

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 70 OF 2023

DIST. : AURANGABAD

Shri Vishwanath Bhagoji Dahe,)
Age. 56 years, Occu. Service as)
Special Land Acquisition Officer,)
Special Unit, AMC, Aurangabad,)
In the cadre of Town Planner – Group-A))
R/o A-3, Gurupushpa Apartments,)
Shardashram Colony,)
Aurangabad – 431 001.) .. **APPLICANT**

V E R S U S

The State of Maharashtra,)
Through the Principal Secretary)
Urban Development Department,)
Mantralaya, Mumbai – 400 032.).. **RESPONDENT**

APPEARANCE :- Shri Ajay S. Deshpande, learned
Advocate for the applicant.

: Shri M.P. Gude, learned Presenting
Officer for the respondent.

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

DATE : **06.02.2024**

O R A L - O R D E R

[Per :- Justice P.R. Bora, V.C.]

1. Heard Shri Ajay S. Deshpande, learned counsel for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondent.

2. The grievance of the applicant is that on the pretext of the departmental enquiry initiated against him and that the criminal prosecution is pending against him, he has not been considered by the respondent for his promotion to the post of Assistant Director of Town Planning. The applicant is working as Town Planner since the year 2000. According to the applicant, he is in all respect eligible and entitled for to be promoted to the next higher post. Applicant has not disputed that in the year 2014 the trap was laid against him and as a result thereof special case No. 01/2015 is registered against him for the offences punishable under the provisions of Prevention of Corruption Act, and it is pending for adjudication. The departmental enquiry was initiated against the applicant on 28.7.2017 and the same is also pending.

3. As is revealing from the documents placed on record, the applicant was considered for his promotion in the D.P.C. meeting held on 28.3.2022 and in the said meeting the case of the applicant was resolved to be kept in a sealed cover on the ground of pending criminal prosecution, as well as, departmental enquiry against him. It is the contention of the applicant that on the pretext of pending criminal prosecution

and the D.E., the applicant cannot be deprived from promotion for indefinite period.

4. The learned counsel for the applicant invited our attention to Government Resolution dated 15.12.2017 and the relevant provisions therein. Learned counsel submitted that the methodology is provided in the said G.R. to be adopted even in the matter like the present one. Learned counsel submitted that the respondent has not reviewed the case of the applicant after expiry of the period of 06 months after the DPC meeting held on 28.3.2022. Learned counsel submitted that there is no progress in the departmental enquiry proceedings. Learned counsel further submitted that the criminal prosecution is not likely to be concluded in near future, however, that aspect has also not been considered by the respondent. For all these reasons, according to the learned counsel, the applicant deserves to be provisionally promoted to the higher post and cannot be deprived from promotion on the ground of pending criminal prosecution or pending departmental enquiry.

5. Shri M.P. Gude, learned Presenting Officer has opposed the submissions made on behalf of the applicant. Affidavit in reply has been filed by the respondent no. 01. Sole respondent has contended that in view of the criminal

prosecution pending against the applicant, wherein serious charges are levelled against him and the departmental enquiry initiated in that regard is also pending, the respondent has rightly not considered the case of the applicant for his promotion. Learned P.O. pointed out that the applicant was caught red handed in a trap while accepting bribe of Rs. 4,00,000/- and the said case is still pending against him. In the departmental enquiry Presenting Officer is appointed and it is in progress. In the circumstances, the respondent has prayed for dismissal of the Original Application.

6. We have duly considered the submissions made on behalf of the applicant, as well as, the respondent. We have also gone through the documents produced on record by the parties. The material facts are not in dispute. G.R. dated 15.12.2017 takes care of every situation and provides guidance in that regard. The contingency as has been arisen in the present matter is also considered in the said G.R. Clauses 06 & 09 of the said G.R. read thus :-

“६. विभागीय पदोन्नती समितीच्या बैठकीच्या दिनांकाच्या ६ महिन्यांनंतर मोहोरबंद पाकीटात ठेवलेले प्रकरण नियुक्ती प्राधिकारी यांनी पुनर्विलोकित करावे. पुनर्विलोकनाच्यावेळी निलंबित अधिका-यास पुनःस्थपीत केले असल्याचे व त्यांचेविरुद्ध कोणतीही शिस्तभंगविषयक कार्यवाही सुरु झालेली नसल्याचे आढळून आल्यास, मोहरबंद लिफाफा उघडून त्यातील निष्कर्षानुसार तो पदोन्नतीस पात्र असल्यास त्यास पदोन्नती देण्यात

यावी. तसेच ज्या अधिकारी/कर्मचा-याविरुद्धची शिस्तभंगविषयक कार्यवाही संपुष्टात येवून शिक्षा दिली असल्यास, अशा अधिकारी/कर्मचा-यांचे सीलबंद लिफाफे न उघडता त्यांची पदोन्नतीसाठीची पात्रता पुढील नियमित विभागीय पदोन्नती समितीच्या बैठकीमध्ये तपासण्यात यावी.

९. विभागीय पदोन्नती समितीच्या मुळ बैठकीच्या दिनांकापासून दोन वर्षे झाल्यानंतरही मोहोरबंद पाकीटात निष्कर्ष ठेवलेल्या अधिकारी//कर्मचा-यांच्या, शिस्तभंगविषयक/न्यायालयीन कार्यवाही प्रकरणी अंतिम निर्णय झालेला नसल्यास, अशा प्रकरणी नियुक्ती प्राधिकारी स्वविवेकानुसार संबंधीत अधिकारी/कर्मचा-याला तदर्थ पदोन्नती देण्याबाबत जाणीवपूर्वक निर्णय घेईल, असा निर्णय घेताना नियुक्ती प्राधिकारी, खालील मुद्दे चिचारात घेईल-

अ) संबंधितांविरुद्धची शिस्तभंगविषयक/न्यायालयीन कार्यवाही बराच काळ प्रलंबित राहण्याची शक्यता,

ब) दोषारोपाचे गांभीर्य,

क) धावयाची पदोन्नती जनहिताच्या विरुद्ध जाईल का,

ड) शिस्तभंगविषयक/न्यायालयीन कार्यवाही लांबण्यास संबंधीत अधिकारी/कर्मचारी जबाबदार आहे का?

इ) संबंधित अधिकारी/कर्मचा-यास तदर्थ पदोन्नती दिल्यानंतर, पदोन्नतीच्या पदावर काम केल्यामुळे, संबंधित अधिकारी/ कर्मचा-याच्या शिस्तभंगविषयक/न्यायालयीन कार्यवाहीच्या प्रकरणांवर परिणत होण्याची शक्यता आहे का? किंवा संबंधित अधिकारी/कर्मचारी पदोन्नतीच्या पदाचा त्यासाठी दुरुपयोग करण्याची शक्यता आहे का ?

फ. न्यायालयीन कार्यवाही बाबतची सदस्थिती /अभियोगाबाबतचे किती टप्पे पार पडले याबाबतची माहिती करून घ्यावी.

ग. सेवानिवृत्तीस 9 वर्षे शिल्लक असेल तर पदोन्नती न देण्याच्या अनुषंगाने सेवानिवृत्तीचा कालावधी विचारात घेणे (तदर्थ पदोन्नती दिल्यास वरिष्ठ वेतनश्रेणी प्राप्त झाल्यामुळे सेवानिवृत्तीनंतर मिळणारे सेवानिवृत्ती वेतनाचा ज्यादा लाभ प्राप्त होणार असल्यामुळे सेवानिवृत्तीस एक वर्ष शिल्लक असलेल्यांना तदर्थ पदोन्नती देण्यात येऊ नये याकरीता ही बाब तपासणे आवश्यक आहे.)”

7. DPC meeting was admittedly conducted on 28.3.2022 and the applicant was considered for promotion in the said meeting. There is nothing on record to show that thereafter at any point of time the case of the present applicant was reviewed by the respondent. Period of almost 02 years is likely to be completed in the next month.

8. In view of the provisions incorporated in clauses 06 and 09 of the G.R. dated 15.12.2017, which was have reproduced hereinbefore, the respondent was under an obligation to take review of the situation pertaining to the pending criminal prosecution against the applicant, as well as, pending D.E. against him, and having considered the same to take conscious decision in respect of the promotion to be granted to the applicant. The respondent has failed to carry out the said exercise. The present Original Application, therefore, deserves to be allowed. Hence, we pass the following order:-

ORDER

- (i) The respondent is directed to consider the case of the present applicant for his promotion in terms of the provisions contained in clauses 06 and 09 of G.R. dated 15.12.2017 in the next D.P.C. meeting.

(ii) The Original Application stands allowed in the aforesaid terms without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 06.02.2024

ARJ O.A. NO. 70 OF 2023 (PROMOTION)