

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

WRIT PETITION NO. 1887 OF 2018

Ramesh S/o. Shahajirao Ghorpade Petitioner

Versus

The State of Maharashtra & Ors. Respondents

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Shri. Santosh S. Dambe, Advocate for the petitioner

Shri. S. P. Tiwari, AGP for respondent/State

Shri. Nanabhau R. Thorat, Advocate for respondent No. 4

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**CORAM : S. V. GANGAPURWALA
AND
A. M. DHAVAL, JJ.**

DATE : 1ST APRIL, 2019

ORAL ORDER:

. The petitioner had filed Original Application before the tribunal aggrieved by the order reverting the petitioner from the post of P.S.I. (Wireless). The Tribunal dismissed the Original Application filed by the petitioner. Aggrieved thereby the present petition.

2. Shri. Santosh Dambe, learned counsel for the petitioner submits that, the petitioner was promoted to the post of Head Wireless Operator on 02.12.2008. The respondent No. 4 was promoted to the post of Head Wireless Operator in the year 2009. In

the gradation/seniority list for the post of Head Wireless Operator, the name of the petitioner is shown as senior to respondent No. 4. In the year 2016, the petitioner was promoted to the post of P.S.I. (Wireless). The same was recommended by the Departmental Promotion Committee. The complete process was followed. Under the impugned order, the petitioner is reverted. No reason is mentioned in the order of reversion except that the promotion was for the period of 11 months. The learned counsel submits that, in the affidavit filed before the Maharashtra Administrative Tribunal, the respondent/State came with a case that, the present respondent No. 4 is senior to the petitioner. Only because he had submitted the validity subsequently, his seniority could not be lost. According to the learned counsel, the seniority list/post of Head Wireless Operator was published every year. Respondent No. 4 had not raised any objection to the seniority list for all these years even when the petitioner was considered by the Departmental Promotion Committee for the post of P.S.I. (Wireless). Now the respondents cannot turn around.

3. The learned Assistant Government Pleader submits that, as per the Government Resolution dt. 16.06.2008, if a senior does not possess validity certificate, then the junior can be promoted temporarily and after the senior submits his validity, his seniority

would be maintained and he will be considered senior to his junior. The learned Assistant Government Pleader further submits that, in the cadre of Wireless Operator, respondent No. 4 was senior to the petitioner. However, as respondent No. 4 was not possessing validity certificate, the petitioner was promoted as Head Wireless Operator prior to respondent No. 4. Respondent No. 4 submitted validity certificate in the year 2009 and was subsequently promoted as Head Wireless Operator. His seniority as per Government Resolution dt.16.06.2008 is above the petitioner. The Tribunal has rightly considered the said aspect.

4. Learned advocate for respondent No. 4 also adopts the arguments of the learned Assistant Government Pleader and submits that, the respondent No. 4 was senior to the petitioner in the cadre of Wireless Operator and his seniority would revive after submission of the validity certificate.

5. It does not appear to be matter of debate that under the appointment order dt. 24.02.1994, the petitioner and respondent No. 4 were appointed as Wireless Operator. Both belongs to NT (C) category. The petitioner joined his post as Wireless Operator on 26.02.1994 and respondent No. 4 joined the said post on 28.02.1994. Date of joining may not make much difference. It appears that,

Respondent No. 4 was elder in age to the petitioner. Respondent No. 4 was shown senior to the petitioner in the seniority list of Wireless Operator.

6. It appears that, on 02.12.2008, the petitioner was promoted as Head Wireless Operator. Respondent No. 4, at the relevant time, did not produce the validity certificate. He produced the validity certificate in the year 2009 and thereafter was promoted as Head Wireless Operator. For all these years, in the seniority maintained for the post of Head Wireless Operator the petitioner is shown senior to the respondent No. 4. Respondent No. 4 for all these years did not raise any objection to the seniority list maintained by the office for the post of Head Wireless Operator wherein petitioner was shown senior to respondent No. 4. In the year 2016, the petitioner was promoted as a P.S.I. (Wireless) on the basis of the recommendation of the Departmental Promotion Committee and the petitioner was issued with the promotion order as P.S.I. (Wireless).

7. In the seniority list of Wireless Operator, respondent No. 4 was certainly senior to the petitioner, however, in absence of validity certificate the petitioner was promoted to the post of Head Wireless Operator in the year 2008 and respondent No. 4 in the year 2009 after he had produced the validity certificate. At the relevant time, in

the year 2009 neither the respondent No. 4 nor the Department took any steps to revise the seniority list. In the seniority list of the Head Wireless Operator, the name of the petitioner continued to be shown as senior to respondent No. 4. The said list was never objected to by respondent No. 4 till the year 2016. In the year 2016, the petitioner was granted promotion as a P.S.I. (Wireless). Head Wireless Operator is a feeder cadre for the post of P.S.I. (Wireless). Naturally the seniority in the feeder cadre will have to be considered while considering the promotion to the post of P.S.I. (Wireless).

8. Promotion is not a fundamental right. The promotion to the post of P.S.I. (Wireless) would depend upon the seniority list maintained consistently for all these years for the post of Head Wireless Operator. It would not be open for respondent No. 4 to agitate about the seniority list of Head Wireless Operator after eight years. Had the respondent No. 4 agitated about his seniority list in the year 2009 itself, certainly respondent No. 4 would have better case on merits. The reversion order issued solely on the basis of the fact that respondent No. 4 ought to have been senior to the petitioner in the cadre of Head Wireless Operator could not have been entertained after lapse of eight years.

9. Respondent No. 4 having not objected to seniority list in

the year 2008/2009 itself, could not have agitated about it after eight years. The right was created for seeking promotion in favour of the petitioner pursuant to the seniority list maintained for such a long period.

10. Considering the above, the order of reversion issued to the petitioner solely on the ground that respondent No. 4 would be senior to the petitioner in the cadre of Head Wireless Operator is quashed and set aside and also the impugned judgment of Tribunal.

11. The Writ Petition is accordingly allowed. No costs.

[A. M. DHAVAL]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

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