



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

WRIT PETITION NO. 8828 OF 2022

THE STATE OF MAHARASHTRA & ORS. .. PETITIONERS

VERSUS

ARVIND DATTATRAYA SULAKHE .. RESPONDENT

Mr.A.R. Kale, A.G.P. for the petitioners.
Mr.R.B. Ade, Advocate for the respondent.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
KISHORE C. SANT, J.**

DATE : AUGUST 27, 2024

ORDER [PER : KISHORE C. SANT, J.] :-

01. The Government, being aggrieved by the judgment and order passed by the Maharashtra Administrative Tribunal [hereinafter referred to as "Tribunal"], has approached this Court. The Tribunal by way of judgment and order dated 16.12.2021 passed in Original Application No. 367 of 2019 allowed the Original Application filed by present respondent and directed the Government to give him deemed date of promotion by setting aside

communication dated 27.03.2019 issued by the under Secretary, Government of Maharashtra to the Divisional Commissioner, Aurangabad and communication dated 01.04.2019 issued by the Dy. Commissioner (Revenue), Aurangabad. The Tribunal granted 16.09.1982 as the deemed date for promotion to the present respondent to the post of Dy. Collector with all consequential benefits.

02. The facts in short are that the respondent came to be appointed to the post of *Awal Karkoon* on 15.05.1956 in the erstwhile Hyderabad State. After formation of State of Maharashtra, he opted for Maharashtra and accordingly his services came to be transferred to Maharashtra State. He was later-on promoted to the post of *Nayab Tahsildar* on 11.06.1968 by giving deemed date of promotion as 01.04.1962. Thereafter, he was promoted to the post of *Tahsildar* on 09.04.1980. The respondent worked as such at different places. In the meantime, some officers junior to the respondent came to be promoted to the post of Dy. Collector. The respondent, therefore, filed a Writ Petition bearing

Writ Petition No. 301 of 1984 in this Court, which subsequently came to be transferred to the Tribunal after formation of the Tribunal. The said writ petition came to be renumbered as Transfer Application No.2307 of 1992.

03. The respondent filed another Original Application No.281 of 1991 challenging promotions of junior officers by superseding the respondent. It was the case of the respondent before the Tribunal that the promotions were given to the junior officers without finalizing the seniority list, as he was at Serial No.69 in the seniority list published on 11.08.1986 and the deemed date assigned to him as *Tahsildar* was shown to be 19.08.1974. He was, thus, entitled to be considered for promotion to the post of Dy. Collector in the year 1979.

04. Before the Tribunal stand of the Government was that there were adverse remarks against the respondent in the Annual Confidential Reports ["ACR" for short] for the year 1980-1981 and 1981-82. It is for this reason, the Departmental Promotion Committee [hereinafter referred to as "DPC"] did not consider the

case of the respondent for promotion, whereas it was the case of the respondent that said remarks could not have been considered as those were not communicated to him before meeting of DPC. No opportunity was provided to him to seek remedy to get such adverse entries expunged etc. It was further stated that the respondent was not fit to be appointed as *Tahsildar* on 30.11.1970 as his service record was not good. His name was subsequently included in the revised list of *Nayab Tahsildars*, who were fit to be appointed as *Tahsildar* on 08.08.1975. Thus, the respondent's name came in the seniority list of *Tahsildars* only in the year 1975.

05. The Tribunal mainly considered and held that claim of the respondent could not have been denied on the basis of adverse entries in his service record as the same were not communicated to him prior to meeting of the DPC. The adverse remarks for the year 1984-85 were also communicated to the respondent for the first time on 02.05.1986, i.e. again after the meeting of DPC was held for next time. From the judgment of the Tribunal, it appears that the next meeting of the DPC was held on 19.11.1984. In the said

meeting respondent's case was not considered as his performance was reported to be below average. That report was also communicated vide letter dated 05.11.1986, which was again after the meeting of the DPC for the relevant year i.e. meeting dated 06.03.1986. Thus, every time, adverse remarks of the relevant year were communicated to the respondent after the meetings of DPC were over.

06. The Tribunal also considered actual remarks for some of the years which are said to have been taken into account to deny promotion to the respondent. After considering all these aspects and considering the seniority list prepared, the learned Tribunal allowed the transfer petition as well as Original Application No.281 of 1991. It was specifically ordered to the State to consider the matter of promotion afresh after reconsideration of the case by the DPC. The State was further directed to decide the deemed date of promotion of the respondent in the grade of the Dy. Collector, if found eligible as prayed for in the Original Application No.281 of 1991.

07. This judgment and order passed by the Tribunal dated 20.10.1992 has never been challenged. The finding recorded by the Tribunal, that the respondent was denied promotion on the basis of un-communicated adverse entries, thus, attained finality.

08. Even after the judgment by the Tribunal, the authorities did not take any action pursuant thereto. On record, there is communication dated 01.09.1990 i.e. decision in appeal against decision of the Commissioner rejecting appeal of the respondent for expunging the adverse remarks. The Task Force (Revenue and Forest Department) by its communication communicated that the adverse entries taken in the year 1980-81 i.e. "Special aptitude ... Legal interpretation to use nuisance value" came to be expunged. So far as entry in respect of "Relations with Colleagues And public" remarks was "dominating", that was not expunged. "General Assessment" that "He can prove to be a good officer provided he gives up habit to dominate superior officers and to talk beyond the points" was, however, also not expunged.

09. Even after the judgment of the Tribunal dated 20.10.1992 the authorities did not consider and implement the order and therefore contempt petition was filed bearing No.3 of 1993 before the Tribunal. It is only thereafter that by order dated 12.03.1993, the applicant was given promotion to the post of Dy. Collector. The matter of grant of deemed date of promotion was still not considered. The respondent was making representations and was paying personal visits to the authorities. However, no information was furnished to him even under the Right to Information Act [for short "RTI"]. He was required to prefer an appeal under the RTI. Even in 2009 in-spite of application under the RTI, no information was furnished. After second appeal under RTI Act, order came to be passed directing authorities to furnish information.

10. The respondent, thereafter, again was compelled to file Original Application St. No.365 of 2018 seeking relief of deemed date. The said application came to be disposed of by directing the Government to take decision within three months and to

communicate the same. It is only thereafter that by communication dated 19.10.1918, the Dy. Commissioner (Revenue), Aurangabad communicated to the Additional Chief Secretary (Revenue and Forest Department) that the respondent was fit for promotion.

11. Thereafter, the communication dated 01.04.2019 was issued informing that in the meeting held on 18.01.2019, the DPC considering the confidential reports of the respondent for the year 1977-78 and 1981-82 came to conclusion that the deemed date of 16.09.1982 is not admissible. It is this communication that came to be challenged before the Tribunal by filing Original Application No. 367 of 2019. By way of the impugned judgment and order, the Tribunal has allowed the application and set aside the communication and has granted deemed date w.e.f. 16.09.1982 to the respondent with all consequential benefits within a period of three months from the date of passing of the impugned order.

12. The State Government aggrieved by this order, has approached this Court. It is mainly argued by the learned AGP that

the respondent was not entitled to get promotion as he was not found fit by the DPC in its meeting in 1984, as there were adverse entries for the year 1980-81 and 1981-82 in ACR. The next DPC was held in 1986, where also he was not found fit because of the adverse entries for the year 1984-85, as the appeal against the adverse entries came to be partly allowed by order dated 01.09.1990. Thus, the respondent against whom adverse entries were there, could not be considered as fit person for promotion. The DPC had rightly taken a decision not to give promotion to the respondent. The learned Tribunal has thus failed to consider that when the respondent was not entitled to get promotion, he would not be entitled to deemed date of promotion. When the respondent was found fit, he was given promotion in the year 1993. He, thus, prays for quashing and setting aside the impugned order.

13. The learned Advocate for the respondent vehemently argued that the Tribunal has rightly considered all the aspects involved in the matter. The judgment of the year 1992 passed in Original Application No. 281 of 1991 in T.A. No. 2307 of 1992 has

never been challenged by the Government. Thus, the findings recorded by the Tribunal in the said judgment became final. The authorities, thereafter, cannot go beyond findings recorded by the Tribunal. In the said judgment, it is rightly considered that the entries which were considered in the proceedings of the meeting of the DPC were not communicated to the respondent. It is well settled by now, by various pronouncements, that no promotion can be denied on the basis of un-communicated adverse entries/remarks.

14. This Court has heard both the parties carefully and has gone through the orders passed by the Tribunal in 1992 and also the impugned order. There is no dispute that the order passed in 1992 was never challenged by the present petitioners. On one hand the order was not challenged and on the other hand still it was not implemented. The respondent was, therefore, compelled to file Contempt Petition. It is only thereafter that the authorities took steps pursuant to order passed in 1992. Thereafter also, the respondent was made to take efforts to get the order of the

Tribunal implemented by engaging in various communications. The Dy. Commissioner by communication dated 19.10.2018 had recommended case of the respondent, however, by the communication dated 01.04.2019, the same was not accepted. It is, thus, that the respondent was again constrained to approach the Tribunal.

15. By now it is well settled from as back as in 1979 in the judgment in the case of **Gurdial Singh Fijji Vs. State of Punjab, AIR 1979 SC 1622**, that no promotion can be denied to a person on the basis of adverse entries, if those are not communicated to the concerned employee. In the present case, having accepted the order of the Tribunal in Original Application No. 281 of 1991, now it is not open to the petitioners to rely upon the very same uncommunicated adverse entries, which have already been held to be not material, because those were not communicated at the relevant time. Therefore, now the petitioners cannot go beyond judgment passed in the year 1992. Looking to the grounds taken in the petition, it is seen that all these grounds are only in respect

of adverse entries and this aspect stood already considered by the Tribunal while deciding the first round of litigation in Transfer Application No. 2307 of 1992 and Original Application No.281 of 1991. No substantial ground is made out calling for interference in the impugned judgment of the Tribunal at the hands of this Court. This Court, therefore, holds that there is no merit in the petition and the same deserves to be dismissed. It is made clear that all the consequential benefits will be paid to the respondent within three months from today.

16. With the above observations, the writ petition is dismissed with no order as to costs.

[KISHORE C. SANT, J.]

[CHIEF JUSTICE]