

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.317 OF 2019**

DISTRICT : SATARA

Shri Nana Gulabrao Nalawade,)
Age 62 years, occ. Retired Talathi,)
R/at Vidyanagar Sakharwadi, Tal. Phaltan,)
District Satara 415522)..Applicant

Versus

1. The Collector, Satara)
2. The Resident Deputy Collector, Satara)
3. The Sub Divisional Officer,)
Khatav, Office of Sub-Divisional Office,)
Khatav (Vaduj), Satara)..Respondents

Shri M.B. Kadam – Advocate for the Applicant

Ms. Neelima Gohad – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)

DATE : 11th September, 2019

J U D G M E N T

1. Heard Shri M.B. Kadam, learned Advocate for the Applicant and Ms. Neelima Gohad, learned Presenting Officer for the Respondents.

2. The applicant joined as Talathi on 14.9.1981 and was confirmed in the rank of Talathi on 31.8.1982. On completion of 12 years of regular service he was granted first Time Bound Promotion on 3.5.1996. On 12.7.2002 the applicant was placed under suspension till 25.1.2008. On 5.5.2016 the competent officer regularized his period of suspension as the applicant was exonerated on 1.3.2016 from the charges leveled against him in the Departmental Enquiry. The relevant portion of the order reads as under:

“त्याअर्थी मी. उपविभागीय अधिकारी, फलटण उपविभाग फलटण मला प्रदान केलेल्या अधिकारानुसार श्री. एन.जी. नलवडे, तत्कालीन तलाठी हणंतवाडी, सध्या सेवानिवृत्त तलाठी तहसिल कार्यालय खटाच यांचा दिनांक 12/07/2002 ते 25/01/2008 अखेर निलंबन कालावधी हा महाराष्ट्र^a नागरी सेवा (पदग्रहण अवधी, स्वियेतर सेवा आणि निलंबन, बडतर्फी व सेवेतून काढून टाकणे यांच्या काळातील प्रदाने) नियम 1981 च्या नियम 72 (3) अन्वये मी. उपविभागीय अधिकारी फलटण, उपविभाग फलटण मला असलेल्या अधिकाराचा वापर करून श्री. एन. जी. नलवडे यांचा दि.12/07/2002 ते 25/01/2008 हा निलंबन कालावधी खालीलप्रमाणे नियमित करणेचे आदेश देत आहे.

- 1) श्री. एन.जी. नलवडे तत्कालीन तलाठी हणमंतवाडी ता. फलटण सध्या सेवानिवृत्त तलाठी तहसिल कार्यालय खटाच यांचा दि.12/07/2002 ते 25/01/2008 हा निलंबन कालावधी सर्व प्रयोजनार्थ अर्हताकारी सेवाकाळ मानल्यात येत आहे.
- 2) श्री. एन. जी. नलवडे यांचा वरील कालावधीचा नियमाप्रमाणे निलंबन निर्वाह भत्ता देणेत आलेला आहे. तथापि, उपरोक्तलिखित बाबीमुळे सदर भत्यामध्ये बदल करणेत येऊन त्यांना निलंबन कालावधीसाठी संपूर्ण वेतन व भत्ते अदा करून त्यांचा दि.12/07/2002 ते 25/01/2008 हा निलंबन कालावधी नियमित करणेत येत आहे.
- 3) श्री. एन. जी. नलवडे तलाठी यांच्या दि. 12/07/2002 ते 25/01/2008 या कालावधीतील देय असणा-या सर्व वेतनवाढी काढण्यात याव्यात.”

(Quoted from page 13 of OA)

3. On 31.1.2015 the applicant retired from the post of Talathi on superannuation. After receipt of the order dated 5.5.2016 he submitted representation on 19.3.2018 (Exhibit D page 14 of OA) to provide him the

benefit of the Second Time Bound Promotion on completion of 24 years of service. In response to the same the DPC was held under the chairmanship of respondent no.1 on 20.4.2018 for considering the second Time Bound Promotion to the applicant. The relevant portion of the DPC is at page 36 of the OA. The same reads as under:

“प्रमत्र - पाच

२४ वर्षांच्या सलग सेवेनंतर सेवाअंतर्गत आश्वासीत प्रगती योजनेचा दुसरा लाभ देणेबाबत (सेवानिवृत्त तलाठी संयर्ग)
सन २०१८

अ न	तलाठी कर्मचा- याचे नांव	उपदि- भाग	जन्मतारी ख	तलाठी संवर्गत रुजू झालेला वा दिनांक	तलाठी संवर्गत सलग सेवेचा दिनांक	दुय्यम सेवा परिक्षा उ-तीर्ण वर्ष	महसूल अर्हता परिक्षा उ-तीर्ण वर्ष / सुट	प्रथम कालबद्ध पदोन्नती दिल्याचा दिनांक	२४ वर्ष पुर्ण झाल्याचा दिनांक	खातेका रवाई प्रस्तावित आहे अगर कसे ?	जात वैधता प्रमाणपत्र आहे अगर	योजनेचा दुसरा लाभ देणेची तारीख	गोपनीय प्रतवारी	अहवालाची					अभिप्रा य		
१	२	३	४	५	६	७	८	९	१०	११	१२	१३	१४	१५	१६	१७	१८	१९	२०	२१	
३	श्री. नाना गुलाबरा व नलावडे	माण- खटाव	०३/०१/ १९५७	१४/०९/ १९८१	१४/०९/ १९८१	सप्टेंबर १९८२	ऑक्टोब र २००१ सुट	०१/१० /१९९४	१४/०९ /२००५	नही खुला	०१/१० /२००६	-	क-	स्व २००३-२००४ निलंबन कालावधी लिहलेले नाहीत.	जे २००६-२००७ गोपनीय अहवाल					क-	अपात्र

(Quoted from page 36 of OA)

4. The findings of the DPC and rejection of the representation was communicated to the applicant on 17.10.2018 by the impugned order enclosed in Exhibit A page 10 of the OA. Relevant portion of the same reads as under:

“त्यानुसार दि.२०/०४/२०१८ रोजी कालबद्ध पदोन्नती समितीसमोर सदर प्रस्ताव सादर करणेत आलेला होता. आपणास कालबद्ध पदोन्नतीचा दुसरा लाभ दि.०१/१०/२००६ पासून देय होत आहे. कालबद्ध पदोन्नतीचा दुसरा लाभ देणेकामी सदर कर्मचा-याची मागील पाच वर्षांचे गोपनीय अहवालाची सरासरी “ब+” असणे आवश्यक आहे. आपले प्रस्तावातील गोपनीय अहवाल संचिका तापसली असता आपले सन २००२-२००३ ते २००६-२००७ या कालावधीतील सन २००२-२००३ या कालावधीतील गोपनीय अहवाल प्राप्त असून सन २००३-०४ ते २००६-०७ या निलंबन कालावधीतील गोपनीय अहवाल अप्राप्त आहेत. त्यामुळे पाच वर्षांचे गोपनीय अहवालाचा प्रतवारी क - येत असलेने तुम्हास दि.२०/०४/२०१८ रोजी झालेल्या कालबद्ध पदोन्नतीच्या बैठकीमध्ये कालबद्ध पदोन्नतीकामी नियुक्त समितीने कालबद्ध पदोन्नतीचा दुसरा लाभ देणेकामी आपणास अपात्र ठरविलेले आहे.

सबब तुमची दि.१९/०३/२०१८ रोजीच्या अर्जांन्वये वरीष्ठ वेतनश्रेणीचा लाभ मिळणेबाबतची विनंती अमान्य करणेत आलेली आहे.”

(Quoted from page 10 of OA)

5. Aggrieved by the same the applicant has prayed to (1) quash and set aside the order dated 17.10.2018 and (2) to extend the benefit of Second Time Bound Promotion to him from 1.10.2006 (prayer clause 10(a) & (b) of OA – page 8 of OA).

6. The respondents have filed affidavit in reply. Relevant portion of the same mentions as under:

“7. The scheme was so made applicable to the beneficiaries with effect from 1.10.1994 as per the scheme the candidate is required to have continuous regular service of 12 years without any break in service and the employee should be eligible for next promotion. But the applicant was suspended for the period 12.6.2002 to 25.1.2008 those period regularized by order dated 5.5.2016. But at the time of consideration for second time bound promotion, the confidential reports of the applicant were not submitted to the district promotion committee due to unavailability of the same, therefore applicant’s application was rejected.”

(Quoted from page 45 of OA)

7. The affidavit also mentions that the ACRs were not submitted (para 11). The respondents submit that the OA has been filed after retirement and therefore be dismissed.

8. The Ld. Advocate for the applicant relied on the following judgments:

(i) Amrut Pusaji Ilme Vs. State of Maharashtra & Anr, 2007(6) Mh.L.J. 330. Head note and para 10 of the same reads as under:

“On revoking the suspension and treating the entire period of suspension as duty period they could not be denied deemed date of promotion in absence of ACRs for the relevant period presuming their ACRs would have been less than ”Good”. (Paras 10 to 14).

10. Now absence of ACRs for the relevant period cannot lead to the inference that their ACRs would have been less than ‘Good’ to justify denial of promotion to the petitioners, particularly when the State has dropped all the charges against the petitioners and treated the period of suspension as duty period.”

(ii) Shri Nandkumar Rajaram Parve Vs. The State of Maharashtra & Ors,. OA No.711 of 2015 decided by this Tribunal on 22.1.2016. Relevant portion reads as under:

“6. The Applicant in his representation dated 29.8.2012 has sought deemed date of promotion from 7.4.2006, when Smt. S.P. Prasade, who was junior to him, has been promoted as Senior Clerk. Learned Counsel for the applicant has relied on the judgment of Hon’ble Supreme Court in the case of Union of India Vs. K.V. Jankiraman etc. reported in AIR 1991 SC 2010. It is held by Hon’ble Supreme Court that:

‘When an employee is completely exonerated in criminal/disciplinary proceedings and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the last, he should not be deprived of any benefits including the salary of the promotional post.’

8. In the present case the respondents are responsible for not writing ACRs of the applicant when he was actually working. Refusal to grant him deemed date of promotion presupposes that his

ACRs for the period, when he was on duty would have been below par. The presumption is obviously without any basis. If the ACRs of the period when the applicant was working were not written, the applicant cannot be blamed for that. If his juniors were promoted as Senior Clerk, he cannot be granted deemed date, just because the respondents did not ensure that the Applicant's ACRs were written for the relevant period, or at least part of it."

9. I have perused the record furnished by the applicant as well as the affidavit in reply filed by the respondents. The order regularizing his period of suspension has been issued on 5.5.2016 and the DPC has been held on 20.4.2018. The DPC was very well aware that the period of suspension has been regularized by order dated 5.5.2016. The ACRs for the period from 2003-2007 were not written, the respondents could have definitely taken action to rectify the same. Instead of discharging the responsibility by the concerned, the DPC has penalized the applicant for no fault of him for non-completion of his ACRs for the period from 2003-2007 when he was under suspension. The order dated 5.5.2016 has regularized his period of suspension from 12.7.2002 to 25.1.2008 and provided him necessary increments and other financial benefits. It was also incumbent on the concerned to write his ACRs for the relevant period and make them available to the DPC for consideration.

10. As observed by the Hon'ble Bombay High Court in Amrut Pusaji Ilme Vs. State of Maharashtra & Anr, 2007(6) Mh.L.J. 330 (supra), I have no hesitation to come to the conclusion that the impugned order issued on 17.10.2018 has been issued without application of mind and is therefore illegal.

11. The impugned order dated 17.10.2018 is quashed and set aside. The respondents are directed to consider extending the benefit of Second

Time Bound Promotion to the applicant from 1.10.2006 by doing the needful including writing his ACRs and holding DPC again within a period of three months from the date of issue of this order. OA is disposed off accordingly with no orders as to cost.

(P.N. Dixit)
Vice-Chairman (A)
11.9.2019

Dictation taken by: S.G. Jawalkar.

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