

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH, NAGPUR
ORIGINAL APPLICATION No. 948 of 2021 (DB)

Onkarsingh S/o Shersingh Bhond,
aged 54 years, Occ. Geologist,
R/o Shersingh Niwas, Plot No. 15,
Haveli Garden Road, Trimurti Nagar,
Civil Lines, Chandrapur.

Applicant.

Versus

1) The State of Maharashtra,
through its Secretary,
Industry, Energy and Labour Department (IND-9),
Mantralaya, Mumbai-32.

2) Director,
Director of Geology and Mining,
Government of Maharashtra, Khanji Bhavan,
Cement Road, Shivaji Nagar, Nagpur.

Respondents.

Shri S.P. Palshikar, ld. counsel for the applicant.

Shri S.A. Sainis, ld. P.O. for the respondents.

**Coram :- Shri Shree Bhagwan, Vice-Chairman and
Shri M.A. Lovekar, Member (J).**

Date of Reserving for Judgment : 14th June, 2022.

Date of Pronouncement of Judgment: 04th July, 2022.

JUDGMENT

Per : Vice Chairman.

(Delivered on this 04th day of July, 2022)

Heard Shri S.P.Palshikar, ld. Counsel for the applicant and Shri
S.A.Sainis, ld. P.O. for the respondents.

2. The applicant belongs to Nomadic Tribe-B Category and as per recommendation of M.P.S.C.; joined the post of Junior Geologist, Class-II, Group-B on 30.11.1996. Since recommendation is dated 20.11.1996 and applicant has joined on 30.11.1996 i.e. within a gap of 10 days; in between appointment letter must have been issued.

3. After joining, the applicant was transferred at various places in the state like Chandrapur, Washim, Yavatmal as District Mining Officer. At last on 27.06.2003; applicant came to be transferred at Yavatmal from Washim; where he joined on 01.07.2003 as District Mining Officer, Yavatmal. Applicant took action against illegal mining against one Shri Sanjay Chiddarwar, Construction Company and based on his report Collector, Yavatmal passed an order on 23.02.2005 as penalty of Rs. 1,43,19,388/- and directed to deposit it within 15 days. As alleged by the applicant, due to this Political pressure was created and departmental enquiry was ordered by respondent no. 1 on 12.06.2006 (A-4, Pg. No. 118) and for that suspension order was also issued on 24.02.2005 (A-1, Pg. No. 32). The applicant challenged that order by filing O.A. No. 418/2005 before this Tribunal and order was passed by this Tribunal on 12.01.2006 (A-2, Pg. No. 33). The operative part of order (Pg. No. 34) is reproduced below:-

“If the departmental enquiry is not completed within four months from today suspension order of the applicant, would stand revoked automatically.

With these directions O.A. stands disposed of, with no order as to costs.”

As per the order in O.A. 418/2005 since enquiry was not completed within four months, suspension order was revoked vide order dated 12.06.2006 (A-3, Pg. No. 112) as per affidavit-in-reply on behalf of respondent nos. 1 & 2 (Pg. No. 100). Applicant preferred appeal before Hon’ble Governor vide his representation dated 25.08.2014 about enquiry.

4. Subsequently, M.P.S.C. recommended to respondent no. 2, Director of Geology and Mining, Government of Maharashtra for promoting the applicant to the post of Maharashtra Mining Services, Group-A vide letter dated 28.02.2011. As per pleading and record seniority list of Geologist, Class-A (sanctioned post 23) was published from 2015 to 2019 together, it has been filed on record.

5. Subsequently, applicant was punished after D.E. vide order dated 30.06.2014 by respondent no. 1 (A-3, Pg. No. 35) and his punishment was under Maharashtra Civil Services (Discipline and Appeal) Rule, 1979, Section 10 of Minor Punishment and due to this next increment was stopped for one year without having future effect. So, applicant was under

the punishment from 30.06.2014 to 30.06.2015 only. Respondents have filed their reply on 12.04.2022 and in para no. 11 they have made following submission:-

“11. It is submitted that the applicant was suspended vide letter dated 24.02.2005 due to complaints received against applicant. Copy of the order dated 24.02.2005 is enclosed as Annexure-2. Thereafter applicant was reinstated in service and his suspension was revoked vide order dated 12.06.2006 as per the orders issued by Maharashtra Administrative Tribunal, Nagpur in O.A. No. 418/2005. Copy of the order dated 12.06.2006 is enclosed as Annexure-3. From which it is crystal clear that applicant was under suspension from 24.02.2005 to 12.06.2006.”

6. The grievance of the applicant is that when M.P.S.C. recommended him for promotion on 28.02.2011; he was not under suspension or punishment but D.E. started vide order dated 24.02.2005 remained unfinished and continued. He claims that he should have been promoted immediately after 28.02.2011 itself. Since as per order dated 12.01.2006 in O.A. No. 418/2005 which was pronounced on 12.01.2006; departmental enquiry was to be completed within four months, from 12.01.2006 four months period expired on 12.05.2006. It appears that seniority list from 2015 to 2019 was published vide letter dated

05.07.2019 but in February, 2011 there was seniority list of Geologist, Group-A from the department and they should have promoted the applicant from the date of recommendation by M.P.S.C. as per seniority and prevailing rule, if permitted.

7. The Id. Counsel for the applicant submits that now applicant again stands to lose seniority further. Respondents in their reply have justified the promotion of the applicant from the 03.11.2016 as per Government order (A7, Pg. No. 46) where applicant appears at Sr. No. 4. Respondents in their reply have explained in para no. 21 which is reproduced below:-

"21. It is submitted that the Judgment dated 30.04.2019 given by Hon'ble Maharashtra Administrative Tribunal, Mumbai in O.A. No. 886/2017 produced by the applicant in present O.A. No. 948/2021 is matter of record. But the Judgment mentioned by applicant is altogether different. The mentioned judgment is related to promotion but the present application is for the fresh recruitment recommended by the M.P.S.C through the Government. It is further submitted here that General Administration Department, Mantralaya, Mumbai has given their comments on the issue of whether applicant can be given posting on the post of Geologist (Group-A) from 17.03.2011 or

not. Brief abstract of the opinion given by General Administration Department, Mantralaya, Mumbai is as under:-

1. Recommendation of Maharashtra Public Service Commission is not mandatory or binding on Government.

2. There are no prescribed rules or Government orders for giving appointment in retrospective manner.

3. Applicant can not be posted on the post of Geologist (Group-A) by way of nomination from 17.03.2011.”

8. After perusal of all the documents, it appears that applicant was unnecessarily harassed. Respondent nos. 1 & 2 have filed affidavit in reply on page no. 100 along with this reply they have attached D.E. order which is dated 12.09.2005 (A-4, Pg. No. 118), before that applicant was placed under suspension vide order dated 24.02.2005 (A-1, Pg. No. 32) after the order of M.A.T. in O.A. No. 418/2005 delivered on 12.06.2006. Respondents had to revoke suspension order vide order dated 12.06.2006 which is attached A-3, Pg. No. 117 along with affidavit-in-reply on behalf of respondent nos. 1 & 2. The D.E. which was started on 12.09.2005 was unnecessarily continued and final order was passed on 30.06.2014 (A-3, Pg. NO. 35) and that too it was minor punishment. Before awarding this minor punishment, Respondents took nine years to finalize the D.E.. It was an inordinate delay.

9. With the above discussion, it is clear that when M.P.S.C. recommended applicant for promotion vide order dated 28.02.2011; only D.E. was pending against applicant due to delay by respondent only. If promotion would have been given at that time applicant would have been placed higher in the seniority list from 2015 to 2016.

10. It needs to be reiterated that when the M.P.S.C. recommended name of the applicant for promotional post i.e. on 28.02.2011, the applicant was neither under suspension nor was he under the punishment which was imposed later on conclusion of departmental enquiry. The departmental enquiry was dragged for a period of 9 years for which no blame could be attributed to the applicant.

11. It is the contention of the respondents that recommendations made by the M.P.S.C. are not binding on the Government and viewed from this angle prayer made by the applicant cannot be allowed. It may be stated that the recommendation dated 28.02.2011 made by the M.P.S.C. was eventually acted upon. This goes to show that the recommendation was found to be acceptable by the Government / respondents. The applicant was promoted, on the basis of recommendation of the M.P.S.C. dated 28.02.2011, only on 03.11.2016. Thus, a period of more than five years elapsed between the recommendation and the implementation. This delay was primarily attributable to total lack of urgency shown by the

respondents in finalizing the departmental enquiry. It would be, therefore, unjust to make the applicant suffer consequences of the same. For these reasons it would be appropriate and reasonable to direct the respondents to fix date of promotion of the applicant, as per recommendation dated 28.02.2011 as 01.09.2011. Hence, the order.

ORDER

Application is partly allowed. The respondents shall treat the applicant to have been promoted to the post as recommended by the M.P.S.C., on 01.09.2011. His seniority shall be accordingly fixed. The applicant will be entitled to all consequential benefits arising out of this determination made by the Tribunal. No order as to costs.

(M.A.Lovekar)
Member(J)

aps

Dated – 04/07/2022

(Shree Bhagwan)
Vice Chairman

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman and
Hon'ble Member (J) .

Judgment signed on : 04/07/2022.

and pronounced on

Uploaded on : 05/07/2022.