

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.857 OF 2015**

**DIST : MUMBAI**

Smt. Lata Namdev Jadhav, )  
Clerk, )  
Gazetteers Department, Maharashtra State, )  
Mumbai 400 023 )  
**.... Applicant**

**Versus**

Executive Editor and Secretary, )  
Gazetteers Department, Maharashtra State, )  
27, Barjori Bharucha Marg, Fort, )  
Mumbai )  
**....Respondent**

Shri S.S. Dere, learned Counsel with Shri M.B. Kadam,  
learned Counsel for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the  
Respondent.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

DATE : 01.03.2016

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## J U D G M E N T

1. Heard Shri S.S. Dere, learned Counsel with Shri M.B. Kadam, learned Counsel for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondent.

2. This O.A. has been filed by the Applicant challenging the order dated 26.08.2013, withdrawing the earlier order dated 01.03.2012 granting seniority in the post of Clerk-typist with effect from March, 1994 and also cancelling order granting first benefit of the Assured Career Progression Scheme to the Applicant from 01.03.2006.

3. Learned Counsel for the Applicant argued that the impugned order dated 26.08.2013 has been passed behind the back of the Applicant, thus it has been issued in violation of the principles of natural justice. The Applicant was appointed as Peon in the office of the Respondent on 15.12.1987 on compassionate basis. She passed S.S.C. examination in March, 1994 and was promoted as Clerk in May, 1999. In January, 2012, the Applicant preferred a representation that she was entitled to be given deemed date of promotion as Clerk on the date when she passed S.S.C. examination. Accordingly, the Respondent passed order dated 01.03.2012 and the Applicant was given seniority in the post of Clerk from March, 1994. She was also held eligible for grant of 1<sup>st</sup> benefit of the Assured Career Progression Scheme



with effect from 01.03.2006 on completion of 12 years as Clerk. Learned Counsel for the Applicant argued that the Respondent has cancelled the benefits extended to the Applicant by order dated 01.03.2012 by the impugned order dated 26.08.2013 behind the back of the Applicant. This order dated 26.08.2013 may, therefore, be quashed and set aside,

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent that the order dated 01.03.2012 was passed by the Respondent by mistake on the misrepresentation of facts by the Applicant. The Applicant claimed that she was eligible to be promoted as Clerk immediately on passing S.S.C. examination. The Applicant was given deemed date of promotion as Clerk from March, 1994, the date of passing S.S.C. examination by her. However, the relevant G.R. dated 15.04.1991 provides for 25% of the vacancies in Class III (Group 'C') posts to be filled by promotion of Class IV (Group 'D') employee who have passed S.S.C. examination and have put in 3 years of service. The seniority among Group 'D' employees is determined as follows:- (i) those who have passed S.S.C. examination at the time of joining service, the date of seniority will after be 3 years of continuous service (ii) For employees, who had not passed S.S.C. examination at the time of joining service, the date of passing S.S.C. after three years of service.

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5. The Applicant was seeking seniority from the date on which she passed S.S.C. examination in March, 1994. She joined service on 15.12.1987. The other employee Shri M.K. Naik was appointed on Class IV post on 16.07.1991 and passed S.S.C. examination in March, 1993. As per G.R. dated 15.04.1991, the Applicant, though appointed in Class IV before Shri Naik, become his junior, as she passed S.S.C. examination after Shri Naik did so. Learned P.O. argued that decision was taken to grant her seniority as Clerk from the date of passing S.S.C. examination i.e. from March, 1994. However, G.R. does not provide for promotion as Clerk immediately on being eligible for such promotion. That would have been possible only if some junior was promoted before the date the Applicant became eligible for promotion. As that was not the case, the order dated 26.08.2013 is perfectly legal.

6. It is seen that the Applicant's case is that a Class IV employee has to be promoted to Class III posts as soon as he or she becomes eligible for such promotion. This is not correct. A person becomes eligible for promotion, but may be actually promoted when vacancies are available. The case of the Applicant appears to be that she was eligible to be promoted to Class III post, as soon as she passed S.S.C. in March, 1994 as Shri Naik, was promoted as Clerk on 27.11.1995. However, para 1 of the G.R. dated 15.04.1991 provides that a Class IV employee who has completed three years of service and has passed S.S.C. can be promoted in

that year in 25% of the vacant posts. Now, such promotion will depend on other factors like roster point for vertical reservation for S.T./ VJ-NT etc. The first issue to be decided was relative seniority of the Applicant and Shri Naik. In case of the Applicant, she was eligible to be promotion as Clerk after March, 1994, as she had completed 3 years of Class IV service and passed S.S.C. in March, 1994. Shri Naik was appointed in Class IV post on 16.07.1991. He completed 3 of continuous service on 16.07.1994. He had passed S.S.C. examination in March, 1993. However, as he completed 3 years of continuous service only on 16.07.1994, he would become eligible to be promoted to Class III post from that day, while the Applicant would have become eligible for promotion to Class III post from March, 1994. Shri Naik was promoted to Class III post on 27.11.1995. In fact, the Applicant had become eligible to be promoted to Class III post before Shri Naik. She could not have been given deemed date of promotion to Class III post before Shri Naik. She would not have become eligible for deemed date of promotion to Class III post immediate when she become eligible for such promotion in March, 1994. However, based on the provision of G.R. dated 15.04.1991, she appears to be eligible for deemed date of promotion from the date when Shri Naik was promoted to Class III post, as Shri Naik would have become eligible for such promotion after 16.07.1994, while the Applicant become eligible for such promotion in March, 1994. The order 01.03.2012 is obviously not correct. However, the Applicant



appears to be eligible for deemed date of promotion to Class III posts from the date on which Shri Naik was given such promotion.

7. The order 26.08.2013 is not quashed as this order nullified the earlier order dated 01.03.2012, which is obviously incorrect. However, the Respondent is directly <sup>to</sup> to correctly fix date of eligibility for promotion of the Applicant and Shri Naik to class III post as per provisions of G.R. dated 15.04.1991 as indicated above and also consider granting of deemed date of promotion to the Applicant within a period of 3 months from the date of this order.

8. This O.A. is disposed of accordingly with no order as to costs.

Sd/-  
**(RAJIV AGARWAL)**  
**VICE-CHAIRMAN**

**Place : Mumbai**  
**Date : 01.03.2016**  
**Typed by : PRK**