

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

WRIT PETITION NO. 14573 OF 2022

Sakharam T. Zaware .. Petitioner.
v/s.
The State of Maharashtra .. Respondent.

Mr. Yashodeep Deshmukh with Ms. Sonali Pawar and Ms. Janvi Chotai i/b.
Mr. Vinod Sangvikar, for the Petitioner.
Mrs. Nisha Mehra, AGP for the Respondent-State.

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**CORAM: S.V. GANGAPURWALA, ACJ &
S.G.CHAPALGAONKAR,J.
DATED : 20th DECEMBER, 2022.**

PC:-

The Petitioner is challenging the order of the Maharashtra Administrative Tribunal (MAT).

2 The Petitioner had approached the Tribunal, claiming the deemed date of promotion as on 1st April, 1995 to the post of Sectional Engineer. The prayer of the Petitioner is negated by the Tribunal.

3 Mr. Deshmukh, learned Counsel for the Petitioner submits that the Petitioner was upgraded as a Sectional Engineer in the year 1996. The Petitioner was appointed as a Junior Engineer in the year 1982. The Petitioner is required to be upgraded after five years to the posts of Sectional Engineer of satisfactory performance of the service. The ACR of the year 1986-87 were never communicated to the Petitioner. If the ACR communicated to the Petitioner, the said ACR cannot be relied upon. The

learned Counsel further submits that the said ACR was also reviewed by the Sr. Officer who are also opined that during the year 1986-87, the Petitioner was mentally disturbed and otherwise, his performance were excellent. The learned Counsel submits that the Tribunal has committed an error while relying upon the earlier Original Application (OA) filed by the Petitioner bearing No.910 of 1994. That was dismissed for default. The prayer in the said OA cannot be said to be same in the present OA. The Petitioner is challenging the order passed by the Respondent on an application of the Petitioner, for granting deemed date. As such the order is passed in the year 2021, fresh cause of action arises for the Petitioner to challenge the same.

4 We have considered the submissions.

5 The Petitioner is appointed in the year 1982 as a Junior Engineer as contended by the learned Counsel for the Petitioner. According to the learned Counsel for the Petitioner, as per the Rules, after completing the five years of service, he has to be upgraded as a Sectional Engineer. The Petitioner is upgraded on or about 1st April, 1993. It further appears that the Petitioner has filed OA bearing No.910 of 1994 wherein the Petitioner sought relief that he needs to be considered for appointment of Sectional Engineer w.e.f. 1st April, 1998.

6 Petitioner suppressed this fact of filing of earlier OA bearing No.910 of 1994 while filing the present OA. OA No.910 of 1994 is dismissed for default in the year 1999. Thereafter, Petitioner for the first time in 2019, made a representation. The Petitioner in the year 2019 was at the fag end of his service career. It was incumbent upon the Petitioner to disclose the filing of the earlier OA and dismissal of that OA in default.

The Petitioner suppressed this fact, only because Petitioner filed a fresh application in the year 2019 that has not given a fresh cause of action to the Petitioner.

7 The Petitioner is further promoted as a SDO. Considering the Petitioner is upgraded as a Sectional Engineer in the year 1993, since dismissal of the Petitioner's OA in the year 1999, the Petitioner for the first time in the year 2019 has filed a representation to the effect that Petitioner ought to have been promoted as a Sectional Engineer in the year 1988. The Petitioner could not have approached the Tribunal again and that to after long slummer. Only because in the year 2019 the Petitioner filed an application and order is passed on that application, would not be sufficient for the Petitioner to agitate that it has a fresh cause of action. Similar relief is sought in the OA and after the dismissal of the OA bearing No.910 of 1994, till the year 1999, Petitioner remained silent.

8 In light of the aforesaid facts, the Tribunal has not committed any error while passing the impugned order.

9 Writ Petition disposed of. No costs.

(S.G.CHAPALGAONKAR,J.)

(ACTING CHIEF JUSTICE)