

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.385 OF 2016

DISTRICT : KOLHAPUR

Mr. Prakash V. Kohok.)
Retired Divisional Deputy Commissioner)
of State Excise, MS and having address)
as 83, Saraswati, Ruikar Colony, Kolhapur)
Dist : Kolhapur.)...**Applicant**

Versus

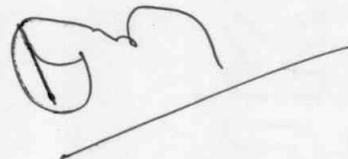
1. The Government of Maharashtra.)
Through Principal Secretary,)
Home Department (Excise),)
Mantralaya, Mumbai 400 032.)
2. The State of Maharashtra.)
Through Principal Secretary,)
General Admn Department,)
Mantralaya, Mumbai - 400 032.)...**Respondents**

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

Mr. A.J. Chougule, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 23.01.2017



JUDGMENT

1. The Applicant, a retired Divisional Deputy Commissioner of State Excise whose service career had been somewhat bumpy hereby seeks a declaration about the order dated 14th March, 2016 (Exh. 'L', Page 135 of the Paper Book (PB)) and for quashing it, whereby his request for grant of deemed date in the cadre of Joint Commissioner came to be rejected on the ground of an undertaking given on his behalf before the Hon'ble Bombay High Court in **Civil Application No.5783/2000 with Writ Petition No.419/1999, dated 15.11.2000 (Pratapsingh Golekar Vs. State of Maharashtra dated 15.11.2000)**.

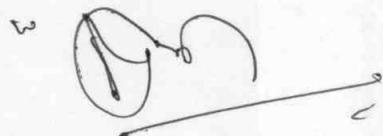
2. I have perused the record and proceedings and heard Mr. M.D. Lonkar, the learned Advocate for the Applicant and Mr. A.J. Chougule, the learned Presenting Officer (PO) for the Respondents.

3. The Respondent No.1 is the State of Maharashtra in Home Department (Excise) and the 2nd Respondent is the State of Maharashtra in General Administration Department.



4. The Applicant came to be initially appointed as Superintendent of Prohibition and Excise on 6.9.1966. On 18.11.1976, he was promoted as Superintendent, State Excise Class-I. While working as such, he got embroiled in a prosecution under the Prevention of Corruption Act, 1988 vide Criminal Case No.3 of 1990 in the Special Court, Ahmednagar. On 3rd April, 1993, he was convicted and sentenced to a Jail term as well. He preferred an appeal to the Hon'ble High Court vide Criminal Appeal No.172/1993. Pending appeal, he came to be dismissed from service on 25.4.1994. In the meanwhile, by an order dated 24th April, 1996, he came to be acquitted by the Hon'ble High Court which acquittal in fact was maintained by the Hon'ble Supreme Court in Criminal Appeal No.86/1997, the order dated 30th July, 2003.

5. The Applicant brought **OA 398/1998 before this Tribunal (Shri Prakash V. Kohok Vs. State of Maharashtra, dated 8.10.1998)** before this Tribunal. In the meanwhile, post acquittal by the Hon'ble High Court, the Applicant came to be reinstated on 6.9.1996. A spate of representations for fixing his pay, etc. yielded little result. The Tribunal in OA 398/1998 had clearly found that the Judgment of acquittal was on merit and it was not of a technical nature. In the meanwhile, the Applicant



came to be promoted to the post of Deputy Commissioner. He retired as such in the year 2002 and it must have become clear that the order of his acquittal became final by the Judgment of the Hon'ble Supreme Court on 30th July, 2003. The Home Department issued a detailed order on 30th October, 2006, a copy of which is at Exh. 'G' (Page 113 of the PB). All the details above referred to were mentioned therein. It was further mentioned that the Government opined that the acquittals were on technical point, and therefore, in fact, a notice was issued to the Applicant as to why only 90% of his salary and allowances be not paid to him. However, taking into consideration, the representation of the Applicant, those notices were cancelled. A move was there to initiate action post retirement under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. But by an order of 21st December, 2005, the said proceedings were closed. Therefore, no proceedings were pending against the Applicant and the Hon'ble Supreme Court was pleased to acquit the Applicant. In exercise of powers under Rule 71(2)(b) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981, his period of dismissal during 25.4.1994 to 5.9.1996 was treated as "spent on duty". On 8.10.1998, OA 398/1998 above discussed was in the manner of



speaking allowed which paved way for his promotion as Deputy Commissioner which promotion was actually made on 15.12.2000. The Writ Petition No.419/1998 was filed by one of the colleagues of the Applicant and the Applicant was the 3rd Respondent to that Writ Petition. He challenged this Tribunal's order and it was his apprehension that by virtue thereof, the present Applicant would claim seniority over the existing incumbents and the others similarly placed Officers holding the post of Deputy Commissioner of State Excise. The State did not challenge the order of the Tribunal. The Hon'ble High Court was pleased to observe as follows in Paras 4 to 8.

4. Mr. Lonkar, the learned Counsel appearing for the Respondent No.3 i.e. the original Applicant before the Tribunal, makes a statement that the Respondent No.3 will not claim seniority over the existing incumbents in the post of Dy. Commissioner of State Excise and Joint Commissioner of State Excise.

5. In view of the statement made by the Learned Counsel, the grievance made by the Petitioner in the present Petition does not survive.

6. Petition and O.A. are disposed off.



7. The State Government is directed to implement the directions of the Tribunal within a period of four weeks from today.

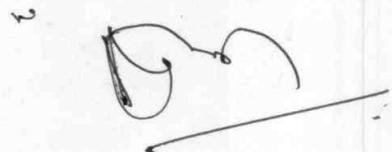
8. Parties to act on the copy of this order duly authenticated by the Sherastedar of this Court.”

6. The next event of some significance took place when the Applicant brought **OA 248/2015 (Shri Prakash V. Kohok Vs. State of Maharashtra and 2 others, dated 17.12.2015)**. It was decided by the 2nd Division Bench of this Tribunal, which I was also a party to. The relief sought therein was also like herein for the grant of deemed date of promotion to the post of Joint Commissioner of State Excise. The 2nd Division Bench noted all the above facts summarized hereinabove. It was recorded that the Applicant wanted deemed date of promotion to the post of Joint Commissioner from 6th September, 1999 and the objection of the Respondents was apparently based on the undertaking above referred to. It was recorded that a representation made by the Applicant was pending with the Hon'ble Chief Minister from 12.2.2014. That OA was disposed of by the 2nd Division Bench with a direction to the Respondents that the Chief Minister be requested to decide the said representation within three months from 17.12.2015 and communicate the decision to the Applicant within one week thereafter.

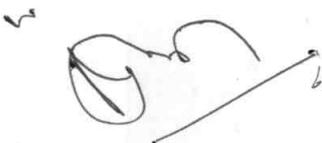


7. The above discussion must have made it clear that the fate of this particular OA would depend upon the fact as to whether the undertaking given to the Hon'ble High Court by the Applicant would put him out of contention for claiming even the deemed date of promotion. Mr. Lonkar told me and in my opinion, not without substance that the undertaking was given at the time, the Criminal Appeal of the State was pending before the Hon'ble Supreme Court. The fact that the Applicant's acquittal was confirmed by the Hon'ble Supreme Court is no doubt there, but assuming it had gone against the Applicant and he would have been convicted, then regardless of the undertaking, etc., no issue would have survived. Further, there was no qualitative change in the situation when the Applicant was given promotion to the post of Deputy Commissioner and more importantly, when the period spent outside the service was regularized and treated as "spent on duty". If that relief could have been granted, then there is no reason why the relief of consideration of the deemed date for the post of Joint Commissioner could not have been considered.

8. It is no doubt true that no judicial or any other authority can either directly or indirectly make any order that would stand in contest with the order of the Hon'ble High Court pursuant to the undertaking given on behalf of

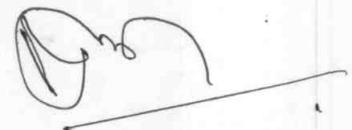


the Applicant and again neither directly nor indirectly can the undertaking be in any manner diluted. But then, one has to be at the same time quite clear in one's mind that the scope of the undertaking should not be either expanded or restricted in any manner. It will have to be read as it is. It was very clear that taking into consideration the concern of Hon'ble High Court's Petitioner, his seniority was not to be interfered with by the Applicant and not only his, but the seniority of, "existing incumbents and other similarly placed Officers" was not to be in any manner affected by the present Applicant. Now, by the grant of deemed date to the Applicant, nobody's seniority would have been affected. In fact, by granting deemed date of promotion, the Applicant was in any case, not to get the functional promotion and if that was so, then there was no question of anybody getting affected by the order of the deemed date to the Applicant. In fact, the very concept of the deemed date at least in the context of the present facts, will be that the Applicant would not affect anybody else's seniority and would only get deemed date of promotion to the post of Joint Commissioner and that was so when he got the same relief in terms for the post of Deputy Commissioner which was the post he held when he demitted Office on superannuation. The deemed date for the post of Deputy Commissioner was given to him by

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virtue of the order made by the Government in Home Department on 24th July, 2007 (Exh. 'H', Page 117 of the PB). There, in fact, the names of as many as eight of his colleagues who were junior to him were shown and three of them were senior to him. But nobody's seniority was in any manner disturbed and the Applicant was given deemed date of promotion from 20.7.1991. Pertinently, the State did not challenge the order of this Tribunal in that OA. Therefore, they had no case of their own against the Applicant. The issue is only to safeguard the interest of the Writ Petitioner of the Hon'ble High Court and others mentioned there.

9. The foregoing would, therefore, make it quite clear that a case is made out for considering the issue of grant of deemed date to the Applicant to the post of Joint Commissioner, State Excise and this is not going to in any manner affect the order made by the Hon'ble High Court in the Writ Petition above referred to on the basis of the undertaking given on behalf of the Applicant. The scope of the undertaking can neither be expanded nor constricted by any authority below the Hon'ble High Court. But on a plain interpretation thereof, a case is made out for consideration of the deemed date of promotion to the post of Joint Commissioner, State Excise. Mr. Lonkar relied upon **Ramesh Kumar Vs. Union of India, AIR 2015 SC**



2904. That was a matter arising out of the issue of grant of Pay and Allowances from back date and the scope of the principle of, "no work no pay" was enunciated by the Hon'ble Supreme Court. The principles emanating therefrom have been borne in mind though they may in terms not apply hereto.

10. In view of the foregoing, the order herein impugned stands hereby quashed and set aside. The Respondents are directed to consider the case of the Applicant for grant of deemed date to the Applicant with effect from 6.9.1999 and for that purpose, a Special Departmental Promotion Committee (DPC) may be constituted to examine as to whether the case of the Applicant for that relief is meritorious and if so, then to take further steps in the matter of the grant of deemed date as mentioned just now. Compliance within three months from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
23.01.2017

Mumbai
Date : 23.01.2017
Dictation taken by :
S.K. Wamanse.