

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 254 OF 2022

DISTRICT:- AHMEDNAGAR

Sandip Wamanrao Khadse

Age: 36 years, Occu. Service
R/o. Mahada Colony in front of
Pratap Nagar, Darga Road,
Usmanpura, Aurangabad
District Aurangabad.

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra**
Through its Secretary,
Home Department (Transport)
Mantralaya Mumbai.
- 2) **The Commissioner of Transport,**
5th floor fountain, Telecom
Department Bhavan no. 2,
Mahatma Gandhi Road Fort,
Mumbai-400 001.
- 3) **The Deputy Regional Transport
Officer,** Ahmednagar.
- 4) **The Departmental Promotion
Committee,** Through its President,
Home Department (Transport)
Mantralaya, Mumbai.

.. **RESPONDENTS**

APPEARANCE : Shri A.W. Khadse, learned counsel for
the applicant.

: Shri M.S. Mahajan, learned Chief
Presenting Officer for the respondent
authorities.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND**

SHRI VINAY KARGAONKAR, MEMBER (A)

DATE : 12.12.2023

ORDER

(Per : Justice Shri P.R. Bora, Vice Chairman)

Heard Shri A.W. Khadse, learned counsel for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondent authorities.

2. The applicant is presently working on the post of Assistant Regional Transport Officer. The applicant joined the services as Assistant Regional Transport Officer in the month of April, 2013. His first posting was at Dhule. The applicant became entitled for promotion to the post of Deputy Regional Transport Officer in the year 2019-20. His name was also in the list of officers in the zone of consideration. In the meeting of Departmental Promotion Committee (DPC) held on 20.11.2020 the name of the applicant was there for consideration for promotion to the post of Dy. R.T.O. However, on the pretext that the departmental enquiry is initiated against him, no promotion was granted to the applicant and his decision was kept in sealed cover.

3. Applicant challenged the said decision by filing O.A. No. 191/2021 before this Tribunal. The said O.A. was contested by the respondents. The only ground, which was raised by the respondents in the earlier O.A. for keeping the decision in

regard to the applicant in the sealed cover was the pendency of D.E. against him. This Tribunal decided the said O.A. on 29.11.2021. In the said O.A. the following order was passed :-

“16. In the above circumstances, according to us, there appears no rational in the action of the D.P.C. of keeping the decision in regard to the promotion of the applicant to the post of Deputy R.T.O. in a sealed envelope. The said decision, therefore, has to be set aside and it is accordingly set aside.

17. In the above circumstances, the respondents are directed to consider the present applicant for his promotion to the post of Deputy R.T.O., if he is otherwise eligible to be promoted on the said post. The present O.A. thus stands allowed in the aforesaid terms and disposed of with no order as to costs.”

4. As per the directions given by this Tribunal in the decision of the aforesaid O.A., D.P.C. was held on 25.1.2022. As is revealing from the contentions raised by the applicant in the present O.A., he was required to collect the information as about the said D.P.C. by invoking the provisions under Right to Information Act. The copies of the proceedings of the said meeting of D.P.C. held on 25.1.2022 are placed on record in the present matter. Minutes of the said meeting reveal that the D.P.C. thoroughly discussed the decision rendered by this Tribunal in O.A. No. 191/2021, however, by further observing that the charges leveled against the applicant vide charge-sheet issued to the applicant on 4.12.2020 are serious, the D.P.C. ultimately took a decision not to recommend the name of the

applicant for his promotion and again resolved to keep the decision in sealed cover until the departmental enquiry proceedings are concluded.

5. It is the contention of the applicant that in the earlier decision rendered by this Tribunal in O.A. No. 191/2021 a specific finding was recorded by this Tribunal that on the date of D.P.C. meeting held on 20.11.2020, since no departmental enquiry was pending against the applicant, the respondents could not have kept the decision in regard to the applicant for his promotion in sealed cover. Considering the aforesaid aspects, the O.A. No. 191/2021 was disposed of by this Tribunal by giving further directions, which we have reproduced hereinabove.

6. It is the further contention of the applicant that thereafter on 16.9.2022 another D.P.C. meeting was held and in the said D.P.C. meeting it was resolved to promote the applicant to the post of Deputy R.T.O. and in consequence thereof the applicant was called upon to submit his options for revenue division. It is the further contention of the applicant that he accordingly, though submitted his options on 23.1.2023 has not yet been promoted. Since there was no further development in

the matter, the applicant has approached this Tribunal seeking following reliefs :-

“A) This Original Application may kindly be allowed.

B) Record and proceedings be called for.

C) By way of allowing the present Original Application, quashed and set aside the order dated 25.01.2022 passed by respondent no. 4 and it may be directed to respondents grant promotion to the applicant from the date of earlier DPC dated 20.11.2020.

C-1) The applicant may kindly be promoted on the post of Dy. R.T.O. in pursuance to the D.P.C. meeting dated 16/09/2022 since there was no D.E. pending on the D.P.C. meeting dated 16/09/2022.”

7. Respondent nos. 1 to 4 have filed their affidavit in reply in the present matter and have thereby opposed the contentions raised and the prayers made in the O.A. The respondents have admitted in their affidavit in reply that in the D.P.C. meeting held on 16.9.2022 the decision in respect of grant of promotion to the applicant has been taken in view of the order passed by this Tribunal in O.A. No. 191/2021. It is further contended that the respondents have initiated another Departmental Enquiry against the applicant in pursuance of the order dated 12.9.2023 issued by respondent no. 1. In paragraph 09, the respondents have again taken a contrary stand than taken in paragraph 07 and have reiterated that the applicant is being considered for promotion and the said matter is in progress.

8. It has also to be stated that since order passed by this Tribunal was not being implemented by the respondents, the applicant also preferred Contempt Petition against the respondents. In the said contempt petition sur-rejoinder on behalf of respondent no. 1 has been filed, wherein also it has been specifically deposed that in the meeting of the D.P.C. held on 16.9.2022 the name of the applicant was considered for promotion to the post of Deputy R.T.O. and further action is under process and will be concluded as per the procedure prescribed under the G.R. dated 15.12.2017. However, till this date the respondents have not issued the order of promotion in favour of the applicant. On the contrary, now the second charge-sheet has been issued by the respondents to the applicant and the D.E. is initiated in that regard. In the premise of the facts as aforesaid, the case of the applicant has to be considered.

9. It is not in dispute that the applicant is due for his promotion to the post of Deputy R.T.O. It is the contention of the respondents themselves that in the D.P.C. meeting held on 16.9.2022, the decision has been taken to promote the applicant to the post of Deputy R.T.O. However, it is quite discernable that the respondents are reluctant in giving

promotion to the applicant by raising hurdles in his way. Now the second D.E. has been initiated against the applicant and though there is no express statement on behalf of the respondents that because of said D.E. pending against him it may not be possible to issue order of promotion to the applicant, factually the order of promotion has not been issued in favour of the applicant.

10. In the G.R. dated 15.12.2017 complete procedure is prescribed about the steps to be taken in the matters of promotion in the cases where criminal case or departmental enquiry is pending against the Government employee. Clause 12 of the said G.R. is relevant which reads thus:

“१२) शिस्तभंगविषयक/न्यायालयीन कायवाहा चालू असलेल्या प्रकरणी संबंधित अधिकारी/कमचारा दोषमुक्त ठरल्यास किंवा फौजदारो खटल्यात निर्दोष सुटल्यास, खालीलप्रमाणे कायवाहा करावी :-

अ) तदथ पदोन्नती दिलेली नसल्यास त्याचे मोहोरबंद पाकोट उघडून त्यातील निष्कषानुसार तो पदोन्नतीसाठी पात्र ठरत असल्यास, त्याला नियमित पदोन्नती द्यावी.

ब) अधिकारी/कमचार्यास तदथ पदोन्नती दिलेली असल्यास, दिलेली तदथ पदोन्नती नियमित करण्यात यावी.

क) मोहोरबंद पाकोटातील शिफारशीनुसार तो पदोन्नतीसाठी पात्र असल्यास, संबंधित अधिकारी/कमचार्यास कनिष्ठ असलेल्या अधिकारी/कमचार्याला ज्या निवडसूचीत स्थान देण्यात येवून नियमित पदोन्नती देण्यात आली असेल, अशा कनिष्ठ अधिकारी/कमचार्याच्या पदोन्नतीचा दिनांक हा त्यांना पदोन्नतीचा मानीव दिनांक देण्यात यावा.”

11. In fact, we need not to refer and rely upon the said clause also for the reason that the decision taken in the meeting of DPC held on 20.11.2020 to keep the result in respect of the applicant in sealed cover, has been set aside by this Tribunal holding that on the date of DPC meeting since there was no proceeding pending against the applicant, the respondents could not have taken such decision. Accordingly, further directions were given by this Tribunal in O.A.No.191/2021.

12. As we have noted hereinabove, the decision rendered by this Tribunal was discussed in DPC meeting held on 25.01.2022. In the minutes of the said meeting some of the paragraphs from the judgment delivered by this Tribunal in O.A.No.191/2021 are reproduced. However, it is disgusting that in spite of that a contrary decision was taken in the said DPC meeting. For keeping the decision in sealed cover the stand of the respondents was that departmental enquiry was pending against the applicant. In the decision given by this Tribunal in O.A.No.191/2021 the aforesaid issue has been elaborately discussed and an unambiguous finding has been recorded that on the date of DPC meeting held on 20.11.2020, since there was no departmental enquiry initiated against the applicant and it came to be initiated thereafter on 04.12.2020,

the respondents could not have kept the decision in regard to promotion of the applicant in the sealed cover. The further directions were given in premise of the aforesaid facts.

13. After having read the minutes of the meeting of the DPC held on 25.01.2022, we are constrained to observe that the observations made and decision taken in the said meeting are contemptuous. In the said meeting the DPC has considered the charges leveled against the applicant in the charge-sheet issued on 04.12.2020 and have recorded the conclusion that the charges are serious and on that count again the decision was kept in sealed cover. Said decision was apparently in defiance of the order passed by this Tribunal in O.A. No. 191/2021. Moreover, when the matter was pending before the enquiry officer it was none of the business of the DPC to consider the charges leveled in the said charge-sheet. It is further surprising to note that DPC has recorded its conclusion holding the applicant guilty of the charges leveled against him. On what evidence DPC has reached to the said conclusion is not disclosed in the minutes of the meeting. Suffice it to say that the entire approach of DPC was contemptuous and the decision taken by the DPC in the said meeting was an arbitrary exercise of power vested in DPC.

14. It is significant to note that the charges for which the DPC held the applicant guilty and recorded such finding in the meeting held on 25.1.2022, the enquiry officer after having conducted thorough enquiry into the charges raised against the applicant, exonerated the applicant and submitted the report in that regard to the disciplinary authority on 2.9.2003.

15. Subsequent to the report as aforesaid submitted by the enquiry officer, the next DPC meeting was held on 16.9.2022 and in the said meeting the decision was taken to issue order of promotion in favour of the applicant.

16. However, as we noted hereinabove, the respondents were reluctant in promoting the applicant. In the contempt petition, though, a statement has been made by the responsible officer that the order is being implemented and when the similar statement is there in the reply filed on behalf of the respondents in the present OA, now it is discernable that on the pretext of initiation of another departmental enquiry against the applicant he has not yet been promoted. We revert back to the G.R. dated 15.12.2017. Following clauses thereof are relevant, which read thus,

१. राज्य शासकाय अधिकारी/कमचा-यांना पदोन्नती देताना शिस्तभंगाविषयक अथवा न्यायालयीन कायवाहां सुरु असलेल्या कमचा-यासंदर्भात समान कार्यपध्दती अवलंबिली जावी या दृष्टीने व कद्र शासनाच्या कमचा-यांसाठी कद्र शासनाने विहित

केलेल्या कायपध्दतीशी सुसंगत अशी कायपध्दती ठेवण्याच्या टप्पटाने या विभागाचे दि.०२.०४.१९७६ चे शासन परिपत्रक व दि.२२.०४.१९९६ चा शासन निणय रद करून बालील कायपध्दती विहोत करण्यात येत आहेत.

१) विभागीय पदोन्नती समितीच्या बैठकांच्या दिनांकाला

अ) जे अधिकारी/कमचारां निलबीत आहेत,

ब) ज्या अधिकारी कमचा-यांच्याविरुद्ध शिस्तभंग विषयक कायवाहांच्या अनुषंगाने दोषारोप बजावून शिस्तभंग विषयक कायवाहा सुरु झालेले आहे.

क) ज्या अधिकारी/कमचा-यांच्याविरुद्ध फौजदारां आरोपाचे न्यायालयीन प्रकरण प्रलंबित आहे,

फौजदारां आरोपाचे न्यायालयीन प्रकरण प्रलंबित असल्याचे केव्हा समजण्यात येईल या साठां म.ना.से. (निवृत्तीवेतन) नियम, १९८२ मधील नियम २७६) (बी) (एक) मध्ये दिलेला खालील अथ विचारात घेण्यात येईल :-

(बी) न्यायिक कायवाहा -

(एक) फौजदारां कायवाहांच्या बाबतीत, दंडाधिकारी जिची दखल घेतो अशी तक्रार किंवा प्रतिवेदन, पोलास अधिका-याने ज्या तारखेस दाखल केले असेल त्या तारखेस सुरु केला असल्याचे मानण्यात येईल.

अशा अधिकारी/कमचा-यांच्या पदोन्नतीच्या प्रकरणात विभागीय पदोन्नती समिती त्यांची गोपनीय अभिलेखाच्या व इतर सेवाप्रवेश नियमाच्या तरतुदांच्या अनुषंगाने पात्रता तपासेल. मात्र संबंधीत अधिकारी/कमचा-यांच्यासंदर्भात विभागीय पदोन्नती समितीने केलेले मूल्यमापन (Assessment) आणि दिलेला प्रतवारो स्वतंत्र पाकोटात मोहोरबंद करून ठेवण्यात येईल या पाकोटावर "श्री.....(सरकारो कमचा-यांचे नाव) यांच्याबाबतीत या पदावरून (निम्न पदाचे सध्याच्या पदाचे नाव) या पदावर (पदोन्नतीच्या पदाचे नाव) पदोन्नती देण्याकरिता आवश्यक योग्यतेबाबतचे निष्कष श्री.....यांच्याविरुद्धच्या शिस्तभंगाच्या प्रकरणाची/फौजदारां खटल्याची समाप्ती होईपर्यंत हे पाकोट उघडण्यात येवू नये" असा मायना लिहोण्यात यावा.

१२) शिस्तभंगविषयक/न्यायालयीन कायवाहां चालू असलेल्या प्रकरणी संबंधित अधिकारी/कमचारां दोषमुक्त ठरल्यास किंवा फौजदारां खटल्यात निर्दोष सुटल्यास, खालीलप्रमाणे कायवाहां करावी :-

) न प शिक्ष ल न ष
 द प्र अधिकारी/ = ल शिक्षे त
 वषाच्या ल शिक्षे
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 प्रस् अधिकारी/कर्मचाऱ्यांसोबत फि न त्र
 ल त न ण

) द्या फि ा/कर्मचाऱ्यास विनिर्दिष्ट ा ज
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 च श्रे ध , श्रेणीमध्ये, फि ध ण
 शिक्षा ल प्र दिलेली न द रु , ज
 श्रे ध , श्रे ध , फि ध फि फि
 ा त श्रे , श्रे , रु फि
 फि ा/कर्मचाऱ्यास च श्रे ध , श्रे ध , फि
 ध ण फि रु फि ा
 रु / शिक्षेनुसार फि ा/ = ज ष फि ा/
 = च शिक्षे / शास्तीच्या ध ल फि शे
 ण शिक्षे ल त्याच्या
 श्रे ध , श्रे ध , फि ध ल त
 ज ष ा फि ध , ा सेवाज्येष्ठतेनुसार
 न च विचारक्षेत्रात ल फि न फि च
 बैठकामध्ये त न च ा फि ण त्र
 ा ज ष न च विचारक्षेत्रात ल फि
 न फि च बैठकामध्ये त न च ा फि
 ण न त्र ल त न ण

) ज प्र फि ा/कर्मचाऱ्यास क फि ती,
 फि फि शिक्षापैका ा शिक्षा
 , त न ष फि रु फि
 ा ज त शिक्षे रु

१८. ज्या अधिकारी/कर्मचा-यांचे पदोन्नतीचे प्रकरण त्यांच्याविरुद्ध शिस्तभंगविषयक/न्यायालयीन कार्यवाही सुरु असल्यामुळे विभागीय पदोन्नती

समितीच्या पहिल्या बैठकीत मोहोरबंद पाकीटात ठेवले आहे अशा प्रकरणात, संबंधित अधिकारी/ कर्मचारी कालांतराने पूर्णतः निर्दोष सुटला व त्याला मोहोरबंद पाकिटात ठेवलेल्या निष्कर्षानुसार पदोन्नती देताना, नंतरच्या कालावधीत दुसरी विभागीय चौकशी किंवा न्यायालयीन कार्यवाही, त्याच्या कनिष्ठास पदोन्नती दिल्याच्या दिनांकानंतर सुरु झाली असेल, तर अशा प्रकरणी संबंधित अधिकारी/कर्मचा-यास पहिल्या विभागीय पदोन्नती समितीच्या निष्कर्षानुसार त्याला पदोन्नती देण्यात यावी व त्याला कनिष्ठ असलेल्या अधिकारी/कर्मचा-यास देण्यात आलेला पदोन्नतीचा दिनांक हा मानीव दिनांक म्हणून देण्यात यावा [कनिष्ठाच्या पदोन्नतीच्या दिनांकास अशा अधिका-याविरुद्ध कोणतीही विभागीय चौकशी अथवा न्यायालयीन कार्यवाही सुरु नसल्यामुळे अशा कर्मचा-याला प्रत्यक्ष पदोन्नती नाकारता येणार नाही (Even if the second departmental proceeding or judicial proceeding relates to his misconduct uring the period for which his assessment for promotion was done by the first DPC). परंतु ज्या प्रकरणी अशा कर्मचा-याच्या कनिष्ठ कर्मचा-यास पदोन्नती देण्यात आली नसेल, तत्पूर्वी किंवा संबंधित कनिष्ठ कर्मचा-यास पदोन्नती दिल्याच्या दिनांकापूर्वी, अशा अधिका-याविरुद्ध दुसरी विभागीय चौकशी किंवा न्यायालयीन कार्यवाही सुरु झाली असेल अशा प्रकरणी मात्र उपरोक्त परिच्छेद 9 (9) मधील तरतुदी लागू होतील.”

17. We reiterate that in fact, in O.A. No. 191/2021 this Tribunal has held that the resolution to keep the decision in respect of the promotion of the applicant in sealed cover taken in the DPC meeting held on 20.11.2020 itself was erroneous and was accordingly set aside. In the decision given by this Tribunal in the said O.A. it has been specifically observed by this Tribunal that on the date of DPC meeting i.e. on 20.11.2020 no DE was pending against the applicant and in the circumstances there was no reason for the respondents to keep the decision in sealed cover. It appears that the respondents are adopting the same course again. In the DPC meeting held on 16.9.2022 though it has been resolved to promote the applicant, the said resolution is not acted upon and now

another enquiry is contemplated against the applicant and the charge-sheet of the said enquiry has also been served upon him vide memo dated 12.9.2023. It is the apprehension in the mind of the applicant that on the pretext that the DE is pending the respondents may not promote the applicant. Since the learned CPO has also in his arguments emphatically submitted about the initiation of the second enquiry against the applicant, the apprehension in the mind of the applicant cannot be said to be misplaced.

18. Having regard to the provisions made in the G.R. dated 15.12.2017 it may not be however permissible for the respondents to withhold the promotion of the applicant. It is not in dispute that in the meeting of the DPC held on 16.9.2022 the respondents have resolved to grant promotion to the applicant. In the circumstances, even though it is accepted that the second enquiry has been initiated against the applicant and the charge memo of it is served upon the applicant on 12.9.2023, on that ground the respondents cannot withhold the promotion of the applicant for the reason that on the date of DPC meeting i.e. on 16.9.2022 no DE was pending against the applicant. It is further evident that from 16.9.2022 to 12.9.2023 there was nothing against the applicant and in spite

of that the decision in the DPC meeting held on 16.9.2022 was not implemented.

19. After having considered the entire facts and circumstances in the matter and after having considered the legal position in this regard, we have reached to the conclusion that unless there is some ultimatum given by this Tribunal the respondents perhaps may not promote the applicant, we are therefore, inclined to allow the present Original Application. Hence, the following order: -

ORDER

- (i) The respondents are directed to issue the order of promotion in favour of the applicant as resolved in the DPC meeting held on 16.9.2022 within a period of four weeks from the date of receipt of copy of this order.

- (ii) The respondents are further directed to consider the provisions under the Government Resolution dated 15.12.2017 for according the deemed date of promotion in favour of the applicant, in case any person junior to the applicant has been promoted prior to him.

- (iii) The Original Application stands allowed in the aforesaid terms however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN