

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5428 OF 2015

Shri. Dadabhau Posha Pote

..Petitioner

Versus

The State of Maharashtra and others

..Respondents

Mr. T. D. Deshmukh, Advocate for the Petitioner.

Mr. P. G. Sawant, AGP for Respondent No.1.

Mr. R. M. Pethe, Advocate for Respondent Nos.2 & 3.

Mr. Abhay Khandeparkar a/w Mr. Pankaj Sutar, Ms. Trupti Khadse I/by Jayakar and Partners, Advocate for Respondent No.4.

CORAM : B. R. GAVAI &

N. J. JAMADAR, JJ.

DATE : 24th JANUARY, 2019

P.C.

1] The Petition challenges the decision of the Respondent No.2, thereby deciding to promote the Respondent No.4 to the post of Deputy Municipal Secretary.

2] Mr. T. D. Deshmukh, learned counsel appearing on behalf of the Petitioner submits that when on earlier occasion, the Respondent No.4 was offered promotion to the post of Deputy Municipal Commissioner, he had refused the said promotion. However, by subsequent order dated 2nd July 2013, he has been

promoted by the Respondent Nos.2 & 3 to the said post. Mr. T. D. Deshmukh, learned counsel appearing on behalf of the Petitioner relying on the judgment of the Hon'ble Apex Court in the case of **Dr. N. C. Singhal Vs. Union of India and others**¹ submits that once a person denies the promotion, then subsequently he could not have been considered for promotion. He also relies on the Government Circular dated 31st July 1991 in support of the same proposition.

3] Undisputedly, when the Respondent No.4 was offered promotion on earlier occasion, on account of his personal difficulty, he declined to accept the same. However, for considerable period the said post was not filled up. Subsequently when the post was available and the Respondent No.4 was offered the said post, the Respondent No.4 was willing to accept the same. As such, Respondent No.4, who is undisputedly senior to the Petitioner came to be appointed.

4] Insofar as the judgment of the Hon'ble Supreme, on which Mr. T. D. Deshmukh relies, the same would not be applicable to the present case. In the said case, the Appellant before the

1 (1980) 3 SCC 29.

Hon'ble Supreme Court had earlier denied the promotion granted to him elsewhere and insisted that the promotion should be granted to him only at Delhi. The same was not considered and a person junior to him came to be promoted. However, subsequently he made a somersault and challenged the promotion given to the juniors. In this factual situation, the Hon'ble Apex Court held that the Appellant, who had refused promotion, now cannot be heard to say that bypassing his claim his juniors have been promoted.

5] Insofar as the Government Circular, on which Mr. T. D. Deshmukh relies would reveal that even if a person has refused promotion, in the subsequent round his claim is required to be considered. Undisputedly, in the present case, after the Respondent No.4 had declined promotion, the post was not filled up. When the process for filling up the post again commenced, the Respondent No.4 had expressed his willingness.

6] In that view of the matter, no merit is found in the Petition. The Writ Petition is rejected.

[N. J. JAMADAR, J.]

[B. R. GAVAI, J.]