

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.900/2021(S.B.)

Rajendra Shesharao Jawanjal
Aged about 55 years,
Occ. presently working as a Naib Tahsildar at Katol,
District Nagpur.

Applicant.

Versus

- 1) State of Maharashtra
Through its secretary,
Revenue Department,
Mantralaya, Mumbai

- 2) The Divisional Commissioner,
Nagpur Division, Nagpur

- 3) The Collector,
Nagpur District, Nagpur

Respondents

Shri S.A.Marathe, Ld. Counsel for the applicant.
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

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

Dated: - 16th February, 2024.

JUDGMENT

Judgment is reserved on 14th February, 2024.

Judgment is pronounced on 16th February, 2024.

Heard Shri S.A.Marathe, learned counsel for the applicant and Shri A.M.Khadatkar, learned P.O. for the respondents.

2. Case of the applicant is as follows. The applicant was appointed as Talathi on 05.06.1985. By order dated 03.09.2005 (Annexure A-3) first time bound promotion was given to him w.e.f. 26.10.1999. By Judgment dated 15.09.2011 in O.A.No.866/2010 (Annexure A-4) this Tribunal directed that the applicant be promoted to the post of Circle Inspector and by order dated 20.12.2011 (Annexure A-5) he was promoted to the said post. By order dated 19.02.2013 (Annexure A-6) he was given deemed date of promotion to the post of Circle Inspector as 26.02.2010. By order dated 02.06.2016 (Annexure A-7) the applicant was given second time bound promotion w.e.f. 01.10.2015 instead of 26.10.2011 i.e. 12 years after getting first time bound promotion because inspite of promotion to the post of Circle Inspector his pay had remained the same. By representation dated 15.10.2020 (Annexure A-9) he ventilated these grievances. By the impugned order dated 19.07.2021 (Annexure A-1) he was informed that in meetings of D.P.C. held on 29.07.2012 and 14.01.2015 he had failed in attaining the benchmark. Eventually, he was given second time bound

promotion w.e.f. 01.10.2015. A.C.Rs. from 2002 to 2014 were not communicated to him. Therefore, these A.C.Rs. ought not to have been taken into account while depriving him of benefits of second time bound promotion and deferring the same till meeting of D.P.C. dated 05.01.2016. He should have been given second time bound promotion w.e.f. 26.10.2011 and third time bound promotion, as per G.R. dated 03.09.2019 (Annexure A-8), in 2017. Hence, this O.A..

3. With their reply (at PP.105 to 111) respondents 2 and 3 have placed on record minutes of meetings of D.P.C. dated 19.07.2012, 03.01.2014, 14.01.2015 and 05.01.2016 (Annexures R-2, R-3, R-4 and R-5, respectively) to contend that on earlier three occasions the applicant could not attain the benchmark for grant of second time bound promotion and on the last occasion when he did attain the benchmark, he was given second time bound promotion.

4. According to respondents 2 and 3 there was no need to communicate A.C.Rs. to the applicant for the years 2002 onwards because none of these A.C.Rs. was adverse, which was in conformity with G.R. dated 01.12.1996 (Annexure R-6). Thus, respondents 2 and 3 have not disputed that A.C.Rs. from 2002 till 2014 were not communicated to the applicant.

5. In support of his case the applicant has relied on **Dev Dutt Vs. Union of India and Others AIR 2008 Supreme Court 2513** wherein it is held-

10. In the present case the bench mark (i.e. the essential requirement) laid down by the authorities for promotion to the post of Superintending Engineer was that the candidate should have 'very good' entry for the last five years. Thus in this situation the 'good' entry in fact is an adverse entry because it eliminates the candidate from being considered for promotion. Thus, nomenclature is not relevant, it is the effect which the entry is having which determines whether it is an adverse entry or not. It is thus the rigours of the entry which is important, not the phraseology. The grant of a 'good' entry is of no satisfaction to the incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances.

View in Dev Dutt (supra) was approved by Full Bench of the Hon'ble Supreme Court in **Sukhdev Singh Vs. Union of India and Others AIR 2013 Supreme Court 2741** by observing as follows-

8. In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a

public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR – poor, fair, average, good or very good – must be communicated to him/her within a reasonable period.

In view of aforesaid factual and legal position the O.A. deserves to be allowed in terms of prayer (iii) which reads as under-

iii. Direct the respondents to communicate alleged adverse entries prior to 2012 to the applicant and grant him opportunity to submit his explanation and by reconsidering his explanation constitute fresh Departmental Promotion Committee for giving Second time bound promotion to the applicant from October 2011.

6. The O.A. is accordingly allowed. Representation/s made by the applicant in respect of A.C.Rs. by which he is aggrieved shall be considered and necessary steps taken including constitution of D.P.C., within three months from the date of receipt of the same. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 16/02/2024
rsm.

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

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J).
Judgment signed on : 16/02/2024.
and pronounced on
Uploaded on : 19/02/2024.