

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No. 2002 OF 2020

Shailesh Pundlik Meshram Petitioner

// VERSUS //

Union of India and others. ... Respondents

**With
Writ Petition No.2014 of 2020**

Prakash Amrutrao Sonparote Petitioner

// VERSUS //

Union of India and others. ... Respondents

**With
Writ Petition No.2001 of 2020**

Shri Vishal Rameshrao Malode Petitioner

// VERSUS //

Union of India and ors. Respondents

**With
Writ Petition No.2003 of 2020**

Prashant Tukaram Dharkar

.... Petitioner

// VERSUS //

Union of India and ors.

.....Respondents

**With
Writ Petition No. 2855 OF 2020**

Ravindra Jaysing Masram and ors.

..... Petitioners

// VERSUS //

The Union of India and ors.

..... Respondents

Shri M.M. Sudame, Advocate for the Petitioner in Writ Petition Nos. 2002 of 2020, 2014 of 2020, 2001 of 2020 and 2003 of 2020.

Shri P.N.Shende, Advocate for the Petitioners in Writ Petition No. 2855 of 2020.

Shri U.M. Aurangabadkar, A.S.G.I. for the Respondent Nos.1 to 3 in all Writ Petitions

Shri D.T. Shinde, Advocate for the Respondent Nos.4 to 11, 14, 15, 17, 18 to 24 in Writ Petition Nos. 2002 of 2020, 2003 of 2020 and 2014 of 2020

Shri Anil Bambale, Advocate for the Respondent No.39 in Writ Petition Nos. 2002 of 2020, Respondent No. 41 in Writ Petition No. 2014 of 2020, Respondent No. 32 in Writ Petition No.2003 of 2020.

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATED : 4 MARCH 2021

P.C.

In these Writ Petitions the reversion of respective Petitioner, in view of review made by the Respondent Nos. 1 and 2 of all the promotions granted based on reservations and by resort to Roster System from 15 November 1997, in pursuant to order passed by the Central Administrative Tribunal, Mumbai dated 30 November 2018, is under challenge.

2. The brief facts of the present case are that one Smt. Shyama Vakil, who is Respondent No.4 in Writ Petition No. 2002 of 2020 preferred an Original Application before the Central Administrative Tribunal (in short "Tribunal") questioning the promotion granted to the Respondent Nos. 4 and 5 in the said Original Application on the ground that the cadre controlling authorities have not followed post- based roster in accordance with DOP&T O.M. No. 36012/2/96-Estt(Res) dated 2 July 1997.

3. The Respondent Nos. 2 and 3 did not raise much opposition to the said Original Application on merit but sought rejection on the ground of impossibility to correct the anomaly pointed out in the application.

4. The learned Tribunal while allowing the Original Application filed by the Respondent No.4 and similar Original Applications filed by Respondent Nos. 5 to 24, by common order dated 30 November 2018 impugned in the present petition, directed the Respondent Nos. 2 and 3 to review all the promotions granted based on reservations and by resort to the roster system from 15 November 1997 till the date of order and carry out the necessary amendments within a period of four months and grant seniority and pay fixation in accordance with the rules and fairness to the applicants who have been deprived by the wrong and constitutionality invalid decisions of the Respondents.

5. In pursuant to the said directions, review of all the promotions, was made and consequently the Petitioners have been reverted, which gave cause to the Petitioners to file these petitions.

6. We have heard respective counsels for the parties.

7. Shri Sudame, learned Counsel for the Petitioners submits that learned Tribunal has not considered that the applications were time barred as the challenge was made to the seniority list dated 15 November 1997 and the Original Applications were preferred in the year 2013.

8. He further submits that the Petitioners before this Court, were not party before the Tribunal and the order dated 30 November

2018 was passed by the Tribunal without hearing the Petitioners. It is submitted that the grievance raised by the applicants in the respective Original Applications filed before the Tribunal, was the individual grievance, however, because of general directions issued by the Tribunal to review all the promotions, the Petitioners have suffered adversely.

9. Per contra, learned Assistant Solicitor General of India has submitted that the Petitioners in these petitions are having alternate remedy before the Central Administrative Tribunal to challenge their individual reversions.

10. It is submitted that the directions issued by the Tribunal has already been implemented. It is further submitted that the individual case of all employees, has been considered and thereupon, the orders of reversion or promotion have been issued. It is submitted that if the order dated 30 November 2018 impugned in the present petition is set aside, many employees who are not before this Court, may cause prejudice.

11. Shri Shinde, the learned Counsel appearing for some of the original applicants reiterated the contentions of the learned Assistant Solicitor General of India and in addition, it is submitted that the draft seniority list of the year 1997 was first time published in the year 2012 and therefore there was no delay caused in approaching to the Tribunal, raising grievance against the seniority list.

12. To consider the rival contentions of the parties, we have gone through the record and perused the relevant documents and the impugned order.

13. Before considering the individual case of the respective petitioners challenging their reversion and legality and correctness of the impugned order dated 30 November 2018 passed by the Tribunal, we will first deal with the preliminary objection as regards availability of alternate remedy.

14. There is no dispute that the order passed by the Tribunal dated 30 November 2018 was passed without hearing the Petitioners. It is further clear from the order that though the applicants before the Tribunal raised their individual grievance, the Tribunal without considering the fact that the employees who would cause prejudice if review of all promotions will be granted, allowed the Original Applications filed by certain employees, with direction to review all the promotions from 15 November 1997 upto the date of order. Consequently, many employees like Petitioners who were not heard or who were not party to the proceeding before the Tribunal were reverted.

15. In the said backdrop to consider the challenge raised to the reversion of the Petitioners numerous factors will have to be considered namely date of appointment, whether the appointment is made in open or reserved category, whether the seniority is rightly considered, whether

the subsequent promotion were granted as per the prevailing rules and Office Memorandum etc., which the Tribunal can be gone into the same, being specially constituted to decide such matters.

16. We have also noted that any finding relating to correctness of the order dated 31 December 2018 passed by the Tribunal may cause prejudice to many employees who are not before us, more particularly those employees who have already been promoted in view of implementation of directions issued by the learned Tribunal vide order dated 30 November 2018.

17. In the peculiar facts of the present case to subserve the cause of justice, the only appropriate mode in the present case would be to allow the Petitioners to approach to the Tribunal questioning their respective reversions on the grounds available to them under the law. Hence, we pass the following order.

ORDER

- i. The Writ Petitions are partly allowed.
- ii. The Petitioners are permitted to file Original Application before the Central Administrative Tribunal, questioning their individual reversions.

- iii. The Central Administrative Tribunal shall decide all such Original Applications, if so filed, *de novo* within a period of one year from the date of this judgment.
- iv. It is made clear that the Central Administrative Tribunal shall consider the findings given in its order dated 30 November 2018 as *prima facie* findings.
- v. All contentions of the parties are kept open.
- vi. No order as to costs.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]