

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**MISCELLANEOUS APPLICATION NO.502/2023**

**IN**

**ORIGINAL APPLICATION NO.716/2023**

**DISTRICT:- AURANGABAD**

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Kailas Ganpatrao Datkhil,  
Age : 44 years, Occ. Education Officer,  
(Primary), Zilla Parishad, Jalna, Dist. Jalna,  
R/o. C/o. R.M.Solunke, Plot No.3,  
Vivekanand Colony, Station Road,  
Aurangabad, Dist. Aurangabad.

**...APPLICANT**

**V E R S U S**

1. The State of Maharashtra,  
Through its Principal Secretary,  
School Education and Sports Department,  
Madam Cama Road, Hutatma Rajguru Chowk,  
Mantralaya, Mumbai-400 032.
2. The Commissioner (Education),  
Commissioner of Education,  
Central Building, Dr. Annie Beasant Road,  
Maharashtra State, Pune-411 001. **...RESPONDENTS**

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APPEARANCE : Shri V.B.Wagh, Counsel for the  
Applicant.  
: Shri B.S.Deokar, Presenting Officer  
for the respondents.

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**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN  
AND  
SHRI VINAY KARGAONKAR, MEMBER (A)**

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**Decided on: 05-12-2023**

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**O R A L O R D E R**

1. Heard Shri V.B.Wagh, learned Counsel for the  
Applicant and Shri B.S.Deokar, learned Presenting Officer  
for the respondents.

2. Grievance of the applicant is that, he is being denied the promotion or is being not considered for promotion on the pretext that a Criminal Appeal filed against the order of acquittal recorded in his favour in the case under the Prevention of Corruption Act is pending before the Hon'ble High Court and further that the departmental enquiry against the applicant has been closed with a rider that the fate of the said departmental enquiry depends upon the decision of the aforesaid Criminal Appeal.

3. Applicant came to be selected and appointed on the post of Education Officer (Primary) on 01-07-2013. On 06-01-2014 offence came to be registered against him under the Prevention of Corruption Act, 1988 and Criminal Case bearing Special (ACB) Case No.22/2014 was registered against him. On 12-10-2022 applicant came to be acquitted by the Special Judge, Latur from the charges levelled against him in the said ACB case. On 16-11-2022 memorandum was issued initiating departmental enquiry against the applicant. However, subsequently on 29-05-2023 a decision was taken by the respondent no.1 to drop the enquiry subject to the decision in the Criminal Appeal

No.1569/2023 filed against the order of acquittal in Special Case No.22/2014, which is pending before the Hon'ble High Court. The probation period of the applicant was extended on 25-01-2019 on the ground of pendency of Special Case against him.

4. It is the contention of the applicant that his period of probation now deserves to be terminated since he has been acquitted of the criminal case pending against him. It is the further contention of the applicant that he has also now become eligible to be considered for his promotion in the cadre of Maharashtra Education Services (Group-A) to the post of Deputy Director of Education. According to the applicant, he had become eligible to be promoted to the said post in the year 2019 itself. However, because of the criminal case pending against him the Departmental Promotion Committee (DPC) has kept the decision in that regard in sealed cover.

5. Learned Counsel for the applicant invited our attention to the provisions under G.R. dated 15-12-2017, and more particularly, clauses 9 and 12 thereof. Learned Counsel also referred to the judgment dated 26-10-2023 delivered by this Tribunal in O.A.No.384/2023. Learned

Counsel submitted that identical facts existed in the said O.A. as are existing in the present matter, and as such, decision rendered by the Tribunal in the said matter would squarely apply to the facts of the present case. Learned Counsel in the circumstances prayed for allowing the O.A.

6. Contentions raised in the O.A. as well as the prayers made therein are opposed by the respondents. Respondent no.1 and 2 have filed their joint affidavit in reply to oppose the contentions raised in the O.A. Perusal of the said affidavit in reply reveal that pendency of the criminal appeal filed before the Hon'ble High Court against the order of acquittal recorded in favour of the applicant in the case under the Prevention of Corruption Act, is the only ground cited by the respondents for not considering the applicant for his promotion.

7. We have duly considered the submissions advanced on behalf of the applicant as well as the respondents. We have perused the documents placed on record. Documents on record reveal that in the DPC meeting held on 21-08-2019 the applicant was not considered for promotion on the ground of pendency of criminal case against him. In the meeting of DPC held in the next year i.e. on 24-02-2020

applicant was not considered for promotion on the same ground and the decision in respect of his promotion has been kept in sealed cover.

8. It is not in dispute that the applicant has been acquitted of the charges levelled against him in Special (ACB) Case No.22/2014 on 12-10-2022. There is further no dispute that the State Government has preferred criminal appeal against the said order bearing Criminal Appeal No.1569/2023 before the Hon'ble High Court of Bombay and the same is pending. Admittedly, the departmental proceedings initiated against the applicant have been dropped subject to decision of the Criminal Appeal pending before the Hon'ble High Court.

9. In the G.R. dated 15-12-2017 the procedure for promotion in the matters like the present applicant is prescribed in detail. Clauses 9 and 12 of the said G.R. are material in context of the present matter, which read thus:

“९) विभागीय पदोन्नती समितीच्या मूळ बैठकांच्या दिनांकापासून दोन वर्षे झाल्यानंतरही मोहोरबंद पाकोटात निष्कष ठेवलेल्या अधिकारी/कमचाऱ्यांच्या, शिस्तभंगविषयक / न्यायालयीन कायवाहा प्रकरणी अंतिम निर्णय झालेला नसल्यास, अशा प्रकरणी नियुक्ती प्राधिकारी स्वविवेकानुसार संबंधीत अधिकारी/कमचाऱ्याला तदथ पदोन्नती देण्याबाबत जाणीवपूर्वक निर्णय घेईल. असा निर्णय घेताना नियुक्ती प्राधिकारी, खालील मुद्दे विचारात घेईल.

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

ब) दोषारोपांचे गांभीर्य,

क) द्यावयाची पदोन्नती जर्नहिताच्या विरुद्ध जाईल का,

ड) शिस्तभंगविषयक/न्यायालयीन कायवाही लांबण्यास संबंधित अधिकारी / कमचारां जबाबदार आहे का?

इ) संबंधित अधिकारी/कमचार्यास तदथ पदोन्नती दिल्यानंतर, पदोन्नतीच्या पदावर काम केल्यामुळे, संबंधित अधिकारी/कमचार्याच्या शिस्तभंगविषयक / न्यायालयीन कायवाहीच्या प्र

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10. As per the provision under clause 12 reproduced hereinabove, the applicant has certainly made out a case for declaring him entitled for promotion to the next higher post in view of the fact that he has been acquitted from the criminal case pending against him. On the same ground probation period also deserves to be terminated. Though the respondents have raised a plea that unless the Criminal Appeal No.1569/2023 is decided the applicant cannot be considered for his promotion to the next higher post and his probation period also cannot be terminated, the contention so raised is difficult to be accepted. Only on the ground of pendency of Criminal Appeal applicant cannot be deprived of his right to be considered for promotion on the next higher post if he is otherwise eligible, qualified and entitled to the said promotion.

11. Having considered the facts involved in the instant matter, it appears to us that the provision made under clause 12 of the G.R. dated 15-12-2017 would squarely apply. The case of the applicant for promotion has

been kept in sealed cover on the ground that criminal case is pending against him. In view of the fact that the applicant has been now acquitted of the said criminal case, he has become eligible for to be considered for promotion to the next higher post. Respondents, therefore, need to be directed to open the sealed cover and act according to the decision recorded therein as about the performance and eligibility of the applicant for the purpose of his promotion to the next higher post.

12. For the reasons recorded above, we are inclined to pass the following order:

ORDER

[i] Respondents are directed to issue the order of completion of probation period of the applicant if there is no other impediment in that regard within 2 weeks from the date of this order.

[ii] Respondents are further directed to break open the sealed cover and if the applicant is recommended therein for his promotion, consider his case for promotion on merit in order of seniority and as per rules.



[iii] O.A. stands disposed of in the aforesaid terms, however, without any order as to costs.

[iv] M.A. also stands dispose of accordingly.

**(VINAY KARGAONKAR)**  
**MEMBER (A)**

**(P.R.BORA)**  
**VICE CHAIRMAN**

**Place : Aurangabad**

**Date : 05-12-2023.**

2023\db\YUK M.A.502/2023 IN O.A.No.716/2023 PRB

**MOTION FOR SPEAKING TO MINUTES IN**  
**ORIGINAL APPLICATION NO.716/2023**  
**(Kailas Ganpat Datkhil Vs. State of Maharashtra & Ors.)**

**CORAM : Justice Shri P.R. Bora, Vice Chairman**  
**AND**  
**Shri Vinay Kargaonkar, Member (A)**

**DATE : 14.12.2023**

**ORAL ORDER :**

Heard Shri V.B.Wagh, learned counsel for the applicant and Shri B.S.Deokar, learned Presenting Officer for the respondent authorities.

2. This is the motion for speaking to minutes in the order passed by this Tribunal on 05-12-2023 in O.A.No.716/2023.

3. Learned Counsel submits that the time has not been stipulated for breaking open the sealed cover. In view of the submissions made, clause [ii] of the order be amended as follows:

[ii] Respondents are further directed to break open the sealed cover within 4 weeks from the date of this order and if the applicant is recommended therein for his promotion, consider his case for promotion on merit in order of seniority and as per rules.

Accordingly, motion for speaking to minutes is allowed.

**MEMBER (A)**

**VICE CHAIRMAN**