

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.304 OF 2016

DISTRICT : THANE

Shri Pundalik Narayan Dalal,)
R/o Shree Complex, A-1/103, Opp. Beloli,)
Badlapur (W), District Thane)..Applicant

Versus

1. The State of Maharashtra,)
Through Additional Chief Secretary,)
Home Department, Mantralaya, Mumbai 400032)
2. The Director General of Police, MS,)
Shahid Bhagatsingh Marg, Colaba, Mumbai-1)
3. The Commissioner of Police, Thane 400601)..Respondents

Shri S.S. Dere – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson

Smt. Medha Gadgil, Member (A)

RESERVED ON : 20th July, 2023

PRONOUNCED ON: 10th August, 2023

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Heard Shri S.S. Dere, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.
2. The applicant challenges order dated 1.3.2016 passed by respondent no.2 by which he came to be reverted to the post of Senior Clerk from the post of Head Clerk.
3. The applicant was appointed as a Junior Grade Clerk in the Police Department on 4.2.1982 from Scheduled Tribe (ST) category. He was promoted to the post of Senior Grade Clerk on 25.3.1997. His case was considered for the next promotional post of Head Clerk in the Departmental Promotion Committee (DPC) held in 2006. However, he was found unfit as there was adverse Annual Confidential Report (ACR) for the year 2005-06. The applicant challenged his adverse ACR by filing OA No.1524 of 2009 in this Tribunal. The said OA was allowed by order dated 17.11.2011 wherein it was held that the aforesaid adverse entries cannot be sustained in law. In compliance of the said order the adverse ACR of the applicant was cancelled. However, respondent no.3 received information that the caste certificate of the applicant belonging to ST category had been invalidated on 12.1.2009. Hence, in accordance with the GAD GR dated 30.6.2004 the seniority of the applicant was fixed as on 15.6.1995. In the meanwhile the applicant also obtained caste certificate as belonging to Koshti Caste i.e. Special Backward Class (SBC) category on 20.6.2008 and obtained caste validity certificate for the same on 3.11.2010. The Special Inspector General, Konkan Range refixed the seniority of the applicant in the cadre of Junior Clerk and Senior Grade Clerk as on 15.6.1995 and 23.4.2012 respectively in compliance of the standing orders of the Government in GAD issued as per GR dated 30.6.2014.

4. In the meanwhile the applicant has filed OA No.267 of 2010 in this Tribunal seeking promotion to the post of Head Clerk as per DPC of 2006. This Tribunal by order dated 10.10.2013 gave the following directions:

“6. Having regard to the aforesaid facts and circumstances, the Respondents are directed to constitute a review Promotion Committee for consideration of promotion of the Applicant to the post of Head Clerk on the basis of select list of 2006.”

5. The DPC was constituted on 16.9.2014 in compliance of the order passed by this Tribunal. The name of the applicant was considered in this DPC. However, the committee unanimously decided to ask for report on the matter from Inspector General, Konkan Range and ordered as follows:

“In view of the various lacunae pointed out in the Remarks Column, it is not possible for the Committee to take a decision as to the inclusion of his name in the Select List of 2006 and consider his fitness for promotion as Head Clerk. The Committee unanimously decides to send all the material to Special IG Konkan Range to decide his position as Senior Clerk and then only decision about his further promotion as Head Clerk can be taken by the Committee. IG Konkan Range should give his report within a week.”

6. Pursuant to this Review DPC was taken on 26.3.2015 and the entire case was discussed, which reads as follows:

“त्यामुळे श्री.दलाल यांची आता नव्याने वरिष्ठ श्रेणी लिपिकपदी दि.२३.४.२०१२ रोजी सेवाज्येष्ठता पुनर्निश्चित केलेली असल्यामुळे त्यांनी दाखल केलेल्या मूळ याचिका क्र.२६७/२०१० वर मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, खंडपीठ मुंबई यांनी दि.१०.१०.२०१३ च्या

आदेशान्वये दिलेल्या निर्णयानुसार, त्यांचा सन-२००६ च्या निवडसूचीवर वरिष्ठ श्रेणी लिपिक ते प्रमुख लिपिकपदी "विशेष मागास प्रवर्ग" या मागास प्रवर्गातून विचार कतरा येत नाही. कारण पूर्वी त्यांना सन-२००६ च्या निवडसूचीवर त्यांचा वरिष्ठ श्रेणी लिपिकपदाचा पदोन्नतीचा दि.२५.३.१९९७ च्या ज्येष्ठतेनुसार विचार करण्यात आला होता. त्यानंतर श्री.दलाल यांचे "अनुसूचित जमाती" चे जातप्रमाणपत्र अवैध ठरल्याबाबतचे प्रकरण प्रशासनाच्या निदर्शनास आल्यामुळे, त्यांना शासन निर्णय, दि.३०.६.२००४ नुसार शासन सेवेत संरक्षण अनुज्ञेय असल्यामुळे, त्यांची कनिष्ठ श्रेणी लिपिकपदी व वरिष्ठ श्रेणी लिपिकपदी नव्याने सेवाज्येष्ठता पुनर्निश्चित करण्यात आली आहे. त्या नव्याने पुनर्निश्चित केलेल्या वरिष्ठ श्रेणी लिपिकपदातील पदोन्नतीचा दिनांक २३.४.२०१२ च्या सेवाज्येष्ठतेनुसार ते सन-२००६ च्या निवडसूचीवर "विशेष मागास प्रवर्ग" या मागास प्रवर्गातून पदोन्नती कक्षेत येत नाहीत.

In view of above factual position he cannot be considered on the Select List of 2006 for the promotion of Head Clerk."

7. Ld. PO opposes the OA and states that the applicant is not entitled to relief in view of the special circumstances in this case.

8. We have carefully considered submissions of both the sides. It is seen that applicant was initially appointed as Junior Clerk on the basis of his caste certificate as belonging to Halba ST category. However, this caste certificate was invalidated by the concerned authority on 12.1.2009. However, the applicant had already obtained a caste certificate as belonging to Koshti SBC category dated 20.6.2008. After his caste certificate as belonging to ST category was invalidated on 12.1.2009 action was taken in compliance of the standing orders of the GAD vide GR dated 30.6.2004. The action of refixing seniority of the applicant was taken and was communicated to the applicant on 4.4.2015. The impugned order passed on 1.3.2015 is clearly in consonance with the standing orders of

GAD issued by GR dated 30.6.2004. In view of this GR the seniority of the applicant came to be fixed as his caste certificate belonging to ST came to be invalidated on 12.1.2009. The Review DPC had rightly concluded that the applicant cannot be considered in the select list of 2006 because of the change in his seniority in view of the invalidation of his Halba Caste (ST) certificate and re-fixing of his seniority in view of the standing orders of the Govt. in GRs dated 24.6.2004 and 30.6.2004.

9. In view of this the applicant is not entitled to any relief.
10. The Original Application is dismissed. No orders as to cost.

Sd/-

(Medha Gadgil)
Member (A)
10.8.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
10.8.2023

Dictation taken by: S.G. Jawalkar.