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

WRIT PETITION NO. 15 OF 2011

Shripad s/o Shrirang Pasarkar
Age 57 years, Occu. Service,
presently working as Executive
Engineer (C), Thermal Power Station,
Maharashtra State Power Generation
Company Ltd., Parli, District Beed ... **PETITIONER**

VERSUS

1. Managing Director,
Maharashtra State Power Generation
Company Ltd., Plot No.G-9,
Prakash Gadh, Bandra (East), Mumbai

(Respondent No.1 is deleted as per
Court's order dated 8/7/2013)

2. Executive Director,
Human Resources,
Maharashtra State Power Generation
Company Ltd., Plot No.G-9,
Prakash Gadh, Bandra (East), Mumbai
3. Chief General Manager, Technical,
Maharashtra State Power Generation
Company Ltd., Plot No.G-9,
Prakash Gadh, Bandra (East), Mumbai

... **RESPONDENTS**

.....
Shri M.D. Narwadkar, Advocate for petitioner
Shri S.M. Godsay, Advocate for respondent No.2
.....

**CORAM: T.V. NALAWADE AND
SUNIL K. KOTWAL, JJ.**

DATED : 28th MARCH, 2018.

JUDGMENT (PER SUNIL K. KOTWAL, J.):

1. By filing this Writ Petition under Article 226 of the Constitution of India, the petitioner has sought quashment of letter dated 29.8.2008 and 3.4.2010, with consequential prayers for directions to grant deemed date of promotion as Executive Engineer in Maharashtra State Power Generation Company Ltd. (hereinafter referred as "Company"). Respondent No.1 is Managing Director of the Company. Respondent No.2 is Executive Director and respondent No.3 is Chief General Manager (Technical) of the Company.

2. Undisputed facts in between the parties are that, petitioner was selected as Junior Engineer in the Company on 4.8.1976 and in the year 1981, promoted as Assistant Engineer. Thereafter, petitioner was promoted as Deputy Executive Engineer in the year 1992.

3. Shri M.D. Narwadkar, learned counsel for the petitioner submitted that, the process of promotion for the post of Executive Engineer was carried out in the year 2006. However, that time, the name of the petitioner was not considered through he was eligible and seniormost officer. When

petitioner made representation to respondent No.3, raising grievance regarding not considering his name for promotion on 15.9.2006, that time, by letter dated 4.12.2006, the petitioner was informed that, though his name was placed before competent selection committee, it was not recommended on the ground of pendency of enquiry and record of petitioner was not up to the mark. Learned counsel for the petitioner pointed out that, on 17.11.2006, explanation of the petitioner was called by respondents and on 28.3.2007, the proceeding was dropped and enquiry was closed. Thereafter on 4.4.2008, petitioner was promoted as Executive Engineer. However, when petitioner made representation to the respondents to grant deemed date of promotion with retrospective effect from 4.9.2006 and to restore his seniority, the said representation was turned down by the respondents, without reasonable cause.

4. Learned Advocate for respondents submitted that, in the meeting of competent selection committee for promotion to the post of Executive Engineer held on 27.7.2006 and on 10.11.2006, after considering various confidential reports, vigilance report and disciplinary action, the competent selection committee did not select the petitioner on the ground of pendency of disciplinary enquiry and earlier record of petitioner which was not up to the mark on both occasions. He pointed out that, by letter dated 29.8.2008 (Exhibit R-1), the petitioner was

informed as to why he was not selected for the post of Executive Engineer on 27.7.2006 and on 10.11.2006. By the same letter, the petitioner was informed that, his seniority cannot be restored and cannot be considered for promotion to the post of Executive Engineer with retrospective effect.

5. Learned counsel for the respondents has drawn our attention towards adverse remarks communicated to the petitioner by letters dated 10.2.1987, 11.8.1987, 19.7.1987 and 27.11.2002. He also pointed out that, the past record of the petitioner is not clean as claimed by him as previously punishment of withholding increment, warning in case of misconduct were imposed against the petitioner by the competent officer. According to learned counsel for respondents, when the competent selection committee refused to select the petitioner for the post of Executive Engineer for cogent reasons, merely for the reason of subsequent promotion of the petitioner, deemed date of promotion with retrospective effect cannot be given and even retrospective effect cannot be given to the seniority list maintained by the respondents.

6. Learned Advocate for the petitioner mainly relied on Service Rule No.29(b)(vi), which reads as under :

“(vi) On conclusion of the investigations and/or departmental enquiry:-

- a) If a person is completely exonerated the following consequences should follow :-
 - i) If he was provisionally promoted, his provisional promotion should be treated as regular.
 - ii) If such a person had become due for promotion but was not promoted, he should be promoted at the first opportunity. He should retain the seniority of his position in the select list. His pay should also be fixed at a stage which he would have reached had he been actually promoted according to his rank in the select list, but he should not be entitled to any arrears of pay on this account.”

7. A bare glance at above rule together with reasons assigned by the respondents for not granting deemed date of promotion with retrospective effect to the petitioner makes it crystal clear that, at the time of process of promotion held on 27.7.2006 and 10.11.2006, name of the petitioner was placed before competent selection committee, but he was not selected for the post of promotion for two reasons. The first reason is pendency of vigilance enquiry and the second reason is his earlier record was not up to the mark. Thus, it becomes absolutely clear that, the promotion to the petitioner was not refused at these both occasions only on the ground of pendency of vigilance enquiry. Therefore, the above referred service rule is of no help to the petitioner to claim deemed date of promotion with retrospective effect for the simple reason that the promotion to the petitioner was also refused by the selection committee on

another ground of poor service record of petitioner. Therefore, contention of petitioner is not acceptable that because he was exonerated from vigilance enquiry, deemed date of promotion with retrospective effect can be given to him.

8. As pointed out above, the adverse remarks in the confidential reports of the petitioner were already communicated to the petitioner and, therefore, those remarks are binding on the petitioner. Thus, the ground assigned by the respondents for not considering name of the petitioner for the post of promotion at the above two selection process is just, proper and cannot be termed as arbitrary decision which calls for interference by this Court.

9. So also, as name of the petitioner was placed before competent selection committee at the time of selection process dated 27.7.2006 and 10.11.2006, petitioner cannot say that his name was not considered by respondents at the time of process of promotion. No other substance is placed on record by the petitioner to show that similarly situated other employee of the respondent Company were considered at the time of both promotions though their service record was poor like the petitioner. Therefore, it cannot be said that there was discrimination at the time of process of promotion which was carried out in the year 2006. On the other hand, after decision

of respondents to drop the vigilance enquiry against the petitioner in very next process of promotion, the petitioner was promoted to the post of Executive Engineer. So also he was granted higher grade benefit under the provisions laid down under Government Order 74/111(P). In the circumstances, by no stretch of imagination it can be held that there was violation of Article 14 of the Constitution of India to invoke writ jurisdiction under Article 226 of the Constitution of India.

10. After considering the case of petitioner in every possible angle, we have come to the conclusion that this petition being devoid of merit, deserves to be dismissed. Writ Petition is dismissed. Rule is discharged.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

fmp/