

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 858 OF 2014**

**DISTRICT : PUNE**

Shri Pandurang Nagorao Paratwagh, )  
Occ : Service as Superintendent, )  
O/o: Director of Town Planning, )  
Maharashtra State, Pune. )  
[with additional charge of the post )  
of Administrative Officer, [Group-B], )  
R/o: Central Building Office Premises )  
Quarters, Pune. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through the Secretary, )  
Maharashtra State, )  
Town Planning Department, )  
[NV-27], Mantralaya, )  
Mumbai 400 032. )  
[Copy to be served on C.P.O, )  
M.A.T, Mumbai. )

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2. The Director of Town Planning, )  
Maharashtra State, )  
Central Building, Pune 411 001. )...**Respondents**

Shri S.D Joshi, learned advocate for the Applicant.

Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

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

**DATE : 03.02.2016**

**PER : Shri Rajiv Agarwal (Vice-Chairman)**

**ORDER**

1. Heard Shri S.D Joshi, learned advocate for the Applicant and Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant seeking direction to the Respondent no. 1 to consider the case of the Applicant for promotion to the post of Administrative Officer, Group 'B' w.e.f 1.1.2014.

3. Learned Counsel for the Applicant argued that the Applicant was appointed as Junior Clerk in the Town

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Planning Department on 1.6.1982 from Scheduled Caste category. The Applicant has been promoted as Senior Clerk in 1986, Head Clerk in 2003 and Superintendent in 2006. The next promotional post is Administrative Officer, Group 'B'. As per the Recruitment Rules notified on 4.11.1971, a Superintendent, who has worked for 3 years is eligible to be promoted as Administrative Officer. Two persons senior to the Applicant viz Shri Pawar and Shri Ghodmare retired as Administrative Officer on 31.1.2013 and 31.12.2013 respectively. A Departmental Promotion Committee (D.P.C) meeting was held on 19.11.2013 to fill the post from 1.1.2014. However, the Committee's recommendations to appoint the Applicant by promotion as Administrative Officer was not accepted by the Respondents as the Recruitment Rules for the post of Administrative Officer were sought to be amended. The Applicant had made a representation on 5.6.2013 to the Respondents that he may be given promotion as Superintendent, as he is eligible for promotion. However, no reply was received and the Applicant had retired on superannuation on 30.9.2014. Learned Counsel for the Applicant argued that in the D.P.C held on 19.11.2013 the Applicant was recommended for promotion. However, he was not promoted on the ground that the Recruitment Rules were to be amended. The Applicant was fully eligible for promotion. Learned Counsel for the Applicant argued

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that the Applicant is eligible for retrospective promotion w.e.f 1.1.2014.

4. Learned Chief Presenting Officer (C.P.O) argued on behalf of the Respondents stated that the post of Administrative Officer is a single post and it has to be filled in either by promotion or by nomination. The meeting of the D.P.C was held on 19.11.2013, prior to retirement of Shri Ghodmare, who was to retire on 31.12.2013. In the said meeting three employees from the cadre of Superintendent were considered for promotion to the post of Administrative Officer. The D.P.C recommended that the Applicant be promoted as Administrative Officer. The proposal was submitted to the General Administration Department, who returned it with queries and sought information regarding the manner in which the post has been filled in the past, i.e. whether by nomination or promotion. The file was returned to G.A.D with the remarks with the information and recommendation that the Applicant be promoted. However, G.A.D did not approve the proposal, stating that recruitment rules require amendment and after rules are amended proposal may be resubmitted. During the correspondence between the Urban Development Department and the General Administration Department, the Applicant retired on 30.9.2014. Learned C.P.O argued that a Government servant cannot be given retrospective promotion. The proposal to promote the

Applicant was under consideration of the Government, and as the Applicant had very little time to retire, no decision could be taken before his retirement. As the Applicant was not given actual promotion to the post of Administrative Officer, even deemed date of promotion cannot be granted to him.

5. Learned Counsel for the Applicant has relied on the judgment of Hon'ble Supreme Court in Civil Appeal no. 192 of 2014 in the case of Major General H.M Singh Vs. Union of India and another. Learned Counsel for the Applicant argued that Hon'ble Supreme Court has held that a Government servant has a fundamental right to be promoted. Learned C.P.O contended that this is not correct. Hon'ble Supreme Court has merely reiterated that a Government servant has fundamental right to be considered for promotion. However, when a Government employee is actually considered for promotion, he has fundamental right to be promoted, if he was adjudged suitable for promotion by the Competent Authority. In this case, the Competent Authority, viz. the Government, has never held that the Applicant was suitable for promotion. Only D.P.C has recommended his case.

6. We find that the Applicant was adjudged suitable for promotion by D.P.C. In the case before Hon'ble Supreme Court, the Appellant was held eligible for promotion by the D.R.D.O Selection Committee. The

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recommendation of D.R.D.O Selection Committee required approval from the Appointments Committee of the Cabinet (ACC). Hon'ble Supreme Court has held in para 20 of the judgment that:-

“Therefore, all other issues apart, the appellant must be deemed to have been found suitable for promotion to the rank of Lieutenant General, even by the Appointment Committee of the Cabinet.”

In the present case, the matter was referred by the Urban Development Department for approval by the General Administration Department, which did not approve the proposal. For the post of Administrative Officer, Group 'B', the appointing authority is the Government, i.e. Hon'ble Minister. The matter was never placed before the Hon'ble Minister for approval of the promotion of the Applicant. In the present case, there is no acceptance by the competent authority that the Applicant was fit for promotion. There cannot, therefore, be any deemed acceptance of promotion of the Applicant. The case is clearly distinguishable.

7. The Applicant was found suitable by the Departmental Promotion Committee and his name was recommended for promotion. However, though the Recruitment Rules provide that the post may be filled either by promotion or by nomination, no one has been

appointed by nomination so far. This is clear from letter dated 5.2.2014 from the Respondent no. 2 to the Respondent no. 1. G.A.D, when the proposal was sent to them for approval did not do so, as the Recruitment Rules were implemented in a lop sided manner by filling the post by promotion only. G.A.D wanted amendment to the Recruitment Rules. From para 13 of the affidavit in reply of the Respondent, it is clear that the proposal required approval of 'Government', after it was approved by G.A.D. From the sequence of events, it is clear that the approval of 'Government' was never sought and the Applicant stood retired on 30.9.2014. The present O.A has now reached a stage that any relief, if granted, would amount to retrospective promotion, which is not provided in the rules. It cannot be said that the Applicant was denied promotion malafide or in colourable exercise of powers.

8. We have, therefore, no alternative, but to dismiss the present Original Application. There will be no order as to costs.

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

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**(Rajiv Agarwal )**  
**Vice-Chairman**

**Place : Mumbai**

**Date : 03.02.2016**

**Dictation taken by : A.K. Nair.**