

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 167 of 2013 (DB)

Shri Milind Patruji Khobragade,
Aged about 56 years, Occ. Accountant,
Forests Department, Allapalli Division,
Allapalli, Dist. Gadchiroli
Resident of Allapalli, Taluka Aheri,
Dist. Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Revenue and Forest Department
Mantralaya, Mumbai-32.
- 2) The Principal Chief Conservator of Forests,
Maharashtra State,
Van Bhavan, Civil Lines, Nagpur.
- 3) The Chief Conservator of Forests,
Regional Office,
Behind I.T.I., Gadchiroli.
- 4) The Deputy Conservator of Forests,
Allapalli Division, Allapalli,
Dist. Gadchiroli.
- 5) Shri K.M. Wankar,
Occ. Chief Accountant (Direction Department),
Chief Conservator of Forests, Regional Office,
Behind I.T.I., Gadchiroli.

Respondents.

S/Shri Vishal Anand, Kishor Ghuguskar, Advs. for the applicant.

Shri V.A. Kulkarni, P.O. for respondent nos. 1 to 4.

None for respondent no.5.

**Coram :- Shri Shree Bhagwan,
Member (A) and
Shri Anand Karanjkar, Member (J).**

JUDGMENT**Per : Anand Karanjkar : Member (J).****(Delivered on this 19th day of March,2019)**

Heard Shri Vishal Anand, learned counsel for the applicant and Shri V.A. Kulkarni, learned P.O. for respondent nos. 1 to 4. None for respondent no.5.

2. The applicant is challenging the action of the respondent no.3 in promoting the respondent no.5, on the post of Chief Accountant, disregarding seniority of the applicant. The facts in brief are as under –

3. The applicant joined the service on the establishment of respondent no.3 as a Clerk on 02/01/1984. The applicant passed the departmental examination in the year 1988 in the third attempt, thereafter he was promoted vide order dated 04/03/1996 as Accountant. It is contention of the applicant that the seniority list was published by his office on 01/01/2012 and as per the seniority list the applicant was at sr.no.5 in the cadre of Accountant and the respondent no.5 was at sr.no.14. It is grievance of the applicant that without considering the seniority of the applicant, the respondent no.3 illegally promoted the respondent no.5 on the post of Chief Accountant. It is submitted that this action of the respondent no.3 is contrary to the service rules, therefore, the impugned order of

promotion issued by the respondent no.3 on 11/02/2013 be quashed and set aside and as per the seniority the applicant be promoted on that post.

4. The application is resisted by the respondent no.3 vide reply at page no.48 of the P.B. It is submission of the respondent no.3 that the respondent no.5 passed the examination in 5th attempt and thereafter he was promoted on the post of Accountant on 22/08/2000. One Shri J.V. Khedkar was promoted as Accountant on 29/02/1996 as he passed the departmental examination in three attempts. Later on the respondent no.5 made representation for giving him deemed date of promotion on the post of Accountant, as per the rules dated 05/12/1980. It is contention of the respondent nos. 1 to 4 that the DPC of the Circle was held on 30/09/2012 in which the representation of the respondent no.5 was considered and it was decided that the respondent no.5 was entitled for deemed date promotion as per the rule 4 (3) (a) and rule 4 (3) (d) and consequently the Chief Conservator of Forests (Administration) relying upon the letter dated 10/06/1999 granted deemed date promotion to the respondent no.5. It is contended that the D.P.C. in its meeting held on 30-9-2012 decided the representation of the respondent no.5 as per the rules. It is submitted that considering this deemed date promotion given to the respondent no.5 his seniority was considered and the respondent no.5 became senior to the applicant, therefore,

he was promoted. It is submitted that there is no substance in the contention of the applicant that disregarding his seniority, the respondent no.5 was promoted. It is contended that the application is without any merit and it be dismissed.

5. We have heard oral submissions on behalf of the applicant and on behalf of respondent nos. 1 to 3. The respondent no.5 not turned up. We have perused the Rules framed by the Government of Maharashtra under Article 309 of the Constitution of India. The Rules are published on 05/12/1980. The learned counsel for the applicant invited our attention to rule-5, rule-5 is relating to the consequences of the failure to pass departmental examination. As per rule 5 (1) (a) Clerk or Accountant who fails to pass the examination within a period and chances allowed as per rule 4 shall not be confirmed on the post of Clerk or Accountant and he shall not be allowed to draw his next increment in the scale of the post of Clerk of Accountant. The rule 5 (1) (b) says that such Government servant shall lose his seniority to all those Clerks or Accountants who pass the examination before he passes the examination subsequently. The learned counsel for the applicant submitted that the impact of rule 5(1) (b) is that if the clerk or accountant fails to pass the departmental examination within the fixed period or the fixed attempts, then all the clerks or accountants though junior, who pass the examination before him acquires seniority and such seniority

cannot be divested. It is submission of the learned counsel for the applicant that no doubt the respondent no.3 was authorised to give one more chance in exceptional circumstances to the respondent no.5 to clear the departmental examination, but the respondent no.5 had not authority in law to restore the seniority which was lost by the respondent no.5. Similarly it is submitted that even though the Government was empowered to give relax the time (period) or number of chances to pass the examination, but the Government was not empowered to restore the seniority.

6. We have examined the rule-4 of clause (c) and (d) which are as under –

“(c) The Chief Conservator of Forests may, in exceptional circumstances at his discretion, allow one extra chance to a Clerk or Accountant to appear for the examination and may where necessary, correspondingly extend the period of four years mentioned in sub rule (1) to that of five years.

(d) The Government may, in exceptional circumstances and on merit, either extend the period of years or number of chances more than the period or chances as are laid down in the foregoing provisions of this rule for passing the examination by a Clerk or Accountant or condone his failure”.

7. After reading the clauses (c) and (d) it is pertinent to note that only in exceptional circumstances the Chief Conservator of Forest is permitted to give one extra chance. As per clause (d) in

exceptional circumstances the Government is empowered to extend time period and also number of chances, but it appears from the language of clauses (c) & (d) that the authorities were bound to examine individual case separately.

8. The learned P.O. has placed reliance on Annex-R-1. After reading Annex-R-1 it seems that without examining the individual case it was decided by the Government to give 5th chance to pass the examination and also it was decided to fix the seniority as provided under rule 4 (3) (d) of the Rules. In Annex-R-1 it is nowhere mentioned that the seniority of such employee who has cleared the examination in the extra attempt shall be restored. From the language of rule 5 (1) (b) it appears that the language is mandatory. The relevant provision is as under –

“shall lose his seniority to all those Clerks or Accountants who pass the examination before he passes the examination subsequently.”

9. Thus, the meaning of the rule is that if the employee fails to pass the examination within a prescribed period and chances as per the rules he shall lose his seniority, there is no provision in the rules to restore such seniority. In this regard, we would like to point out that as the applicant passed the departmental examination in 1988 in the third attempt, therefore, he was promoted in the year 1996. Though the respondent no.5 joined before the applicant, but he

passed the departmental examination in the year 2000, therefore, the respondent no.5 had lost his seniority. The language of rule 5 (1) (b) is imperative which says that the junior who passed the examination before the senior, then he would be placed in seniority above the senior, who does not pass the examination, therefore, consequence is that the seniority is lost and the junior acquires right to be senior. The legal position is firm that once right is vested in a person it can be divested only in manner provided by law. Therefore, in absence of any legal provision the respondent no.3 or D.P.C. had no authority to disturb seniority of the applicant. In view of this discussion, we hold that the action of respondent no.3 to restore seniority of respondent no.5 was apparently illegal and in violation of the rules, so also the subsequent action of the respondent no.3 promoting the respondent no.5 as Chief Accountant is also illegal. We, therefore, accept the contention of the applicant that the promotion of respondent no.5 disregarding the seniority of the applicant was contrary to law and the respondent no.3 committed error by promoting the respondent no.5. Hence, we pass the following order –

ORDER

The O.A. is allowed. The impugned order of promotion issued by respondent no.3 promoting the respondent no.5 on the post of Chief Accountant is hereby set aside. The respondent no.3 is

directed to promote the applicant on the post of Chief Accountant after giving him deemed date from 11/02/2013. The respondent nos. 1 to 3 are directed to fix the salary of the applicant and revise his pension and pay him the arrears within a period of three months from the date of this order. No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Member (A).

Dated :- 19/03/2019.

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