

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMABI
BENCH AT AURANGABAD.

DIST. BEED.

ORIGINAL APPLICATION NO.184/2016.

Smt. Lata w/o Dadarao Shirsath,
Age 47 years, Occu. Service as
Naib Tahsildar (Supply),
R/o Tahsil Office, Osmanabad.

-- **APPLICANT**

VERSUS

1. The State of Maharashtra
Through : Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Aurangabad Division,
Aurangabad.

-- **RESPONDENTS.**

APPEARANCE : Shri K. B. Jadhav, learned Advocate for the
Applicant.

: Smt D. S. Deshpande, learned Presenting Officer
for the Respondents.

CORAM : **Hon'ble Shri Justice M. T. Joshi, Vice Chairman.**

DATE : 10.03.2017.

JUDGMENT.

1. Heard Shri K. B. Jadhav, learned Advocate for the Applicant and Smt D. S. Deshpande, learned Presenting Officer for the Respondents.

2. By the present application, the applicant is seeking direction to the Respondent no.2 to grant the deemed date of promotion for the post of Naib Tahsildar w.e.f. 7.3.2015 i.e. the date on which junior to her was promoted to the said post.

3. The applicant was originally serving as a Peon with the Respondent. Upon getting various promotions, she was ultimately promoted to the post of Awwal Karkun on 31.5.2007. The gradation list of the Awwal Karkun showed that she was at Sr.No.1342, while Mr. Suhas Hajare was at Sr.No.1343.

4. The Departmental Promotion Committee in the month of January 2015 has considered the cases of all the incumbents. Vide order dated 7.3.2015. Mr. Suhas Hajare was promoted to the post of Naib Tahsildar. The applicant was superceded. Thereafter, in the promotion list dated 1.7.2015 the applicant came to be promoted to the said post. The grievance of the applicant is that, since the

applicant came to be wrongly superceded she is entitled for deemed date of promotion as 7.3.2015.

5. The affidavit in reply of the Respondent no.2 would show that, in fact the applicant was considered for promotion along with Mr. Suhas Hajare. It was however, found that the applicant was found guilty in Departmental Enquiry and was undergoing the penalty. Therefore, though she was considered for promotion, ultimately her junior Mr. Suhas Hajare was promoted. Lateron, in the next of D.P.C. meeting as applicant's penalty period was over she was selected for the promotion from the same quota. It was submitted that, as the applicant has suppressed the fact of holding her guilty in D.E., the application be dismissed.

6. The learned Advocate for the applicant as well as the learned Presenting Officer argued on the line of the above submissions. Shri K.B. Jadhav learned Advocate for the applicant submits that, as the punishment was minor, the D.P.C. should not have superceded her. He relies on the ratio of the judgment passed by the Division Bench of the Maharashtra Administrative Tribunal at Mumbai in OA No.711 of 2015 between Shri Nandkumar Rajaram Parve Vs. The State of Maharashtra and Others dated 22.01.2016, the judgment in OA No.385/2016 between Mr. Prakash Kohok Vs.

Govt. of Maharashtra & Others dated 23.01.2017, Union of India etc. Vs. K. V. Jankiraman etc. AIR 1991 SUPREME COURT 2010, Amrut Pusaji Ilme Vs. State of Maharashtra, [2007(6) Mh.L.J. 331, and the Government Resolution bearing No. SRV 2002/PK-2/2002/12, dated 6th June, 2002.

7. The documents filed by the Respondents would show that, the present applicant was found guilty of not maintaining the important registers while she was working as Awwal Karkun with the District Supply Officer. Collector, Beed therefore, had directed that, her two annual increments would be withheld temporarily. In appeal, the punishment was reduced to the withholding of one increment only. This order in appeal came to be passed by Divisional Commissioner on 5.2.2015.

8. It is now well settled that, the employees in the consideration zone are entitled for consideration for the promotion. However, as of right promotion cannot be claimed. The present applicant was found guilty of misconduct as detailed supra and therefore, for a brief period she was superceded.

9. In the case of *Nandkumar Rajaram Parve* the Division Bench

of this Tribunal was dealing with the aspect of effect of not writing of ACRs by the controlling authority on the promotion avenues of an employee.

10. In the case of *Prakash V. Kohok* learned Member (J) of this Tribunal was dealing with the effect of acquittal of the employee from a criminal case on the deemed date of his promotion.

The G.R. dated 6.6.2002 provides for general guidelines for deemed date of promotion etc. *inter alia* in case the employee is exonerated in D.E. or minor punishment is inflicted upon him.

11. In the case of *Union of India etc. Vs. K. V. Jankiraman* Hon'ble The Supreme Court was dealing with the sealed cover procedure in cases of promotion during the pendency of a Departmental Enquiry.

12. In the case of *Amrut Pusaji Ilme* the Division Bench of the Hon'ble High Court was dealing with the issue of suspension of the employee during the registration of the crime and his superannuation and promotion of others during his suspension and acquittal.

13. The ratio of all the cases above, would show that, none of all the ratio is applicable to the present case. The G.R. provides for guidelines for grant of deemed date of promotion.

14. In the present case, what I find that, the D.P.C. has considered the case of the promotion of present applicant. It was found that, she was held guilty in D.E. and she was undergoing the punishment at the time when the case for promotion was considered.

15. In that view of the matter, though the incumbent junior to the present applicant was promoted, for the reasons of undergoing the punishment during the very same period, the applicant was not promoted, no fault can be found with the decision of the Departmental Promotion Committee. In the circumstances, following order.

ORDER.

The Original Application is dismissed without any order as to costs.

VICE CHAIRMAN.

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