

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 917 of 2017
WITH CIVIL APPLICATION No.178 of 2023 (D.B.)

Avinash Bhaskar Potdukhe,
Aged about 50 years, Occupation – Service,
Circle Officer in the Tahasil Office,
Anjangaon Surgi, District Amravati.
R/o- At Post Vihigaon, Tq. Anjangaon Surji,
District Amravati.

Applicant.

Versus

1. The State of Maharashtra,
through its Secretary, The Revenue and Forest Department,
Mantralaya Extention, Mumbai MUMBAI-32.
2. The Collector, Amravati,
Collector Office, Camp, Amravati.
3. Kishor Ajabrao Wankhade,
Aged about 52 years. Occupation – Service,
Naib Tahasildar (Election), Tahasil Office, Pusad,
District Yawatmal. R/o-Kothari Nagar,
Old Dhamangaon, Tahasil Dhamangaon Railway,
District Amravati.

Respondents.

Shri Y.P. Kaslikar, Advocate for the applicant.
Shri V.A. Kulkarni, learned P.O. for the respondents.

WITH

ORIGINAL APPLICATION No. 918 of 2017
WITH CIVIL APPLICATION No.179 of 2023 (D.B.)

Janardhan Bhanudas Bondre,
Aged about 50 years. Occupation - Service Circle Officer,
Yevada, Tq. Daryapur, District Amravati
R/o- At Adharsha Nagar, Tq. Anjangaon Surji, District Amravati.

Applicant.

Versus

1. The State of Maharashtra,
through its Secretary, The Revenue and Forest Department,
Mantralaya Extention, Mumbai MUMBAI-32.
2. The Collector, Amravati,
Collector Office, Camp, Amravati.
3. Kishor Ajabrao Wankhade,
Aged about 52 years. Occupation – Service,
Naib Tahasildar (Election), Tahasil Office, Pusad,
District Yawatmal. R/o Kothari Nagar,
Old Dhamangaon, Tahasil Dhamangaon Railway,
District Amravati.

Respondents.

Shri Y.P. Kaslikar, Advocate for the applicant.
Shri V.A. Kulkarni, learned P.O. for the respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman and
Hon'ble Shri Vinay Kargaonkar,
Member (A).**

Dated :- 15/01/2024.

COMMON JUDGMENT

Per : Shri Justice M.G. Giratkar, Vice-Chairman.

Heard Shri Y.P. Kaslikar, learned counsel for the applicants, Shri V.A. Kulkarni, learned P.O. for respondent nos.1&2 and none for respondent no.3.

2. The O.As. are heard and decided finally with the consent of learned counsel for both the parties.

3. The case of the applicant in O.A.No.917/2017 in short is as under-

The applicant was appointed on the post of Talathi as per the order dated 21/01/1991. Thereafter, he was promoted on the post of Circle Officer as per the order dated 18/03/2010. In fact, Junior, i.e., respondent no.3, Shri Kishor A. Wankhade was promoted on 04/02/2004. Without any reason, the respondents have not granted deemed date of promotion to the applicant w.e.f. 04/02/2004. Hence, the applicant approached to this Tribunal for the following reliefs –

“(9) (1) This Hon'ble Court may pass suitable order to call the entire record concerning to the pleading of the applicant from the custody of the Respondent Department and after perusing all the record direct the Respondent Department to grant the benefit of the deemed date of 04-02-2004 for promotion to the post of Circle Officer to the Applicant as granted to the Respondent No. 3 in the interest of justice and equity.

(2) It is also prayed that this Hon'ble Tribunal may kindly be issues any suitable order quashing and setting aside the impugned promotion order issued by the Respondent Department dated 26/09/2017 and by directing to consider the name of the present applicant for promotion to the post of Naib Tahasildar from the date, on which his juniors are promoted to the said post and by giving deemed date of promotion as such and with full backwages and all other service benefits due and admissible to him.

3. That any other relief may kindly be granted in favour of the Applicant in the interest of justice and equity, including the cost on the Respondents.

(10) (1) That during the pendency of this Appeal, Hon'ble Tribunal may kindly be issues any suitable order staying the effect, operation

and implementation of the order passed by the Respondent No.3 dated 26th September 2017 till the pendency of this application in the interest of justice and equity.

2. That any other relief may kindly be granted in favour of the Applicant in the interest of justice and equity, including the cost on the Respondents.”

4. The case of the applicant in O.A.No.918/2017 in short is as under-

The applicant was appointed on the post of Talathi on 02/01/1992. The applicant has passed the Revenue Qualifying Examination on 14/03/2001. Thereafter, he was promoted on the post of Circle Officer by order dated 27/02/2012. The respondent nos.1 & 2 have promoted to respondent no.3, Shri Kishor A. Wankhade on 04/02/2004. Shri Wankhade was junior to the applicant. Without any reason, the respondents have not granted deemed date of promotion to the applicant w.e.f. 04/02/2004.

5. Both the O.As. are strongly opposed by respondent nos.1 and 2. It is submitted that respondent no.3 had filed O.A.No.554/2004 along with other applicant Shri Devidas R. Ugale. The said O.A. was decided on 19/11/2014. This Tribunal has directed the respondent nos.1&2 to promote respondent no.3, Shri Wankhade. Accordingly, the respondent nos.1 and 2 issued order dated 11/08/2016 and promoted respondent no.3, Shri Wankhade w.e.f. 04/02/2004. The

order is dated 11/08/2016, but deemed date was granted to Shri Wankhade w.e.f. 04/02/2004.

6. It is submitted by the side of respondent nos.1 and 2 that deemed date to respondent no.3 was granted because of the order of this Tribunal. Hence, both the O.As. are liable to be dismissed.

7. During the course of submission, there is no dispute that the applicants are senior to Shri Wankhade. The learned P.O. submits that because of the order of this Tribunal deemed date was granted to respondent no.3, Shri Wankhade w.e.f. 04/02/2004. The respondents should have followed the Government Circular dated 28/02/2017 which was issued after the Judgment of the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh & Ors Vs. Arvind Kumar Srivastava*** reported in ***2015 (1) SCC 347***. The material portion of the Government Circular dated 28/02/2017 is reproduced below –

“(1) The Hon'ble Maharashtra Administrative Tribunal, Mumbai, vide order dated 14.12.2016 in O.A. Nos. 59, 61 and 90 of 2016, has expressed displeasure over rejection of the claim of the applicants therein, for grant of Time Bound Promotion on the ground that the applicants had declined to accept temporary promotions, though in similar matters Hon'ble Tribunal has allowed the OAs and order of the Tribunal has attained finality.

2. The Hon'ble Tribunal, in Para 8 of aforesaid Judgment, has observed as under:-

“If a principle of general applicability is capable of being culled out from a particular pronouncement of this Tribunal, then similarly placed employees, though not before the Tribunal should be given the benefit thereof without actually moving this Tribunal for relief. If on the other hand, the relief is person specific, then of course, this direction will not apply.”

Therefore, the Hon'ble Tribunal has directed the undersigned to inform all the concerned departments regarding applicability of general judicial principle as explained in Para 8 of the aforesaid Judgment.

3. *The Hon'ble Supreme Court in the case of **State of Uttar Pradesh & Ors Vs. Arvind Kumar Srivastava** reported in **2015 (1) SCC 347** has laid down similar principle, thus:*

“Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently”.

4. *In view of the above, all the departments are hereby directed to take action according to the above directions given by the Hon'ble Maharashtra Administrative Tribunal, reiterating the legal position expounded by the Hon'ble Supreme Court.*

5. *The aforesaid directions be also brought to the notice of the offices under the administrative control of the departments.*

8. As per the said Circular, when the similarly situated employees are granted relief, then the same relief should have been granted to the similarly situated employees. In both the O.As., the applicants are similarly situated employees like Shri Wankhade (R/3). As per the order of this Tribunal, the respondent no.3, Shri Wankhade was granted deemed date of promotion w.e.f. 04/02/2004. Therefore, it was the duty of respondents to grant the same relief to both the applicants. The contention of the respondents that the respondent no.3 approached to this Tribunal, therefore, he was granted deemed date of promotion w.e.f. 04/02/2004, is not legal and correct. The

G.R. is very clear. The intention of the G.R. is that other similarly situated employees should not approach to the Courts. To avoid the litigations before the Courts, the said G.R. was issued, but the respondents have not followed the said G.R. There is no dispute that both the applicants are senior to the respondent no.3, Shri Wankhade. Therefore, they are entitled for deemed date of promotion w.e.f. 04/02/2004. Hence, we pass the following order –

ORDER

- (i) The O.As. are allowed.
- (ii) The respondents are directed to give the deemed date of promotion to the applicants w.e.f. 04/02/2004 on the post of Circle Officer and further promotion if they are eligible on the post of Naib Tahsildar with effect from the date on which their junior i.e. respondent no.3 was promoted.
- (iii) The respondents are directed to pay all the consequential benefits to the applicants within a period of three months from the date of receipt of this order.
- (iv) The C.As. are also disposed of.
- (v) No order as to costs.

(Vinay Kargaonkar)
Member(A).

(Justice M.G. Giratkar)
Vice-Chairman.

Dated :- 15/01/2024.

dnk.

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 15/01/2024.