

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 756 OF 2018

DISTRICT : AHMEDNAGAR

Shri Barindrakumar S/o Chhagan Gavit,)
Age : 50 years, Occu. : Service working as)
Chief Officer, Municipal Council, Rahata,)
Rahata, District Ahmednagar.).. **APPLICANT**

V E R S U S

1. The Principal Secretary (2),)
Urban Development Department,)
Mantralaya, Mumbai-32.)
2. **The Commissioner and Director,**)
Directorate of Municipal Administration,)
Government Transport Services Building,)
3rd Floor, Sir Pochkhanwala Road, Worli,)
Mumbai-400030.) .. **RESPONDENTS**

APPEARANCE : Shri Avishkar Shelke, Advocate for Applicant.

: Shri M.P. Gude, P.O. for respondent
Authorities.

CORAM : **Shri V.D. Dongre, Member (J)**
and
Shri Bijay Kumar, Member (A)

Reserved on : **03.03.2023**

Pronounced on : **18.04.2023**

O R D E R

(Per : Shri Bijay Kumar, Member (A))

1. Original application (St.) No. 1587/2018 had been filed by
one Shri Barindrakumar S/O Chhagan Gavit on 19.09.2018

invoking provisions of Section 19 of Administrative Tribunals Act, 1985, upon being aggrieved by impugned recommendations of the Departmental Promotion Committee of year 2010 (*actual date of meeting of DPC, as per record, is 05.12.2008*) to keep the proposal of promotion of the applicant in sealed cover and thereby denying him promotion with deemed date of promotion of 07.04.2008. A Miscellaneous Application No. 369/2018 in O.A. (St.) No. 1587/2018 too had been filed on 19.09.2018 for condonation of delay of one year and two days which was allowed by Oral Order Dated- 03.10.2018 and the O.A. was registered with No. 756/2018. As the O.A. No. 756/2018 was dismissed in default vide Oral Order dated 27.11.2018, yet another M.A. No. 54/2019 in O.A. No. 756/2018 was filed on 04.02.2019 for restoration of O.A. No. 756/2018 vide oral order dated 14.02.2019.

2. Facts of the Matter:- Background facts of the matter may be summed up as follows in two parts, firstly, undisputed background facts and secondly, disputed facts and interpretations of rules etc. :-

(A) Undisputed Background Facts:-

- (a) The name of the applicant was recommended by the Maharashtra Public Service Commission (in short, MPSC)

in the cadre of Chief Officer, Municipal Councils, Class-2 by communication dated 23.05.1996. Accordingly, respondent no. 1 issued appointment order to the applicant vide his letter dated 27.03.1997. This was followed by issue of Government Resolution of Urban Development Department bearing No. एमसीओ 1296/1640/प्र.क. 110/96/नवि-१४, मंत्रालय, मुंबई-३२, Dated 11.07.1997 notifying the appointment of the applicant in the cadre of Chief Officer, Municipal Councils, Class-2. The applicant joined on the post of Chief Officer, Municipal Council on 02.05.1997.

(b) The applicant was appointed on two years' probation period but respondent did not decide completion or extension of probation period of the applicant until 11.07.2021. It is vide order dated 12.07.2021 that the applicant was declared to have completed his probation period satisfactorily w.e.f. 10.07.1999 after accounting for leave period availed by the applicant during two years probation period. A copy of the order of completion of probation period is appended at page 202 of paper-book and marked as Annexure AR-2 of the rejoinder filed on behalf of the applicant.

(c) While the applicant was working as Chief Executive Officer, Class-2 and posted at Municipal Council, Navapur, District Nandurbar, charges of misconduct were communicated by Commissioner and Director of Municipal Administration i.e. respondent No. 2, to the applicant (delinquent in departmental inquiry) vide memorandum No. नप्रसई १००३/प्र.क.३०९/०३/७, dated 28.11.2003 for initiating a Departmental Enquiry against him under Rule 10 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, [in brief, MCS (D&A) Rules]. In response, the applicant submitted his written say dated 29.12/2003. After considering the reply of the applicant (delinquent in departmental inquiry). The applicant was given personal hearing on 15.05.2006. Thereafter, the then Commissioner & Director, Municipal Administration passed order under Rule 5 (1) (four) of the MCS (D & A) Rules vide order bearing No. नप्रसं/कक्ष-२१/बी.सी.गावीत/वि.चौ./२००५, वरळी, मुंबई.४०० ०३०, dated-nil, inflicting following punishment on the applicant:-

“श्री.बी.बी. गावीत, मुख्याधिकारी यांचे सध्याचे वेतन समय श्रेणीतील खालच्या टप्प्यावर ५ वर्षासाठी आणण्यात येत आहे. आणि अशा पदावनीच्या काळात त्यांना वेतनवाढ मिळणार नाही. हा कालावधी समाप्त झाल्यानंतर या पदावनीच्या परिणामी त्यांच्या भावी वेतनवाढी पुढे ढकलल्या जाव्यात. हा कालावधी पूर्ण होण्यापूर्वी रजेवर व्यतित केलेले कोणतेही कालांतर (इंटर्नल) समाविष्ट असणार नाही.”

त्याचमाणे “श्री. बी.बी.सी. गावीत, यांनी त्यांचे कालावधीत कनिष्ठ अभियंता हे पद रिक्त नसताना तसेच मानधनावर नेमणूक करणेबाबत तरतूद नसताना श्री. स.पाटील यांची मानधनावर नेमणूक करण्यात आली. ही नेमणूक अवैध असल्यामुळे

नगरपरिषदेच्या निधीची उधळपट्टी केलेली आहे. सबब मानधनावर झालेला अंदाजित एकूण खर्च रु. १,०२,०००/- वसूलीस पात्र ठरतो. झालेला खर्च हा महाराष्ट्र नगरपरिषद, नगरपंचायती व औद्योगिक नगरे अधिनियम १९६५ चे कलम ९६ अन्वये वसूलीस पात्र आहेत.”

(d) Gist of the punishments imposed on the applicant may be summed as being to the following effect :-

‘To lower the pay of the delinquent (applicant in this O.A.) to the lowest stage in his present time-scale of pay for a period of five years with future effect. Any leave period availed by the delinquent (applicant in the present O.A.) shall be excluded from counting of period of five years. Payment of RS. 1,02,000/= made to one Shri S. Patil as honorarium on the post of Junior Engineer without having vacancy should be recovered by Divisional Commissioner & Regional Director, Municipal Administration, Nashik as per provisions of S. 96 of the Maharashtra Municipal Council, Nagar Panchayats & Industrial Township Act, 1965.’

(e) Being aggrieved by the punishment order, the applicant filed appeal dated 21.08.2006 before the respondent No. 1 against the punishment order passed by the aforesaid respondent No. 2, which was decided respondent No. 1 vide order dated 30.01.2016 in following terms :-

“ आदेश:-

श्री बी. सी. गवित, मुख्याधिकारी यांचे दि. २१.०८.२००६ चे अपील मान्य करण्यात येत आहे. आयुक्त तथा संचालक, नगर परिषद संचालनालय, वरली, मुंबई यांचे क्र. नपप्रसं/ कक्ष-२१/ बी.सी. गवित/ वि. चो./ २००५, दि. २९ मे २००१ चे शिक्षा आदेश रद्द करण्यात येत आहेत. प्रस्तुत प्रकरणी श्री गवित यांच्या मुख्याधिकारी दोंडाईचा -

वरवडे नगरपरिषदेतील कार्यकाळातील अनियमितते संदर्भात विभाषिय चौकशी करण्याचा सुधारित प्रस्ताव संचालनालयने शासनास तातडीने सादर करावा.”

(f) In accordance with the order passed by respondent No. 1 in appeal filed by the applicant, respondent No. 2 submitted revised proposal dated 12.02.2019 for initiating departmental inquiry against the applicant under rule 8 of the MCS (D&A) Rules. Based on the revised proposal, memorandum of charges dated 03.12.2020 for initiating de novo department inquiry had been issued to the applicant who submitted his say on 24.02.2020.

(g) As per report dated 07.02.2023 submitted by respondent No. 1 through learned Presenting Officer, the proposal of departmental inquiry against the applicant is pending for appointment of Inquiry Officer and Presenting Officer, for which approval of Hon'ble Chief Minister is still awaited.

(h) In the meantime, an offense had been registered at Police Station- Majalgaon Town, District Beed against the applicant for committing financial irregularities while working as Chief Officer, Municipal Council, Majalgaon, District Beed. The Crime No. in the case is reported to be

345/2019 in which the applicant had been arrested on 26.02.2021 and released on bail by the Court on 02.12.2021. Therefore, Shri Gavit had been placed under deemed suspension w.e.f. 26.02.2021 vide order dated 31.01.2022.

(i) Taking into consideration critical development which took place in respect of the present dispute from the date of initiation of departmental proceedings against the applicant vide order of respondent No. 2, Dated 28.11.2003 onwards, it is observed that the first meeting of Departmental Promotion Committee (in short, DPC) was held on 05.12.2008 for recommending names for promotion to the 4 vacant post of backlog of ST category of Chief Officer, Municipal Councils, Class-1, on the basis of select list of year 2007. The name of applicant too was considered by the DPC along with other names falling in the zone of consideration but, for the reason of pendency of an appeal dated 21.08.2006 against punishment inflicted on the applicant in the aforesaid departmental proceedings and also due to pending decision to conclude the probation period of the applicant; his name was kept in sealed envelope as per decision of DPC.

(j) Again the applicant could not get promotion to the cadre of Chief Executive Officer, Class-1 based on recommendation of DPC held 11.10.2013 on the basis of select list of year 2010-11 on the similar grounds and one post under ST category was kept vacant; thus the name of applicant continued to be in sealed envelope.

(k) As per Guidelines of General Administration Department, name of the applicant was considered for promotion based on select list of 2017-18 by the DPC held on 16.02,2019 but the same had not been recommended for promotion on the stated ground of pending decision on probation period and non-availability of Annual Confidential Reports. One post under ST category was kept vacant subject to decision in respect of the matter of completion of probation period and availability of ACR of the applicant.

(l) The applicant's probation period has been approved to be completed satisfactorily by an order of **respondent No. 1 vide** order dated 12.07.2021 (a copy of order at page no. 202, marked as Annexure AR-2 of P.B) with retrospective effect from 10.07.1999. He has been given permanency

benefits vide order of respondent No. 1 dated 10.03.2022 w.e.f. 03.05.2000 and his services have been reviewed on attaining 50/55 years of service vide order dated 25.11.2020 (a copy of order at page No. 206 of P.B. marked as Annexure AR-4).

(m) It is a matter of record that the respondent No. 1 has not submitted any reason for delay in deciding the appeal by the competent authority. Likewise, respondent No. 2 has not given any reason for delay in submitting draft memorandum of charges for initiating fresh inquiry against the applicant as per the order passed by respondent No. 1 in appeal against the punishment order.

(n) It is also undisputed that the applicant could not get benefits of Time-Bound Promotion and Modified Assured Career Progression Schemes due to pendency of departmental inquiry against him.

B. Disputed Facts and interpretation of rules etc.:-

(a) Applicant's claim that can be inferred from major parts of his submissions is that he could be given promotion to the post of Chief Officer, Class-1 w.e.f.

05.12.2008 i.e. the date of meeting of DPC in which his names was decided to be kept in sealed envelope pending departmental inquiry against him as per provisions of Government Resolution issued by General Administration Department, No. एसआरव्ही-२०१५/प्र.क.३१०/कार्या.१२, मंत्रालय, मुंबई-३२, dated, 15.12.2017 (a copy of the G.R. is at page 241 of P.B).

(b) Applicant has also contended that he cannot be held responsible for delay in issuing orders to the effect of his completing probation period satisfactorily. He has also contended that his name should have been considered for promotion w.e.f. 07.04.2008 subject to outcome of pending departmental inquiry after taking his willingness to undergo punishment on the post of promotion, as provided in the MCA (D&A) Rules.

(c) On the other hand, respondents have relied upon Government Resolutions issued by General Administration Department, dated 17.02.1997; 29.02.2016 and 29.12.2017.

3. Relief Sought:- Applicant has sought relief in terms of para XI of the O.A. which is reproduced verbatim for ready reference as follows :-

“XI RELIEF SOUGHT:

- A) *The Original Application may kindly be allowed.*
- B) *By way of appropriate order or directions, the respondents be directed lift the sealed cover and consider the recommendation of DPC of 2010 and the applicant be promoted to Class-I Post alongwith all the monetary benefits to be post of Chief Officer, Class-I forthwith.*
- C) *By way of appropriate order or directions, the respondents be directed to issue order of promotion of the Applicant to the post of Chief Officer, Class-I with deemed date of 07.04.2008 with all consequential monetary benefits.*
- D) *Any other suitable and equitable relief may kindly be granted in favour of the applicant.*

4. Chronology of Pleadings and Final Hearing :-

- (a) Learned Presenting Officer filed affidavit in reply on behalf of respondent No. 2 on 04.07.2019, which was taken on record, a copy thereof was also served on the applicant.
- (b) Rejoinder affidavit was filed on behalf of the applicant on 17.10,2022, which was taken on record and copy thereof served on the other side.
- (c) Learned Advocate for the applicant submitted on 18.01.2023 memo of additional affidavit placing on record the fact of issuance of memo of charge-sheet and submitting reply of the applicant and initial appointment

order of the applicant. The same is taken on record and copy thereof served on the other side.

(d) Learned Presenting Officer submitted on 03.03.2023 the minutes of meeting of DPC dated 05.12.2008, whereby recommendations were made for promotion in the year 2010 and sealed cover in respect of the present applicant.

(e) Learned Advocate for the applicant submitted a copy each of following judgment of Hon'ble Supreme Court by way of citations :-

(i) 2013 AIR SCW 2232, Supreme Court, Civil Appeal No. 2537 of 2012 out of S.L.P. (C) No. 1911 of 2011, Dated 15.03.2013

(ii) AIR 2000 Supreme Court 2767, Supreme Court S.L.P. (C) No. 11726 of 2000, Dated 01.09.2000

(iii) AIR 1991 SUPREME COURT, Civil Appeal Nos. 3018-21 of 1987 with C.A. No. 3016 of 1988 and C.As. No. 51-55 of 1990 with C.As. 3083 and 4379 of 1990 and S.L.P.s (C) Nos. 1094 and 2344 of 1990, 11680 of 1991, Dated 27.08.1991

(f) Learned Presenting Officer too, has submitted a copy judgment of Hon'ble Supreme Court in Civil Appeal No. 5153 of 2021 (arising out of SLP (C) No. 4655 of 2020, State of Madhya Pradesh & Anr. Vs. Akhilesh Jha & Anr., delivered on 06.09.2021, by way of citation.

(g) After conclusion of arguments by the two sides, the matter was reserved for order.

5. Analysis of Facts:- Based on facts on record, following critical issues emerge which are analyzed and inference drawn for each of them to arrive at conclusion in respect of prayers made :-

(I) Issue No. 1- Whether the applicant is eligible for promotion to the post of Chief Officer, Municipal Council, Class-1 with effect from 07.04.2008, as prayed for in terms of prayer clause XI (C) ?

Analysis of facts- As stated in this O.A., the applicant has basically advanced his claim for promotion based on the recommendations of DPC meeting held on 05.12.2008 in which he was the only candidate considered for promotion, but his report was kept in sealed envelope. But, at the same time, he has claimed deemed date of temporary promotion on the ground that two persons junior to the applicant in the cadre of Chief Officer, Class-2, namely Shri D. G. Langhi and Shri T. B. Nilavar had been given temporary promotion prior to him. In support of this the applicant has appended information in a tabular form on page No. 70 of the paper-book. In that table, name of the applicant too, has been shown above Shri D. G. Langhi and Shri T. B. Nilavar with date of working as Chief Officer,

Class-1 as 02.05.1997 whereas, Shri Langhi and Shri Nilavar have been shown to be officiating from 02.05.1998 and 09.04.1999. The applicant has also submitted final seniority list of Chief Officers, Class-2 as on 01.01.2010 published by respondent No.1 on 15.04.2016 (page 72-78) in which the above named two persons have been shown to be junior to the applicant and also shown to have been given fortuitous temporary promotion against nomination quota w.e.f. 07.04.2008. This being fortuitous promotion, the same does not qualify for being given deemed date to the applicant.

Inference- In our considered opinion, the applicant's claim of getting promotion w.e.f. a date prior to the date of meeting of DPC, i.e., 05.12.2008, citing a case of fortuitous temporary promotion against nomination quota is not admissible.

(II) Issue No. 2- Punishment order dated 29.05.2006 passed by the Commissioner & Director, Directorate of Municipal Administration against the applicant was set aside by the appellate authority vide order dated 30.01.2006 with a direction to draw departmental proceedings under rule 8 of MCS (D&A) Rules as a major penalty had been imposed on the applicant by initiating departmental inquiry under rule 10 of MCS (D&A) rules, which is not permissible. Therefore, the second issue to be decided is whether the order passed in appeal may result into change in the date of

institution of departmental proceedings? If so, then in which manner the said change may be treated to be admissible?

Analysis of Facts- Appellate authority has set aside the punishment order passed by the disciplinary authority on the ground that major penalty has been inflicted after drawing process under rule 10 of MCS (D&A) Rules which is applicable when minor penalty is to be imposed. However, the appellate authority has not observed that the findings of the disciplinary authority are unwarranted based on the evidence on the record. Even upon going through the memorandum of charges served on the applicant (delinquent in the departmental proceedings) and reply submitted by the applicant thereto, which have admission of the fact of appointment of contractual junior engineer on the establishment of the Municipal Council, Dondaicha-Warwade without having vacancy and by backdoor entry method and working under pressure from the President of the Municipal Council, shows that the findings in departmental inquiry were not unwarranted based on evidence on record. At the same time, a fresh memorandum of charges have been issued to the applicant dated, 03.12.2020 under rule 8 of MCS (D&A) Rules though, comprising of the same imputations and articles of charges which were there when inquiry was ordered under rule 10 of MCS (D&A) Rules. Despite that treating date of 03.12.2020

as the date of institution of Departmental Inquiry seems to be just and fair.

Inference:- In view of above analysis, in our considered opinion, 03.12.2020 deserves to be treated as the date of institution of departmental inquiry against the applicant and departmental inquiry may be completed within prescribed period hence forth.

(III) Issue No. 3- Whether the applicant deserved to be promoted with deemed date as prayed for in terms of prayer clause XI ((D) but with suitable correction in date mentioned therein ?

Analysis- It is admitted by the contesting parties that the applicant's probation period has been completed w.e.f. 10,07,1999 by an order passed by respondent No. 1, Dated 11.07.2021 (a copy of the order is on page 202 of paper-book), benefit of permanency has been given to the applicant w.e.f. 03.05.2000 vide order of respondent No. 1, Dated 10.03.2022 (a copy of the order on page 203 of paper-book), and service review of the applicant on completion of 30 years of service and on completion of 50 years of age has been completed and respondent No. 1 has issued order dated 25.11.2020 to continue the services of the applicant beyond 50 years of age. Moreover, it is evident from the record that the respondent No. 1 decided the appeal on 30.01.2016 against the orders of the Disciplinary Authority, Dated 29.05.2006 i.e.

the respondent No. 1 took more than 9 years to decide the appeal, during which period, the applicant had to seek intervention of Hon'ble High Court. Respondent No. 2 took another 3 years to submit proposal dated 12.02.2019 for departmental inquiry under rule 8 of MCS (D&A) Rules. Thereafter too, after issuing memorandum of charges dated 03.12.2020 for initiating departmental inquiry under rule 8 of MCS (D &A) rules in the year 2020 and getting reply from the applicant / delinquent dated 24.12.2020, till date the enquiry has not been ordered and inquiry officer and presenting officers have not been appointed. Moreover, date of institution of departmental inquiry under rule 8 of MCS (D&A) rules has been determined to be 03.12.2020; therefore, in our considered opinion the applicant has merit in his contention that sealed envelope kept as per recommendations of the DPC held on 05.12.2008 may be opened and decision regarding his promotion may be taken accordingly, giving deemed date on which other Chief Officers, Class-2 recommended by DPC held on 05.12.2008 were given order of promotion.

6. Conclusion:- On the basis of above analysis, we are of considered opinion that there is some merit in the present original application and the O.A. may be partly allowed. Hence, following order :-

ORDER

(A) Original Application No. 756 of 2018 is partly allowed in following terms:-

(I) Prayer clause XI (B) is rejected for being devoid of merit.

(II) Prayer Clause XI (C) is partly allowed in following terms :-

“Sealed envelope report in respect of the applicant kept as per recommendation of DPC held on 05.08.2008 may be opened by respondents and decision may be taken on the issue of giving promotion to the applicant along with benefits of deemed date, as per relevant rules, within 8 weeks’ time from the date of receipt of the copy of this order.

(B) Department Inquiry instituted under rule 8 of MCS (D&A) Rules may be expedited and be completed within time prescribed by rules.

(C) Based on the facts of the matter brought on record during process of adjudication of this O.A., process to fix responsibility, if any, on the President, Municipal Council /Members of Standing Committee or so, may also be initiated by respondents, as per provisions of statute and extant rules within 3 months of receipt of this order and completed within 6 months period.

(D) No order as to costs.

MEMBER (A)

MEMBER (J)