

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No.118 of 2022 (D.B.)**

Arvind Ambadasji Suryawanshi,
aged 51 years, Occ. Service, Resident of 39,
Navnath Nagar, Bhahadura Fata, Umred Road, Nagpur.

Applicant.**Versus**

1. State of Maharashtra,
through its Secretary, Department of Revenue and Forest,
Mantralaya, Mumbai-32.
2. Settlement Commissioner cum Director of Land Records,
3rd floor, New Administrative Building, Pune.
3. Deputy Director of Land Records, Nagpur.
4. Shri J.H. Khichi,
aged about Major, Occ. Service,
R/o C/o Office of Deputy Superintendent of Land Record,
Bhandara.

Respondent.

**S/Shri R.V. Shiralkar, N.R. Shiralkar, Advocates for the applicant.
Shri M.I. Khan, learned P.O. for respondent nos.1 to 3.
None for respondent no.4.**

**Coram :- Hon'ble Shri Justice M.G. Giratkar, Vice Chairman and
Hon'ble Shri Nitin Gadre, Member (A).**

Dated :- 27/08/2024.

J U D G M E N T

Heard Shri R.V. Shiralkar, learned counsel for the
applicant and Shri M.I. Khan, learned P.O. for respondent nos.1 to 3.
None for respondent no.4.

2. The case of the applicant in short is as under –

The applicant was appointed on the post of Peon on compassionate ground as per order dated 19/11/1991. The applicant was promoted on 01/06/1998 on the post of Clerk (Class-III). He was promoted on the said post in Open category. In the year 2006, the applicant was falsely implicated in the criminal case for the offence punishable under the Prevention of Corruption Act. The said case was pending before the Special Judge / District and Sessions Judge, Nagpur. The applicant was acquitted on 29/08/2016 in the said criminal case. No any appeal was preferred by the State Government against the Judgment of the Special Judge.

3. The respondent nos.1 to 3 had initiated departmental inquiry in respect of the charges which were in respect of offences punishable under the Prevention of Corruption Act. The applicant is exonerated in the departmental inquiry. The applicant is not promoted as per the order dated 31/07/2006. In the said order, junior Shri J.H. Khichi was promoted. The applicant was not promoted on the ground that the departmental inquiry / criminal case was pending against him. Thereafter, the applicant is promoted as per order dated 31/12/2021. The applicant is now working on the post of Sr. Clerk (Sheristedar). The respondent nos.1 to 3 have not granted deemed date of promotion to the applicant. Therefore, the applicant has approached to this Tribunal for the following reliefs –

“(A) Hold and declare that applicant is entitled for deemed date of promotion on the post of head quarter assistant w.e.f. 31.7.2006 i.e. date on which junior to the applicant i.e. respondent no. 4 came to be promoted as head quarter assistant with all consequential benefits and consequently;

(B) Direct the respondents to consider the case of the applicant for further promotion on the post of Deputy Superintendent of Land Record and then to consider his case of grant of deemed date on the post of Deputy Superintendent of Land Records w.e.f. 27.4.2012 i.e. date on which the respondent no. 4 came to be promoted as such with all consequential benefits flowing from such deemed date of promotion.”

4. The O.A. is strongly opposed by respondent no.3. In para-7 it is submitted that in DPC meeting dated 21/12/2002 respondent no.4 was promoted from V.J. category as per the reservation policy, whereas, the applicant was selected / considered in N.T. (B) category. But as the applicant was not having caste validity certificate, his promotion was kept in abeyance. As the applicant was not fulfilling the criteria for promotion, he has not got the promotion along with the respondent no.4. It is further submitted that as per the minutes of DPC dated 25/03/2003 and 26/03/2003 already excess employees were in N.T. (B) category, hence the applicant was not considered for promotion. Hence, the O.A. is liable to be dismissed.

5. During the course of submission, the learned counsel for applicant has submitted that respondent no.4 is further promoted on the post of Deputy Superintendent of Land Records. Therefore,

prayed to direct the respondent nos.1 to 3 to consider the applicant for promotion to the post of Deputy Superintendent of Land Records with a deemed date of promotion from the date on which respondent no.4 Shri J.H. Khichi was promoted.

6. Heard learned P.O. Shri M.I. Khan. He has strongly objected the O.A. As per his submission, the applicant was not having the caste validity certificate and therefore he was not promoted along with Shri J.H. Khichi. Hence, the O.A. is liable to be dismissed.

7. There is no dispute that the applicant was arrested for the offence punishable under the Prevention of Corruption Act. He is already acquitted as per the Judgment dated 29/08/2016 by Special Judge, Nagpur in Special Criminal Case (ACB) No.02/2007. There is no dispute that for the same charges the departmental inquiry was held by the respondents. The applicant was exonerated in the departmental inquiry as per order dated 03/04/2018. Shri J.H. Khichi was promoted as per the order dated 31/07/2006 (P-64). That time criminal case was pending against the applicant.

8. From the perusal of reply, it appears that the applicant was not promoted only on the ground that he was not having caste validity certificate of N.T. (B). From the perusal of appointment order of applicant dated 19/11/1991, it is clear that the applicant was appointed

on compassionate ground. The applicant was not appointed in any reserved category. He was appointed as per the policy of the Government of appointment on compassionate ground (Open category). Therefore, there was no need for the applicant to apply for caste validity certificate. There are Judgments of this Tribunal, Hon'ble High Court and Hon'ble Supreme Court that once the candidate is appointed on compassionate ground or as per the scheme of the Government for Freedom Fighters etc., then those employees need not to produce Caste Validity Certificate. The applicant was appointed on compassionate ground. Therefore, his appointment was not in a reserved category of N.T. (B). Hence, the ground raised by the respondent nos.1 to 3 that the applicant has not produced Caste Validity Certificate of N.T. (B) category and therefore he was not promoted is not tenable.

9. There is no dispute that junior Shri J.H. Khichi was promoted on the post of Sr. Clerk on 31/07/2006. In fact, the applicant should have been promoted along with Shri J.H. Khichi on 31/07/2006. Therefore, the applicant is entitled for deemed date of promotion from the date on which his junior Shri J.H. Khichi was promoted, i.e., 31/07/2006.

10. Junior Shri J.H. Khichi was further promoted on the post of Deputy Superintendent of Land Records as per the order dated

24/07/2012. There is no dispute that the applicant was promoted on the post of Sr. clerk as per the order dated 31/12/2021.

11. The applicant was in fact entitled for promotion along with his junior Shri J.H. Khichi in the year 2006. Thereafter, Shri J.H. Khichi was promoted on the post of Deputy Superintendent of Land Records. Hence, we pass the following order –

ORDER

(i) The O.A. is allowed.

(ii) The respondent nos.1 to 3 are directed to give deemed date of promotion to the applicant w.e.f. from the date on which his junior Shri J.H. Khichi was promoted i.e. from 31/07/2006 for the post of Sr. Clerk.

(iii) The respondent nos.1 to 3 are directed to correct seniority list.

(iv) The respondent nos.1 to 3 are directed to consider the applicant for further promotion on the post of Deputy Superintendent of Land Records, if he is eligible and entitled for the said post and also grant deemed date of promotion on which his junior was promoted.

(v) No order as to costs.

(Nitin Gadre)
Member(A).

(Justice M.G.Giratkar)
Vice Chairman.

Dated :- 27/08/2024.

dnk.

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman and
Member (A).

Judgment signed on : 27/08/2024.