

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.865 OF 2018

DISTRICT : KOLHAPUR

Shri Sunder Madanrao Jadhav.)
Age : 53 Yrs., Joint District Registrar, Class-I)
(Senior) and Collector of Stamps, having office)
at New Administrative Building, Kasba Bawada)
Road, Kolhapur and residing at Paymal House,)
Near Old Aadhar Hospital, Harishchandra)
Building, Kolhapur – 416 012.)...Applicant

Versus

The State of Maharashtra.)
Through Additional Chief Secretary,)
Revenue & Forest (Stamp & Registration))
Department, Mantralaya,)
Mumbai – 400 032.)...Respondent

Mr. M.D. Lonkar, Advocate for Applicant.

Ms. S.P. Manchekar, Presenting Officer for Respondent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 24.06.2019

JUDGMENT

1. The Applicant is seeking deemed date of promotion w.e.f.02.05.2015 for the promotional post of Joint District Registrar, Class-I (Senior) invoking

W. S. Manekar

jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated facts giving rise to this application are as follows :-

The Applicant was initially appointed as Sub-Registrar, Grade-II in Revenue and Forest Department of Government of Maharashtra on 04.06.1994. During the course of service, he was promoted to the post of Sub-Registrar, Grade-I on 19.03.2002 and then to the post of Joint Registrar, Class-III in the year 2006 and thereafter to the post of Joint Registrar, Class-I (Junior) in 2011. He contends that in 2015, he was eligible and qualified to be considered for the next promotion in the cadre of Joint District Registrar, Class-I (Senior). By order dated 02.05.2015, various officials were promoted in the cadre of Joint District Registrar, Class-I (Senior). That time, one of the Officer viz. Shri Boralkar, who was in the select list on the strength of seniority and eligibility declined the promotional post. The Applicant was next to Shri Boralkar in the seniority list and in view of refusal of Shri Boralkar to accept the promotional post, he being eligible, it was imperative on the part of Respondent to promote the Applicant along with other officials in the order dated 02.05.2015. However, it being not done so, aggrieved by it, the Applicant has filed O.A.No.381/2016 which was disposed of on 08.09.2016 giving directions to Respondents to take appropriate steps in the matter arising out of refusal of Shri Boralkar to accept the promotional post and give it to the next eligible person within eight weeks from the date of order. In pursuance of aforesaid direction, the Respondent belatedly by order dated 02.05.2017 promoted to the Applicant to the post of Joint Registrar, Class-I (Senior) and accordingly, he joined on 11.05.2017. The Applicant then made representation on 29.09.2017 and 01.01.2018 for deemed date of promotion w.e.f.02.05.2015 with consequential monetary benefits.

3. The Respondent resisted the application by filing Affidavit-in-reply (Page Nos.23 to 28 of Paper Book) *inter-alia* denying the entitlement of the Applicant to the relief claimed. It is not in dispute that in 2014-2015, the proposal to fill-in the promotional post of Joint District Registrar, Class-I (Senior) was processed and finalized for 17 posts and the Applicant's name was at serial number 12 of the select list from Open Category. However, only 11 posts were vacant, and therefore, the name of the Applicant was not considered for promotion. The Respondent further contends that Shri Boralkar's letter dated 01.09.2014 declining to accept the promotion was received by the Department on 04.09.2014. Whereas, the Departmental Promotion Committee (DPC) meeting was already concluded on 04.08.2014, and therefore, the question of considering Applicant's name in place of Shri Boralkar did not arise. Later, in pursuance of directions given by the Tribunal in O.A.No.381/2016, the Applicant's case was examined and he was promoted to the post of Joint District Registrar, Class-I (Senior) w.e.f. 02.05.2017. As regard representations made by the Applicant for deemed date of promotion w.e.f.02.05.2015, the Respondent contends that the Applicant is not superseded by his junior, and therefore, his representation for grant of deemed date of promotion has been rightly rejected. The Respondent thus contends that the Applicant's case does not fall within the guidelines issued in Circular dated 6th June, 2002, and therefore, is not entitled to deemed date of promotion.

4. At the very outset, it needs to be clarified that during the pendency of this O.A, the representation made by the Applicant for deemed date of promotion has been decided by the Respondent in terms of order passed by this Tribunal in this O.A. on 01.11.2018 and the same has been turned down by order dated 18.12.2018 on the ground that no junior official from Open Category has been promoted to the post of Joint District Registrar (Senior), and therefore, the Applicant is not entitled to deemed date of promotion w.e.f.02.05.2015.

Antony

5. The issue posed for consideration in the present O.A. is whether the Applicant is entitled to deemed date of promotion w.e.f.02.05.2015 in the cadre of Joint District Registrar, Class-I (Senior) with monetary benefits. Needless to mention that the employee is entitled to deemed date of promotion where he has been superseded by his junior and has been illegally deprived of the opportunity to work on the promotional post though eligible and qualified to occupy the said post.

6. Here, it would be apposite to set out certain admitted facts, which are as follows :-

- (a) Initially, the DPC meeting was convened on 04.08.2014 for preparing select list for the promotional post of Joint District Registrar, Class-I (Senior) but it was cancelled. Later again, the DPC was convened on 13.02.2015 and fresh select list was prepared wherein Shri Boralkar and the Applicant were found eligible for promotion at Serial Nos.11 and 12 respectively.
- (b) The Applicant was next to Shri Boralkar and both were eligible for the promotional post in the cadre of Joint District Registrar, Class-I (Senior) from Open Category.
- (c) Shri Boralkar, by his letter dated 01.09.2014 refused to accept the promotional post.
- (d) The Respondent by order dated 02.05.2015 promoted 15 Officials to the post of Joint District Registrar, Class-I (Senior) by excluding the name of the Applicant.
- (e) In pursuance of directions issued by this Tribunal in earlier round of litigation i.e. O.A.No.381/2016, the Respondent later examined the Applicant's case and promoted him w.e.f.02.05.2017.
- (f) The Respondent by communication dated 18.12.2018 rejected the representation of the Applicant for deemed date of promotion

solely on the ground that the Applicant is not superseded by Junior Official from Open Category, and therefore, not entitled to deemed date of promotion.

- (g) In the seniority list, Shri Boralkar was at Serial No.21, the Applicant (Open Category) was at Serial No.22 and Shri Rajput (S.T. Category) was at Serial No.24 and he was promoted on 02.05.2015.

7. At this juncture, let us see the direction issued by this Tribunal in 1st round of litigation i.e. O.A.No.381/2016 decided on 08.09.2016.

"It is an admitted position that in the list, copy whereof is annexed at Page 14 of the Paper Book, Shri V.P. Boralkar whose name appeared at Serial NO.15 from Open category has declined to accept the promotion. We are not going to enter into the details of each name of the personnel but ex-facie, it would appear that his name is at Serial No.12 in the select list of Open category candidates. All that he is asking for in this OA is to give directions to the Respondents to give the promotion to the next eligible person in view of Mr. Boralkar's refusal to accept the direction. We can find nothing objectionable much less even illegal or irregular in giving the necessary directions. It is, therefore, directed that the Respondents shall within a period of eight weeks from today act in the matter arising out of the refusal of Shri Boralkar to accept the promotional post and give it to the next eligible person, who is already been found fit by the DPC and if the next eligible person is the Applicant, so be it. The OA is allowed in these terms with no order as to costs."

8. The learned P.O. opposed the entitlement of the Applicant to the deemed date of promotion solely on the ground that no junior Official has been promoted, and therefore, the question of asking for deemed date of promotion does not survive. In this behalf she referred to the Circular dated 6th June, 2002 whereby the guidelines are issued to examine the matters relating to deemed date of promotion. The said Circular is illustrative and has set out the instances and also contained guidelines in this behalf. The relevant portion of the Circular is as follows :

- “२. कर्मचा-याला ज्या पदाचा मानिव दिनांक दयावयाचा आहे त्या पदावर त्याला प्रत्यक्ष पदोन्नती मिळणे आवश्यक आहे. परंतु सेवेमध्ये असताना त्याला जर प्रत्यक्ष पदोन्नती मिळाली नाही तर पदोन्नतीचा मानिव दिनांक देताना महाराष्ट्र नागरी सेवा (सेवेच्या सर्वसाधारण शर्ती) नियम १९८१ मधील नियम ३२ मधील तरतुदी शिथिल करणे

W. S. Kulkarni

आवश्यक ठरते. अशाप्रकरणी मात्र पूर्वीप्रमाणेच सामान्य प्रशासन विभाग आणि वित्त विभाग यांची मान्यता घेणे आवश्यक राहिल. अशा अनुषंगाने आणखी नमूद करण्यात येते की, मानीव दिनांकाची प्रकरणे सर्वसाधारण पणे ज्या कारणांमुळे उदभवतात ती कारणे सोबतच्या परिशिष्ट - अ मध्ये दिलेली आहेत. ती विचारात घेऊन मानीव दिनांकाची प्रकरणे उदभवणार नाही याची दक्षता शासनाच्या सर्व विभागांनी व विभाग प्रमुखांनी घ्यावी. अशी दक्षता घेऊनही मानीव दिनांक देण्याची प्रकरणे उदभवल्यास त्या प्रकरणाची तपासणी/ उपरोक्त आदेशातील तरतुदी आणि सोबतच्या परिशिष्ट - ब मधील मुद्दे विचारात घेऊन करावी व त्यांची पूर्तता होत असल्यास मानीव दिनांक प्रधान करण्यास परिच्छेद 9 मधील प्राधिकारांतर्गत मंजूरी देण्यात यावी.

परिशिष्ट - अ

मानीव दिनांक देण्याची प्रकरणे उदभवण्याची कारणे

१. गोपनीय अहवालातील प्रतिकूल शेरे वेळेवर न कळविणे, त्यांची वस्तुनिष्ठ प्रतवारी न होणे, विभागीय पदोन्नती समितीच्या बैठकीच्या वेळी अदययावत गोपनीय अहवाल उपलब्ध नसणे व त्यामुळे त्यांची प्रकरणे खुली ठेवणे.
२. सेवाजेष्ठता यादी अदययावत नसणे, शिवाय सर्व अधिका-यांना /कर्मचा-यांना सेवाजेष्ठता यादी वेळीच उपलब्ध न झाल्यामुळे अधिकारी /कर्मचारी यांना सेवा ज्येष्ठता यादीतील त्यांचे स्थान माहित नसणे.
३. विभागीय परीक्षा उत्तीर्ण / अनुत्तीर्ण झाल्याच्या कारणास्तव तसेच उत्तीर्ण होण्यापासून सूट मिळाल्यानंतर परीक्षा नियमांनुसार सेवाज्येष्ठता यादीत वेळीच सुधारणा न करणे.
४. मागासवर्गीयांच्या पदोन्नती संदर्भातील आरक्षण धोरणाची काटेकोरपणे अंमलबजावणी न करणे.
५. पदोन्नतीसाठी विचार करताना विभागीय चौकशी प्रलंबित करणे, काही कालावधीनंतर विभागीय चौकशीचा निर्णय घेऊन त्यामध्ये निर्दोष सूटणे वा किरकोळ शिक्षा होणे.
६. पदोन्नतीसाठी विचार झालेला असताना अधिकारी / कर्मचारी निलंबित असणे व त्यानंतर तो अंशतः किंवा पूर्णतः दोषमुक्त होणे.
७. भ्रष्टाचार /लालचपत प्रकरणी न्यायालयात गुन्हा दाखल असल्याने पदोन्नती न देणे व निर्दोष सुटल्यानंतर मानीव दिनांक देणे.
८. निवडसूच्यांना आयोगाची मान्यता न घेणे, परिणामी दीर्घकाळ पदोन्नती तात्पुरत्या स्वरूपात चालू राहणे - पदोन्नत्या नियमित झाल्याशिवाय मानीव दिनांकाचा विचार करणे शक्य नसते.
९. पदोन्नतीच्या नियमित कोटयाखेरीज नामनिर्देशनाकरिता असलेल्या कोटयातील पदांवर पदोन्नत्या दिल्या जातात व भविष्यात पदोन्नतीसाठी उपलब्ध होणा-या पदांवर त्या समायोजित केल्या जात नाहीत.

परिशिष्ट - ब

मानीव दिनांक देण्याबाबतच्या प्रस्तावाची तपासणी करताना लक्षात घ्यावयाचे मुद्दे.

- १) सेवाकनिष्ठ कर्मचा-यास पदोन्नती देण्यात आली, त्यावेळी संबंधित कर्मचा-यांचा कोणत्या कारणास्तव विचार झालेला नाही. यास जबाबदार कोण व त्याविरुद्ध करावयाची कार्यवाही.
- २) अर्जदाराचे निवडसूचीच्यावेळी अस्तित्वात असलेल्या सेवाज्येष्ठता यादीतील स्थान, त्यास सेवाकनिष्ठ (पदोन्नतीसाठी आरक्षण असल्यास त्याच्या आधारे) असलेल्या त्याच्या प्रवर्गतील कोणत्या कर्मचा-यास नियमित पदोन्नती दिली आहे.

- ३) सेवाकनिष्ठ कर्मचा-यास पदोन्नती देण्यात आली त्या दिनांकास (निवडसूचीत) अर्जदार गोपनीय अहवाल व इतर आवश्यक त्या अटीनुसार पदोन्नतीस पात्र आहे किंवा कसे? याबाबतची पात्रता विभागीय पदोन्नती समितीमार्फत तपासून घेण्यात यावी व ते जर पदोन्नतीस पात्र ठरले तरच मानीव दिनांक देण्यात यावा.
- ४) मानीव दिनांक हा एकास - एक तत्वावर देण्यात यावा.
- ५) ज्या निवडसूचीच्या आधारे ज्या प्रवर्गाच्या कर्मचा-यास/अधिका-यास मानीव दिनांक देण्यात आला आहे, त्या प्रवर्गाच्या सर्वात सेवाकनिष्ठ कर्मचा-याचे नाव संबंधित निवडसूचीतून कमी करून, पुढील निवडसूचीत रिक्त पदे व त्या प्रवर्गाच्या वाट्याला येणा-या पदांमध्ये प्रमाणात समावेश करणे आवश्यक असते.”

9. Indeed, the case of the Applicant falls in these guidelines itself, which will be clear during the course of further discussion.

10. As stated above, admittedly, the name of the Applicant was next to Shri Boralkar who refused to accept the promotion. Shri Boralkar and Applicant both are from Open Category. The Respondent's contention that the DPC meeting was held on 04.08.2014 and communication of Shri Boralkar dated 01.09.2014 received on 04.09.2014 i.e. after the date of meeting, and therefore, in meeting dated 04.08.2014, in place of Boralkar, the Applicant was not considered, is factually incorrect. The Applicant has filed Rejoinder and made it clear that in fact, the selection list prepared in the meeting dated 04.08.2014 was cancelled and later again, fresh DPC was called on 13.02.2015. The perusal of minutes of DPC meeting dated 13.02.2015 (Page No.43 of P.B.) makes it quite clear that the select list prepared in the meeting dated 04.08.2014 was cancelled and fresh select list was prepared in terms of DPC meeting held on 13.02.2015. As such, when the subject was discussed on 13.02.2015, the letter of Shri Boralkar refusing promotional post was very much before Committee and that time itself, the Committee ought to have considered the said issue. In pursuance of the minutes of DPC dated 13.02.2015, the posting orders were issued by Order dated 02.05.2015. Here, significant to note that in Order dated 02.05.2015, there is specific reference that Shri Boralkar had declined to accept promotion, and therefore, his name has been deleted from select list. This being the position, suffice to say, refusal of Shri Boralkar to accept promotional post was well within

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the knowledge of the Respondent, and therefore, that time itself, the name of Applicant who was next to Shri Boralkar and from same category i.e. Open Category, ought to have been included in the select list dated 02.05.2015. However, instead of including the name of the Applicant, the Respondent had included the name of Shri N.B. Rajput from Scheduled Caste Category.

11. True, the promotion of Shri Rajput was from S.T. Category, but admittedly, he was junior in seniority list. The Applicant was at Serial No.22 and Shri Rajput was at Serial No.24. The promotional post from Open Category was already available in view of refusal of Shri Boralkar. In such state of circumstances, the Respondent was under obligation to include the name of Applicant in select list while promoting Shri Rajput who was junior to the Applicant. Therefore, the stand taken by the Respondent that no junior Official from Open Category is promoted before the Applicant, can hardly be accepted, as admittedly, Shri Rajput who was junior to the Applicant was promoted by Order dated 02.05.2015. What is material, the supersession by junior and not the category he belongs, particularly when promotional post from Open Category was available and the Applicant was eligible for the same in terms of his service record and seniority. As such, supersession to the Applicant by Shri Rajput is manifest and contention raised in this behalf is misconceived.

12. The Circular dated 6th June, 2002 reproduced above, as a matter of fact, is applicable in the present situation. As per the said Circular, where the employee is superseded by Junior Official, the Government needs to identify the reasons why it is so happened and to consider the case of such employee for deemed date of promotion who has been superseded. In the present case, in view of refusal of Shri Boralkar, the Applicant being next to Shri Boralkar in the seniority list, ought to have been promoted while issuing promotion order dated 02.05.2015, but the Respondent promoted Shri Rajpurohit from S.T. Category

keeping the post of Open Category of the Applicant vacant. Consequently, the Applicant has been deprived of the opportunity to work on promotional post w.e.f.02.05.2015 though found eligible and entitled to the said post

13. As such, the reason put forth by the Respondent that no junior is promoted and secondly, Shri Boralkar's letter declining promotion was not before DPC are contrary to the record and totally erroneous. Needless to mention that, though the employee has no vested right of promotion, he has right of consideration for the promotional post and in absence of justifiable reason, such employee deserves to be promoted, if no fault can be attributed to him. The rule of fairness in Government's action, is therefore, essential and such fairness has to be based on reasons. In the present matter, the reasons put forth by the Respondent are far from fairness and in fact, those are totally erroneous as discussed above. Needless to mention that 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 fair consideration in the matters of promotion under Article 16 flows from guarantee of equality under Article 14 of the Constitution. The State Government is thus required to act as model employer fairly consistent with its role in a welfare state. The respondent, therefore, cannot deny deemed date of promotion to the Applicant w.e.f.02.05.2015. The Applicant, is therefore, entitled to the deemed date of promotion w.e.f. 02.05.2015 i.e. the date when his junior Shri Rajput has been promoted.

14. Now, the question comes whether the Applicant is entitled to monetary benefits w.e.f.02.05.2015. Shri M.D. Lonkar, learned Advocate for Applicant referred to various decisions of Hon'ble Supreme Court in support of his contention that where the employee is illegally deprived of the opportunity to work upon the promotional post, the principle of 'no work no pay' embodied in

Shri M.D. Lonkar

Rule 32 of Maharashtra Civil Services (General Service Conditions) Rules, 1981 would not apply. In this behalf, he referred to the following decisions :-

(a) AIR 2015 SC 2904 (Ramesh Kumar Vs. Union of India) wherein the Hon'ble Supreme Court held that in normal circumstances when retrospective promotions are effected, the benefit flowing therefrom including monetary benefits must be extended to an employee who has been denied promotion earlier and the principle of 'no work no pay' cannot be accepted as a rule of thumb and matter needs to be considered on case to case basis. In that case, the Army Personnel was discharged from service and disciplinary proceedings were initiated before discharging him from service. However, he was reinstated and then promoted in the year 2000. His claim for arrears for promotional post from 01.08.1997 was the subject matter before the Hon'ble Apex Court. The Hon'ble Supreme Court held that when the Applicant was granted anti-dated seniority along with his batch-mates, there is no reason for denying pay and allowances in the promotional post.

(b) (1991) 4 SCC 109 (Union of India Vs. K.V. Jankiraman) wherein again the issue pertaining to principle 'no work no pay' was in consideration in the matter where the employee was completely exonerated from departmental proceedings. The Hon'ble Supreme Court held that the normal rule of 'no work no pay' could not apply to the cases where the employee was willing to work but kept away for the same by authorities for no fault on his part and if the employee did not keep himself away from the work, the principle of 'no work no pay' cannot be used against him.

15. Thus, the legal principles enunciated in the aforesaid Judgments are squarely applicable in the present case rather with greater force, as in the

present matter, the Applicant is wrongly deprived of working on the promotional post as by superseding him, the promotion was granted to Shri Rajput who was junior to the Applicant. The Applicant, is therefore, entitled to deemed date of promotion w.e.f. 02.05.2015 with monetary benefits.

16. The necessary corollary of aforesaid discussion leads me to sum-up that the Applicant is entitled to the deemed date of promotion with monetary benefits and the O.A. deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The Applicant is entitled to deemed date of promotion w.e.f. 02.05.2015.
- (C) The consequential order of deemed date of promotion be issued within a month.
- (D) The Respondent is directed to extend the monetary benefits to the Applicant considering his deemed date of promotion w.e.f.02.05.2015 and the actual monetary benefits be extended within two months from today, failing which the Respondents will be liable to pay interest at the rate of 9% p.a. from the date of impugned order till actual payment.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 24.06.2019

Dictation taken by :

S.K. Wamanse.

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