

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 145 of 2012 (D.B.)

Rushi S/o Ragho Meshram,
Aged about 53 years, Occ. Service,
R/o C/o Vishwanath Giradkar,
Sarvodaya Ward no.3, Rani Durgawati School,
Armori Road, Gadchiroli.

Applicant.

Versus

- 1) State of Maharashtra
through its Secretary,
Water Supply & Sanitation Department,
Mantralaya, Mumbai-32.
- 2) Director,
Ground Water Survey & Development Agency,
Bhujal Bhavan, Agriculture University Campus,
Wakdewadi Road, Shivaji Nagar, Pune.
- 3) Deputy Director,
Ground Water Survey & Development Agency,
Nagpur Region, Maharashtra Jivan Pradhikaran
Building, Wing "A", 2nd floor, Telangkhedi, Nagpur.
- 4) Senior Geologist,
Ground Water Survey & Development Agency,
Gadchiroli.
- 5) Shri R.R. Bansod,
Junior Clerk in the office of Deputy Director,
GSDA, Nagpur Region,
Maharashtra Jivan Pradhikaran
Building, Wing "A", 2nd floor, Telangkhedi, Nagpur.
- 6) Shri S.K. Larokar,
Junior Clerk in the office of Senior Geologist,
GSDA, Wardha.

Respondents.

Shri P.V. Thakre, Advocate for the applicant.

Shri A.M. Ghogre, learned P.O. for respondent nos. 1 to 4.

S/Shri V.S. Kukday, W. Mathew, Advs. for respondent nos.5&6.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J) and
Hon'ble Shri Shree Bhagwan, Member(A).**

JUDGMENT

PER : V.C. (J).

(Delivered on this 3rd day of September,2018)

Heard Shri P.V. Thakre, learned counsel for the applicant, Shri A.M. Ghogre, learned P.O. for respondent nos.1 to 4 and Ms. R.V. Kukday, learned counsel holding for Shri V.S. Kukday, learned counsel for respondent nos. 5 and 6.

2. The applicant has claimed that the order dated 08/07/2009 (Annex-A-10) be quashed and set aside. Vide Annex-A-10 one Shri R.R. Bansod (R/5), Shri S.K. Larokar (R/6) and one Shri Tok Bharat Bahadur (since deceased) were promoted to the post of Junior Clerk. The applicant's claim was however not considered for such promotion. The applicant is also claiming direction to the respondents to grant him promotion to the post of Junior Clerk and grant him deemed date of promotion w.e.f. 08/07/2009 i.e. on the date on which his Juniors i.e. Shri R.R. Bansod (R/5), Shri S.K. Larokar (R/6) and Shri Tok Bharat Bahadur were promoted.

3. The applicant was appointed as a Chaukidar (Watchman) vide order dated 01/08/1984 under N.T. (B) category. As per the G.R. dated 15/04/1991 the Government was to grant promotion for

the post of Class-III (Clerical post) from Class-IV cadre. The qualification for such promotion was that the candidate shall have passed SSC examination and should have worked for three years continuous service. The applicant applied for the promotional post through department being qualified. The private respondent nos. 5 and 6 were juniors to the applicant. The DPC meeting was held in 2008 and 2009 and the respondent nos. 5 and 6 were promoted, though juniors to the applicant. The applicant filed representation on 5/09/2011, but his representation was not considered and therefore the applicant has filed this O.A.

4. The respondent nos. 1 to 4 have resisted the claim of the applicant. It is stated that as per the guidelines in the G.R. dated 19/09/1977 the departmental committee considered the overall ability of the candidates to shoulder the responsibility for the higher post and the respondent nos. 5 and 6 were found eligible and suitable for promotion and therefore in the DPC meeting decision was taken to promote the respondent nos. 5 and 6. Since no suitable candidate from ST category was found during last three years, the name of respondent no.6 was recommended for promotion. In 2009 the meeting of DPC was again held to grant the promotion the post of Class-III employees. Three posts were vacant from Open category. The name of the applicant as well as the name of respondent nos. 5 and 6 were recommended along with other 6 candidates, but

considering the Confidential Reports (C.Rs.), educational qualification and the experience and as per the guidelines of the G.R. dated 19/09/1977 the names of the respondent nos. 5 and 6 were recommended on merits.

5. The learned counsel for the applicant submits that the final selection list is at Annex-A-15 at P.B. page no.55 from which it seems that only three candidates were found eligible i.e. one Tok Bharat Bahadur at sr.no.4, one S.K. Larokar i.e. respondent no.6 at sr.no.5 and one R.R. Bansod, i.e., respondent no.5 at sr.no.7. The name of the applicant was at sr.no.6, but he was found unfit since he was not holding requisite qualification. The learned counsel for the applicant invited our attention to the fact that respondent nos. 5 and 6 as well as Tok Bharat Bahadur were holding similar qualification. It is stated that the applicant is senior most amongst them and still he was not considered.

6. The learned P.O. however submits that the G.R. dated 19/09/1977 was considered as per guidelines and as per the said G.R. the promotion is to be granted as per the merits. He pointed out Clause 3 (b) of the G.R. dated 19/09/1977 which reads as under :-

“3 (b) for a Government servant to be considered as possessing positive merit, the overall assessment of his record should show that he possesses positive qualities like initiative drive integrity and efficiency to a noticeably higher

degree that necessary for discharging efficiently the duties of the post held by him and also shoulder the responsibilities of a higher post. The person should be clearly fit for promotion to a higher post and should not be a border line case.”

7. The G.R. dated 19/09/1977 refers to the promotions from lower to higher grade posts and principles to be observed in connection with. It seems to be a general G.R. and therefore we have perused the recruitment rules for promotion to the post of Junior Clerk. The said recruitment rules are at P.B. page no.41 and are known as “the Clerk, Clerk-Typist and Typist in the offices of Government of Maharashtra, outside Greater Bombay (Recruitment) Rules,1986”. The rule nos. 3, 4 and 5 of the said rules are of the material and it reads as under :-

“(3) Recruitment to the post of Clerk- Appointment to the post of Clerk shall be made either –

(a) by promotion of a suitable member of Class IV service who has put in not less than three years continuous service and possesses the educational qualifications prescribed for appointment by nomination in clause (b) of this rule: or

(b) by nomination from amongst candidates who –

(i) are not less than 18 years and not more than 28 years of age ; and

(ii) have passed the Secondary School Certificate Examination ;

Provided that the number of vacancies in the cadre to be filled by promotion of class IV persons shall not exceed 25 percent of the total vacancies occurring in a particular year.

(4) Appointment to the post of Clerk-Typist, Typist Marathi or English appointment to the post of Clerk-Typist or Typist (Marathi or English) shall be made by nomination from amongst candidates, who –

(i) are not less than 18 years and not more than 28 years of age;

(ii) have passed the Secondary School Certificate Examination; and

(iii) possesses the Government Commercial Certificate for a speed of not less than 40 words per minute in English typewriting or 30 words per minute in Marathi typewriting, as the case may be;

(5) A person appointed to the post of Clerk or Clerk-Typist under rules 3 and 4, whether by promotion or by nomination shall be required to pass the Departmental Examination wherever prescribed; and in the case of typist appointed under rule 4, shall also be required to pass that examination where the combined cadre of Clerk, Clerk-Typist and Typist exists. Every person appointed to a post under rules 3 and 4 shall also be required to pass the examinations in Hindi and Marathi according to the rules made in that behalf, unless he has already passed or has been exempted from passing those examinations.”

8. Perusal of the aforesaid rules makes it crystal clear that a person can be appointed to the post of Clerk either by promotion of a

suitable member of Class-IV service or by nomination. Since the case of the applicant falls within the category of promotion of a suitable member of Class-IV the qualification concerning that mode of appointment is to be considered and as per the qualification Clause, the person to be appointed for the post of Clerk by promotion of a suitable candidate from Class-IV service shall have put not less than three years continuous service and the educational qualification i.e. must have passed the Secondary School Certificate examination. The applicant admittedly has completed more than three years service at the time of consideration of his claim for promotion and has also acquired the requisite qualification of SSC and therefore it cannot be said that he was not having requisite qualification.

9. The learned counsel for the applicant invited our attention to the seniority lists at Annex-A-13 at P.B. page nos.51 & 52 as on 1/1/2009 in respect of Watchman, the cadre to which the applicant belongs and as per the said list the applicant's stand at sr.no.4 and his date of appointment as a Watchman is 28/08/1984. It shows that the applicant has passed SSC examination and has also passed English Typing 40 wpm and Marathi Typing 30 wpm.

10. The seniority list in respect of the Peons, to which the cadre deceased Shri Tok Bharat Bahadur and Shri R.R. Bansod (R/5), Shri S.K. Larokar (R/6) belongs is at Annex-A-14 at P.B. page

nos.53&54. It seems that Shri Tok Bharat Bahadur was appointed as a Peon on 13/04/1987, Shri S.K. Larokar (R/6) was appointed as a Watchman on 01/12/1992 and as a Peon from 07/01/1993, whereas Shri R.R. Bansod (R/5) has been appointed vide order dated 16/01/1997 as a Peon. Thus even though the lists of Peon and Watchman are separate, there is no doubt that the applicant has been appointed since 28/08/1984 i.e. much prior to that of respondent nos. 5 and 6 and Shri Tok Bharat Bahadur. The learned counsel for the applicant on information has stated that Shri Tok Bharat Bahadur had not joined as a respondent in the matter since immediately after appointment and joining on the promotional post of Clerk he died within a month. It is however clear that the applicant is senior in the Class-IV post to Shri Tok Bharat Bahadur as well as respondent nos. 5 and 6. The recruitment rules of 1986 clearly show that there was no rule of considering merits of the candidates for promotion to the post of Clerk from Class-IV employees. The only requirement was that he must have served for not less than three years continuous service and must have possessed qualification i.e. SSC passed as well as passing of Typing examination. Admittedly the applicant as well as the respondent nos. 5 and 6 and deceased Shri Tok Bharat Bahadur were qualified and therefore there was no reason to deny promotion to the applicant since he was senior most.

11. The learned P.O. submits that in the DPC, merits of candidates were considered in view of the G.R. dated 19/09/1977. In order to verify this fact, the minutes of the meeting were called. Admittedly in the minutes of the meeting, there is no whisper to say that the Committee considered the merits of the candidates and since the respondent nos. 5 and 6 and Shri Tok Bharat Bahadur were meritorious, were considered against the applicant and therefore such arguments for the first time cannot be accepted.

12. Considering the aforesaid aspects, we are satisfied that the applicant being senior most amongst the Class-IV employees and having acquired requisite qualification for promotion as per the recruitment rules, should have been considered for promotion as against his juniors, i.e., respondent nos. 5 and 6 and deceased Shri Tok Bharat Bahadur. We are therefore satisfied that the applicant was entitled to be promoted as against deceased Shri Tok Bharat Bahadur and respondent nos. 5 and 6. The applicant is therefore entitle to get promotion to the post of Clerk w.e.f. from the date on which the respondent nos. 5 and 6 as well as deceased Shri Tok Bharat Bahadur were promoted.

13. The learned counsel for the applicant submits that since the applicant was not promoted to the post of Clerk, he continued to serve in the Government since he has not attained the age of 60

years and the applicant is completing his age of 60 years on 31/07/2018. For a Class-III servant the age of superannuation is 58 years and therefore if the applicant is promoted to the post of Junior Clerk, it shall be presumed that he should have been retired on completion of age of 58 years i.e. on 31/07/2016. The applicant was present before the Tribunal and he submits that he is ready to get retired with immediate effect, provided he is promoted to the post of Junior Clerk by granting deemed date of promotion. Considering this aspect, we pass the following order :-

ORDER

- (i) The O.A. is partly allowed.
- (ii) Instead of quashing the impugned order of promotion 08/07/2009 (Annex-A-10), we direct the respondents to grant promotion to the applicant to the post of Junior Clerk w.e.f. 08/07/2009 i.e. the date on which deceased Shri Tok Bharat Bahadur and the respondent nos. 5 and 6 were promoted. The applicant however will not be entitled to any financial benefits of the promotional post since he has not actually worked on the promotional post. The respondents are directed to treat the applicant as promoted as a Junior Clerk w.e.f. 08/07/2009 and as such it shall be presumed that he has retired on superannuation on attaining the age of 58 years i.e. w.e.f. 31/07/2016. The applicant will be entitled to get

pension and pensionary benefits of post of Junior Clerk from the date of superannuation. He shall also be entitled to get financial pensionary benefits and arrears as may be admissible considering that he shall stand retired as a Junior Clerk w.e.f. 31/07/2016. The services of the applicant as Peon shall come to an end forthwith. No order as to costs.

(Shree Bhagwan)
Member(A).

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

Dated :- 03/09/2018.

dnk.