

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.102/2018 (D.B.)**

Kailash S/o Pundlikrao Talodhikar,
Aged: 45 years, Occu. Service,
R/o. Aanchaleshwar, Ward No.3,
Kannamwar Chowk, Dist: Chandrapur- 442402.

Applicant.

Versus

- 1) State of Maharashtra,
Through the Secretary,
Ministry of Revenue & Forest,
Mantralaya, Mumbai-32.
- 2) Chief Conservator of Forests,
Chandrapur Circle, Chandrapur,
Civil Lines, Nagpur Road, Chandrapur-442401.
- 3) Conservator of Forests,
North Chandrapur Circle,
Chandrapur, Civil Lines,
Nagpur Road, Chandrapur-442401.

Respondents.

Shri R.S.Khobragade, Ld. Counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Justice Vinay Joshi, Member (J) &
Hon'ble Shri Nitin Gadre, Member (A).

Dated:- 13th January, 2025.

JUDGMENT

Judgment is reserved on 07th January, 2025.

Judgment is pronounced on 13th January, 2025.

Per : Member (A)

Heard Shri R.S.Khobragade, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the respondents.

2. The Applicant had filed this original application on 01.02.2018. He was initially appointed on compassionate ground in the year 2003 and his appointment was shown in the S.T. category. He was then terminated on 13.01.2010 as he failed to obtain the validity certificate. Subsequently, he was again appointed on 25.02.2010 on compassionate ground in open category. However, it has been decided to consider his service from the date of second appointment only. The relevant portion of his application is as follows-

That, in view of Government Resolution dated 26.10.1994, the Applicant was appointed on the post of Accountant on compassionate grounds on 08.09.2003.

That, the Applicant made a representation dated 07.05.2004 stating that his appointment is made on compassionate grounds & his appointment is shown from ST category and as per G.R. dated May/1995 the caste Halba is shown in SBC category and his proposal for caste verification is sent to the Scrutiny Committee for verification. It is stated that, as the Applicant's appointment is made

in view of G.R. for compassionate appointment, his appointment shall be shown from Open category.

That, the Respondent No.3 passed an order dated 26.10.2006 by which the appointment of the Applicant in the ST category was changed to Open category.

That, the Respondent No.3 Issued a letter dated 12.03.2009 to the Assistant Commissioner, Backward Cell, Nagpur wherein it is stated that, the Applicant has completed 3 years of service, also passed the departmental examination and looking to his satisfactory service and state government's requirement, by this office order no. 7(2)/admin/06-07/71, dated 26.10.2006 the Applicant was shown in Open category. It is further stated that, the vacant post of ST category was filled up by the ST category candidate.

That, the Respondent No.3 terminated the services of the Applicant as per order dated 13.01.2010 on the ground of failure to submit Caste Validity.

That, In view of letter dated 30.1.2010 Issued by the District Collector, Chandrapur, the Respondent No.3 has issued the fresh appointment order dated 25.02.2010 on compassionate ground by which the Applicant was appointed on the same post of Accountant in Open category and absorbed in service w.e.f. 02.06.2007.

Applicant made several representations to grant deemed date of appointment w.e.f. 08.09.03 i.e. from the date of his initial appointment.

Applicant filed O.A. no. 150/2017 for directions to decide his representations and consider for promotion.

Respondent No.3 by impugned order dated 28.11.2017 rejected the grant of deemed date of appointment w.e.f. 08.09.03 i.e. from date of Applicant's initial appointment and held that the service benefits will be granted by calculating service from 13.01.10.

3. In view of the circumstances the applicant has sought following reliefs –

(1) call for the service records of proceedings pertaining to the Applicant' service on the post of Accountant from the Respondents office and peruse the same;

(ii) hold and declare that the Applicant is entitled for the grant of deemed date of initial appointment to the post of Accountant and all the service benefits including promotions by calculating his service w.e.f. 08.09.2003 with continuity in service;

(iii) hold and declare the impugned order dated 28.11.2017 (Annexure-A-1) passed by Respondent authorities is bad in the law, unsustainable, arbitrary, malafide, illegal and unconstitutional;

(iv) quash and set aside the impugned order dated 28.11.2017 (Annexure-A-1) passed by Respondent authorities being bad In the law, unsustainable, arbitrary, malafide, illegal and unconstitutional;

(v) direct the Respondents to grant deemed date of Initial appointment w.e.f. 08.09.2003 with continuity in service to the post of Accountant and all the service benefits including promotions to the next post of Chief Accountant from the date of his juniors promotion by calculating his service w.e.f. 08.09.2003;

4. The respondents have submitted the reply on 24.05.2018. The relevant portion of the reply is on page no.56, Para nos.23 to 26 are reproduced below-

23. The applicant was initially appointed on 08.09.2003 as an Accountant on compassionate ground against a vacancy reserved for Scheduled Tribe since he belonged to Halba Scheduled Tribe. As per the terms and conditions of the appointment order dated

08.09.2003, the appointment of the applicant was subject to the verification of his caste certificate from the competent authority. The applicant accepted all the terms and condition of the said appointment order by giving an undertaking dated 10.09.2003. However, after his appointment the applicant failed to submit the validity certificate of his caste. Therefore, he requested the authority to appoint him on the post of Accountant in open category. Considering his request, on humanitarian ground the respondents decided to give him appointment in open category on the post of Accountant as and when it is available in future, through direct recruitment.

24. Since, the initial appointment of the applicant being illegal, for non-submission of the caste validity certificate, his services were terminated vide order dated 13.01.2010. The contents of the said order are self-explanatory.

25. Thereafter, the applicant was freshly appointed as an Accountant in open category, through direct recruitment vide order dated 25.02.2010. The contents of this appointment order are also self-explanatory.

26. The applicant had voluntarily accepted the above appointment orders by willingly accepting all the terms and conditions mentioned therein. Therefore, he cannot turn around and now question his appointment and termination order. The applicant cannot question terms and conditions of the appointment order once it has been accepted by him. Now the applicant is estopped from claiming the relief as sought in the present application since his subsequent appointment was fresh and he did not challenge the validity of his earlier termination order dated 13.01.2010. The applicant has no locus to claim continuity in service and seniority w.e.f. his earlier appointment dated 08.09.2003, as his earlier services were terminated w.e.f. 13.01.2010 for the reasons mentioned therein. Subsequently he was appointed

on the post of Accountant vide fresh appointment order dated 25.02.2010 due to availability of the post in open category by following all recruitment procedure.

5. The issue of appointment on compassionate ground and reservation policy of such appointment has been dealt by the Hon'ble Supreme Court in various Judgments. In **Vinodkumar Singh Rajkumar Vs. State of Maharashtra and Ors. [2016 MhLJ Online 101]** the Court has said that an appointment made on compassionate basis and in the absence of making such an appointment on a post reserved for a particular category, such an appointment would not be deemed to have been made as against a reserved post and as such, the candidate so appointed would not be required to submit a caste or tribe validity certificate.

6. The applicant was appointed in 2003 and his appointment was shown against a post reserved for the Scheduled Tribe. The applicant failed to produce the Validity Certificate. Instead of shifting him to the open or any other appropriate category, his services were terminated. The Collector, Chandrapur had written to the Dy. Conservator of Forest on 30.01.2010 that all the persons senior to the applicant, in the compassionate ground appointment

waiting list have been already appointed and they should reconsider their decision to terminate services of the applicant.

7. The original appointment in the year 2003 was on compassionate ground and in view of the Hon'ble Supreme Court Judgement, there is no need to ask for validity certificates in such cases. The applicant should have been directly adjusted against the open category when he failed to obtain the validity certificate. However, his service was terminated and he was again given a fresh appointment on a post for open category. Therefore, we pass the following order.

ORDER

1. The O.A. is allowed.
2. The order by the Chief Conservator of Forests, Chandrapur Circle dated 28.11.2017 is quashed and set aside.
3. The applicant is entitled for the grant of deemed date of initial appointment with effect from 08.09.2003 with continuity in service to the post of accountant and all the service benefits including promotions, for which he is eligible as per rules, by

calculating his service from the date of his first appointment, i.e. 08.09.2003.

4. The respondents are directed to implement this order in the next four months from the date of this order.
5. No order as to costs.

(Nitin Gadre)
Member(A)

(Justice Vinay Joshi)
Member (J)

Dated – 13/01/2025
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde.
Court Name : Court of Hon'ble Member (J)
& Hon'ble Member (A).
Judgment signed on : 13/01/2025.
and pronounced on