

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.129/2008.

Damodar Eknath Dalvi,
Aged about 57 years,
Occ : Service,
R/o Officers' Quarters,
M.S. Board of Secondary and Higher Secondary Education,
Nagpur Divisional Board,
Civil Lines, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra
through its Secretary,
Department of School Education & Sports,
Mantralaya, Mumbai-32.
- 2) The Director of Education,
(Secondary and Higher Secondary), (M.S.),
Pune-1.
- 3) Shri J.M. Abhyankar,
Former Joint Director of Education,
Maharashtra Primary Shikshan Parishad,
Jawahar Bal Bhavan, Mumbai.
R/o G 116, Mukherjee Marg,
Gorepeth, Nagpur.

Respondents

Shri S. M. Khan, Adv. holding for Shri P.C. Marpakwar, Advocate for the applicant.
Shri P.N. Warjekar, P.O. for the respondent Nos. 1 and 2.
None for the respondent No.3.

Coram:- B. Majumdar, Vice-Chairman and'
R.B. Malik, Member (J)

Dated: - 29th April 2016.

Order

Per: Member (J)



The affidavit by way of this Original Application (O.A.) disputes the seniority list whereby he has been placed below the 3rd respondent (Private respondent). All the various reliefs sought herein depend upon the determination of the issue of the abovesaid seniority.

2. The applicant came to be appointed w.e.f. 9.1.1987 by nomination (direct) in Educational Service, Class-1 (Administrative Branch) through M.P.S.C. It is an indisputable factual position that the applicant got embroiled in a disciplinary proceeding and ultimately it was by an order of 15.10.2001 that his probation was formally cleared though w.e.f. 4.2.1990. He was promoted in the cadre of Dy. Director of Education. It is pleaded in the O.A. that the name of the applicant was included in the seniority list published on 29.7.2005 (Sr. No.41).

3. Insofar as the dispute raised by the applicant is concerned, he is basically aggrieved by placing over him in the seniority list of the respondent No.3. It is his case that he is a direct appointee from 1987 batch. The respondent No.3 in fact should be held to have suffered from an order made by this Tribunal in Transfer Application (T.A.) No. 71/1991 converted from W.P. No. 3170/91 **(Prakash Ramchandra Kulkarni and one another V/s State of Maharashtra and 62 others dated 19.11.1992)**. It needs to be noted

and clear that the respondent No.3 was not a party to that T.A. itself. However, the case of the applicant is that this Tribunal struck down the seniority list which would also affect the respondent No.3 and, therefore, the respondent No.3 will have to be shown below the applicant. He made representations to ventilate his grievance. By a communication dated 29.3.2007, the respondent No.2 Director of Education (Secondary and Higher Secondary), (M.S.), Pune informed the applicant that the provisional seniority list for the period from 1.1.1998 to 31.12.2004 came to be issued on 18.7.2005 and copies were forwarded to all concerned. The representation of the applicant was also considered. He was further informed that his date of appointment in the cadre of Class-I was 3.2.1987. However, some departmental proceedings were pending against him and it was by an order of 15.10.2001 that his probation period was cleared w.e.f. 4.2.1990. Inasmuch as his probation period had not been cleared, he was not considered for the post of Dy. Director of Education and it was only thereafter that he was promoted on 22.10.2001, whereas the date of appointment of the respondent No.3 to the said cadre was 23.4.1998 and, therefore, he was senior to the applicant. It is this communication which stung to the applicant and has brought him before us by way of this O.A.



4. We have perused the record and proceedings and heard Mr. S.M. Khan, the learned counsel for the applicant and Mr. P.N. Warjekar, the learned P.O. for the respondent Nos. 1 and 2. None appeared for the respondent No.3.

5. We have already noted the gist of the case of the applicant. The respondent Nos. 1 and 2 have filed a common affidavit-in-reply through Shri G.G. Nandede, the Deputy Director of Education. It is the case of the respondents that the list was finalized after the objections were invited to the provisional seniority list for the period from 1.1.1998 to 31.12.2004. According to the respondents, the placement of the applicant vis-à-vis the respondent No.3 is accurate. It is pointed out that the applicant seeks relief in respect of Super Class-I cadre as Joint Director of Education and, therefore, disputing the seniority list of Class-II and earlier one is not proper. It is further pleaded that after the decision of the Tribunal in T.A. No. 71/1991, there was due revision of the seniority list by Circular of 20.8.1994. In that behalf, it is pointed out that the respondent No.3 was placed at Sr. No.36 by taking into consideration the date of promotion which was 1.2.1973. Thereafter the Government published the seniority list of Class-I officers for the period from 1.1.1987 to 31.12.1992 vide Circular of 8.5.1996. The applicant therein was


shown to have been appointed on 20.1.1987. Therefore, the respondent No.3 was indisputably senior to the applicant. There is then reference to events of the departmental enquiry against the applicant and consequences thereof.

6. The applicant has annexed to this O.A. the various seniority lists as published on 24.4.1992 and the provisional seniority list vide G.R. of 7.9.1990. There are other seniority lists on record including one issued vide G.R. dated 8.5.1996. Now, it is really not necessary for us to closely read them herein. It would be suffice to mention that if the case of the applicant was juxtaposed with the seniority list then granting all latitude to the applicant, it would become clear that the applicant for all practical purposes slept over his right from long time. Even the order of the Tribunal in T.A. No. 71/91 was made on 19.11.1992.s We shall presently read that order to the extent necessary. However, taking the case of the applicant as it is, there has been a delay which amounts to laches in the context of the present facts. We do not at all agree with the respondents that the earlier lists are entirely irrelevant. Although, in the present O.A. we ultimately have to decide the issue with regard to the higher promotional posts, but there is definitely a nexus between final seniority list and the earlier lists and if the applicant was aggrieved for whatever reason, in our

view, it was incumbent upon him to challenge the same before this Tribunal. We shall be presently pointing out that we do not accept the case of the applicant based on the earlier order of the Tribunal in T.A. No.71/91, but going along with the applicant for the time being in that behalf, he quite clearly is so disposed as to be aggrieved by the seniority list subsequently published as offending the mandate of this Tribunal That is all the more the reason why he should have moved this Tribunal much earlier.

7. The question of limitation is also there. But it is not so much that issue only. What really happens is that the seniority aspect of the matter is generally beset with an elaborate exercise which is not always free from being vexed and, therefore, if the one who had an opportunity to raise objection to the provisional seniority list is shown to have not acted with due diligence in past, then he produces the result where certain rights have accrued and have become solidified and he wants to get them altered belatedly which might give right to the complications which he could have avoided. In this behalf, useful reference can be made to **Bhupendra Nath Hazarika V/s State of Assam, AIR 2013 SC 234 (A).**

8. It is on the above point itself that this O.A. can be worked out.




9. However, turning to the order on T.A. No. 71/91 which is the mainstay of the applicant, we have already mentioned above that the respondent No.3 was not a party respondent thereto. The matter was transferred from the Hon'ble High Court to this Tribunal after the establishment of the Tribunal. The judgment opens with details of the dates of appointment of the petitioners and such other details. A certain order of 21.11.1990 was impugned before this Tribunal. It was recorded that the issue was with regard to clearance of departmental examination. Four of the candidates had been exempted. In para 5, issue was culled out as to whether the respondents there except the 6 respondents named there were entitled to the deemed dates given in the seniority list. The Tribunal noted the details of various dates including the deemed dates given to those employees before this Tribunal. It was found in para 8 that the two respondents were granted the deemed date rightly. In para 9, it was held that the respondents except those mentioned therein had not passed the departmental examination. Rule 3 of the Maharashtra Education Service, Class-III (Administrative Branch Departmental Examination) Rules, 1979 came to be examined. It was held that the said rules provide that those employees who were required to pass the said examination, but failed to do so, would not be eligible for being promoted. In para 11, it was found that depending upon the availability

of vacancies in 1976, the excess number of employees were given the deemed dates. It was categorically held that percentage earmarked should not be exceeded. It was further held that the rule did not pertain to filling up of vacancies when they occur, but it would make proportion between the direct recruits and promotees.

10. Thereafter, elaborate directions were given and it was held in the last clause that those who have already been promoted to M.E.S., Class-I before the date of that order of the Tribunal, would not be disturbed till the seniority list was finalized and their continuance would be treated as provisional and fortuitous.

11. It is this last clause which the applicant is heavily relying upon in support of his case against the respondent No.3.

12. Now, we have read in extensio the order of this Tribunal in T.A. No. 71/91. We are at a complete loss to understand as to how the respondent No.3 can be held to have been affected thereby. There were reasons peculiar and specific of each one of the respondents before this Tribunal which becaused the order of the Tribunal. Unless the applicant could show that the respondent No.3 also suffered from the same vice as did the respondents before this Tribunal, we do not think that the order of this Tribunal can just be



bodily lifted and applied against the respondent No.3. We reject that contention advanced on behalf of the applicant.

13. The last ground is that according to the applicant, he is a direct appointee as against the respondent No.3 who is promotee and in that connection, reliance is being placed on **Bhupendra Nath** (supra). We have carefully perused the judgment of the Hon'ble Supreme Court and we are quite clearly of the view that by no stretch of imagination can it be said that the respondent No.3 will be hit by rule of **Bhupendra Nath** (supra). The impugned communication makes it clear as to the reason why the respondent No.3 was placed ahead of the applicant including the applicant having been embroiled in a departmental enquiry. We do not, therefore, think that the applicant has any case against the respondent No.3 or even against the seniority list.

14. The upshot is that examined it from any angle and there is no merit in this O.A. The same is accordingly dismissed with no order as to costs.

sd/-

(R.B. Malik)
Member (J)

sd/-

(B.Majumdar)
Vice-Chairman