

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO. 907 OF 2015

DISTRICT : PUNE

Shri Sanjay Madhukarrao Sarode,)
Age: 56 years,)
Joint Director of Steam Boilers,)
Having Office at Kamgar Bhawan, 7th Floor,)
Bandra-Kurla Complex, Bandra (E),)
Mumbai-400 051.)
R/O. D-201, Treasure Park Near Rawat)
Brothers Behind Walawalkar Nagar, Pune-9)...**Applicant**

VERSUS

1. The State of Maharashtra,)
Through, Principal Secretary,)
(Labour), Industries, Energy and)
Labour Department, Having Office at)
Mantralaya, Mumbai- 400 032.)

2. Shri S.L. Kumbhalwar,)
Aged Adult, Working as Joint Director of)
Steam Boilers, Having office at Kamgar)
Bhavan, 7th floor, Bandra-Kurla Complex,)
Bandra (E), Mumbai-400 051.)**Respondents**



Shri A.V. Bandiwadekar, learned Advocate for the Applicant.

Ms. N.G. Gohad, learned Presenting Officer and

Shri D.B. Khaire, learned Special Counsel for the Respondent

No.1.

Shri K.R. Jagdale learned Advocate for the Respondent No. 2.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

Shri R.B. Malik (Member) (J)

DATE : 09.06.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

J U D G E M E N T

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant, Ms. N.G. Gohad, learned Presenting Officer and Shri D.B. Khaire, learned Special Counsel for the Respondent No.1 and Shri K.R. Jagdale, learned Advocate for the Respondent No.2.

2. This O.A. has been filed by the Applicant challenging the seniority list of the Joint Director of Steam Broilers for the period from 01.01.2004 to 31.12.2014 published on 13.10.2015 by the Respondent No.1.

3. Learned Counsel for the Applicant argued that the Applicant was promoted to the post of Joint Director of Steam Broilers on 24.05.2010. On 01.10.2012, the

Respondent No.1 published the provisional seniority list of Group 'A' officers working in the Directorate of Steam Broilers for the period from 01.01.2009 to 01.01.2012. Objection, if any, to the provisional seniority list were called within one month. There are four posts in Group 'A' in the Directorate of Steam Broilers viz. Deputy Director, Joint Director, Additional Director and Director. The Applicant was placed at Sr. No.4 in the cadre of Joint Director. Shri B.M. Bhokre, was shown at Sr. No. 3 and Shri S.L. Kumshalwar, the Respondent No.2, who belong to Scheduled Caste (S.C.) Category, was shown at Sr. No. 6, below the Applicant. The Applicant objected to his placement below Shri Bhokre and filed his objections. The Respondent No.2 didnot object to his place at Sr. No.6 in the seniority list. As the Respondent No.1 didnot finalize the Seniority list, the Applicant filed O.A. No.1150 of 2012. By order dated 07.05.2015, this Tribunal directed the Respondent No.1 to publish the final seniority list within 3 months from that date of order. On 02.09.2015, the Applicant submitted a representation, pointing out that Shri Bhokre has filed two O.As No. 747/2012 and 589/2014 before Aurangabad Bench of this Tribunal but he failed to get any relief against the Applicant. The Respondent No.1 ignored all the representations of the Applicant and published the final seniority list on 16.10.2015, placing the Respondent No.2 above the Applicant. The Applicant has filed the present O.A. challenging that.



4. Learned Counsel for the Applicant stated that the ostensible reason to change the seniority of the Applicant was that Shri B.M. Bhokre, who belonged to N.T. (B) category, was promoted from open category w.e.f. 01.08.2013 in the in the cadre of Joint Director. Shri Bhokre filed two O.As nos 747/2012 and 589/2014 before Aurangabad Bench of this Tribunal seeking seniority over the Applicant. However, he didnot succeed. The Respondent No.1 had failed to consider representations of the Applicant dated 27.09.2012, 18.10.2012 and 02.09.2015 to the provisional seniority list as on 01.10.2012. The Applicant and the Respondent No.2 were prompted to the post of Joint Director by G.R. dated 24.05.2010 on the same day and on the basis of the same Select list. The Respondent No.2 was at Sr. No. 3, while the Applicant was at Sr. No.1. There was no question of placing the Respondent No.2 above the Applicant in the Seniority list. As per Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, the Applicant has to be treated as senior to the Respondent No.2, as he was more meritorious than the Respondent No.2.

5. Learned Advocate Shri D.B. Khaire, Special Counsel for the Respondent No.1 argued that three posts of Joint Director were available for the select list of the year 2009-10. Two posts were available from promotion quota, one each for S.C. and Open category. One post was from nomination quota. Against the promotion quota, Shri S.H. Kumbhalwar from S.C. category and Shri D.K. Ghodke from Open category



were found eligible to be promoted. Shri Ghodke opted for voluntary retirement in 2010 and Shri S.T. Badhe from Open category was promoted. Name of the Applicant was not included in the select list of the year 2009-10. His name was included in the select list of the year 2010-11. The Applicant was promoted after the Respondent No.2, and therefore, in the cadre of the Joint Director, he is shown below the Respondent No.2. Learned Advocate Shri Khaire stated that judgement of this Tribunal, Aurangabad Bench and various judgement of Hon'ble S.C. have been considered while deciding the seniority list. Shri Bhokre was adjusted in Open category post of Joint Director by G.R. dated 13.10.2014. Shri Bhokre challenged the aforesaid G.R. dated 13.10.2014 in O.A. No. 589/2014 before this Tribunal, Aurangabad Bench. That O.A. was dismissed along with O.A. No. 742/2012 by order dated 01.04.2015.

6. Learned Advocate Shri Jagdale, on behalf of the Respondent No.2 adopted the arguments of the Special Counsel for the Respondent No.1. He argued that the Applicant was promoted from the select list of the year 2010-11, while the Respondent No.2 was promoted from the select list of the year 2009-10. The Respondent No.2 is, therefore, senior to the Applicant in the cadre of Joint Director.

7. Let us first examine the claim of the Applicant as per the recruitment rules for the post of Joint Director. From Exhibit R-6 (page 137 of the Paper Book) it appears that



there were 6 sanctioned post of Joint Directors in the Directorate of Steam Broilers. Till 28.09.2010, 50% of the posts were to be filled by promotion and 50% by nomination. The Rules were amended by notification dated 29.09.2010 and 100% posts are now required to be filled by promotion. Both the Applicant and the Respondent No.2 were promoted by Government order 24.05.2010 as Joint Director (Exhibit 'B' page 23). In the cadre of Deputy Director, the Applicant was appointed to the post on 03.05.1998 from Open category while the Respondent No.2 was appointed on 29.11.2001 from S.C. category. From the file noting appended as Exhibit R-2-1, (Pg. 69-85 of the paper book) it appears from noting dated 12.06.2013 (Pg. 77 para 3) that though out of 6 posts of Joint Director, 50% were required to be filled by promotion, in practice all the 6 posts were being filled by promotion. That will explain the reservation of posts to be filled, which was shown as S.C.-1, S.T.-1 and Open-1. If only 3 posts were there for promotion, only 1 post would have been reserved. It will be proper to reproduce the file noting dated 03.08.2013 of G.A.D. from Pg. 82 of the Paper Book.

It reads as follows:-

१२. सन २००६ व २००८ नंतर सह संचालक संवर्गात सन २०१० मध्ये आणखी ३ पदे उपलब्ध झालेली होती. म्हणजेच आरक्षणानंतर एकूण ७ पदे उपलब्ध झालेली आहेत. (सह संचालक या संवर्गाची मंजूर सवर्ग संख्या ६ इतकी आहे) सह संचालक वाष्यके हा ६ पदाचा संवर्ग असून संख्या पूर्ण होत असल्याने ६ पदे विचारात घेणे आवश्यक आहे. या ६ पदाचे आरक्षण खालील प्रमाणे राहिल. अनुसूचित जाती-१, अनुसूचित जमाती-१, खुला-४ असे राहिल.

१३. सन २०१० मध्ये ३ पदे उपलब्ध झालेली होती या ३ पदाचे आरक्षण अनुसूचित जाती-१ व खुला २ असे होते. उपलब्ध झालेली ३ पदे विचारात घेवून १) श्री. कुंभलवार (अजा) २) श्री. सरादे (खुला) व ३) श्री. लोंदे (खुला) यांना पदोन्नती देवून भरलेली आहेत.

8. It appears that for 6 posts, which were always filled only by promotion (4 posts were filled till 2008, keeping two posts vacant), in 2010, when three vacancies were to be filled, at least one post was required to be filled from S.C. Category. As per 100 point roster for promotion, first point is for S.C.. Even if only 50% of 6 posts for promotion are considered, 1 post will have to be reserved and the reservation will go to S.C. candidate. As the Respondent No.2 was eligible for promotion to the post of Joint Director, he was required to be considered first i.e., ahead of the Applicant. The claim of the Applicant that he was senior to the Respondent No.2 in the cadre of Deputy Director, so when promoted to the post of Joint Director, he will be senior to the Applicant, cannot be accepted. The Respondent No.2 was required to be considered first against vacant S.C. point in 100 point roster for promotion, as no backward class candidate was promoted from S.C. category since 2004 when the Reservation Act came into existence.

9. The Applicant has relied on the judgement of Hon'ble S.C. in **S. Panneer Selvam & Others Vs. Government of Tamil Naidu & Others in Civil Appeal Nos. 6631-6632 of 2015 arising out of SLP (Civil) Nos. 8366-8367 of 2012.** Learned Counsel for the Applicant argued that Hon'ble S.C. has held that Article 16 (4A) of the Constitution of India is only an enabling provision regarding consequential seniority of a reserved category candidate promoted earlier than his



senior general category candidate in the feeder cadre. Unless a policy decision is taken by the State in this regard, it would be wrong to hold that Article 16(4A) of the constitution by itself would give consequential seniority in addition to accelerated promotion to the roster-point promotees. Learned Counsel for the Applicant argued that there is no provision in the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis, Nomadic Tribes, Special Backward Class and Other Backward Classes) Acts, 2001 (Reservation Act) which came into force on 29.01.2004 and any rules framed there under, providing for consequential seniority. As a result, even if, it is held that the Respondent No.2 was promoted ahead of the Applicant on the roster point no.1, as the Respondent no.2 was junior to the Applicant in the feeder cadre of Deputy Director, the Applicant would regain his seniority over the Respondent No.2 in the cadre of Joint Director.

Hon'ble S.C. in Panneer Selvam's case (supra) has held that:

"35. In the absence of any provision for consequential seniority in the rules, the **'catch up rule'** will be applicable and the roster-point reserved category promotes cannot count their seniority in the promoted category from the date of their promotion and the senior general category candidate will regain their seniority. The Division Bench appears to have proceeded in the erroneous



footing that Article 16 (4A) of the Constitution of India automatically gives the consequential seniority in addition to accelerated promotion to the roster-point promoters and the judgement of the Division Bench cannot be sustained.”

10. Learned Special Counsel for the Respondent No.1 argued that the State Government had taken a policy decision to grant consequential seniority in such cases, when a roster-point promotee is granted accelerated promotion, he also gets consequential seniority. He referred to G.R. dated 20.10.1997 which has the following provision:

- २ (अ) एखादा मागासवर्गीय कर्मचारी/अधिकारी पदोन्नत संवर्गात अघोदरच पदोन्नत झाला असले तर त्याची ज्येष्ठता त्या संवर्गात पुनर्विलोकीत करण्याची आवश्यकता नाही. तसेच दिनांक ३० जानेवारी १९९७ रोजी अस्तित्वात असलेल्या ज्येष्ठता याद्या सुधारित करण्याची देखील आवश्यकता नाही.
- (ब) संबंधित कर्मचारी/अधिकारी त्यांच्या त्या त्या संवर्गातील नियमित नियुक्तीच्या दिनांकापासून, ज्येष्ठता विनियम, १९८२ मधील तरतुदीनुसार आपली ज्येष्ठता कायम राखील.
- (क) ज्येष्ठता निर्धारित करण्यासंबंधीचे वरील तत्व शासन सेवेतील सर्व गटातील सर्व स्तरांवरील पदोन्नत्यांच्या संदर्भात लागू राहिल.

These instructions were reiterated by G.R. dated 20.03.2003 as below:

३. केंद्र शासनाने भारतीय संविधानामध्ये केलेली दुरुस्ती व त्यानुसार निर्गमित केलेले दिनांक २१/०१/२००२ चे आदेश विचारात घेता राज्य शासनाने आता निर्णय घेतला आहे की, शासन सेवेतील मागासवर्गीय/उमागासवर्गीय कर्मचारी/अधिकारी यांची पदोन्नत संवर्गात आपापसातील ज्येष्ठता विनियमित करण्याबाबत वर नमूद केलेल्या दिनांक २१ जून १९८२ च्या

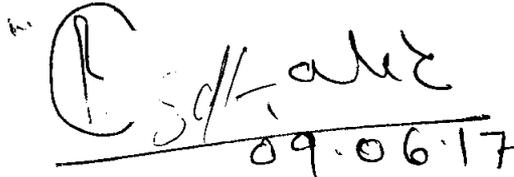
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अधिसूचानेतील आणि दिनांक २०/१०/१९९७ च्या आदेशातील सूचना कायम राहतील. त्यामूळे मागासवर्गीय व अमागासावर्गीय उमेदवारांच्या निवडसूचीतील क्रमानुसार दिलेल्या नियमित पदान्तीच्या संवर्गातील त्यांची परस्पर ज्येष्ठता निश्चित होईल.

11. Learned Special Counsel argued that these G.Rs contain the policy decision of the Government of Maharashtra that '**consequential seniority**' is available to a backward class candidate given accelerated promotion on a roster-point and the Respondent No.2 was correctly given seniority over the Applicant. We find that the contention of Learned Special Counsel to be valid and held that the Respondent No.2 is eligible to get seniority over the Applicant in the cadre of Joint Director.

12. The Applicant has cited a large number of judgements in support of his contentions. We have carefully perused those judgement but here on facts, the Respondent No.2 was eligible to be promoted before the Applicant. Regardless of the fact whether the number of posts for promotion are taken as 3 or 6, in the 100 point roster first point is required to be filled by S.C. category candidate, and the Applicant was first S.C. category candidate after the Reservation Act came into force, so he was eligible for promotion before General category candidate. The Government of Maharashtra had taken a policy decision to grant consequential seniority by G.Rs mentioned in the preceding paragraph. Considering these two facts, the Applicant cannot claim seniority over the Respondent no.2.

13. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.


(R.B. MALIK)
MEMBER (J)
09.06.2017


(RAJIV AGARWAL)
(VICE-CHAIRMAN)
09.06.2017

Date : 09.06.2017
Place : Mumbai
Dictation by : NMN
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