

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 267 of 2010 (S.B.)

Madhav S/o Govind Nardodkar,
Aged about 63 years,
Resident of Plot No.112, Mhalgi Nagar,
Nagpur-440034.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Transport,
Mantralaya, Mumbai.
- 2) The Transport Commissioner,
Administrative Building,
3rd- 4th floor, Bandra East,
Mumbai-400051.
- 3) Regional Transport Officer,
Nagpur City, Nagpur.

Respondents

Shri T. Mandlekar, Advocate for the applicant.

Shri A.M. Ghogre, Id. P.O. for the respondents.

WITH

ORIGINAL APPLICATION NO. 437 of 2010 (S.B.)

Niranjan S/o Ramchandra Kokardekar,
Aged about 70 years,
Resident of Plot No.66, Bharat Nagar,
Nagpur-440033.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Transport,
Mantralaya, Mumbai.

2) The Transport Commissioner,
Administrative Building,
3rd- 4th floor, Bandra East,
Mumbai-400051.

3) Regional Transport Officer,
Nagpur City, Nagpur.

Respondents

Shri T. Mandlekar, Advocate for the applicant.

Shri S.A. Sainis, Id. P.O. for the respondents.

WITH

ORIGINAL APPLICATION NO. 438 of 2010 (S.B.)

Narayan S/o Jagoji Karmore,
Aged about 66 years,
Resident of Plot No.5, Panchdeep Nagar,
Jaiprakash Nagar,
Nagpur-440025.

Applicant.

Versus

1) The State of Maharashtra,
through its Secretary,
Department of Transport,
Mantralaya, Mumbai.

2) The Transport Commissioner,
Administrative Building,
3rd- 4th floor, Bandra East,
Mumbai-400051.

3) Regional Transport Officer,
Nagpur City, Nagpur.

Respondents

Shri T. Mandlekar, Advocate for the applicant.

Shri A.P.Potnis, Id. P.O. for the respondents.

WITH**ORIGINAL APPLICATION NO. 439 of 2010 (S.B.)**

Anand S/o Marotrao Dadilwar,
Aged about 64 years,
Resident of Plot no.47, Ladikar Layout,
Manewada Road,
Nagpur.

Applicant.**Versus**

- 1) The State of Maharashtra,
through its Secretary,
Department of Transport,
Mantralaya, Mumbai.
- 2) The Transport Commissioner,
Administrative Building,
3rd- 4th floor, Bandra East,
Mumbai-400051.
- 3) Regional Transport Officer,
Nagpur City, Nagpur.

Respondents

Shri T. Mandlekar, Advocate for the applicant.

Shri H.K. Pande, Id. P.O. for the respondents.

WITH**ORIGINAL APPLICATION NO. 623 of 2010 (S.B.)**

Govind Mahadeo Khare,
Aged about 68 years,
Resident of 03, Ladikar Layout,
Manewada Road, Nagpur.

Applicant.**Versus**

- 1) The State of Maharashtra,
through its Secretary,
Department of Transport,
Mantralaya, Mumbai.

2) The Transport Commissioner,
Administrative Building,
3rd- 4th floor, Bandra East,
Mumbai-400051.

3) Regional Transport Officer,
Nagpur City, Nagpur.

Respondents

Shri T. Mandlekar, Advocate for the applicant.

Shri A.M. Khadatkar, Id. P.O. for the respondents.

WITH

ORIGINAL APPLICATION NO. 624 of 2010 (S.B.)

Vinayak Mahadeo Chinchalkar,
Aged about 68 years,
Resident of Plot no.123, Vinaypushp,
Prabhat Nagar, Collector Colony,
Godhani Railway,
Nagpur.

Applicant.

Versus

1) The State of Maharashtra,
through its Secretary,
Department of Transport,
Mantralaya, Mumbai.

2) The Transport Commissioner,
Administrative Building,
3rd- 4th floor, Bandra East,
Mumbai-400051.

3) Regional Transport Officer,
Nagpur City, Nagpur.

Respondents

Shri T. Mandlekar, Advocate for the applicant.

Shri V.A. Kulkarni, Id. P.O. for the respondents.

WITH**ORIGINAL APPLICATION NO. 672 of 2010 (S.B.)**

Subhashsingh Kisansingh Banafar,
Aged about 65 years,
Resident of Revenue Colony,
Ganesh Nagar, Gondia.

Applicant.**Versus**

- 1) The State of Maharashtra,
through its Secretary,
Department of Transport,
Mantralaya, Mumbai.
- 2) The Transport Commissioner,
Administrative Building,
3rd- 4th floor, Bandra East,
Mumbai-400051.
- 3) Regional Transport Officer,
Nagpur City, Nagpur.

Respondents

Shri T. Mandlekar, Advocate for the applicant.

Shri P.N. Warjurkar, Id. P.O. for the respondents.

WITH**ORIGINAL APPLICATION NO. 825 of 2010 (S.B.)**

Sunanda Keshav Pendharkar,
Aged about 65 years,
Resident of "Ameya" Apts.
Surendra Nagar, Nagpur.

Applicant.**Versus**

- 1) The State of Maharashtra,
through its Secretary,
Department of Transport,
Mantralaya, Mumbai.

- 2) The Transport Commissioner,
Administrative Building,
3rd- 4th floor, Bandra East,
Mumbai-400051.
- 3) Regional Transport Officer,
Nagpur City, Nagpur.

Respondents

Shri T. Mandlekar, Advocate for the applicant.

Shri M.I. Khan, Id. P.O. for the respondents.

WITH

ORIGINAL APPLICATION NO. 160 of 2011 (S.B.)

Mr. Gangadhar Rambhau Karankar,
Aged about 65 years,
Resident of 79, Juna Kailas Nagar,
Juna Subhedar Layout,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Transport,
Mantralaya, Mumbai.
- 2) The Transport Commissioner,
Administrative Building,
3rd- 4th floor, Bandra East,
Mumbai-400051.
- 3) Regional Transport Officer,
Nagpur City, Nagpur.

Respondents

Shri T. Mandlekar, Advocate for the applicant.

Shri S.A. Deo, Id. C.P.O. for the respondents.

WITH
ORIGINAL APPLICATION NO. 161 of 2011 (S.B.)

Mr. Jaggaath Sivilal Shrivasa,
Aged about 61 years,
Resident of 273, Abhyankar Nagar,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Transport,
Mantralaya, Mumbai.
- 2) The Transport Commissioner,
Administrative Building,
3rd- 4th floor, Bandra East,
Mumbai-400051.
- 3) Regional Transport Officer,
Nagpur City, Nagpur.

Respondents

Shri T. Mandlekar, Advocate for the applicant.

Shri A.M. Ghogre, Id. P.O. for the respondents.

WITH
ORIGINAL APPLICATION NO. 162 of 2011 (S.B.)

Mr. Chandrashekhar Krishnarao Joshi,
Aged 61 years,
Resident of 47, Rameshwari Nagar,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Transport,
Mantralaya, Mumbai.

2) The Transport Commissioner,
Administrative Building,
3rd- 4th floor, Bandra East,
Mumbai-400051.

3) Regional Transport Officer,
Nagpur City, Nagpur.

Respondents

Shri T. Mandlekar, Advocate for the applicant.

Shri A.P. Potnis, Id. P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

COMMON JUDGEMENT

(Delivered on this 4th day of January,2018)

Heard Shri T.D. Maldlekar, learned counsel for the applicants and Shri A.M. Ghogre, learned P.O. and other Id. CPO/Pos. for the respondents.

2. All these O.As. are being disposed of by this common Judgment since they involved similar issue.

3. The applicants in these O.As., have been appointed as Junior Clerks and have retired. The details regarding date of appointment as Junior Clerk, date of actual promotion as Senior Clerk, date of retirement and the date on which they were entitled to claim deemed date of promotion are given as under :-

Sr. No.	O.A.No.	Date of appointment as Junior Clerk	Date of actual promotion as Senior Clerk	Date of retirement	Date of claiming deemed date promotion
1.	267/2010	20/12/1972	---	02/07/2005	5/9/1980
2.	437/2010	08/02/1965	17/05/1994	30/04/1999	5/9/1980
3.	438/2010	08/02/1965	---	30/04/2002	5/9/1980
4.	439/2010	09/11/1964	---	31/03/2004	5/9/1980
5.	623/2010	23/06/1971	---	30/04/2000	5/9/1980
6.	624/2010	16/06/1971	---	30/06/2000	5/9/1980
7.	672/2010	04/04/1966	13/03/1997	31/08/2003	5/9/1980
8.	825/2010	01/11/1966	20/11/1998	31/10/2004	5/9/1980
9.	160/2011	04/06/1972	---	31/10/2003	5/9/1980
10.	161/2011	20/11/1972	28/06/2004	31/07/2008	5/9/1980
11.	162/2011	10/06/1971	---	31/11/2001	5/9/1980

4. As already stated the applicants were appointed as Junior Clerk and were due for promotion after completion of 12 years' service on 05/09/1980. However, one Mr. J.B. Warokar, Mr. V.B. Umathe and Ku. Kamal Petkar who were Junior to the applicants were promoted prior to the applicants. The applicants were subsequently promoted to the post of Senior Clerk after their juniors were promoted.

5. The applicants filed various representations and requested that instead of their actual date of promotion to the post of Senior Clerk, they may be promoted on that post w.e.f. 05/09/1980. In fact their cases were also recommended for promotion for the deemed date of promotion, i.e., 05/09/1980. However, the same was not considered and on the contrary they were granted promotion

subsequent to their juniors vide impugned order dated 29/06/2009. The applicants have therefore filed separate O.As. in which they are claiming deemed date of promotion as Senior Clerk w.e.f. 05/09/1980 and all consequential monetary benefits as Senior Clerk and Head Clerk. For the purposes of convenience the record in O.A.No. 438/2010 is being considered.

6. In the reply affidavit filed on behalf of respondent nos. 2 and 3, it is admitted that Mr. V.B. Umathe, Mr. J.B. Warokar and Ku. K.B. Petkar, were juniors to the applicants. It is stated that the seniority list was published on 01/01/1993 and in the said list the applicants were placed much lower to Mr. V.B. Umathe and Mr. J.B. Warokar, but the applicants never took any objections to the seniority list as on 01/01/1993. It is further stated that Mr. J.B. Warokar was temporarily promoted as Senior Clerk on 05/09/1980 in the office of Deputy RTO, Chandrapur and the applicants never objected for such promotion. It is further stated that Ku. K.B. Petkar was not eligible to get deemed date of promotion w.e.f. 05/09/1980, but she was found eligible for such promotion in the year 1989. However she was wrongly promoted w.e.f. 05/09/1980. It is thus admitted fact that Mr. V.B. Umathe, Mr. J.B. Warokar and Ku. K.B. Petkar were promoted though they were juniors.

7. The learned counsel for the applicants has placed on record one Chart at Exh-X (P-110) which gives details of the seniority list of employees including that of applicants and Mr. V.B. Umathe, Mr. J.B. Warokar and Ku. K.B. Petkar. The said Chart is reproduced below for the purposes of convenience.

Sr. No	Name	Case no.	Date of birth	Date of appointment	Date of retirement	Applicants place in Seniority list of employees			Remarks
						1984	1987	1993	
1	Mr.A.M. Dadilwar	439/10	9/3/45	9/11/64	31/3/03	(45)	(44)	(04)	Jr. Clerk
2	Mr.N.R. Kokardekar	437/10	6/4/41	8/2/65	30/4/99	(46)	(45)	(05)	Jr. Clerk
3	Mr.N.J. Karemore	438/10	11/4/44	8/2/65	30/4/02	(48)	(47)	(07)	Jr. Clerk
4	Mr.S.K. Banafar	672/10	10/6/45	4/4/66	30/6/03	(49)	(48)	(08)	Jr. Clerk
5	Ku.Kamal Petkar	Promoted	20/11/45	7/4/66	30/11/03	(50)	(49)	(09)	(5/9/80) promoted asSr. Clerk w.e.f. 11/11/2000
6	Smt.S.K. Pendharkar	825/10	24/10/46	1/11/66	31/10/04	(52)	(51)	(11)	Jr. Clerk
7	Mr. C.K. Joshi	162/11	23/8/50	10/6/71	31/8/08	(66)	(65)	(20)	Jr. Clerk
8	Mr.V.M. Chinchalkar	624/10	26/6/42	16/6/71	30/6/00	(67)	(66)	(21)	Jr. Clerk
9	Mr. G.M. Khare	623/10	15/4/42	23/6/71	30/4/00	(68)	(67)	(22)	Jr. Clerk
10	Mr.G.R. Karankar	160/11	10/10/45	4/6/72	30/10/03	(75)	(74)	(28)	Jr. Clerk
11	Mr.M.G. Nardodkar	267/10	14/12/47	20/12/72	31/12/05	(81)	(80)	(33)	Jr. Clerk
12	Mr. J.S. Shriwas	161/11	23/7/50	20/12/72	31/7/08	(82)	(81)	(34)	Jr. Clerk
13	Mr.V.B. Umathe	Promoted	12/2/48	1/7/75	28/2/06	(87)	(86)	(21)	Promoted as Sr. Clerk w.e.f. 31/7/1989
14	Mr.J.B. Warokar	Promoted	1/7/45	12/4/76	31/7/03	(94)	(93)	(23)	Promoted as Sr. Clerk w.e.f. 5/9/1980

8. From the aforesaid Chart it will be clear that all the applicants were quite seniors to Mr. V.B. Umathe, Mr. J.B. Warokar and Ku. K.B. Petkar and though Mr. V.B. Umathe, Mr. J.B. Warokar and Ku. K.B. Petkar were juniors to the applicants, they were given promotion earlier in date than that of applicants.

9. The learned counsel for the applicants has also invited my attention to recommendation at page nos. 66 to 69 (both inclusive) in O.A.No.438/2010. Perusal of the said recommendation clearly shows that the office recommended the cases of the applicants for deemed date of promotion w.e.f. 05/09/1980, i.e., on the date on which the juniors to the applicants, i.e., Mr. V.B. Umathe, Mr. J.B. Warokar and Ku. K.B. Petkar were promoted and it was recommended that these dates shall be given to the applicants also. However, the said recommendation was not accepted.

10. The learned counsel for the applicants also placed reliance on the Minutes of Meeting of the DPC. The copy of the said Minutes is at P.B. page nos. 72 to 99 (both inclusive). In the said Minutes of the meeting the applicant's claim for deemed date of promotion was considered favourably. However, in spite of such favourable consideration deemed date was not granted to the respective applicants. Vide impugned order dated 29/06/2009 the applicant Mr. Narayan Karmore's claim for deemed date was rejected

on the ground that Mr. V.B. Umathe and Mr. J.B. Warokar were granted regular promotion from 31/07/1989 and therefore the applicants were also granted deemed date of promotion from 31/07/1989 instead of 05/09/1980.

11. From the Chart at Exh-X it will be clear that Mr. V.B. Umathe, Mr. J.B. Warokar and Ku. K.B. Petkar were promoted prior to the applicants though they were juniors to the applicants and therefore the date on which these three employees were promoted, same should have been granted to the applicants also. Admittedly, these employees are on the promotional post from 05/09/1980 and therefore there is no reason as to why the same date has not been given to the applicants also.

12. The learned counsel for the applicants placed reliance on the Judgments as follows :-

(i) Major General H. M. Singh, VSM Vs. Union of India & Another, Civil Appeal no.192 of 2014 arising out of (SLP (C) 2008 of 2010).

(ii) P.N. Premchandran Vs. State of Kerala (2003 DGLS (SC) 935)

(iii) Deep Chand Sharma Vs. Union of India (O.A.No.1709/2012) Central Administrative Tribunal, Delhi.

(iv) Vinor Kumar Singal Vs. Union of India and Ors. Appeal (Civil) 4721 of 1995.

(v) *Jagdish Prasad Vs. State of Rajasthan & Ors. (Civil Appeal no.5102-2103 of 2011) arising out of SLP (C) no.20693-20694 of 2009.*

(vi) *Shriniwas S/o Parshuramji Meshram Vs. Zilla Parishad, Chandrapur & Another, (Writ Petition no.1434 of 2009) (High Court, Nagpur Bench)*

(vii) *E.P. Royappa Vs. State of Tamil Nadu (1974 AIR (SC) 555)*

(viii) *General Manager, Southern Railway, Gurbu Das Intervener Vs. Rangachari (1962 AIR (SC) 36.*

(ix) *Ganga Ram Vs. Union of India (1970 AIR (SC) 2178).*

(x) *General Manager, Southern Central Railway, Secunderabad Vs. A.V.R. Siddhantti (1974 AIR (SC) 1755).*

(xi) *Union of India Vs. Mool Chand Dasumal Parsasani (1971 AIR (SC) 2369.*

13. I have carefully gone through the said Judgments. The learned counsel for the applicants submits that the action of authorities in depriving the appellant's due consideration for promotion would have resulted in violation of his fundamental right under Article 14 of the Constitution of India. Such an action at the hands of the respondents would unquestionably have been arbitrary. In the case of **P.N. Premachandran Vs. State of Kerala** (cited supra), it was observed that in view of the administrative lapse, the Departmental Promotion Committee did hold a sitting from 1964 to 1980, the

respondents cannot suffer owing to such administrative lapse on the part of State. In the present case also the applicants cannot be allowed to suffer for not conducting Departmental Promotion Committee's Meeting to consider their promotions. In **Jagdish Prasad Vs. State of Rajasthan & Ors** (cited *supra*), it was observed by the Hon'ble Apex Court that the Court must keep in mind the constitutional obligation of both the appellants/ Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a welfare State. It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part to their fundamental right guaranteed under the Article 16 of the Constitution. The guarantee of fair consideration in matters of promotion under Article 16 virtually flows from the guarantee of equality under Article 14 of the Constitution.

14. Admittedly the applicants were seniors to Mr. V.B. Umathe, Mr. J.B. Warokar and Ku. K.B. Petkar. Admittedly, these three candidates have been given promotion on 05/09/1980 and therefore there is absolutely no reason to as to why the applicants were not considered for promotion from same date. I, therefore, pass the following order :-

ORDER

The O.As. are allowed with no order as to costs. The impugned order dated 29/06/2009 in O.A.Nos. 267/2010, 437/2010, 438/2010, 439/2010 and the impugned recommendation dated 08/06/2009 in O.A.Nos. 623/2010, 624/2010, 672/2010, 825/2010, 160/2011, 161/2011 and 162/2011 so far as respective applicants are concerned are quashed and set aside. The respondents are directed to grant deemed date of promotion to the applicants as Senior Clerk w.e.f. 05/09/1980 with all other monetary and consequential benefits as may be admissible as per rules within four months.

Dated :- 04/01/2018.

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

dnk.