

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 770 OF 2021**

**DISTRICT : THANE**

Shri Dayanand Nivrutti Kiratkar, )  
Police Head Constable, at Khadakpada )  
Police Station, Kalyan [W], )  
R/at Vastu Vatika C.H.S, J-wing, )  
Room no. 2, Lodha Garden Gandhari, )  
Kalyan [W], Dist-Thane 421 301. )...**Applicant**

**Versus**

1. The Director General & Inspector )  
General of Police, M.S, Mumbai. )  
Having office at Old Council Hall, )  
S.B Marg, Mumbai 400 039. )  
2. The Commissioner of Police, )  
Thane, Near Kalwa Bridge, )  
Thane 400 601. )...**Respondents**

Shri K.R Jagdale, learned advocate for the Applicant.

Ms Archana B.K, learned Presenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar (Chairperson)  
Mrs Medha Gadgil (Member) (A)**

**DATE : 11.07.2022**

**PER : Justice Mridula Bhatkar (Chairperson)**

**J U D G M E N T**

1. The applicant, Police Constable, prays that the Respondent no. 1 be directed to promote the applicant to the post of Police Sub-Inspector and grant him deemed date of promotion since his juniors are promoted from 8.3.2021 with all consequential service benefits.

2. The applicant cleared the Limited Departmental Qualifying Examination on 7.9.2013 and he was due for promotion. However, FIR No. 48/2015 was registered against the applicant under Section 7, 13(1)(d) with 13(2) of Prevention of Corruption Act, 1988 read with Sec 34 of I.P.C on 23.8.2015, along with his colleague Police Inspector. His name was first considered in the D.P.C meeting held on 15.7.2020 for the year 2019-20. However, he was not considered for promotion due to pendency of criminal case under the Prevention of Corruption Act, 1988. Again the case of the applicant for promotion to the post of P.S.I was placed before the D.P.C meeting held on 28.5.2021 for the year 2020-21. His name was considered by the D.P.C. However, his case was kept in 'sealed cover' as the criminal case under the Prevention of Corruption Act, 1988 was pending against him.

3. Learned counsel for the applicant submitted that he has filed representations on 8.3.2021 and 21.5.2021. The said representations were not replied till date. Learned counsel for the applicant submits that it was a duty of the Departmental Promotion Committee Members to follow the guidelines, especially mentioned in clause 9 of the G.R dated 15.12.2017, issued by the General Administration Department.

4. Learned counsel for the applicant submits that in the affidavit in reply dated 21.12.2021 filed by Respondent no. 1 through Shri Arvind G. Jadhav, Deputy Assistant to Director General of Police, (Establishment-II), in the office of Director General of Police, M.S, Mumbai, no explanation in respect of following the guidelines mentioned in the G.R dated 15.12.2017 is found. Learned counsel for the applicant submits that the applicant is going to retire on 30.9.2022 and therefore, his case should have been considered positively. In fact, the role assigned to the applicant in the alleged offence does not constitute the offence under the Prevention of Corruption Act. There is no reasoning in the minutes of the D.P.C meeting. Learned counsel for the applicant also submitted that the Respondents have not initiated departmental enquiry against the applicant.

5. Per Contra, learned Presenting Officer while opposing this Original Application relied on the affidavit in reply filed by Respondent no. 1. Learned C.P.O submits that the D.P.C has considered the case of the applicant and due to the pendency of the criminal case under the Prevention of Corruption Act, 1988 against the applicant, his case is kept in 'sealed cover'. As the said case is still subjudiced, therefore, it is not correct and proper to promote the applicant. Learned C.P.O further submitted in the D.P.C meeting which was held on 28.5.2021, the case of the applicant was considered by Five Members of the Committee. He was not promoted for the reason that A.C.B Special Case No. 1/2017 is pending in the Court of Additional District and Sessions Court, Kalyan against the applicant. Learned P.O further submitted that the reason given in the D.P.C meeting is correct and is justified in view of the seriousness of the offence. The mentioning of the G.R in the minutes of the D.P.C meeting itself

shows that the Committee has applied its mind while considering the case of the applicant.

6. The Hon'ble Supreme Court in the case of **UNION OF INDIA & ORS Vs. K.V JANKIRAMAN & ORS, AIR 1991 S.C 2010**, has given the specific directions how the case of the Government servant against whom the criminal cases are pending is to be considered while giving promotion. On the basis of these guidelines, the Government of Maharashtra issued the G.R dated 15.12.2017. The said G.R was issued with an object to follow a particular procedure while considering the cases of the Government servants for promotion against whom criminal cases are pending. Thus, mere mentioning of the said G.R dated 15.12.2017 in the minutes of the D.P.C meeting does not mean that the D.P.C has followed the procedure in the said G.R.

7. Para 9 of the said G.R dated 15.12.2017, which is issued by the General Administration Department, is reproduced below:-

“९) विभागीय पदोन्नती समितीच्या मूळ 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 संबंधित अधिकारी/कर्मचा-याला तदर्थ पदोन्नती देण्याबाबत जाणीवपूर्वक निर्णय घेईल. असा निर्णय घेताना नियुक्ती प्राधिकारी, खालील मुद्दे विचारात घेईल.

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

ब) दोषारोप गांभीर्य,

क) दयावयाची पदोन्नती जनहिताच्या विरुद्ध जाईल का,

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

इ) संबंधित अधिकारी/कर्मचा-यास तदर्थ पदोन्नती दिल्यानंतर, पदोन्नतीच्या पदावर काम केल्यामुळे, संबंधित अधिकारी/कर्मचा-यांच्या शिस्तभंगविषयक / न्यायालयीन कार्यवाहीच्या प्रकरणांवर परिणाम होण्याची शक्यता आहे का ?

फ) न्यायालयीन कार्यवाही बाबतची सदयस्थिती / अभियोगाबाबतचे किती टप्पे पार पडले याबाबतची माहिती करून दयावी.

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.)”

8. Thus, it means that if the case of the promotion of Government servants are kept pending for more than two years and there is no decision of the competent Court in respect of the pending cases against him/her, then the Committee must follow the procedure and directions mentioned in para 9 (a) to (g) of G.R dated 15.12.2017. The Committee is given power to go through certain aspects of the pending case and the case to be tested on those parameters. Thus the time required to decide the case, the seriousness of the charges, whether the promotion will go against the public interest, whether the applicant is responsible for causing the delay/protracting the trial, if promotion is given the Government servant is likely to be misused and so also if the Government servant is going to retire within a period of one year whether promotion is denied to the Government servant who is at the verge of his retirement, then the losses suffered by him if he is deprived of the promotion.

9. The application of mind by the Committee Members that they have considered the guidelines laid down in clause 9 (a) to (g) of G.R dated 15.12.2017, in respect of the Government servant should be manifested in the order. A detail note is never expected from the Members of the Committee, however, under which clause or at least for what reasons the case of the applicant is not considered for promotion should be mentioned in the minutes of the meeting. The blanket denial on the ground of pendency of criminal case under the Prevention of Corruption Act, 1988, does not show that the Committee has applied its mind. The G.R dated 15.12.2017 is issued only for those Government servants whose promotion is denied on the ground of pendency of criminal case. Thus mere mentioning does not suffice the object of the said G.R.

10. After going through the minutes of the D.P.C meeting placed before us, we are of the view that the D.P.C is required to review its decision, which it may or it may not be in favour of the applicant. However, the Respondent-State should hold a review D.P.C meeting and consider the case of the applicant for promotion to the post of P.S.I in view of the parameters mentioned in clause 9(a) to (g) of the G.R dated 15.12.2017.

11. In view of the above, Original Application is disposed of with following directions:-

- (a) The Respondent no. 1, Director General & Inspector General of Police is directed to constitute a review D.P.C in respect of the applicant and consider his case for promotion to the post of P.S.I on or before 27.7.2022.
- (b) The Committee should consider the case of the applicant for promotion to the post of P.S.I after going through the order of this Tribunal and also on the basis of the G.R dated 15.12.2017 issued by G.A.D and pass final orders on or before 19.8.2022 and communicate the same to the applicant.

**Sd/-**  
**(Medha Gadgil)**  
**Member (A)**

**Sd/-**  
**(Mridula Bhatkar, J.)**  
**Chairperson**

**Place : Mumbai**  
**Date : 11.07.2022**  
**Dictation taken by : A.K. Nair.**