

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.808 OF 2016**

DISTRICT : KOLHAPUR

Shri Jaysing Mahadev Gurav,)
Age 58 years, Occ. Retired, 705-A Ward,)
Sarita Apartments, Plot No.304, Surnik Colony,)
Shivajipeth, Kolhapur)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Home Department, Mantralaya, Mumbai 32)

2. The Deputy Director of Health Services,)
Kolhapur)..Respondents

Shri S.D. Dhongade – Advocate for the Applicant

Ms. Neelima Gohad – Presenting Officer for the Respondents

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 16th March, 2017

J U D G M E N T

1. Heard Shri S.D. Dhongade, learned Advocate for the Applicant and Ms. Neelima Gohad, learned Presenting Officer for the Respondents.

2. This OA has been filed by the Applicant claiming deemed date of promotion as Senior Clerk from 3.6.1988, as Assistant from 26.10.1995 and as Superintendent from 3.6.2005.

3. Learned counsel for the Applicant argued that the Applicant was appointed in a Class IV post on 1.1.1978. He was deemed to be promoted as Junior Clerk from 1.1.1981. He was promoted as Senior Clerk on 4.7.1995. One Shri Wadnerkar, who was junior to the Applicant, as he was appointed as Clerk on 30.10.1981, was promoted as Senior Clerk on 3.6.1988. The Applicant is, therefore, eligible to be given deemed date of promotion as Senior Clerk w.e.f. 3.6.1988. The Applicant is seeking further deemed date of promotion as Assistant Superintendent on 26.10.1995 and as Superintendent on 3.6.2005 on the same ground. The Applicant had retired on superannuation on 30.11.2012.

4. Learned Presenting Officer (PO) argued on behalf of the Respondents that the Applicant was granted deemed date of promotion as Junior Clerk as on 1.1.1981 long back and the present OA is filed on the ground that the Medical Officer, Shashikala T.B. Hospital, Jaysingpur, District Kolhapur has taken entry in the Service Book in 2014. This order is without authority as the Medical Officer is not the Appointing Authority for the post of Junior Clerk, which is a Class III post. Such an order is illegal ab-initio and the Applicant's claim for further deemed date is dependent on that order. The Applicant was actually promoted as Junior Clerk on 19.3.1983, while Shri Wadnerkar was appointed as Junior Clerk by nomination on 30.10.1981. The Applicant is not entitled to deemed date of promotion as Senior Clerk from any date earlier than 4.7.1995, as his seniority remained unchanged. The Applicant had made a representation regarding seniority list of Junior Clerk as on 1.1.1991 which was rejected on 16.5.1991. The Applicant filed complaint before Hon'ble Lok Ayukta, on 13.1.2014, which was disposed off on 11.2.2014.

Learned PO argued that the whole case of the Applicant is based on an entry in his Service Book by an authority not competent to pass the order of deemed date of promotion. The communication of the Respondent no.2 dated 30.12.2014 does not give rise to a fresh cause of action.

5. It is true that the Applicant was promoted as Junior Clerk w.e.f. 19.9.1983. The seniority list of Junior Clerk as on 1.1.1991 was published by the Deputy Director, Health Services, Kolhapur on 21.2.1991. The Applicant had made a representation on 16.4.1991 (Exhibit R-2, page 34) seeking seniority in the cadre of Junior Clerk from 1.1.1981 i.e. the deemed date of promotion in the post of Junior Clerk. By letter dated 16.5.1991 this request was rejected. The Applicant then made a complaint to Hon'ble Lok Ayutka on 13.1.2014, which was disposed of by order dated 11.2.2014. It appears that the Applicant did not make any representation to the Respondents after his representation dated 16.4.1991 was rejected by the Respondent no.2 on 16.5.1991 till his retirement on 30.11.2012. He approached Hon'ble Lok Ayukta on 13.1.2014, but his representation was not considered and he was informed accordingly on 11.2.2014. He apparently applied on 22.12.2014, again in this regard to the Respondent No.2. However, the Applicant has not placed copy of the representation dated 22.12.2014 on record with this OA. The Respondent No.2 by letter dated 30.12.2014, has given the following instructions to Medical Officer, Shashikala T.B. Hospital, Jaysinghpur:

“वरील विषय व संदर्भिय अर्ज आपले कार्यालयास सादर केलेला आहे त्याचे अवलोकन करावे. श्री. जयसिंग महादेव गुरव, सेवानिवृत्त अधिक्षक हे दि.३०.११.२०१२ रोजी जिल्हा हिंवाताप कार्यालय, सातारा येथून सेवानिवृत्त झाले आहेत. श्री. गुरव यांचा अर्जाचा विचार करून श्री. गुरव यांच्या सेवापुस्तकात मानीव दिनांकाची नोंद त्यांचे सेवापुस्तकात घेणेबाबत प्रचलित शासन नियमानुसार घेणेबाबत कार्यवाही करावी. तसचे केलेल्या कार्यवाहीचा अहवाल कार्यालयास व श्री. गुरव यांना पाठविणेत यावा.”

(quoted from page 18 of the OA)

The Applicant claims that the aforesaid Medical Officer made an entry in his service book as below:

“मानीव दिनांक नोंद:- मा. उपसंचालक आरोग्य सेवा पुणे मंडळ, पुणे यांचे आदेश क्रमांक बीसीएनसी-१११/१६७८-९६/ पुणे. दिनांक २७.०१.१९८२ अन्वये श्री. जे.एम. गुख यांना कनिष्ठ लिपिक पदाचा दिनांक ०१.०१.१९८१ चा मानीव दिनांक मंजूर केला आहे.”

(quoted from page 20 of the OA)

The question is whether this endorsement in the Service Book amounts to grant of deemed date of promotion as on 1.1.1981 to the Applicant in the post of Junior Clerk from the date of entry in the Service Book. The Applicant was informed by the Respondent No.2 on 16.5.1991 as follows:

“कनिष्ठ लिपिकांची जेष्ठतासुची तयार करतांना प्रत्यक्षात कनिष्ठ लिपिक पदावर पदोन्नती दिलेची तारीख विचारात घेतली जाते. त्यासाठी मानीव तारीख विचारात घेता येत नाही. व त्यामुळे जेष्ठतासुचीमध्ये दर्शविलेला आपला क्रमांक बरोबर आहे.”

(quoted from page 36 of the OA)

It is clear that this issue was already decided by the Respondent No.2 way back in 1991. The Applicant did not challenge the aforesaid order till his retirement on 30.11.2012. Now after almost 25 years, the Applicant wants the issue to be reopened. The endorsement in the Service Book of the Applicant does not make any change in the situation. The order of the Respondent No.2 dated 16.5.1991 does not undergo any change by virtue of this endorsement.

6. Hon'ble Supreme Court in the case of **C. JACOB VS. DIRECTOR OF GEOLOGY AND MINING, AIR 2009 SC 264** has held that:

“6. The present case is a typical example of ‘representation and relief’. The petitioner keeps quiet for 18 years after the termination. A stage is reached when no record is available regarding his previous service. In the representations which he makes in 2000, he claims that he should be taken back to service. But on rejection of the said representation by order dated 9.4.2002, he filed a writ petition claiming service benefits, by referring the said order of rejection as the cause of action.”

7. The present case is quite similar. The Applicant kept quiet for 25 years regarding his seniority in the cadre of Senior Clerk. Then he raises the issue which was decided in 1991, which he had never challenged. By some endorsement of an authority, which does not change the situation at all, he had renewed his claim, as if that endorsement made by the Medical Officer is the cause of action. This is clearly not permissible as held by Hon’ble Supreme Court in the aforesaid judgment, where Hon’ble Supreme Court has held that original date of order will give rise to the cause of action. In the present case, cause of action arose on 16.5.1991 and not on 30.12.2014 or thereafter.

8. In **UNION OF INDIA VERSUS M.K. SARKAR, (2010) 2 SCC 59**, Hon’ble Supreme Court has held that:

“When a belated representation in regard to a ‘stale’ or ‘dead’ issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the dead issue or time-bared dispute.”

9. In the present case, the Applicant is trying to revive a ‘dead’ issue, decided in 1991, by giving representation on 22.12.2014, a copy of which

is also not placed on record. It is quite clear that the Applicant cannot be allowed to revive the issue of his seniority in the cadre of Senior Clerk, after 23 years. He was informed by the Respondent No.2 on 16.5.1991 that his representation in that regard has been rejected. This OA is not maintainable.

10. Having regard to the aforesaid facts and circumstances of the case, this OA is dismissed with no order as to costs.

(Rajiv Agarwal)
Vice-Chairman
16.3.2017

Dictation taken by: S.G. Jawalkar.

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