

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 696 OF 2016

DISTRICT: - DHULE.

Palinidas Dhanaji Ahirrao,
Age-about 52 years, Occu: Service,
R/o: 49, Devchand Nagar,
Golibar Tekdi, Dhule,
District Dhule

.. APPLICANT

V E R S U S

1. The State of Maharashtra
Through its Secretary,
Dairy Development Department,
Mantralaya, Mumbai-32.
2. The Commissioner,
Dairy Development Department,
Worli, Mumbai.
3. Regional Dairy Development Officer,
Nasik Region, Tal-Nasik,
Dist. Nasik
4. District Dairy Development Officer,
Dhule, Tal & Dist. Dhule.
5. C.A. Dhum,
Age- About- Years, Occ-Service,
R/o: Office of Regional Dairy
Development Officer, Dist. Nasik.
6. S.D. Tayde,
Age- About Years, Occ- Service,
R/o : District Dairy Development
Office, MIDC Area, Ahmednagar.

.... RESPONDENTS.

APPEARANCE : Shri M.R. Wagh, learned Advocate
for the applicant.

: Mrs. Deepali S. Deshpande –
learned Presenting Officer for the res.

CORAM : JUSTICE M.T. JOSHI, V.C.
AND
SHRI ATUL RAJ CHADA, MEMBER (A)

DATE : 18TH JULY, 2018

J U D G M E N T

[Per : Justice M.T. Joshi, V.C.]

1. Heard Shri M.R. Wagh, learned Advocate for the applicant and Mrs. Deepali S. Deshpande, learned Presenting Officer for the respondents.

2. By the present application the applicant is seeking rectification in the *inter se* seniority list between the applicant and respondent Nos. 5 & 6 and consequential invalidation of the promotion granted to the respondent Nos. 5 & 6 from the post of Milk Collection Supervisor to the post of Extension Officer / Milk Collection and Distribution Officer vide order dated 31.5.2016.

3. Admitted facts are as under: -

That the applicant was regularly appointed to the post of Milk Procurement Supervisor under the respondent Nos. 1 to 3 on 21.11.1984. In the year 2003 he was declared surplus along with many other employees of the Dairy Development

Department. Therefore, as per the Government decision, employees were to be absorbed either in the same department or any other department. The applicant continued to work under respondent No. 1, Dairy Development Department itself at various places like Dhule, Chalisgaon etc. Ultimately, vide order dated 1.1.2011 he along with some other employees was directed to be absorbed on the same post under the very same department.

4. So far as the seniority list is concerned, according to the applicant his seniority was maintained as per his initial date of regular appointment as 21.11.1984 up to the year 2010. Annexure 'C', page 44 is the seniority list filed in this regard. However, since the date of absorption the respondents interfered with seniority in the seniority list for the year 2011. Respondent Nos. 5 & 6, appointed in the year 1987 ought to have been shown junior to him but they were shown senior to him. Therefore, he raised objection to the draft seniority list of 2011 in that regard but no heed was paid to the objection. This act continued in the subsequent seniority list continuously though he used to continue raising objection.

5. According to the applicant, the Government Resolution dated 10th September, 2001, Annexure 'B' issued by the State

of Maharashtra is very specific in this regard. Clause No. 20 of the said Government Resolution, page-36 of the O.A., is as under: -

“20. Seniority – The person declared as surplus as above, upon his appointment on the similar or equivalent post shall be considered for seniority from the date of his regular appointment in his original cadre from which he was declared surplus.”

6. Despite raising the objection by the applicant, according to him, respondent Nos. 5 & 6 are wrongly shown senior to him and even given promotion as detailed supra. He, therefore, seeks reliefs as detailed above.

7. On behalf of the respondent Nos. 1 to 6, Mr. Yogesh Ramchandra Nagare, the Regional Dairy Development Officer, filed his affidavit. He submits that the present applicant and many more employees were declared surplus by the Government vide resolution dated 16.12.2003. He admits that the present applicant was absorbed on 1.1.2011. According to him, therefore, the present applicant's seniority is fixed from the date of his absorption. He further submits that the seniority was fixed on the basis of principle laid down in the very same G.R. on which the applicant has placed reliance

and, therefore, he wanted that the present Original Application be dismissed.

8. In view of the admitted fact that the present applicant was appointed and regularized earlier to the appointment and regularization of the respondent Nos. 5 & 6 and in view of the provisions of Clause 20 of the G.R. dated 10th September, 2001, this Tribunal passed the order on 14.6.2018 in order to give opportunity to the officer to explain the above facts. Accordingly, the officer Mr. Yogesh Ramchandra Nagare has filed additional affidavit. In the said additional affidavit he relied on clause No. 20 of the G.R. dated 10th September, 2001 and averred that the decision taken by the respondent Nos. 1 to 3 is proper. It was further sworn that not only the present applicant, but 81 more employees were shown junior from the date of their absorption and it is only the present applicant, who is taking objection. He further expressed apprehension that in case the applicant would be considered senior and promoted as per his prayer, 81 employees would also demand the same.

9. Upon hearing both the sides, in our opinion it is unfortunate that the responsible officer is not paying any heed to the proper construction of clause No. 20 and even principle

of general seniority. Admittedly, prior to the date of passing absorption order dated 1.1.2011, the present applicant was placed in the seniority list as senior to the respondent Nos. 5 & 6 and others. From the date of absorption, however, the present applicant and many other employees are shown to have entered the service from the date of their absorption i.e. 1.1.2011. It appears that respondent Nos. 5 & 6 were never declared surplus. Clause No. 20 of the G.R. however, clearly provides that the date of appointment of the surplus employee in his original cadre shall be the determining factor for placing him / her in seniority list. Respondent Nos. 1 to 3 however, in defiance of this provision are firm in maintaining that the date of absorption shall be the determinative date of seniority in the cadre in which the employee is absorbed. This interpretation is absurd which has led to the promotion of the respondent Nos. 5 & 6.

10. The practice of the responsible officer in reaffirming invalid interpretation of the G.R. and even going on to assert that in case the present applicant is declared senior, other employees whose seniority is fixed on faulty principle would also make a demand for the same needs to be deprecated. In view of the above, the following order: -

ORDER

- (i) The present Original Application is allowed with costs of Rs. 5,000/-.
- (ii) The respondents are directed to rectify the impugned seniority list on the basis of the principles as narrated above i.e. placing the employee in the seniority list on the basis of their initial regularization in their original cadre.
- (iii) Consequently, the impugned promotion order issued in favour of the respondent Nos. 5 & 6 is hereby quashed and set aside.

**ATUL RAJ CHADHA
MEMBER (A)**

**M.T. JOSHI
VICE CHAIRMAN**

PLACE : AURANGABAD.

DATE : 18TH JULY, 2018.

O.A.NO.696-2016 (DB)-HDD-2018 / Promotion