

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 272 of 2012 (D.B.)

Krishna S/o Namdeo Balpande,
Aged about 45 years, Occ. Service,
R/o C/o Naresh Itankar,
Plot no.45, Dwarka Nagar,
Old Subhedar Layout, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Department Archaeology and Museums,
Ministry of Tourism and Cultural Affairs,
Mantralaya, Mumbai-32 through its Secretary.
- 2) The Director of Archaeology and Museums,
Government of Maharashtra,
Saint George Fort, Saint George Hospital Compound,
near CST, Railway Station, Mumbai-440 001.
- 3) Assistant Director of Archaeology,
Opp. Government Press, Civil Lines,
Nagpur.

Respondents.

S.N. Gaikwad, Advocate for the applicant.

Shri A.M. Ghogre, learned P.O. for the respondents.

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

JUDGMENT

(Delivered on this 27th day of April,2018) PER: V.C.(J)

Heard Shri S.N. Gaikwad, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. The applicant has passed Diploma in Civil Engineering in 1988 and thereafter came to be appointed as Conservation Assistant (Class-III) on 27/01/1992 in the office of the Assistant Director of Archaeology, Nagpur. The applicant filed O.A.471/1999 and prayed for regularisation. The Tribunal was pleased to pass an order on 29/06/2000 relying on the G.R. dated 08/03/1999 and observed that the applicant was eligible to be regularised and the respondents were accordingly directed to regularise the services of the applicant with consequential benefits subject to availability of the post. Accordingly the services of the applicant have been regularised w.e.f. 04/12/2000 and the breaks in services of the applicant were condoned. In fact the applicant's services should have been regularised with retrospective effect from 27/01/1992 and increments should have been released. Vide communication dated 13/01/2012 (Annex-A-11) the services of the applicant were regularised w.e.f. 29/06/2000 and the earlier order dated 04/12/2000 whereby the technical breaks were condoned has been cancelled. Being aggrieved by the said order, the applicant has filed this said O.A. The applicant has prayed that

the communication dated 13/01/2012 be quashed and set aside and the respondents be directed to grant applicant's due seniority from the date of his appointment, i.e., 27/01/1992 for all purposes and his salary be re-fixed.

3. The respondent nos. 1 to 3 have filed reply-affidavit and it is stated that the applicant has suppressed the fact that he was given fresh temporary employment and was posted at Pune vide order dated 29/05/1992. The applicant cannot seek any assistance from the G.R. vide which 3761 employees were given benefits, since he was not amongst those employees. The applicant was regularised w.e.f. 29/06/2000 as per the order of the Tribunal. As regards the order dated 13/01/2012, it is stated that after looking into consideration all the relevant documents, the order dated 04/12/2000 issued by respondent no.2 earlier was cancelled and the applicant was rightly regularised w.e.f. 29/06/2000 as an exceptional case.

4. The learned counsel for the applicant has placed reliance on the Judgment delivered by the Hon'ble High Court of Judicature at Bombay in a Group Writ Petition Nos. 9051/2013, 8166/2013, 9048/2013, 8295/2013, 9042/2013, 9040/2013, 8149/2013, 9039/2013, 8674/2013, 9049/2013, 8272/2013, 9038/2013, 7779/2013, 8119/2013, 7549/2013, 8120/2013, 9043/2013, 9047/2013, 8150/2013, 9041/2013, 7328/2013, 9044/2013,

1248/2014, 10929/2013, 4645/2014, 9974/2014, 9975/2014, 9976/2014, 9977/2014, 9978/2014, 1506/2015, 745/2016 8553/2012, delivered on 28/04/2016 and particularly relied observations made in para nos. 36 and 48 of the said Judgment which are as under :-

“(36) In Union of India vs. V. N. Bhat (supra), respondent employee was appointed as a lower division clerk in the Ministry of Defence in the year 1962. He sought transfer from Ministry of Defence to the Office of Chief Post Master General, which were allowed by order dated 26 April 1982. As a result, the respondent joined the post of lower division clerk at the bottom of gradation list as required in the departmental rules. On 17 December 1983 TBPS was introduced for providing relief to employees stagnating in the lower grades for period of 16 / 26 years as postal assistants. The benefit under this scheme was initially granted to respondent but later on withdrawn on the basis that the respondent had hardly one year service as postal assistants to which post he had been transferred on 26 April 1982. The CAT however allowed the respondent's original application and the Union of India appealed the Hon'ble Supreme Court. The distinction that in case of Dwijen Chandra Sarkar (supra) the employees concerned had been transferred in public interest and in case under consideration, the transfer was pursuant to the request of respondent V. N. Bhat was rejected by the Hon'ble Supreme Court by looking to the object and purpose of TBPS. The directions issued by CAT to take into consideration V. N. Bhat's services in the Ministry of Defence were upheld by the Hon'ble Supreme Court. In paragraphs 4, 5 and 6, the Hon'ble Supreme Court has observed thus :

"4. The submission of the learned counsel for the appellants in short is that having regard to the admitted fact that the respondent herein has not completed 16/26 years in the postal service, the One Time-Bound Promotion Scheme or BCR Scheme is not applicable in his case. The fact that the respondent herein had completed 18 years of service in the Ministry of Defence is not disputed. The question which, therefore, arises for consideration is as to whether the period of service rendered by the respondent in the Ministry of Defence should be wiped off for

all purposes. The well-settled principle of law that even in the case where the transfer has 36 of 50 skc 37 JUDGMENT-WP-9051-13-GROUP been allowed on request, the employee concerned merely loses his seniority, but the same by itself would not lead to a conclusion that he should be deprived of the other benefits including his experience and eligibility for promotion. In terms of the Schemes aforementioned, promotion is to be granted for avoiding stagnation only within the said parties. The said Schemes have been framed because they are beneficial ones and are thus required to be implemented. The Scheme merely perused that any person having rendered 16/26 years of service without obtaining any promotion could be entitled to the benefit therefor. It is, therefore, not a case where promotion to the higher post is to be made only on the basis of seniority. Even in a case where the promotion is to be made on selection basis, the employee concerned, even if he be placed at the bottom of the seniority list in terms of the order of transfer based in his favour, he cannot be deprived of being considered for promotion to the next higher post if he is eligible therefor. This aspect of the matter is clearly covered by the three decisions of this Court, namely, A.P. SEB v. R. Parthasarathi [(1998) 9 SCC 425 : 1998 SCC (L&S) 1195], Scientific Advisor to Raksha Mantri v. V.M. Joseph [(1998)5 SCC 305 : 1998 SCC (L&S) 1362] and Renu Mullick v. Union of India [(1994) 1 SCC 373 : 1994 SCC (L&S) 570: (1994) 26 ATC 602].

(48) In Pratap Kishore Panda vs. Agni Charan Das²⁰, the issue arose as to whether the grant of benefit of regularisation to employees who were recruited without involving Orissa Public Service Commission (OPSC) was legal and valid, considering in particular, the decision of the Constitution Bench in Secretary, State of Karnataka vs. Umadevi²¹, the Hon'ble Supreme Court after adverting to the fact situation ruled that such regularisation from the date of initial appointment was legal and valid, particularly since the recruitment made was neither capricious nor arbitrary, even though, the OPSC was not involved in the recruitment process. The Hon'ble Supreme Court observed that this was not a case of ad hoc employees being selected in a whimsical, inconsistent or haphazard manner or in order to favour some individuals. The incumbents were sponsored by employment exchange and over 400 candidates were found

suitable by duly constituted selection committee which interviewed them. It 19 M/s. Mideast Integrated Steel Limited and anr. Vs. State of Odisha - W.P.(C) No. 17403 of 2012 decided on 16-12-2015, by Division Bench comprising Hon'ble Chief Justice Mr. D.H. Waghela and the Hon'ble Mr. Justice Biswanath Rath 20 2016 (2) ALL MR 461 (S.C.) 21 (2006) 4 SCC 1 47 of 50 skc 48 JUDGMENT-WP-9051-13-GROUP was not a relaxation of the rules in order to favour a few, but was the consequence of following an alternate method of selection intended to remedy a malady in the recruitment of SC/ST candidates. The sponsorship of employment exchange and subsequent interview by a duly constituted selection committee was itself a valid alternate for recruitment by way of OPSC competitive examination. For this purpose, the Hon'ble Supreme Court also made reference to the provisions contained in Article 320(4) of the Constitution of India and Section 9 (4) of O.R.V. Act. In this batch of petitions also, we are concerned with the appointment of respondents employees appointed to permanent, clear, substantive and sanctioned vacancies, though on temporary basis consequent upon sponsorship of their names by employment exchange and in pursuance of selection process which was fair, transparent and above board. Such respondent - employees, right from the date of their initial appointment have been extended benefits of regular pay scale, increments, leave, transfer, GPF etc. The services of such respondent - employees from the date of their initial appointment has been taken into consideration for practically all purposes, including pensionary benefits (except perhaps seniority).”

5. The learned counsel for the applicant also placed reliance on the Judgment in a Group of O.A. Nos. 732/2011, 494/2013, 790/2013, 508/2013, 813/2013, 833/2013, 554/2013, 555/2013, 654/2013, 1054/2013, 1055/2013, 1056/2013, 1057/2013, 1058/2013, 1059/2013, 1195/2013, 42/2014, 55/2014, 701/2014, 763/2014 & 803/2014 by this Tribunal at Mumbai Bench on 08/06/2016. It is submitted that the case of the applicant is covered by these cases.

6. From the record it seems that the applicant was earlier appointed as Conservation Assistant vide order dated 18/01/1992 on temporary basis. Vide order dated 14/12/1992 in O.A.4103/1992 this Tribunal at Mumbai Bench was pleased to direct that the applicant shall be continued w.e.f. 18/12/1992 till the regular candidate is selected either by MPSC or concerned Selection Board is appointed without creating any right and by way of ad-hoc and interim arrangement only. The applicant then again filed O.A. No. 471/1999 before the Tribunal Bench at Mumbai and vide order dated 29/06/2000 the respondent/ state was directed to regularise the services of the applicants with consequential benefits in terms of the G.R. dated 8/3/1999 subject to availability of posts and the said order was to be complied within two months. Accordingly, the State has passed an order on 04/12/2000 and the technical breaks in the services of the applicant were condoned and his services were regularised. However all of a sudden vide impugned order dated 13/01/2012, the order dated 04/12/2000 was cancelled and the applicant's services were regularised w.e.f. 29/06/2000. No reason is given as to why the earlier order of condonation of breaks was cancelled. In view of the various decisions of this Tribunal, the services of the applicant should have been regularised. There is nothing on the record to show that the post was not available for

regularisation. The impugned order of cancellation dated 04/12/2000 is therefore without any reason and seems to be against the observations made by the Hon'ble High Court and by this Tribunal in the orders as already referred in the aforesaid paras. The impugned communication dated 13/01/2012 is therefore required to be quashed and set aside. Hence, the following order :-

ORDER

The O.A. is allowed in terms of prayer clause nos. A,B & C. No order as to costs.

**(Shree Bhagwan)
Member(A).**

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

Dated :- 27/04/2018.

dnk.