

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 925 of 2010 (D.B.)**

Vishwas S/o Laxmanrao Patil,
Aged about 52 years,
Occ. Service (Auditor),
R/o Kalwaghe Layout (Sagwan),
Buldana.

Applicant.

Versus

- 1) Government of Maharashtra,
Department of Cooperation,
Marketing and Textile, 5th floor,
Mantralaya, Annexe, Mumbai
through its Secretary.
- 2) Commissioner for Cooperation and
Registrar of Cooperative Societies,
Government of Maharashtra,
Central Administrative Building,
2nd floor, Civil Lines, Pune.
- 3) Divisional Joint Registrar,
Cooperative Societies (Audit),
Amravati Division, near Kanta Nagar,
ITI Colony, in the house of Taiwade, Amravati.
- 4) Shri Y.S. Mankar,
Divisional Joint Registrar,
Cooperative Societies (Audit), Amravati Division,
near Kanta Nagar,
ITI Colony, in the house of Taiwade, Amravati.
- 5) Shri M.R. Kakade,
Auditor, Grade-I,
Working with the District Special Auditor, Class-I,
Cooperative Societies (Sugar),
Amravati.

Respondents.

Shri A. P. Sadavarte, Advocate for the applicant.

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

S/Shri A.M. & A.A. Patil, Advocates for respondent no.5.

**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 22nd day of October,2018)

Heard Shri A.P. Sadavarte, 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 was appointed by the respondent vide its order dated 01/12/1982 and was joined on 03/12/1982 as Junior Clerk in Cooperative Department at Khamgaon on temporary basis. The applicant was posted in regular services on 12/12/1983 and lateron was confirmed on 27/12/1991. The applicant was getting the conveyance allowance from 1990 and now at the rate of Rs.1,000/- per month being physically handicapped person. The applicant is also having Employment Exchange Card for physically handicapped persons though he belongs to S.C. category. The applicant was initially promoted for the first time on 24/08/1995 as Sub-Auditor in

the Grade of Rs.1200-2040 and later on to the post of Auditor Grade-II vide order dated 11/11/2004 in the grade of Rs.5800/-.

3. The case of the applicant has been tested and examined by the Department by directing the applicant to appear before the Medical Board or Civil Surgeon for truthfulness and correctness of being physically handicapped. The said certificate has already been issued by the Civil Surgeon, Buldana and renewed from time to time.

4. The Government of Maharashtra has enacted the law i.e. the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 by which the appointment and promotions of the categories from physically handicapped persons are regulated. The Government of Maharashtra has initially issued the Government Resolution in 2002 for the promotion to the physically handicapped persons, but in that categories the partiality or defect body as physically handicapped persons was not covered and the said is now covered by the Government Resolution dated 07/07/2008 issued by the respondent no.1 wherein it is mentioned that the category of physically handicapped persons (one leg affected) is now considered to be the fit person for the promotion Auditor Grade-I. Not only this, the Government has also formulated the policy as to how to maintain seniority of the physically handicapped persons in the 100 point roster by giving him the first

preference over other candidates. If there is no other candidate of physically handicapped category then the name of that category like applicant should be mentioned on the top of other persons.

5. It is expected that the respondent nos. 3 and 4 should implement and honour the government policies in giving the promotions to the categories of physically handicapped (O.L.A.) like applicant, but the applicant is discriminated in the primary activities dated 07/12/2010 which is already objected by the applicant by ventilating his lawful grievance by representations dated 6/7/2009, 18/10/2010 & 11/12/2010. Those representations are not yet decided nor promotion is given to the applicant and hence the applicant is constrained to knock the door of this Tribunal for redressal of his lawful grievance for deciding the representations or considering the case of the applicant for promotion to the post of Auditor Grade-I. The applicant in this O.A. has claimed following reliefs :-

“8 (i) The applicant prays that the Hon’ble Tribunal be pleased to direct the respondent nos. 3 and 4 to act promptly on the representations of the applicant dated 6/7/2009, 18/10/2010 and 11/02/2010, Annexures-A-17 to Annex-A-19 annexed to the original application and further direct to consider the case of the applicant for the promotional post i.e. to the post of Auditor Grade-I from physically handicapped category (O.L.) in view of the directions of Government of Maharashtra vide

Government Resolutions dated 5/3/2002 and 7/7/2008 by suitable order or direction.

(ii) direct the respondent nos. 3 and 4 to consider the case of the applicant in the light of the directions or scheme formulated by the Government of Maharashtra in that Government Resolution dated 5/3/2002 placing the applicant on the top in order of seniority giving first preference to the applicant in the 100 point roster and further be pleased to considered the case of the applicant for the promotional post of Auditor Grade-I from the post of Auditor Grade-II.

(iii) grant any other reliefs deemed fits in the facts and circumstances of the application.

As per Amended prayer clause vide order dated 17/03/2011 (iv) quash and set aside the impugned illegal promotion order respondent no.5 dated 14/06/2007 and further be pleased to allow to place the same as document nos. A-20 to A-23 to the present original application and further be pleased to quash and set aside the communication of respondent nos.3 and 4 dated 29/12/2010 answering the representation of the applicant by respondent nos. 3 and 4 and direct the respondents to promote the applicant from the post of physically handicapped persons categories by setting aside the promotion order of Shri M.R. Kakde dated 14/06/2007 in the interest of justice.

As per amended clause vide order dated 01/08/2012 (v) declare that the applicant is a senior most as per the service record given by respondent no.5 as the date of appointment of applicant is 01/12/1982 and the date of initial appointment of respondent no.5 is 26/09/1990 and further be pleased to declare that no promotion either to the applicant or respondent no.5 is given from category of physically handicapped person by the respondent nos. 1 to 4.

(vi) direct the respondent to consider the case of applicant for promotion to the post of Auditor Grade-I on the basis of resolution of government of Maharashtra dated 7/7/2008 and 8/9/2008 and issue necessary directions to that effect.

(9) direct to consider the case moved by representations dated 6/7/2009, 18/10/2010 and 11/12/2010 Annex-A-17 to Annex-A-19 annexed to the original application on merits and in the light of the government policy dated 7/7/2009 and 5/3/2002. In the meantime, restrain the respondents to keep one post vacant from the candidates whose case are considered and decided to issue promotional orders from the post of Auditor Grade-II to the post of Auditor Grade-I from the category of physically handicapped category (one leg affected person), during the pendency of the original application in the interest of justice.”

6. The respondent nos. 1 to 3 have resisted the claim of the applicant. It is stated that O.A. is premature so far as the communications by the applicant dated 6/7/2009 and 18/10/2010 are concern, because in the above three letters the applicant had prayed that his case may be considered on the post of Auditor Grade-I by way of promotion, but in fact on 11/10/2010 in the Chairmanship of Additional Registrar (Establishment), Pune the meeting was held in which it was decided to fill up the vacant post in Class-III. Therefore, the Divisional Selection Committee was appointed by the respondent no.3, which has been consisted of three Members and therefore the Divisional Selection Committee, the above two letters were submitted. Accordingly, the meeting of the Committee was held on 7/12/2010 in which the Committee refused the promotion to the present applicant on the ground that one post of Auditor Grade-I is already filled in by the handicapped candidate Shri M.R. Kakde on 28/06/2007 and hence again handicapped person cannot be promoted. Therefore, the said aspect was taken into consideration by the Selection Committee in its meeting dated 7/12/2010. Accordingly, the applicant was informed vide letter dated 29/12/2010. Hence the present O.A. is premature and not tenable. Moreover, the applicant could have filed the appeal before the Commissioner for co-

operative, but without exhausting the remedy available, the applicant has filed this O.A. which needs to be dismissed on this ground alone.

7. It is further submitted that the applications dated 6/7/2009 and 18/10/2010 have been placed before the Divisional Selection Committee on 7/12/2010. In the said letter the applicant requested to give him a promotion on the post of Auditor Grade-I as per the reservation for handicapped. In the meeting of Selection Committee dated 7/12/2010, the Committee held that out of 16 sanctioned posts of Auditor Grade-I on the promotion basis had already been filled in the year 2007 i.e. handicapped Shri M.R. Kakde. It is further submitted that as per G.Rs. dated 2/5/1998 and 5/3/2002, there shall be 3% reservation and therefore, as per these Resolutions it comes to 0.48. Therefore, the reservation did not come for the single post out of 16 posts even through as per letter of the GAD dated 10/11/2004, if number of post is above one and less than 34, then one post shall be reserved for the handicapped and hence Shri M.R. Kakade has been promoted in the year,2007 from the reservation of the handicapped. Therefore the applicant's application for promotion on the post of Auditor Grade-I could not be considered by the Selection Committee and the same was rejected by the Selection Committee and the same was communicated to the applicant vide letter dated 29/12/2010.

8. It is not disputed that the applicant came to be appointed on 3/12/1982 as a Junior Clerk. It is submitted that as per the provisions of the Departmental Examination Act, 1983 the applicant should have passed the departmental examination within five years, but he passed the examination on 26/03/1990. Therefore, upto 1990 the applicant was not qualified for the promotion. It is submitted that as per the requirement for the post of Auditor Grade-II the candidate shall pass the GDC & A examination, but the applicant passed the said examination in the months of May, 2000 and in the meantime i.e. 1/3/2000 to 30/6/2004 there was stay for filling the vacant post and hence the applicant was promoted on the post of Auditor Grade-II on 16/11/2004. The Department from time to time as per law promoted the applicant and hence the present O.A. is devoid of merit and liable to be dismissed.

9. It is submitted that the seniority list prepared by the Department has never been challenged by the applicant till the date of filing reply and hence it is deemed to be admitted by the applicant and hence as per the law of estoppels, he cannot agitate the same now before the Tribunal. It is further submitted that the applicant did not take any objection to the seniority list prepared and published by the Department time to time.

10. It is submitted that for the post of Auditor Grade-I there are only 16 sanctioned posts out of which one post came to be reserved as per the provision made by the GAD. As per that provision, one person is already promoted on the post of Auditor Grade-I. Therefore until that person is working on that post again another handicapped person cannot be promoted.

11. We have perused the various documents placed on record, we have also gone through the arguments putforth by the learned counsel for the applicant and the learned P.O. It is material to note that the applicant was initially appointed as Junior Clerk on 03/12/1982 and was promoted as Sub Auditor on 24/08/1995, whereas, Shri M.R. Kakde (R/5) was initially appointed as Sub-Auditor on 20/11/1990. Thereafter the applicant was promoted as Auditor Cadre-II on 11/11/2004 and Shri M.R. Kakde (R/5) was promoted on the said post on 29/03/1997. From the seniority list as on 01/01/2007 which is at P.B. page no.141 in respect of Auditor Cadre-II (Group-III) employees, it seems that the respondent no.5, Shri M.R. Kakde stands at sr.no.9, whereas, the applicant stands at sr.no.57 which is in other word means that the contention of the learned counsel for the applicant that Shri M.R. Kakde (R/5) was junior to the applicant is incorrect. Therefore, the respondent no.5 Shri M.R. Kakde (R/5) who is also in the category of physically

handicapped has been rightly promoted to the post of Auditor Grade-I by the respondent authorities. We, therefore do not find any merits in the O.A. Hence, the following order :-

ORDER

The O.A. stands dismissed with no order as to costs.

(Shree Bhagwan)
Member(A).

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

Dated :- 22/10/2018.

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