

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1716 OF 2002

Raghunath S/o Ramkrishnaji Borkar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri A. I. Deshmukh, Advocate for the Petitioner.

Smt. M. A. Deshpande, A.G.P. for Respondent Nos. 1 and 2.

Shri Shaikh, Advocate h/f Shri A. S. Golegaonkar, Advocate for the Respondent Nos. 3 and 4.

**CORAM : S. V. GANGAPURWALA AND
A. I. S. CHEEMA, JJ.**

DATE : 26TH MARCH, 2015.

PER COURT :

. Mr. Deshmukh, the learned counsel submits that, the petitioner had filed original application before the Maharashtra Administrative Tribunal challenging the seniority list. So also promotion given to present respondent Nos. 3 and 4. The Tribunal did not consider the merits of the contentions canvassed by the petitioner. The respondent Nos. 3 and 4 were appointed as Exploration Assistant in the year 1978. The petitioner was appointed on 23.02.1981. The respondent Nos. 3 and 4 were not qualified for the said post. The petitioner possesses the required qualification. The person who has acquired the qualification first

is considered to be senior, though he may have been recruited subsequently. The learned counsel submits that, the seniority list was published in the year 2000 and as the seniority list was published in the year 2000, the same gave cause of action for the petitioner to challenge the same. As such, it was erroneous on the part of the Tribunal to contend that after the petitioner is not given promotion, the petitioner is challenging the seniority of respondent Nos. 3 and 4. The learned counsel submits that, the Tribunal ought to have considered the issue of initial appointment of respondent Nos. 3 and 4.

2. The learned Assistant Government Pleader and the learned counsel for respondent Nos. 3 and 4 support the order passed by the Tribunal.

3. It is undisputed that, the respondent Nos. 3 and 4 were appointed as Exploration Assistant and the said post is re-designated as Technical Assistant. The petitioner is appointed as Technical Assistant in the year 1981. Admittedly the date of entry of respondent Nos. 3 and 4 is earlier in point of time. From 1978 till the year 2001 the petitioner did not raise any challenge to the qualification of respondent Nos. 3 and 4. The petitioner also participated in the selection process and appointment to the post of Assistant Director by promotion. Having participated in the said process and failed, the petitioner cannot challenge the

said process.

4. Even, otherwise it would be too late in the day to consider the qualification of the petitioner on the initial date of appointment. The Tribunal has relied on the judgment of the Apex Court in a case of **K. A. Abdul Majeed Vs. State of Kerala and others** reported in **2001 AIR SCW 2888**, wherein it is observed that, after long lapse of time, the question of initial appointment cannot be reopened at the instance of private respondents and that too altering their seniority.

5. In the light of the above, the Tribunal has not committed any error in passing the impugned order. The writ petition as such is dismissed. Rule discharged. No costs.

[**A. I. S. CHEEMA, J.**]

[**S. V. GANGAPURWALA, J.**]

bsb/March 15