

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.647/2013

DISTRICT – AHMEDNAGAR

Dilip s/o Madhukarrao Kulkarni,
Age: 57 years, Occ : Service,
R/o : Bungalow No.6, Namrata Colony,
Opp. to Onkar Driving School,
Pipeline Road, Savedi, Ahmednagar,
District : Ahmednagar, 414 003. ...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-400 032.
2. The Divisional Commissioner (Revenue),
Nasik, District Nasik.
3. The Collector (Revenue),
Ahmednagar. ...RESPONDENTS

APPEARANCE :Shri V.B.Wagh, learned Advocate for
the applicant.
:Shri S.K.Shirse, learned Presenting
Officer (PO) for the respondents.

CORAM : Hon'ble Shri J.D.Kulkarni, Member (J)

DATE : 27th January, 2017

J U D G M E N T
[Delivered on 27th day of January, 2017]

Applicant is claiming deemed date of promotion in the cadre of Naib Tahsildar with effect from 26-11-2001 and consequently, on the post of Tahsildar with effect from 08-11-2008 with all the consequential benefits. Applicant initially came to be appointed as Talathi/Clerk on 09-08-1975 and was promoted to the post of Awwal Karkoon on 16-12-1994. He was eligible for promotion to the post of Naib Tahsildar eligible for promotion to the post of Naib Tahsildar in the year 2001 but he was not considered since departmental enquiry and criminal case was pending against him. The applicant came to be acquitted from the said criminal case on 22-12-2010. Prior to that, on 17-07-1998 applicant filed representation for promotion. As the said representation was not considered, applicant filed O.A. During the pendency of the O.A. he was intimated about his promotion and also about closure of departmental enquiry proceeding. Seniority list of the post of Awwal Karkoon was published on 08-02-1995, in which the applicant was shown at Sr.No.375 and one Shri Rakshe was shown at Sr.No.376. However, his junior Shri Rakshe has been promoted and the applicant was not considered for promotion.

2. Learned Advocate for the applicant further submits that the Government has issued G.R. dated 02-04-1976 and 22-04-1996, which specifically provides that the promotion can be subject to certain conditions. Guidelines in the said G.Rs. have not been followed by the department while considering the claim of the applicant for promotion. Criminal case against the applicant bearing STC No.1500/1999 ended into acquittal on 22-12-2010. The applicant submitted representations on 21-04-2002, 22-04-2002, 22-01-2004, 01-07-2004, 26-05-2005 and 12-05-2007. It is stated that the same employees in the similarly situated circumstances were given benefit of G.R. on 30-08-2012 and 25-07-2013 but the applicant's case was not considered. At the time of filing of O.A. the applicant was in service and was due for retirement on superannuation on 31-10-2013. He accordingly got retired on 31-10-2013.

3. Respondents submitted that the criminal case bearing STC No.1500/1999 was pending against the applicant before the Judicial Magistrate First Class (JMFC), Ahmednagar. It was filed under Section 134 of the Representation of People's Act, 1951 and the charges against the applicant were serious in nature. It is stated that the respondents have filed reply in O.A.No.173/2007 and stated that as per Government

Resolution dated 22-04-1996 and 02-04-2009, name of the applicant has been considered for Assured Progressive Time Bound Scale Scheme, and subsequently, benefit of the said Scheme has been granted to the applicant retrospectively from 27-02-2001.

4. Respondent no.3 filed additional affidavit in reply which has been sworn in by Collector, Ahmednagar. In paragraph no.2 of the said reply affidavit respondent no.3 has stated as under (page190):

“2. I say and submit that, Respondent No.2 has forwarded proposal dated 15/01/2014 to the Additional Chief Secretary (Revenue), Revenue and Forest Dept. Mumbai thereby requesting to approve the deemed date in favour of the applicant Shri D.M.Kulkarni. The said proposal is under consideration with the respondent No.1. The Respondent No.2 has forwarded letter dated 16/09/2016 addressing to the Principal Secretary (Revenue), Revenue and Forest Dept. Mumbai in that respect and directed this Respondent to bring the said facts into the notice of this Hon’ble Tribunal. Here to marked and annexed at Exhibit R-A is the copy of letter dated 16/09/2016 forwarded by Respondent No.2 to Respondent No.1.”

5. From the said submission in the reply affidavit of the respondent no.3, it is clear that the case of the applicant is being considered for grant of deemed date

of promotion as claimed by him and the proposal in that regard was before the competent authority. Learned P.O. has also placed on record the minutes of the meeting whereby the DPC considered the cases of various employees for promotion to the post of Naib Tahsildar cadre. A copy of minutes of the meeting dated 31-07-2004 annexed with the paper book is marked as Exhibit "X" for identification purpose. DPC meeting in this regard was held on 16-12-2000. Perusal of the said minutes of the meeting shows that the applicant's case was not considered since the criminal case and department enquiry were pending against him. It seems to be an admitted fact that seal cover procedure as per G.R. dated 02-04-1976 and 22-04-1996 has not been followed while considering the case of the applicant in both the DPC meetings. It is also an admitted fact that ultimately the applicant was given promotion on 16-12-2012 as Awwal Karkoon but his junior Shri Rakshe was given promotion earlier in the year 2001.

6. Government Resolution dated 2nd April, 1976 clearly states about the procedure to be followed in the case of persons whose conduct is under investigation or against whom departmental enquiry is pending. Admittedly, this procedure has not been followed in the case of the applicant.

7. Since the respondents are now considering the case of the applicant, I do not find any reason not to grant the deemed date of promotion to the applicant since the date on which his junior Shri Rakshe was promoted, if the applicant is otherwise fit for promotion. Hence, the following order:

ORDER

- (i) O.A. is partly allowed.
- (ii) Respondent no.1 is directed to take decision on the proposal submitted by respondent no.2 on 15-01-2014 in respect of approval of the deemed date of promotion in favor of the applicant namely, Shri D.M.Kulkarni and shall grant deemed date of promotion and all consequential reliefs that may be admissible to the applicant.
- (iii) Decision on such proposal shall be taken within 3 months from the date of this order and shall be communicated to the applicant immediately in writing.
- (iv) In the circumstances, there shall be no order as to costs.

(J. D. Kulkarni)
MEMBER (J)

Place : Aurangabad
Date : 27-01-2017.