

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.784/2019(D.B.)

1. Khushal Manikrao Rathod,
aged about 46 yrs. Occ. Service,
R/o Nruhsing Saraswati Nagar,
Behind Gurukrupa Apartments,
Jamb Road, Wadgaon, Yeotmal.
2. Kailash Arunrao Uikey,
Aged 42 years, Occ. Service,
R/o. LIC colony, Nalwadi, Wardha.
3. Ashwinkumar Jagdishrao Bichke
Aged 45 years, Occ. Service,
R/o. Adivasi Boys Govt. Hostel,
Taluka Hadgaon, Distt. Nanded.
4. Sunil Savaleram Kotwal,
aged about 47 years, Occ. Service,
R/o. at Post. Ambegaon,
Taluka Dindori, District Nashik.
5. Suryabhan Dashrath Sudake,
aged 40 years, Occ. Service,
R/o. 1, Holkar Nagar, Ugach Road,
Niphad, Taluka Niphad, District Nashik.

Applicants.

Versus

- 1) State of Maharashtra,
through the Secretary,

Tribal Development Department,
Mantralaya, Mumbai-32.

2) Commissioner,
Tribal Development Department,
Commissionerate, Maharashtra State, Nashik.

Respondents

Shri R.V.Shiralkar, Ld. Counsel for the applicants 1 and 2.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.
Shri A.M.Motlag, Ld. Counsel for the applicants 3 to 5 (Intervention).

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman &
Hon'ble Shri Nitin Gadre, Member (A).

Dated:- 12th August, 2024.

JUDGMENT

Heard Shri R.V.Shiralkar, learned counsel for the applicants 1 and 2, Shri V.A.Kulkarni, learned P.O. for the respondents and Shri A.M.Motlag, ld. Counsel for the applicants 3 to 5 (Intervention).

2. The case of the applicants in short is as under-

The applicants are seeking promotion by taking into consideration of their initial date of appointment. The applicants were appointed on the post of Warden. They were posted in Nagpur Division. They were transferred to Amravati Division on the same post. Their seniority is lower down because of the inter-division

transfer and therefore they are not considered for promotion for the post of Assistant Project Officer.

3. Some of the similarly situated employees filed O.A.Nos.5 & 6 of 2015 and O.A.No.785/2014 with Civil Application No.7/2016, as per the Judgment of this Tribunal, direction was given to the respondents to consider the seniority of similarly situated applicants from the date of their initial appointment. Though, they are transferred from one division to other division.

4. After the decision of this Tribunal the respondents have taken the decision to correct the seniority list. The learned counsel for the applicants has filed documents. Those are marked commonly Exhibit – X for identification.

5. The O.A. is strongly opposed by the respondents on the ground that the applicants are juniors because of the inter division transfer. Some of the applicants are facing criminal case and therefore they are not entitled for the promotion.

6. During the course of the submission, learned counsel for the applicants has pointed out the Judgment of this Tribunal in O.A.No.785/2014 and the Judgment in O.A.Nos.5 & 6/2015.

7. This Tribunal in O.A.Nos.5 & 6/2015 in para 7 has held / directed the respondent no.3 to publish fresh seniority list within a

period of three months considering the initial date of appointments for the purpose of seniority / promotion.

8. The learned counsel for the applicants has submitted that now the respondents have complied the order of this Tribunal by issuing fresh provisional seniority list. He has also pointed out the decision of D.P.C. dated 08.01.2024. The learned counsel for the applicants has submitted that only one applicant namely K.M.Rathod is facing criminal trial and other applicants are not facing any criminal trial or departmental enquiry.

9. The learned counsel for the applicant Shri R.V.Shiralkar and Intervenor Shri A.M.Motlag made a statement before this Tribunal that except applicant no.1 other applicants are not facing any criminal trial or departmental enquiry and therefore they are entitled for promotion as per the newly published provisional seniority list.

10. The learned P.O. strongly objected the O.A.. As per his submission, seniority list is provisional it is not final and therefore it cannot be considered.

11. Before the Judgment of this Tribunal, respondents were relying on the G.R. dated 15.05.2019. The respondents have issued the G.R. dated 15.05.2019. As per the guidelines of this G.R.,

employee who seeks request transfer from one division to other, then they have to loose their original seniority and they will be junior to the newly posted place. The Government has allowed the request transfer of the applicants. All they were transferred from Nagpur Division to Amravati Division therefore as per the G.R. dated 15.05.2019 all the applicants lost their seniority. But after the decision of this Tribunal in O.A.No.785/2014 the respondents have acted upon decision. As per the decision of the respondents now they are considering the date of initial appointment for the purpose of seniority and promotion also.

12. Documents dated 08.01.2024 i.e. the decision of the D.P.C. show that one of the applicant namely Rathod is facing criminal case and therefore he is not entitled for promotion.

13. The learned counsel for the applicant has pointed out the Judgments of the Hon'ble Supreme Court in the case of **Union of India Vs. K.V.Jankiraman and Others reported in AIR (1991) SCC 109 decided on 27.08.1991** and **Union of India and Others Vs. Anil Kumar Sarkar(2013) 4 SCC 161 decided on 15.03.2013.** The Hon'ble Supreme Court has held that the promotion cannot be denied because of the pendency of criminal case or departmental enquiry. The temporary promotion can be granted subject to the decision of

the criminal case or departmental enquiry. Therefore, learned counsel for the applicant has submitted that at the most the applicant no.1 can be temporarily promoted subject to the decision of criminal case. The learned counsel for the applicants Shri R.V.Shiralkar and Shri A.M.Motlag both have submitted that other applicants are not facing any criminal case or departmental enquiry therefore they are entitled to get promotion as per newly published provisional seniority list. There is no dispute about the decision of the Government to consider the applicant and others by taking into account their initial date of appointment for the purpose of seniority and promotion.

14. The applicants were considered in the D.P.C., but they are not considered because of their seniority and pendency of some criminal case. Hence, applicant no.1 Khushal Manikrao Rathod is entitled for temporary promotion as per the provisional seniority list published on 27.05.2024 subject to the decision of criminal case. Other applicants are entitled for promotion as per the provisional seniority list dated 27.05.2024 as per their seniority and fulfilling other criteria for promotion. Hence, we pass the following order-

ORDER

1. The O.A. is allowed.

2. The respondents are directed to promote the applicant no.1 temporarily subject to the decision of criminal case and availability of the promotional post. However, the applicant no.1 Shri K.M.Rathod shall not be entitled for any arrears. He shall be entitled to get benefits from the date of joining on the promotional post.
3. The respondents are directed to promote other applicants namely K.A.Uike, Ashwinkumar Bichke, Sunil Kotwal and Suryabhan Sudake as per their provisional seniority list dated 27.05.2024, if they are eligible for promotion as per the Government G.Rs. etc. and it shall be subject to the availability of the promotional post.
4. No order as to costs.

(Nitin Gadre)
Member(A)

(Justice M.G.Giratkar)
Vice Chairman

Dated – 12/08/2024
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde.
Court Name : Court of Hon'ble Vice Chairman
& Hon'ble Member (A).
Judgment signed on : 12/08/2024.
and pronounced on