

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.611 OF 2017

(Subject :- Deemed Date of Promotion)

DISTRICT : LATUR

Nagnath s/o Gyanba Jadhav,)
Age : 66 Years, Occ: retired)
Samta Niwas In Prout Of Civil Court,)
Tq. Ausa, Dist. Latur.) **... APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through: Secretary,)
Revenue Department,)
Mantralaya, Mumbai 32.)

2. The Commissioner,)
Aurangabad Division,)
Aurangabad.)

3. The Collector,)
Latur.) **... RESPONDENTS**

Shri S.D. Dhongde, learned Advocate for the Applicant.

**Smt. Deepali S. Deshpande, learned Presenting Officer for
the Respondents.**

CORAM : B.P. Patil, Member (J)

DATE : 12.02.2019.

ORDER

1. The Applicant has sought direction to the Respondents to release his one annual increment due on 01.01.2007 and to re-fix his pay and pension with all consequential benefits by filing the present Original Application.

2. The Applicant is belonging to backward class i.e. Scheduled Caste Category. He was appointed in the Respondents department after following due process of law. By passage of time, he was promoted from time to time. Lastly, he was promoted as Nayab Tahsildar. He retired on superannuation as Nayab Tahsildar on 30.6.2007. It is his contention that his name stands at Sr.No.10 of the seniority list of the Nayab Tahsildar published on 31.12.2000. It is his contention that the officers junior to him have been promoted as Tahsildar. He has not been promoted on the ground that the Departmental Enquiry is pending against him.

3. It contention of the Applicant that during the year 1986 to 1990 he was serving as Entertainment Inspector in Latur district. In the year 1998, the Respondents initiated an enquiry against him in respect of his carelessness in the duties. It was

prolonged upto the year, 2004. In the enquiry, he was held guilty and therefore, punishment of stoppage of two annual increments permanently was imposed by the Disciplinary Authority. The Applicant has challenged the said order before the Commissioner, Aurangabad by preferring an appeal on 02.06.2004. The Commissioner, Aurangabad decided the appeal on 13.04.2004 and quashed and set aside the order of the Collector, Latur.

4. It is contention of the Applicant that he was not considered for promotion by the Respondents as the enquiry was pending against him. It is his contention that in fact as per the provisions of the Govt. Resolution dated 22.4.1998, the Respondents ought to have promoted him subject to final decision of the departmental enquiry. But the Respondents have not promoted him. It is his contention that the he has been promoted as Nayab Tahsildar in the year 1999 without putting any condition. But while considering his case for promotion on the post of Tahsildar, wrong information has been supplied and therefore, he was not promoted but officers junior to him have been promoted w.e.f. 13.02.2006. Therefore, he made representation dated 03.07.2006 to the Government to grant him promotion as Tahsildar w.e.f. 13.02.2006. The Additional

Secretary, Revenue Department wrote a letter to the Divisional Commissioner, Aurangabad on 20.3.2007 stating that the punishment of stoppage of three increments has been imposed upon the Applicant by order dated 4.3.2006. But considering his date of birth i.e. 12.6.1949, the Applicant will get promotion during the period of punishment and the period of punishment would go beyond the date of his retirement. In view of the said letter, the Commissioner, on 30.6.2007 modified its order imposing punishment of stoppage of three increment of the Applicant and imposed the punishment of stoppage of one increment for one year. It has been mentioned in order to take care of the Applicants pensionary benefits. It is however, mentioned that the Applicants pensionary benefits are protected. In view of the said order, the office of the Collector, Latur where the Applicant was working at the time of retirement has to grant increment to him. But he had not granted/released increment to the Applicant. Therefore, the Applicant made representation dated 15.09.2009 and 30.07.2009, but his request regarding grant of annual increment has not been considered. As the next annual increment due on 1.1.2007 was not granted to him, less pension has been granted to him. It is his contention that because of the fault on the part of the Respondents, he is getting

less pension and therefore, he approached this Tribunal and prayed to direct the Respondents to grant deemed date of promotion as Tahsildar from 13.2.2006 and to release one annual increment due on 1.1.2007 and to re-fix his pension. He has also prayed to implement the order dated 17.3.2007 issued by Government granting deemed date of promotion as Nayab Tahsildar w.e.f. 14.11.1998.

5. The Respondents have filed their affidavit-in-reply and resisted the contention of the Applicant. It is their contention that in the departmental inquiry the Applicant was held guilty of charges and therefore, the Collector, Latur by his order dated 13.4.2004 withheld two increments of the Applicant permanently. The Applicant was undergoing the punishment and therefore, he was not held eligible for the promotion on the post of Tahsildar. The name of the Applicant was placed before the Divisional Promotional Committee in its meeting dated 17.2.2005 for the promotion on the post of Tahsildar. But as the Applicant had held guilty in the departmental enquiry, he was not considered fit for promotion on the post of Tahsildar. It is their contention that the Applicant had preferred an appeal before the Divisional Commissioner against the decision of the Collector, Latur imposing punishment of stoppage of two

increments permanently. The said appeal was partly allowed and punishment imposed by the Collector, Latur was modified and punishment of stoppage of one increment of the Applicant for three years without affecting the further increments has been imposed. The Applicant therefore, approached the Government with a request to grant him deemed date of promotion by filing application dated 3.07.2006. After considering the representation of the Applicant, the Government by its letter dated 20.3.2007 reduced the punishment and imposed the punishment of withholding of one increment of the Applicant for one year without affecting the future increment.

6. It is their contention that the G.R. dated 22.04.1996 is not applicable to the case of Applicant since he was not promoted during the pendency of departmental inquiry. It is their contention that as per the Government's order, the duration of the Applicant's punishment was from 4.03.2006 to 4.3.2007. It is their further contention that the increments to the Government Servant used to be granted on 1st July of the year as per the recommendation of 6th Pay Commission. The Applicant retired on 30.6.2007 on superannuation. Therefore, he is not entitled to get next increment due on 1.7.2007. It is their contention that there is no illegality in the impugned

communication and therefore, they prayed to reject the Original Application.

7. I have heard Shri Suresh D. Dhongde, learned Advocate for the Applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for the Respondents. I have gone through the documents produced on record by both the parties.

8. During the course of hearing, learned Advocate for the Applicant has submitted that the Applicant is not pressing prayer clause 9 (b) and (d) regarding deemed date of promotion on the post of Tahasildar and implementation of order dated 17.3.2007. He has submitted that the Applicant is pressing only prayer clause 9 (b) as regards release of one annual increment which was due on 1.1.2007 and re-fixation of the pay and pension.

9. Since, the Applicant has not pressed the prayer clause 9(b) and (d). The only issue for my consideration is regarding the prayer clause 9(c) made by the Applicant in the Application.

10. Admittedly, the Applicant joined the service with the Respondents and thereafter, promoted from time to time. He was

-serving as Nayab Tahsildar at the time of his retirement. He retired on superannuation as Nayab Tahsildar on 30.6.2007. Admittedly, during the year of 1986-1990, the Applicant was serving as Entertainment Inspector in Latur district. The Departmental Enquiry was initiated against him for the charges of carelessness in the duties. On conclusion of the Departmental Enquiry, the Competent Authority i.e. Collector, Latur imposed punishment of stoppage of two annual increments permanently on the Applicant by order dated 13.04.2004. The Applicant has challenged the said order by preferring an appeal before the Divisional Commissioner, Aurangabad. The appeal was decided by Divisional Commissioner, Aurangabad on 13.4.2004 and the Divisional Commissioner allowed the appeal partly and modified the punishment imposed by Collector, Latur and he imposed the punishment of stoppage of one increment of the Applicant for three years without affecting the further increments. Admittedly, the name of the Applicant was considered for promotion on the post Tahasildar in the meeting of the Divisional Promotion Committee held on 17.2.2005. But the Applicant was not promoted on the ground that the Applicant was undergoing the punishment imposed on him in the departmental enquiry. Admittedly, the Applicant had filed the representation to the

Government on 3.7.2006 for promoting him on the post of Tahsildar. Meanwhile, the Government by its communication dated 20.3.2007, informed the Divisional Commissioner, Aurangabad that the Applicant was going to retire soon and therefore, implementation of punishment imposed by him cannot be made. In view of the said order, Commissioner modified the order dated 03.05.2007 by which the punishment of stoppage of an increment for three years was imposed on the Applicant and imposed the punishment of stoppage of one increment for one year without affecting the further increments. By order dated 7.06.2006, Divisional Commissioner, Aurangabad informed the Applicant about the said punishment and the punishment came in to force w.e.f. 4.3.2006. The Applicant has undergone the punishment from 4.3.2006 to 4.3.2007. There is no dispute about the fact that the date of increment of Government employee is with effect from 1st July of the year as per the recommendation of 6th Pay Commission. Admittedly, the Applicant retired on 30.6.2007.

11. Learned Advocate for the Applicant has submitted that the Applicant had undergone the punishment of stoppage of one increment from 4.3.2006 to 4.3.2007. After undergoing the said punishment, the Applicant was entitled to get next

increment. He has submitted that considering the said facts, the Applicant was entitled to get further increment which was due on 1.1.2007. He has submitted that the Applicant has made several representations to the Respondents, but the Respondents had not considered the request of the Applicant.

12. He has submitted that the Applicant was entitled to get the next increment which was due on 1.1.2007 as he had undergone the punishment during 4.3.2006 to 4.3.2007, but the Respondents had not granted said increment to him. Therefore, his pension has been fixed wrongly and he is getting less pension. It caused loss to the Applicant. Therefore, he prayed to allow the Original Application and prayed to direct the Respondents to grant him increment with effect from 1.1.2007.

13. Learned P.O. for the Respondents has submitted that the Applicant had undergone the punishment of the stoppage of one increment for one year from 4.3.2006 to 4.3.2007. The date of next increment was due on 1.7.2007 as per the recommendation of 6th Pay Commission but before that i.e. on 30.6.2007, the Applicant retired from service. Therefore, he was no eligible for getting further annual increment. Therefore, he cannot claim increment due on 1.7.2007 as on that date the

Applicant was not in service. He has submitted that the Respondents have rightly rejected the representation of the Applicant and there is no illegality in the impugned communication. Therefore, he prayed to dismiss the Original Application.

14. On perusal of record, it is crystal clear that the departmental enquiry was initiated against the Applicant and in the enquiry he was held guilty for charges levelled against him. In the departmental enquiry, the Collector, Latur imposed punishment of stoppage of two annual increments permanently against the Applicant. The said decision was challenged by the Applicant before the Division Commissioner, Aurangabad by preferring an appeal. The Divisional Commissioner, Aurangabad partly allowed the appeal of the Applicant and modified the order of punishment passed by the Collector, Latur. The Divisional Commissioner imposed the punishment of stoppage of one increment for three years without affecting the future increment on the Applicant. Thereafter, he informed the Government about the punishment imposed on the Applicant. The Government informed him that if the punishment of stoppage of one increment for three years will be executed, in that case the applicant will retire during the punishment period and period of

the punishment will go beyond the retirement of the Applicant. On the basis of said communication, the Divisional Commissioner modified the order and imposed the punishment of stoppage of one annual increment of the Applicant for one year without affecting the future increment. The punishment of the Applicant started from 4.3.2006 to 4.3.2007. After undergoing the punishment, the Applicant became eligible for getting further annual increment. The annual increment to the Government employees has to be released on 1st day of July of the year as per the recommendation of 6th Pay Commission. Therefore, next annual increment would be due to the Applicant on 1.7.2007. But before that date the Applicant retired on 30.6.2007. On the date of next increment i.e. on 1.7.2007, the Applicant was not in service as he retired prior to that. Therefore, the Applicant was not entitled to get next annual increment which was due on 1.7.2007. The Respondents have rightly rejected the claim of the Applicant for releasing one annual increment w.e.f. 1.1.2007. I do not find any illegality in the communication sent by the Respondents. Therefore, no directions as claimed by the Applicant can be issued. There is no merit in the Original Application. Consequently, Original Application deserves to be dismissed.

15. In view of the discussion in foregoing paragraph, the Original Application stands dismissed with no order as to costs.

Place:- Aurangabad

(B.P. Patil)

Date :- 12.02.2019

Member (J)

Sas. O.A. No.611/2017. Deemed Date of Promotion BPP.