

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH : NAGPUR****ORIGINAL APPLICATION No. 859 of 2012 (D.B.)**

Ratnakar S/o Raghunath Kekatpure,
aged about 58 years, resident of 120,
Saraswati Layout,
Deendayalnagar, Nagpur- 440 022.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Finance Department, Mantralya, Mumbai-32.
- 2) The Secretary,
(Accounts and Treasury),
Finance Department, Mantralaya, Mumbai-32.
- 3) Director,
Accounts and Treasury,
Maharashtra State, Mumbai.

Respondents.

S/Shri B.D. Pandit, C. Dasgupta, Advocates for the applicant.

Shri H.K. Pande, learned P.O. for respondents.

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

JUDGMENT**PER : M (A).****(Delivered on this 19th day of December,2018)**

Heard C. Dasgupta, Advocate holding for Shri B.D. Pandit, learned counsel for the applicant and Shri H.K. Pande, learned P.O. for the respondents.

2. The applicant was selected by Maharashtra Public Service Commission through State Services examination in 1981 from Open category and was allotted Maharashtra Finance and Accounts Service in Class II cadre. The applicant was appointed in February, 1983 as MFAS Class-II probationer and after completion of training was posted as District Audit Officer, Singhudurg in August, 1983. The applicant successfully completed the probation period after passing prescribed Departmental exam in 1984. The applicant was posted at Sindhudurg, Nagpur, Wardha in various posts. He was also posted in Nagpur Municipal Corporation at Nagpur. Local Fund Audit Department and Nagpur Improvement Trust in MFAS, Class-II cadre before he was promoted to MFAS, Class-I (Jr) cadre in July, 1997 after putting up of 14 years of service in Class II cadre. The applicant was also posted in Divisional Commissionerate Nagpur and Maharashtra State Mining Corporation.

3. After putting in 9 years of service in MFAS, Class I (Jr.) cadre, applicant was promoted to MFAS Class-I (Sr) in August,2006 and was posted as Deputy Director in Public Works Department in Mantralaya. In June,2008 the applicant was transferred to FDCM, Nagpur on deputation and worked till date of superannuation i.e. 31/12/2012. The applicant is at sr.no.36 in the seniority list of officer in Maharashtra Finance and Accounts Service Class I (Sr.) cadre as on 01/01/2011 which was finally published on 26/08/2011 (Annex-A-1,P-22 to 26).

4. It is submitted that the Finance Department, Government of Maharashtra which is cadre controlling authority of the applicant, had submitted a proposal to Establishment Board for filling 19 vacant posts of Joint Director by promoting officers from Deputy Director cadre i.e. MFAS, Class-I (Sr.) cadre to which applicant belonged. The reservation for 19 posts was fixed by B.C. Cell of GAD as S.C. 5, S.C.4, NT(B) 1, NT(C) 1, SBC 1 and Open 7. A meeting of DPC consists of Additional Chief Secretary (Home), Secretary (Accounts and Treasury), Finance Department and Principal Secretary (Services), General Administration Department was held on 31/10/2011 for considering the issue of relaxation of eligible service of 3 years in respect of some of the officers belonging to reserved category. In the said meeting, the names of all eligible candidates

who were in zone of consideration for promotion in the cadre of Joint Director, Accounts and Finance Services were considered along with their length of service in the cadre of Dy. Director, Maharashtra Accounts and Finance Services and it was decided to relax the condition of having minimum 3 years of service in the cadre of Dy. Director, in respect of persons belonging to reserved category. However, the applicant was from Open category. The Minutes of meeting dated 25/01/2012 is at Annex-A-4 P.B. page nos.40 to 44 (both inclusive).

5. The learned counsel for the applicant invites attention of the Tribunal to the fact that according to the above relaxation to ten officers of backward classes as above, the department had submitted a list of 18 eligible officers to the said committee headed by the Additional Chief Secretary (Home) which included the name of the applicant at sr.no.6 (at P.B. page no.29). The Finance Department submitted a proposal to the General Administration Department vide letter no. sleko/2011/pra.kra. 236/kossha- Estt.2 dated 29th December,2011 (Annex-A-3,P-31 to 39 (both inclusive) to be placed before the Establishment Board for granting promotion in the cadre of Joint Director, Maharashtra Accounts and Treasury services, together with the list of all eligible and ineligible Officers as per seniority list. In the said list of all eligible and ineligible officers, at sr.no.5 there is

name of Shri B.G. Khedkar and in the endorsement made against his name is clearly mentioned that he was ineligible for promotion due to proposed departmental inquiry. Based on this list, DPC took place on 25/01/2012 (at P.B. page no. 40 to 44). It is therefore evident that on that date the Officers so included were eligible for promotion.

6. Based on this DPC, promotion order was issued vide order no. sleko/2011/pra.kra.236/ kosha (pra-2), Mantralaya, Mumbai dated 14th March, 2012 at sr.no.1 at P.B. page nos. 45 to 47 (both inclusive).

7. As per GAD G.R. No. SRV 1089/406/pra.kra.5/89/12 dated 1/08/1989 on page no.2 in para 1 (b) it is mentioned as under :-

1- fcujk[no 1/4 ol k/kj.k i dx 1/2 inkdfjrk fopkj Fk/ls &

c- pkj rs ngk ukokph fuoMI ph djko; kph v l Y; kl fuoMI phP; k vkdkj kP; k nqi V l a; brD; k depk&; kP; k @ vf/kdk&; kP; k fopkj dj.; kr ; kok-

8. However, it seems that in DPC dated 25/01/2012 it has not been followed and less number of candidates were considered. The applicant being at seniority list no.36 and 8th candidate in the seniority list as per the seniority list published by the Finance Department as on 1/1/2011 by its order dated 26/8/2011 (Annex-A-1). Since the DPC was to consider for 7 posts of open category, it was mandatory as per the provisions of GAD dated 1/8/1989 to consider

14 candidates from open category. However DPC did not include the name of applicant though he was eligible promotion as per the proposal of Finance Department.

9. While issuing promotion order of Joint Directors on 14/03/2012 only 6 candidates were promoted against clear vacancy of 7 posts and Mr. B.G. Khedkar's (though NT (D) was considered under open category) name was considered in DPC amongst candidates, but while issuing promotion order vide order dated 14/03/2012 the post of Joint Director, he was not promoted. It seems that he was not promoted because of departmental inquiry which was mentioned in table column no.12 in Finance Department's proposal before the Establishment Board dated 19/12/2011 (Annex-A-3,P-31).

10. Aggrieved by the order of promotion Finance Department order no. sleko/2011/pr.kra.236/ kosha (pra-2), Mantralaya, Mumbai, dated 14/03/2012, the applicant has approached to this Tribunal through this O.A. and claimed following main reliefs :-

“ (9) (i) It be declared that the applicant is eligible for promotion to the post of Joint Director along with the officers promoted vide order dated 15th March, 2012 (Annex-A-5).

(ii) The respondents be further directed to promote the applicant to the post of Director as per order dated 15th March,2012 by giving him a deem date of promotion w.e.f. 15/03/2012.

(iii) The respondents be further directed to grant to the applicant all consequential benefits accruing due to said promotion to the post of Joint Director, Maharashtra Accounts and Treasury Services.

(10) (i) During the pendency of present application by way of interim relief all future promotions to the post of Joint Directors be stayed till pendency of this application. Keeping in view the fact that the applicant is retiring on 31st December,2012, the respondents be directed to immediately review the select list approved by the Establishment Board in meeting held on 25th January,2012 and the same be corrected by including applicant's name.

(ii) Grant ad-interim relief in terms of prayer clause (ii) above.”

11. The respondents have filed their reply-affidavit on 08/01/2013 and justified the action taken by the respondents. It is submitted that the applicant was not due for promotion as per seniority in Open category and was not recommended by the DPC for promotion. One Shri B.G. Khedkar is at Sr.No.30 in the seniority list of 1st January,2010 of Dy. Director, MFAS, Class-I (Senior) and in that cadre since 5/7/2003 i.e. 8 years. Other Shri Kharche is at Sr.No.27 in the same seniority list of MFAS Class-I (Senior) since 9/1/2003 i.e. from 8 years. Hence, there was no need of relaxation for service of 3 years for promotion. Shri Khedkar was not promoted to the post of Joint Director because he was not in the zone of

consideration for promotion as per seniority for which Meeting of DPC was held on 24/05/2011. He was first time considered by the DPC held on 25/01/2012 as Open Category Officer as per Seniority list of 1st January,2010 and found fit for promotion subject to submission of Caste Validity Certificate and proposed D.E. Since, Shri B.G. Khedkar belongs to NT (D) Category he was asked to produce Caste Validity Certificate for promotion. He failed to produce the same, therefore he was not promoted to the post of Joint Director.

12. In affidavit-in-reply on behalf of the respondents in the second para in the bottom part following lines are mentioned : -

“Shri Khedkar was not promoted to the post of Joint Director because he was not in the zone of consideration for promotion as per seniority for which meeting of DPC was held on 24/05/2011. He was first time considered by the DPC held on 25/01/2012 as Open category officer as per seniority list of 1st January,2010 and found fit for promotion subject to submission of Caste Validity Certificate and proposed DE. Since, Shri B.G. Khedkar belongs to NT (D) category he was asked to produce Caste Validity Certificate for promotion. He failed to produce the same. Hence was not promoted to the post of Joint Director.”

13. We have perused minutes of DPC meeting dated 25/01/2012 on P.B. page no.42 in the last para it is seen that Shri B.G. Khedkar though from NT (D) category, had been taken in Open category. We failed to understand that when he was considered in

Open category why respondents asked him to produce Caste Validity Certificate of NT (D). This makes it clear that he was not given promotion because of departmental inquiry against him which is mentioned on P.B. page no.37 against his name at sr.no.5 in column no.12.

14. In view of these facts this Tribunal is not convinced on the logics given by the respondents in its reply. Ultimately also Mr. B.G. Khedkar was never promoted to the post of Joint Director and he finally superannuated on 31/10/2012 without promotion.

15. However, in reply respondents have not whispered regarding provisions of GAD G.R. No. SRV 1089/406/pra.kra.5/89/12 dated 1/08/1989 on P.B. page nos.71 & 72 (both inclusive) on page no.2 of the G.R. in para 1 (b) it is mentioned as under :-

1- fcujk[No 1/4 of k/kj.k i dx 1/2 in kdfjrk fopkj FZ (le &

c- pkj rs ngk ukokph fuoMI ph djko; kph v l Y; kl fuoMI phP; k v kdkj kP; k nq i V l a; brD; k de p k &; k@; k @ vf/kdk &; k@; k fopkj dj.; kr ; kok-

Similarly about non applicability of above provisions in DPC dated 25/01/2012 is also not explained in reply of the respondents. It has not been clarified about why applicant was not promoted after retirement of Mr. P.M. Dixit on 31/03/2012 and finally

after retirement of Mr. B.G. Khedkar on 31/10/2012 since applicant retired on 31/12/2012.

16. The applicant has also filed rejoinder to the Government reply dated 08/01/2013. He has raised points regarding provision of GAD G.R. of 1989 and subsequent retirements.

17. We prima facie feel that if DPC dated 25/01/2012 (Annex-A-4,P40) would have followed the provisions of GAD G.R. dated 1/8/1989 at P.B. page nos. 71&72 (both inclusive) and its provision on page no.2 of the G.R. i.e. para 1 (b).

1- fcujk[No 1/4 of 1/1/1989] in 1/1/1989] &

c- pkj rs ngk ukokph fuoMI ph djko; kph v l Y; kl fuoMI phP; k vldkj kP; k nqi V l a; brD; k depk&; k@; k @ vf/kdk&; k@; k fopkj dj.; kr ; kok-

The applicant could have been promoted in the same order i.e. order dated 14/03/2012 and all clear 7 vacancies for promotion of open category would have been also filled.

18. Afterwards Shri P.M. Dixit who was promoted in order dated 14/03/2012, retired on superannuation on 31/03/2012. Again applicant could have been promoted from 1st April,2012 in this vacancy also.

19. Again Mr. B.G. Khedkar who was recommended by the DPC dated 25/01/2012 was never promoted and retired on

superannuation on 31/10/2012. Again applicant had chance for promotion from 1st November,2012 till his superannuation i.e. 31/12/2012.

20. It appears that because of non following of provisions of GAD G.R. dated 1/8/1989 in DPC dated 25/01/2012 the applicant lost opportunity three times to get promotion and work on promotional cadre as Joint Director, Maharashtra Finance Service. First time when initial order was issued on 14/03/2012, second time after retirement of Mr. P.M. Dixit, on 01/04/2012 and lastly on 01/11/2012 after retirement of Mr. B.G. Khedkar.

21. In view of above discussions in forgoing paras, we pass following order :-

ORDER

(i) The O.A. is partly allowed.

(ii) The respondents are directed to convene a special DPC meeting related to applicant's case and if he is found fit as on 25/01/2012, he should be given deemed date of promotion from the date of initial promotion order issued by the department i.e. 14/03/2012 and consequent to this he should be also given pensionary benefits.

(iii) Since the applicant never worked on the promotional post, he will not be entitled for any arrears or back wages.

(iv) Necessary decisions be taken by the respondents within four weeks from the date of this order.

(v) No order as to costs.

(Shree Bhagwan)
Member(A).

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

Dated :- 19/12/2018.

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