



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Writ Petition No. 377/2014

1. Pandit Mukundrao Takankhar,
Age : 59 years, Occu. Superintendent,
Attached with Court
of District Judge-1,
Khandhar, Dist. Nanded

...Petitioner

Versus

1. The State of Maharashtra
Through its Secretary
Law and Judiciary Department
Maharashtra State, Mantralaya,
Mumbai.
2. The District Judge -1 Khandhar,
District Nanded.
3. The Principal District & Sessions
Judge, Nanded.
4. Prabhakar Sambhaji Tuptewar,
Age : 55 years, Occu. Service,
Registrar, District Court,
Nanded.

...Respondents

...

Advocate for Petitioner : Mr. Mayur V.Salunke h/f Mr. V.D.Salunke

AGP for Respondent No. 1 : Mr. S.R.Yadav-Lonikar

Advocate for Respondent No. 2 and 3 : Mr. R.J.Godbole

...

**CORAM : S.G.MEHARE &
SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 6 JANUARY 2025
PRONOUNCED ON : 10 FEBRUARY 2025**

JUDGMENT [Per Shailesh P. Brahme, J.] :

1. Rule.
2. Rule is made returnable forthwith. Heard both sides finally at the admission stage with the consent of parties
3. The petitioner is invoking jurisdiction of this Court under Articles 226 and 227 of the Constitution of India for quashing the order denying him promotion to the post of Registrar and soliciting direction to confer the benefits of promotion from 09.02.2012 with further consequential reliefs.
4. The petitioner was appointed as English Section Writer on 31.01.1979 at District and Sessions Court, Nanded. He was made permanent in due course of time. He was promoted to the post of Senior Clerk on 01.07.1988 and thereafter to the post of Assistant Superintendent on 26.08.1996. He was further promoted to the post of Superintendent on 01.09.2005. He was due for the further promotion to the post of Registrar being senior most eligible candidate. However respondent no. 4 was promoted to the post of Registrar on 09.02.2012 . Against the denial of promotion, appeal was preferred under Rule 21 of Maharashtra Civil Services (Discipline

and Appeal), Rules, 1979 (for brief 'Rules of 1979') to Registrar General. By order dated 24.09.2012 appeal was dismissed which is the cause for the petitioner to approach this Court.

5. Learned counsel for the petitioner submits that the order passed by Appellate Authority is against principles of natural Justice. Without hearing petitioner and without making available the relevant record to him, impugned order was passed. It is further submitted that the relevant document like minutes of meeting of the Advisory Committee were withheld. Appeal was decided in a non-transparent manner. He would further submit that the order passed by the Appellate Authority is perverse as no reasons are assigned. It is a single line order. It is further submitted that the appellate authority failed to adhere to the parameters laid down in rule 23 (2) of Rules of 1979.

6. Learned counsel for the petitioner submits that order of promotion of the respondent no. 4 is against paragraph no. 580 (ii) (c) of the Civil Manual. For the irrelevant reasons the petitioner has been denied the promotion. It is further submitted that for the first time in affidavit-in-reply the respondents are supplying fresh reasons for denying promotion which is impermissible. He relies on the judgment of this Court in the matter of **Anil Kumar Atre Vs. District and Sessions Judge and Another** in Writ Petition No. 2534 of 2000 reported in 2002 (3) Mh.L.J 750.

7. In response to the submissions of the petitioner, the contesting respondent nos. 2 and 3 represented by Mr. Godbole refers to affidavit-in-reply. He submits that the promotion given to the respondent no. 4 was perfectly in accordance with paragraph no. 580 (ii) (c) of the Civil Manual. He would submit that respondent no. 4 was found to be more eligible on merits than the petitioner. The advisory committee made objective scrutiny in which petitioner secured 23.50 out of 50 marks and respondent no. 2 secured 37 out of 50 marks. Para wise remarks were submitted by learned Principal District Judge, Nanded before the appellate authority. An official note was put up by Registrar (Inspection-I) before learned Guardian Judge. Considering it, dismissal of the appeal was approved on 24.09.2012. It is further submitted that minutes of the meeting of the advisory committee was supplied to the petitioner. It is therefore submitted that there is no procedural illegality or perversity in granting promotion to the respondent no. 4 and the writ petition is liable to be dismissed.

8. Learned AGP appearing for the respondent no. 1 adopts the submissions of respondent nos. 2 and 3. Respondent No. 4 though served did not enter into appearance.

9. Learned counsel for the petitioners relied on the judgments of this court in the matter of **Anil Kumar Atre Vs. District and**

Sessions Judge and Another (supra). Respondent nos. 2 and 3 relied on the judgment of this court in the matter of **Prakash Jagannath Mane vs. The Hon'ble Registrar General High Court of Judicature at Bombay Appellate Side, Mumbai 400 032 and others** in Writ Petition No. 6073 of 2012.

10. There is no dispute about the initial appointments of the petitioner and the respondent no.4. Petitioner was senior to respondent no.4. The advisory committee conducted interviews of aspiring candidates including petitioner and the respondent no. 4. The respondent no. 4 was promoted to the post of Registrar vide order dated 09.02.2012. Being aggrieved, administrative appeal was filed by the petitioner and it was rejected on 24.09.2012 by order passed as follows :

“ On the basis of the record ‘A’ as above is approved”

*The approved submission A is as follows :

Your Lordship may, therefore reject the representation of Shri P.M.Takankhar, Superintendent and direct me to inform him through the Principal District and Sessions Judge, Nanded accordingly.

11. The promotion of the staff in a District Court is regulated by para 580 of the civil manual. As per para 580 sub-clause (ii) (b), the District Court is empowered to appoint a committee. The selection of an employee for promotion is regulated by clause (c) which is as follows :

580. In the matter of promotions and confirmations, the District Judge should take

into consideration the following principles :-

(i).....

(ii)(a)

(b).....

c) While selecting an employee for promotion, the District dudge shall take into consideration:

(i) The entire service record, and more the previous 5 years; particularly annual confidential reports for

ii) Leave and punctuality record, for the previous 5 years:

(iii) Special reports called from the officers under whom the employees within zone of consideration are currently working:

(iv) Nature of duties of the promotional post vis-a-vis the abilities of employees within zone of consideration.

d) In case promotions are not made according to seniority a minute indicating reasons for selection shall be recorded by the District Judge.

The seniority of Senior Clerks should be determined from the date of their appointment to that post i.e the Senior Clerk and not reference to seniority in the cadre of Junior Clerk.

12. The advisory committee considered the comparative merits of the petitioner and the respondent no. 4 in its meeting dated 08.02.2012. It considered previous record, performance in the interview, disciplinary actions and by recording minutes recommended to promote the respondent no. 4. This exercise is in consonance with sub-clause (d) of para 580 of the civil manual. The minutes of the meeting were confidential. Therefore, those were not supplied to the petitioner but later on those were made available to him.

13. Considering the provisions of paragraph 580 of the civil manual merit-cum-seniority is the criterion for granting promotion to the post of Registrar. The claims of the petitioner and the respondent no. 4 were assessed objectively and for recording the reasons the respondent no. 4 was preferred. We find that in paragraph no. 13 of the minutes, consciously the reasons for deviating the seniorities have been recorded.

14. The record of minutes of the meeting was placed before the authority alongwith the official notings. Considering the comparative merits independently, office report was prepared on 07.09.2012 by Registrar (Inspection General). It is reiterated that the respondent no. 4 was found to be more suitable. Considering the parameters of promotion and based on the independent assessment, it was suggested to reject the representation vide 'A'. It was approved by learned Guardian Judge on 24.09.2012.

15. In case of administrative matters, official notings with requisite data and reasons are placed before the competent authorities. The appellate authority is not expected to further record any independent reasons either for allowing or rejecting the appeal. The official notings dated 07.09.2012 shows application of mind and are based on record made available to the authority. Therefore single line order dated 24.09.2012 can not be castigated as unreasoned order. We

are satisfied that before rejecting the appeal, the appellate authority with the assistance of the Registry (Inspection) appreciated the matter on merits and consciously passed the order of rejection of appeal.

16. The Advisory Committee made objective assessment in its meeting and relevant portion is reiterated in paragraph nos. 7 to 13. It is not disputed that the comparative assessment is placed on record by way of affidavit filed by respondent nos. 2 and 3 before this Court. The following comparative table is relevant.

	Petitioner	Respondent No. 4
Annual Confidential Reports	Grade B – twice Grade A – twice Grade A Plus - Once	A – Plus for all five years.
Punishments	Suffered three punishments :- i. Censure vide order dt.28.01.1987 for loss of proceedings. ii One increment withheld temporarily vide order dt. 13.02.1997 for misappropriation of Rs.25/- iii Warning vide order dt. 31.05.1999 for non compliance of inspection notes.	Nil
Marks in Interview	23.50 out of 50	37 out of 50
Special Report remark (By the respective Presiding Officers under whom they worked.)	<i>He maybe considered for promotion.</i>	<i>He is fit for promotion.</i>
Balance Leave	Earned leave – 218 Medical -12	Earned leave – 275 Medical -147

17. Our attention is adverted to Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Petitioner had preferred appeal under rule 17 (iv) (b) which is as follows :

17. Orders against which appeal lies

(iv) an order which-

a)

(b) denies promotion to which he is otherwise eligible according to the recruitment rule and which is due to him according to his seniority;

18. Different parameters are prescribed for consideration of appeal for is against the order imposing any of the penalties specified under Rule 5 and for appeal against order specified in Rule 17. Rule 23 sub-rule (2) regulates consideration of appeal which is against penalty imposed under rule 5. This appeal is against the disciplinary action whereas Rule 23 sub-rule (3) prescribes the consideration of appeal which is as follows :

23. Consideration of appeal :

(1)

(2)

(3) In an appeal against any other order specified in rule 17 of these rules, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable.

19. When appeal is preferred against the disciplinary action, opportunity of hearing to the delinquent, application of the parameters stipulated under rule 23 sub-rule (2) (a) to (c) and passing of the reasoned order are imperative. These parameters can not be adopted for appeal under Rule 17. It is not the intention of the legislature that appeal against denial of promotion should be heard in a manner prescribed by sub-rule 2 of rule 23. Therefore we are not inclined to accept that personal hearing was required to be extended or while confirming the order passed by learned District Judge, elaborate reasons are required to be assigned. Sub-rule (3) of rule 23 carves out a distinct category of appeals and the procedures to be undertaken.

20. Considering sub-rule (3) of rule 23 what is expected of appellate authority is to consider all the circumstances of the case and make such orders as may deem just and equitable. In the present case para wise remarks were forwarded by Principal District Judge, Nanded. The minutes of the advisory committee were before the appellate authority. On the basis of this material, the submission was prepared by learned Registrar (Inspection-1) on 07.09.2012. Thereafter, learned Guardian Judge approved rejection of appeal. This is sufficient compliance of sub-rule (3) of rule 23 and no fault can be found.

21. Petitioner relied on the judgment of **Anil Kumar Atre** (supra).

It was reference before the Larger Bench. In that case petitioner was subjected to disciplinary action by conducting enquiry. He was held guilty for the charges and removed from the services. Being aggrieved he had preferred appeal and his appeal was dismissed. One of the submissions of the petitioner was that no opportunity of hearing was extended to him by High Court on administrative side. Finally larger bench concluded that opportunity was not given to the petitioner and order passed by the appellate authority was quashed. The matter was remanded.

22. The distinguishing facts are that the matter before the larger bench was regulated by rule 23 (2) of 'Rules of 1979'. It was case of punishment preceded by disciplinary enquiry and therefore parameters of sub-rule (2) of rule 23 were attracted for consideration of the appeal whereas in the case at hand it was an appeal under section 17 (iv) (b) which is regulated by sub-rule (3) of Rule 23. We have already recorded that for the appeal against denial of promotion a different procedure and parameters are carved out. Hence, ratio laid down by the larger bench is not applicable to the case.

23. Learned counsel for the respondents relied on the judgment of **Prakash Jagannath Mane** (supra). In that case the then petitioner was denied promotion to the post of Registrar and he was superseded by fourth respondent. It was also matter of promotion as

provided by para 580 of Civil Manual read with rule 3 (ii)(h) of Recruitment Rules for Recruitment to Class III and Class IV of Services in the Subordinate Judicial Service. The controversy before the Division Bench was as to whether the promotion to the post of Registrar would be based on principles of seniority-cum-merit or merit-cum-seniority. Following is the relevant extract :

6.

Thus, the District Judge is empowered to promote a Superintendent to the post of Registrar. We have already quoted paragraph 580 of the Civil Manual. Paragraph 583 provides that the Principal District Judge shall invariably consult the Judicial Officer under whom the employee is working the matters concerning promotions. On the conjoint reading of paragraph 580 and rule 3 (ii) of Appendix A, it is not possible to accept the submission of the learned counsel for the petitioner that the promotion to the post of Registrar will be governed by only seniority-cum-merit rule. In fact, the Rules do not specifically lay down whether seniority-cum-merit should be the criteria or whether it should be merit-cum-seniority as far as the promotion to the post of the Registrar is concerned.

24. The Division Bench further relying on the judgment of Hon'ble Supreme Court in the matter of **K.Samantaray vs. National Insurance Co.Ltd.** reported in (2004) 9 SCC 286 has made following observations in paragraph no.10 as follows :

10 Even assuming that the seniority cum merit rule was applicable, the Appointing Authority was entitled to fix its own criteria for adjudging the claim on seniority-cum-merit while giving primacy to the merit as well. The Recruitment Committee was conscious of the hierarchy of administration of the District Court which is required to be held by a person possessing adequate efficiency and experience. Therefore, in writ jurisdiction, we find no fault with the selection of the fourth respondent who is found to be the most meritorious and suitable candidate after considering the seniority, confidential reports, Special Reports, leave record and performance in the interview. Petition is rejected.

25. We are agreement with the ratio laid down in above paragraph. By implication in the present case the promotion to post of Registrar in a district court, is by merit-cum-seniority. The proviso to rule 3 (ii) of Civil Manual fortifies our view which is as follows:

Provided that he is properly qualified and is, in the opinion of the District Judge fit for promotion to the higher post.

. It gives primacy to the merit over the seniority when conjointly read with paragraph 580 (c) of Civil Manual.

26. Considering the procedure adopted by learned Principal District Judge as well as appellate authority, we do not find any arbitrariness or illegality. There are concurrent findings of facts. We are not impressed by the submissions of the petitioner. The upshot of the above discussion is that the petition lacks merit. We therefore, pass following order :

ORDER

- a) Writ petition is dismissed.
- b) Rule is discharged.
- c) There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

[S.G.MEHARE, J.]