

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.930 OF 2018
(Subject : Deemed Date of Promotion)

DISTRICT : PUNE

(*)

Prakash

Shri Prashant Yashwant Shinde)
Age : 50 years, Occupation : Govt. Service,)
Working as Chemical Assistant in State Public Health)
Laboratory, Pune.)
Address : M-25/2226, Maharashtra Housing Board)
Colony, Yerwada, Pune 411 006.)

..... Applicant

Versus

1. State of Maharashtra,)
Through Secretary,)
Public Health Department, Mantralaya,)
Mumbai 400 032)
2. The Director of Health Services,)
Aarogya Bhavan, Nr. Dental College,)
Behind CST, Mumbai 400 001.)
3. Joint Director of Health Services,)
(Malaria, Filaria and water Borne diseases))
Central Building, Pune 411 001.)
4. Deputy Director of Health Services,)
State Public Health Laboratory,)
Pune contonment water works compound,)
Pule gate, Pune 411 001.)

..... Respondents

Shri P.Y. Shinde, Applicant in person.

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : SHRI P.N. DIXIT, VICE-CHAIRMAN.

RESERVED ON : 27.09.2019.

PRONOUNCED ON : 01.10.2019.

(*)

correction is carried out
as per order dt 18/11/2019

18/11/19
Registrar
Maharashtra Administrative Tribunal

9/10

JUDGMENT

1. Heard Shri P.Y. Shinde, Applicant in person and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. Applicant is working under the establishment of the Respondents (Health Department) as Chemical Assistant. He joined the Government service in 1992. He has prayed, he should be promoted from 01.05.2014 as Senior Chemical Assistant, since there were 19 vacant posts.

3. In support thereof he has mentioned that his juniors namely Shri Ravindra Ahire, Shri Siddheshwar Goykar and Shri D.S. Burle, have been promoted w.e.f. 2015. The Applicants has relied on the following judgments :-

- (a) Maj Gen HM Singh, VSM v. Union of India and ANR., Service Law-Fundamental Rights- Article 14, 16 of the Constitution of India-Promotion against vacancy. The relevant portion of the same is as under :-

"The Court while answering in the affirmative, observed that non-consideration of the claim of appellant for vacancy in the post capable of being filled up, would deprive him of his fundamental right of equality before the law, and equal protection of the laws, extended by Article 14 of the Constitution of India."

- (b) High Court of Himachal Pradesh, (Shakti Chand Dogra V. State of Himachal Pradesh, CWP (T) No.12590/2008, decided on 22.04.2014. The relevant portion of the same is as under :-

"The right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution."

The guarantee of a fair consideration in matters of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution and any delay in the promotion by the Selection Committee for no valid reason is an infringement of that right."

- (c) The judgment of this Tribunal in O.A.No.865/2018 (Shri Sunder Madanrao Jadhav Versus The State of Maharashtra), dated 24.06.2019.

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4. Respondents No.1, 2, 3 and 4 have filed their affidavit-in-reply and contested the claims made by the Applicant. Affidavit-in-reply states that the Applicant received 1st Time Bound Promotion on 25.11.2004 on completion of 12 years and 2nd Time Bound Promotion on 25.11.2016. Paragraph 18 and 23 of the said affidavit-in-reply states as under :-

"18. As per verified roster system other candidates were promoted. Applicant is OBC candidate & OBC treated as open category for promotion. Hence applicant is not eligible for promotion though he has completed 3 years in Service. Present applicant will superannuate on 31/10/2026 during his service he will be promoted as per seniority list."

23. as per verified roster, reservation rules junior employee by name Shri Ravindra Ahire, Shri Siddheshwar Goykar and Shri D.S. Burle are promoted, they are in roster and under reservation category. Applicant is from OBC category and OBC treated as an Open category for promotion. Hence he was not promoted though he has completed 3 years of Service, hence denied."

5. Respondents have further submitted that on 17.06.2019 the Applicant has been promoted as Senior Chemical Analyst, as he became eligible for promotion at that time. The Respondents therefore have prayed that the O.A. is devoid of any merit and therefore deserves to be dismissed.

OBSERVATIONS AND FINDINGS :-

6. I have examined the material produced by the Applicant, the record produced by the Respondents and his record. Respondents have admitted that the Applicant though was working as Junior Chemical Analyst was given responsibility of working as Senior Chemical Analyst. However, in 2015 when the DPC met, as per roster available at that time, Respondents promoted 12 officers belonging to the Open Category and some other officers belonging to Reserved Category. The Officers who were promoted from the Reserved Category were junior to the Applicant, but they were promoted because of their Reserved Category and as per the roster.

Sg. J.

7. However, no officer belonging to Open Category and junior to the Applicant has been promoted. When the DPC met next time namely in 2019, the Applicant was considered and being eligible he was promoted on 17.06.2019. As far as the judgments produced and relied on by the Applicant are concerned, the judgments are underlining the principle that the Government Servant has fundamental right to be considered for promotion, if there is a vacancy. In the present case, the Applicant belonging to Open Category was figuring at serial No.16 of the seniority list. However, the Government servants who were senior to him and belonging to Open Category were considered and 12 of them were promoted. The Government servants who were junior as they belonged to Reserved Category were given advantage as per the roster and hence promoted as per the then existing rules. The Hon'ble Supreme Court in Civil Appeal No.672 of 2019 in Union of India Vs. Krishna Kumar and others, decided on 14.01.2019, [2019(2) SLR 865 (S.C.)] has observed as under :-

"The right is to be considered for promotion in accordance with the Rules as they exist when the exercise is carried out for promotion."

There is no discrimination against the Applicant nor has he been superseded. The facts in the judgment given by this Tribunal in O.A.No.865 of 2018 are different and therefore the judgment is not relevant in the present case.

8. For the reasons stated above, the Original Application is devoid of any merits and hence the O.A. is dismissed. No order as costs.

Sd/-

(P.N. DIXIT)

VICE-CHAIRMAN

prk

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

Original Application No.

of 20

DISTRICT

..... Applicant/s

(Advocate)

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	<div style="text-align: center;"> 18.11.2019 Tribunal's orders <u>O.A 930/2018</u> </div>
	<p>Shri Prakash Y. Shinde ... Applicant Vs. The State of Maharashtra & Ors ... Respondents</p> <p>1. Heard Shri P.Y. Shinde, applicant in person and Shri A.J Chougule, learned P.O for the Respondents.</p> <p>2. In O.A 930/2018, the applicant has submitted an application for speaking to the minutes.</p> <p>3. In the original judgment dated 27.9.2019, his name is mentioned as Shri Prashant Yashwant Shinde. However, as per his submission, it should be Shri Prakash Yashwant Shinde.</p> <p>4. The original application is verified and the cause title of the judgment is modified as his name Shri Prakash Yashwant Shinde.</p> <div style="text-align: right; margin-top: 20px;"> <div style="border: 1px solid black; padding: 2px 10px; display: inline-block;">Sd/-</div> <div style="text-align: center;"> (P.N Dixit) Vice-Chairman (A) </div> </div> <div style="text-align: left; margin-top: 20px;">Akn</div>