

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 586 OF 2022

DISTRICT : NANDURBAR

Suvarna W/o Pradip Pawar,)
Age : 55 years, Occu. : Service,)
Presently working as Assistant Block)
Development Officer, Panchayat Samiti,)
Nandurbar.)
R/o : D-10, Suryawanshi Nagar, Opp.)
Kalyaneswar Hanuman Temple, Nandurbar,)
Taluka and District : Nandurbar.)

.... **APPLICANT**

V E R S U S

1. The Under Secretary,)
Rural Development Department,)
25, Marzban Road, Fort,)
Mumbai-400001.)

2. The Divisional Commissioner,)
Nashik Division, Nashik, Dist. Nashik.)

... **RESPONDENTS**

APPEARANCE : Shri A.S. Shelke, Counsel for the Applicant.

: Shri S.K. Shirse, Presenting Officer for
respondent authorities.

CORAM : **Hon'ble Justice Shri P.R. Bora, Vice Chairman**
and
Hon'ble Shri Vinay Kargaonkar, Member (A)

DATE : **27.10.2023.**

PER : **Hon'ble Justice Shri P.R. Bora, Vice Chairman**

ORAL - ORDER

1. Heard Shri A.S. Shelke, learned counsel for the applicant and Shri S.K. Shirse, learned Presenting Officer for respondent authorities.

2. The applicant has preferred the present Original Application seeking direction for giving promotion to the applicant to Maharashtra Development Services Group-A post (for short 'MDS Group-A').

3. The applicant is presently working as MDS Group-B and is entitled for promotion to MDS Group-A. The applicant was appointed as Assistant C.D.P.O. in the year 1995. In the year 2014, she was promoted as Assistant B.D.O., Panchayat Samiti, Dhule. On 04.06.2019, the respondent No. 1 published final seniority list of MDS Group-B. The applicant was shown at Serial No. 457 in the said list. On 09.08.2021, the respondent No. 1 called information of the applicant along with others for being considered for promotion to MDS Group-A. On 12.08.2021, the Deputy C.E.O., Zilla Parishad, Dhule submitted requisite information to respondent No. 2. Then respondent No. 1 called preferences for allotment of Revenue Divisions vide his communication dated 02.05.2022. However, the name of the

applicant was not listed in the said communication. On 04.05.2022, the applicant submitted representation against exclusion of her name for consideration of promotion. Vide order dated 30.05.2022 the respondent No. 1 issued promotion orders to the cadre of MDS Group-A. The applicant, however, has been excluded from the said list. In the circumstances, the applicant has preferred the present Original Application seeking direction against the respondents and seeking declaration that he is entitled and eligible for promotion to MDS Group-A post on the basis of her seniority, as well as, merit.

4. Learned counsel appearing for the applicant pointed out that the respondents have intentionally deprived the applicant from her promotion to MDS Group-A post. Learned counsel pointed out that at the time when the DPC was to be held a memo came to be issued against the applicant requiring explanation from her as about the misconduct alleged against her pertaining to the period of 2015-16 while she was working at Panchayat Samiti, Dhule. Learned counsel submitted that merely on the basis of the memo issued against the applicant, the applicant has not been considered for promotion to the post of MDS Group-A. Learned counsel pointed out that in the G.R. dated 15.12.2017 methodology to be adopted in cases of

employees against whom enquires are pending or criminal prosecution is pending is elaborated.

5. Learned counsel further submitted that the respondents have on the basis of the provisions made in the said G.R. have taken a defense that on the date of meeting of DPC the departmental enquiry was pending against the applicant and that was the reason that her case for promotion was not considered by the DPC. Learned counsel submitted that on the date of meeting of DPC, in fact, there was no departmental enquiry pending against the applicant. Learned counsel pointed out that DPC meeting was held on 11.03.2022 and memo was served upon the applicant few days before the said meeting of DPC. It is further contended that though the memorandum (ज्ञापन) bears the date 03.01.2022, the said memo was served upon the applicant on 04.02.2022. Learned counsel submitted that the respondents on the basis of memo so served upon the applicant have kept the case of the applicant out of consideration for promotion.

6. Learned counsel, referring to the provisions under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and more particularly Rules 8 and 10 thereof submitted that

unless the statement of charge is served upon the delinquent, the enquiry cannot be said to have been initiated against the said delinquent. Learned counsel invited our attention to the wording used in the G.R. dated 15.12.2017 of Clause-1 thereof and submitted that clause-B of the said clause has to be interpreted to mean that the concerned Government employee is served with the statement of charge, wherein the charges are specified against the delinquent and the material in support of the said charges is annexed therewith along with the list of documents, as well as, the list of witnesses. Learned counsel submitted that the memorandum (ज्ञापन) served upon the applicant on 04.02.2022, therefore cannot be held to be a statement of charge issued against the applicant and as such, no enquiry can be said to have been initiated against the applicant on the date on which the meeting of DPC was held.

7. Learned counsel has tendered across the bar the communication dated 24.11.2022 addressed to respondent No. 2 by respondent No. 1. Vide the said communication; respondent No. 2 has sought permission of respondent No. 1 for initiation of departmental enquiry against the applicant under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Learned counsel submitted that now it has become abundantly

clear that on the date on which the DPC was held, there was no departmental enquiry pending against the applicant and in the circumstances, there was no reason for not considering the case of the applicant for her promotion on the ground that there was departmental enquiry pending against the applicant.

8. Learned counsel submitted that even otherwise it is discernible that the action which was not initiated for more than 5 years was sought to be initiated against the applicant at the time when the meeting of DPC was proposed. Learned counsel submitted that considering the facts as aforesaid, the applicant is entitled for declaration as sought by her that she was entitled for promotion to the post of MDS Group-A.

9. Learned Presenting Officer reiterated the contentions raised in the affidavit in reply filed on behalf of respondents. He referred to para Nos. 5 and 6 of the said affidavit in reply to bring to our notice that the DPC did not consider the case of the applicant on the ground that the departmental enquiry was pending against her at the relevant time. Learned P.O. relied upon the provisions under G.R. dated 15.12.2017. According to the learned P.O., the memorandum, which was issued against the applicant, which as per the applicant's contention was served

on 04.02.2022, has to be considered as a statement of charge and the Government has declared its intention of conducting the departmental enquiry against the applicant. According to learned P.O. nomenclature is not that material and if the document is un-biasely read, it is nothing but a statement of charge against the applicant. Learned P.O. for the reasons as aforesaid prayed for dismissal of present Original Application.

10. We have considered the submissions made on behalf of the applicant, as well as, respondents. We have also gone through the documents placed on record. It is not in dispute that at the relevant time the applicant was in the zone of consideration for her promotion to the post of MDS Group-A officer. It is also not in dispute that the promotions to the other officers of the same rank were approved in the DPC meeting held on 11.03.2022. Some of the promotees were junior to the applicant. It is the contention of the applicant that after the said list was published and when it was noticed that her name was not included in the said list, she approached the authorities concerned and after failing in getting relief from the said authorities, the applicant has approached this Tribunal by filing the present Original Application.

11. The crucial question which falls for our consideration is “whether the communication dated 03.01.2022 served upon the applicant on 04.02.2022 can be held to be a statement of charge and on that basis can it be held that on the date of meeting of DPC the departmental enquiry was commenced and pending against the present applicant?”

12. We have carefully perused the memorandum dated 03.01.2022, which has been served upon the applicant on 04.02.2022. According to the respondents, after service of notice of aforesaid memorandum, it has to be held that the departmental enquiry proceedings were initiated against the applicant. It is the further contention of the respondents that it was the reason that the applicant was not considered for her promotion in the DPC meeting held on 11.03.2022.

13. As against the submissions advanced on behalf of the State, it has been argued on behalf of the applicant that merely on the basis of service of memorandum dated 03.01.2022; it cannot be held that the enquiry proceedings were commenced against the applicant. Learned counsel for the applicant has placed reliance on judgment of the Hon’ble Apex Court in the case of **Union of India and Others Vs. Anil Kumar Sarkar, 2013**

AIR SCW 2232. Learned counsel also referred to the provisions under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. In the case of **Union of India and Others Vs. Anil Kumar Sarkar** (cited supra), the Hon'ble Apex Court has referred to its judgment in the case of **Union of India and Others vs. K.V. Jankiraman and Others, (1991) 4 SCC 109.** As mentioned in the aforesaid judgment, one of the questions involved in the case of **Union of India and Others vs. K.V. Jankiraman and Others** (cited supra) was that "What is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee?" The aforesaid question is answered in para No. 17 of **Union of India and Others vs. K.V. Jankiraman's** case (cited supra). The said paragraph reads thus :-

"17. ... The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending 1 Page 14 against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee...."

14. The memorandum dated 03.01.2022 cannot be accepted as the charge memo or the statement of charge against the applicant. As provided under the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and more particularly under Rule 8(3) thereof "(3) Where it is proposed to hold an inquiry

against a Government servant under this rule, the disciplinary authority shall draw up or cause to be drawn up-

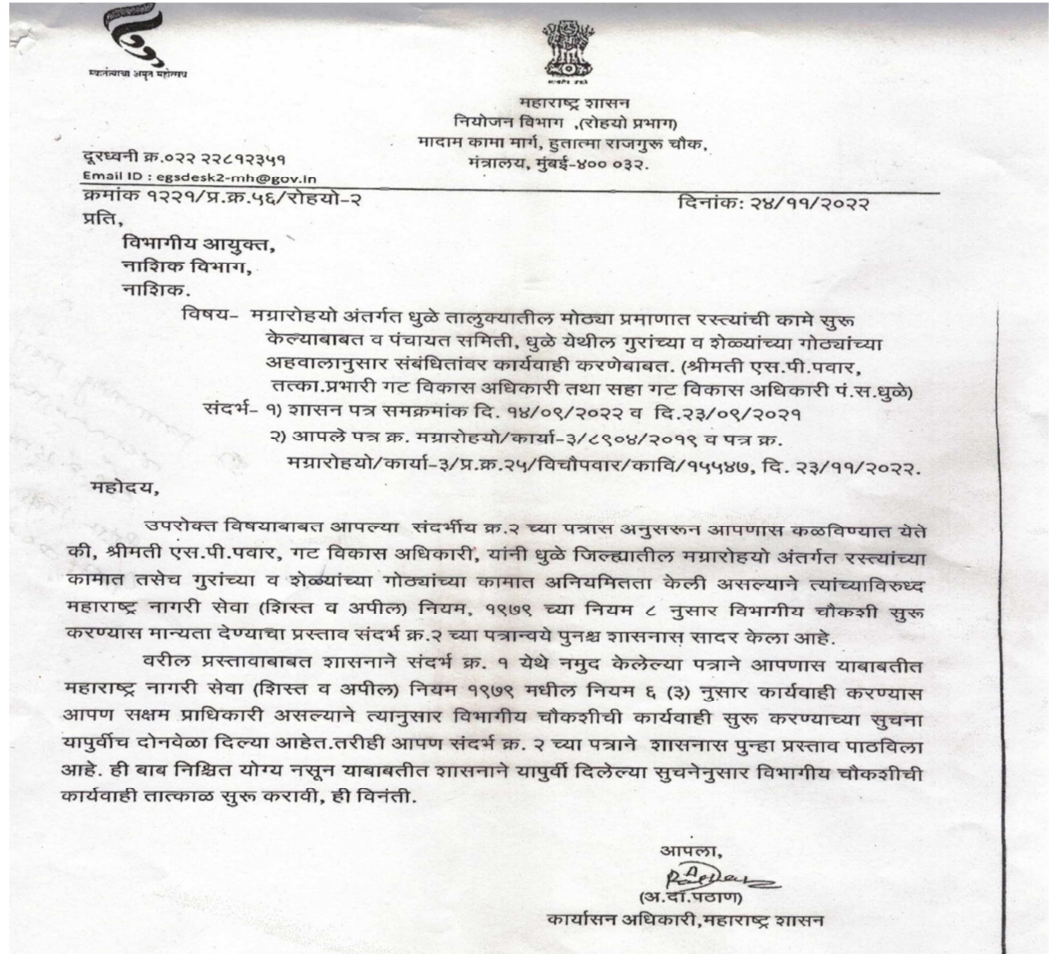
- (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;
- (ii) a statement of the imputation of misconduct or misbehaviour in support of each article of charge, which shall contain-
 - (a) a statement of all relevant facts including any admission or confession made by the Government servant; and
 - (b) a list of documents by which, and a list of witnesses by whom, the articles of charges are proposed to be sustained.”

Rule 8(4) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 provided that the disciplinary authority shall deliver or cause to be delivered to the Government servant, a copy of articles of charge, the statement of the imputations of misconduct or misbehaviour, and a list of documents and of the witnesses by which each article of charge is proposed to be sustained, and shall by a written notice require the Government servant to submit to it within such time as may be specified in the notice, a written statement of his defence and to state whether he desires to be heard in person.

15. From the provisions as aforesaid, it is quite evident that only because of service of memorandum dated 03.01.2022; it cannot be held that the statement of charge was served upon the applicant. The contention of the respondents that a

departmental enquiry was pending against the applicant and hence, the case of the applicant cannot be considered for promotion in the DPC meeting held on 11.03.2022.

16. Today, the learned counsel appearing for the applicant by tendering the communication dated 24.11.2022 has completely negated the contention of the respondents that the departmental enquiry was commenced and pending against the present applicant. We deem it appropriate to reproduce the entire said letter in verbatim, which reads thus :-



17. If the communication dated 03.01.2022 read conjointly with the contents of the communication dated 24.11.2022, there remains no doubt that it pertains to same instance on the basis of which the respondents say that the departmental enquiry was to be conducted against the applicant. After the said document has come on record, there has remained no doubt that on the date of meeting of DPC, no enquiry was pending against the applicant and in such circumstances, there was no reason for DPC to keep the case of the applicant out of consideration for her promotion to the post of MDS Group-A.

18. For the reasons stated above, we hold that the applicant is entitled for promotion to the post of MDS Group-A officer and direct the respondents to consider the case of the applicant for the said promotion and if she is found otherwise eligible to grant promotion to her as MDS Group-A. Needless to state that in the event of promotion granted to the applicant, it shall relate back to the date on which juniors to the applicant were given the said promotion.

MEMBER (A)

VICE CHARIMAN

PLACE : Aurangabad.

DATE : 27.09.2023