are arranged in the Select List is changed following a subsequent review of it, the seniority of the Government servants involved shall be rearranged and determined afresh in conformity with their revised ranks:

(c) the seniority of a transferred Government servant *vis-a-vis* the Government servants in the posts, cadre or service to which he is transferred shall be determined by the competent authority with due regards to the class and pay-scale of the post, cadre or service from which he is transferred, the length of his service therein and the circumstances leading to his transfer.

(3) Where the dates of appointing in posts, cadre or service of any two or more persons determined after assigning the deemed date, if necessary, are identical the person senior in age shall be considered as senior for the purpose of determining the seniority+.

9. The plain reading of the aforesaid rule will make it crystal clear that the *inter se* seniority of the Government servants promoted from a select list shall be in the same order in which their names appear in such select list. Sub-rule (2) of Rule 4 of the Regulation of Seniority Rules makes it crystal clear that the *inter se* seniority of direct recruits selected in one batch for appointment to any post, cadre or service shall be determined according to their rank in the

order of preference arranged by the Commission, Selection Board or in the case of recruitment by nomination, directly made by the competent authority as the case may be, if the appointment is taken up by a person recruited within thirty days from the date of issue of order of appointment or within such extended period as the competent authority may, in its discretion allow.

10. It seems that the applicant was at Sr. No.2 in the appointment order whereas respondent No.4 is at Sr. No.1. Respondent No.4 was, therefore, senior to the applicant and he joined the service, though two days after the applicant but within 30 days of the order of appointment.

11. It seems that, in the seniority list of 2004, the applicant was shown at Sr. No.381 i.e. senior to respondent No.4 as per the date of appointment. But subsequently, the said list seems to have been modified and made final as per letter dated 27.12.2010 (Annexure A-3) and in the said list, the applicant has been shown junior to respondent No.4. Respondent No.4 stands at Sr. No. 181 whereas the applicant is at Sr. No.182. Respondent No.4 was, therefore, rightly shown as senior to the applicant considering the recruitment rules and the general principles of seniority as per Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. The

applicant has, therefore, failed to prove that respondent No.4 is junior to him and, therefore, in such circumstances, no deemed date of promotion can be granted to the applicant as claimed by him. In view thereof, I pass the following order:-

ORDER

The O.A. stands dismissed with no order as to costs.

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

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