

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 261/2021 (D.B.)

Nilkanth S/o Bhaskar Lanjewar,
Aged about 40 years, Occ. Presently working
as Paniwala in the office of C.C.F. Gadchiroli,
R/o Gadchiroli.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary for Forest Department
Mantralaya, Mumbai-32.
- 2) Chief Conservator of Forest,
(Regional), Gadchiroli, Forest
Administrative Building, Potegaon Road, Gadchiroli.
- 3) Conservator of Forest (Regional),
Gadchiroli, Forest Administrative Building,
Potegaon Road, Gadchiroli.

Respondents.

Shri S.A.Marathe, Id. Advocate for the applicant.
Shri A.M.Khadatkar, Id. P.O. for the respondents.

**Coram :- Shri Shree Bhagwan, Vice-Chairman and
Shri M.A.Lovekar, Member (J).**

Dated :- 14/12/2021.

JUDGMENT

Per : Member (J).

Heard Shri S.A.Marathe, the Id. Counsel for the
applicant and Shri A.M.Khadatkar, the Id. P.O. for the Respondents.

2. In this O.A. seniority list prepared by respondent no. 2 on
10.03.2021 for grant of promotion to Group-D employees, and meeting

of the Departmental Promotion Committee to be held on 27.03.2021 for this purpose have been impugned.

3. **CASE OF THE APPLICANT IS AS FOLLOWS:-**

(i) The applicant belongs to Other Backward Class category. He possesses H.S.S.C. qualification. He was appointed as 'Paniwala' in the respondent department on 22.02.2008. At that time he was not holding S.S.C. qualification. On 17.10.2017 R-2 published seniority list (A-1) in which name of the applicant featured at Sr. No. 391. Rules governing various service conditions of Surveyor, Head Accountant, Accountant, Vanpal and Clerk-Cum-Typist working in the respondent department were framed and published in Gazette on 30.06.2011 (A-2). Rule 8 of said Rules provides that employees having completed continuous service of three years in Group-D and possessing qualification mentioned in Rule 8 (1) (b) (ii) and (iii) shall be eligible for promotion to Group-C post.

(ii) In 2018 aforesaid Rules of 2011 were amended and educational qualification of S.S.C. was replaced by Graduation/ Degree in any stream (A-3). The Rules of 2011 have been again amended and published in Gazette on 25.10.2019 (A-4). As per amended Rules of 25.10.2019 employees working in Group-D Category having completed S.S.C. shall be eligible for a period of five years from the date of publication of these Rules for promotion to Group-C post.

(iii) Under the Rules of 2011, 2018 and 2019 continuous service of three years is a primary criterion. Educational qualification, age, typing, etc are additional criteria. The respondents chose to rely on G.R. dated 15.04.1991 issued by G.A.D. of State Government for fixing inter-se seniority though the Rules framed in this behalf are absolutely clear. By pressing into service G.R. of 15.04.1991 (A-5) while fixing inter-se seniority, the date of passing S.S.C. examination is taken to be the basis. As a result, some employees who are Junior to the applicant have been placed above him in the impugned seniority list dated 10.03.2021 (A-7). This was preceded by communication dated 13.01.2021 which instructed, inter alia, that to be eligible for promotion to Group-C post requisite educational qualification was S.S.C..

(iv) By letter dated 18.03.2021 (A-8) R-3 constituted Departmental Promotion Committee and scheduled its meeting on 27.03.2021.

(v) Higher authorities of the respondent department viz Chief Conservator of Forest as well as Additional Chief Conservator of Forest have issued directions (A-9), (A-10) and (A-11) to follow Recruitment Rules framed by the department as G.Rs. of G.A.D. will not be applicable to them to cover the contingencies which have been provided for in the

Recruitment Rules of 2011, 2018 and 2019 by the Forest Department itself.

(vi) Provisional seniority list prepared on the basis of amended Rules dated 25.10.2019 was published on 08.03.2011 (A-12). Objections were called. Thereafter, on 10.03.2021 the seniority list (A-7) was finalized and published.

4. GROUND RAISED BY THE APPLICANT:-

(i) Rule 8 of Rules of 2011, 2018 and 2019 is quite clear and unambiguous. These Rules explicitly state that promotion from Group-D to Group-C shall be simpliciter on the basis of seniority-cum-merit. Since seniority has primacy for the purpose of considering cases of employees for granting promotion, seniority of the applicant (and similarly situated persons) ought to have been counted from the date of their entry in Group-D i.e. the date of initial appointment. The applicant was appointed on 22.02.2008. As per Rule 8 of aforesaid Rules, on completion of three years from the said date he became eligible to be considered for promotion to Group-C post.

(ii) Seniority of the applicant ought not to have been fixed on the basis of G.R. dated 15.04.1991 issued by G.A.D.. There was no warrant to

rely on G.R. of G.A.D. since the recruitment rules were absolutely clear on the point of how seniority was to be fixed.

(iii) After publication of provisional seniority list on 08.03.2021 as per amended Rules dated 25.10.2019, objections were called. Unless all these objections were decided seniority list could not have been finalized on 10.03.2021 for the purpose of considering cases of employees for promotion.

(iv) If in the Departmental Promotion Committee's meeting scheduled on 27.03.2021 seniority list dated 10.03.2021 is acted upon, the applicant would be prejudicially affected since persons junior to him (as per seniority list prepared on the basis of entry in Group-D) would be promoted.

5. On the basis of case set up as above the applicant seeks following substantive reliefs:-

- i) Quash and set aside the impugned seniority list published on 10.03.2021 for effecting promotions of Group-D employees to Group-C post;
- ii) Quash and set aside the communication dated 18.03.2021 whereby, the D.P.C. is constituted to hold meeting on 27.03.2021 for promotion of the employees on the basis of list published on 10.03.2021.

6. REPLY OF RESPONDENTS:-

(i) When the applicant was appointed on 22.02.2008 on the post of 'Paniwala' he had not completed S.S.C. Initially seniority list dated 17.10.2017 was prepared on the basis of date of initial appointment.

(ii) Rules of 2011, 2018 and 2019 are basically Recruitment Rules and they do not govern the scheme of promotion.

(iii) Rule 8 of Rules of 2011, 2018 and 2019 stipulates, inter alia, continuous service of three years in Group-D and educational qualification. Guidelines in respect of counting seniority for the purpose of giving promotion are contained in G.R. of G.A.D. dated 15.04.1991.

(iv) The respondent no. 2, by communication dated 13.01.2021 (A-6) instructed for preparation of seniority list for granting promotion to Group-D employees. In this letter it was specifically mentioned that only the employees who possessed minimum educational qualification of S.S.C. would be eligible.

(v) By letter dated 10.03.2021 (A-7) respondent no. 2 called for confidential information of Group-D employees in prescribed proforma (copy of which is at pg. no. 39) who fell in the consideration zone for promotion to Group-C post.

(vi) There is no substance in the contention of the applicant that objections to the impugned seniority list were not decided. By letter

dated 26.03.2021 (A-11) the respondents communicated to the applicant that (considering his place in seniority list) he was not eligible for promotion and his representation dated 15.03.2021 (A-12) was disposed of.

(vii) After duly complying with all the formalities, including deciding objections to seniority list published along with covering letter dated 08.03.2021 (A-13), meeting of Departmental Promotion Committee was held on 27.03.2021 for promoting eligible and suitable employees working in Group-D to Group-C posts.

7. PROVISIONS:-

Rule 8 to Rules of 2011, 2018 and 2019 is as under:-

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requisite as per Rules of 2019 which were applicable. Consequently, the employees who had completed S.S.C. prior to completion of the same by the applicant were placed above him in the list of seniority. This was perfectly in accordance with law. In support of this conclusion reliance may be placed on **the judgment of the Hon'ble Supreme Court "Union of India Vs. Krishna Kumar in Civil Appeal No. 672 of 2019 (Arising out of SLP (C) No. 26451 of 2014) delivered on 14.01.2019"**. In this case it is held:-

"It is well settled that there is no vested right to promotion, but a right to be considered for promotion in accordance with the Rules which prevail on the date on which consideration for promotion takes place. This court has held that there is no rule of universal application to the effect that vacancies must necessarily be filled in on the basis of the law which existed on the date when they arose.

In this case following observations of the Hon'ble Supreme Court in **"Deepak Agrawal and Another Vs. State of Uttar Pradesh Judgment in Civil Appeal No. 6587 of 2003 delivered on 31.03.2011"** have been quoted:-

"It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the "rules in force" on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be

considered for promotion. The right considered for promotion accrues on the date of consideration of the eligible candidates."

Reliance may also be placed on a ruling of Hon'ble Supreme Court "**Palure Bhaskar Rao Etc. Vs. P. Ramaseshaiah & Ors. Judgment delivered on 12.04.2017 in Appeal Nos. 6795-6798 of 2014**". In this case following observations in the case of **R. Prabha Devi and Ors. Vs. Government of India 1988 SCR (3) 147 through Secretary, Ministry of Personnel and Training, Administrative Reforms and Ors. have been quoted :-**

"The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority".

"When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post."

9. In view of facts of the case and the legal position stated above we hold that seniority was rightly fixed as per Annexure-A-13. Hence, the applicant would not be entitled to any relief.

For all these reasons, the O.A. deserves to be dismissed.

Hence, the order-

ORDER

The O.A. is dismissed. No order as to costs.

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

(Shree Bhagwan)
Vice-Chairman.

Dated :- 14/12/2021.

*aps.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : A.P.Srivastava

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 14/12/2021.

Uploaded on : 15/12/2021.