

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 762 / 2018 (S.B.)

Sudhakar Kisanrao Raut,
Aged about 68 years,
Occ. Retired, R/o M 50/50,
Vidharbha Housing Society,
Bajoria Nagar, Yavatmal,
District Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai.
- 2) The Commissioner,
Amravati Division, Amravati.
- 3) The Collector, Yavatmal,
Distt. Yavatmal.

Respondents

Shri Bharat Kulkarni, Id. Advocate for the applicant.

Shri S.A.Sainis, Id. P.O. for the Respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 08th Feb., 2023.

Judgment is pronounced on 10th March., 2023.

Heard Shri Bharat Kulkarni, Id. counsel for the applicant and
Shri S.A.Sainis, Id. P.O. for the Respondents.

2. The applicant joined as Chowkidar on 10.06.1976 and he was promoted as Peon and Junior Clerk by orders dated 05.09.1979 and 29.04.1972, respectively. He was placed under suspension from 23.04.1996 to 17.12.1996. Period of suspension was directed to be treated as such. Being aggrieved by denial of promotion to the post of Senior Clerk/ Awwal Karkoon, the applicant filed O.A. No. 234/2010. By order dated 20.12.2011 he was exempted from passing departmental examination. He was promoted as Awwal Karkoon on 30.06.2012. By judgment dated 27.08.2015 (A-3) O.A. No. 234/2010 was allowed and the applicant was granted deemed date of promotion to the post of Senior Clerk/ Awwal Karkoon from the date on which his juniors were promoted on this post. Being aggrieved by denial of A.C.P. by order dated 06.12.2016, the applicant filed review application before respondent no. 2 who, by order dated 16.06.2017 (A-4) remanded the matter to respondent no. 3 to consider afresh and on its own merits application of the applicant for grant of A.C.P. by considering his seniority in the cadre of Junior Clerk from 15.06.1995. After remand, respondent no. 3 decided the application afresh by order dated 21.12.2017 (A-2) holding as follows:-

“श्री.एस.के.राउत यांना या कार्यालयामार्फत वेळोवेळी तयार करण्यात आलेल्या कालबद्ध पदोन्नतीचे निवड यादीत गोपनीय अहवाल प्रतिकूल असल्याचे, विभागीय चौकशी प्रलंबित असल्याचे व फौजदारी प्रकरण प्रलंबित असल्याचे कारणास्तव जिल्हा पदोन्नती सभेने अपात्र

केलेले आहे. व या कार्यालयाचे आदेश दिनांक ०६.०७.२००९ अन्वये श्री.एस.के.राउत यांना पात्रतेचा दिनांक ३०.०४.२००९ नमुद करून पहील्या कालबध्द पदोन्नतीचा लाभ अदा करण्यात आलेला आहे.

तसेच श्री.एस.के.राउत, सेवानिवृत्त अब्ज कारकुन यांनी कालबध्द पदोन्नती मिळणेबाबत दिनांक १९.०१.२०१६ रोजी सादर केलेल्या अर्जास अनुसरून त्यांचेबाबत शासन निर्णयामधील तरतुदीनुसार या कार्यालयामार्फत देण्यात आलेल्या व अपात्र ठरविण्यात आलेल्या कर्मचा-यांचे कालबध्द पदोन्नतीबाबत जिल्हा पदोन्नती सभेने निर्णय घेतलेले आहेत. तसेच या कार्यालयाचे आदेश दिनांक ०६.०७.२००९ अन्वये त्यांना पहील्या कालबध्द पदोन्नतीचा लाभ अदा करण्यात आलेला आहे. त्यामुळे प्रस्तुत प्रकरणी श्री. एस. के.राउत, सेवानिवृत्त अब्ज कारकुन यांचे कालबध्द पदोन्नतीबाबत जिल्हा पदोन्नती सभेमध्ये निर्णय घेण्यात आलेले असल्यामुळे त्यांनी दिनांक ०१.१०.१९९४ पासून आश्वासीत प्रगती योजनेचा लाभ मंजूर करणेबाबत अर्ज सादर करून केलेली विनंती अमान्य करण्यात येत आहे व प्रकरण निकाली काढण्यात येत आहे.”

By order dated 06.07.2018 (A-1) respondent no. 2 maintained order dated 21.12.2017 and dismissed the appeal. Hence, this original application for quashing and setting aside the impugned orders (A-1 & 2) and granting the benefit of first A.C.P. to the applicant w.e.f. 01.10.1994.

3. In his reply respondent no. 3 has contended as follows. During the pendency of the O.A. No. 234/2010 the applicant was promoted as Awwal Karkoon by order dated 21.12.2011. As directed by

this Tribunal, by order dated 27.08.2015 passed in O.A. No. 234/2010, the applicant was given deemed date of promotion to the post of Awwal Karkoon as 04.01.2008. Thereafter, the applicant raised a grievance about grant of A.C.P. w.e.f. 01.10.1994. After remand by respondent no. 2, respondent no. 3 properly decided the matter. In the order of remand respondent no. 3 *inter alia* observed :-

“From the record and proceeding made available to this authority it is clear that the applicant was belonging to S.T. category. However, he could not produce caste validity certificate, further the applicant had submitted the caste validity certificate showing that he belongs to SBC category. Thus the services of the applicants were protected and his seniority was fixed from 15.06.1995.”

As per Clause (c) of G.R. dated 30.06.2004 (A-R-2) seniority of Non-Scheduled Tribe Employee who has been given protection of service should be reckoned from 15.06.1995. The applicant secured employment by representing that he belonged to S.T. Category but submitted Caste Validity Certificate of S.B.C.. Hence, period of 12 years to grant A.C.P. to him would commence from 15.06.1995 as per G.R. dated 30.06.2004. As per G.R. dated 08.06.1995 (A-R-3), in addition to service of 12 years it is necessary to pass departmental examination and also

attain the requisite benchmark so far as A.C.Rs. are concerned. On all these grounds the applicant fell short. In addition, judicial and departmental proceedings were pending against him. Keeping in view his seniority and other criteria including exemption from passing departmental examination, A.C.P. was granted to him by order dated 06.07.2009 w.e.f. 30.04.2009. Thereafter, he was given regular promotion by order dated 21.12.2011, and then deemed date of promotion was given to him w.e.f. 04.01.2008 in the cadre of Senior Clerk as per order dated 27.08.2015 passed by this Tribunal. The other employees named in the O.A. viz R.R.Gedam, R.N.Kinorkar, M.N.Pendorkar and R.M.Godamale etc. were given A.C.P. w.e.f. 01.01.1997 because they satisfied the criteria which the applicant did not. Thus, either of the impugned orders does not suffer from any infirmity.

4. It was submitted by Shri Kulkarni, Id. Counsel for the applicant that respondent no. 2, while remanding the matter to respondent no. 3, had directed the latter, in no uncertain terms, to fix seniority of the applicant from 15.06.1995 and from the said date the applicant was to be treated to be eligible for grant of A.C.P. but by disregarding said direction respondent no. 3 committed an error. This submission is founded of incomplete reading of order of remand. Para no. 4 and operative part of order of remand read as under:-

“Thus the seniority of the applicant in the cadre of Junior Clerk was fixed from 15.06.1995 thus it is clear that the applicant will be eligible for the benefits of Assured Promotion Scheme after he had completed the services of 12 years from 15.06.1995. Thus the present application filed by the applicant is devoid of substance.

ORDER

**The matter is remanded back to Collector, Yavatmal.*

**The Respondent is directed to consider the application on merit considering the seniority of the applicant in the cadre of Junior Clerk from 15.06.1995.*

**Inform all the concerned.*

**Close the file and consign to record.”*

5. It was further submitted by Advocate Shri B.Kulkarni that as many as five employees named in para XIII of the O.A. were found eligible for grant of A.C.P. w.e.f. 01.01.1997 though their A.C.Rs. were no better than those of the applicant for the relevant period. Details at A-6 show that against none of these employees departmental enquiry was either contemplated or pending whereas departmental enquiry was pending against the applicant at this point of time.

6. Before this Tribunal the applicant also raised a grievance that while denying A.C.P. A.C.Rs. which were not communicated to him

were taken into account and this was not permissible. I have referred to the chronology in respect of grant of promotion, deemed date of promotion as well as A.C.P. to the applicant which has been elaborately set out by respondent no. 2 and about which there is no dispute. Further, there is no dispute about the applicant claiming to belong to S.T. category and then furnishing Caste Validity Certificate of S.B.C. thereby inviting rigour of G.R. dated 30.06.2004. All these circumstances taken together lead to the conclusion that claim of the applicant for grant of A.C.P. w.e.f. 01.10.1994 is devoid of merits. **The O.A. is accordingly dismissed with no order as to costs.**

(Shri M.A.Lovekar)
Member (J)

Dated :- 10/03/2023.
aps

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 Member (J).

Judgment signed on : 10/03/2023.
and pronounced on

Uploaded on : 13/03/2023.