

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 864 OF 2022

DISTRICT : PUNE

Shri Vikas Hanmantu Rajnalwar,)
Occ – Service, R/o: Officer Quarter No. 3)
Press Road, Yerwada Central Prison,)
Yerwada, Pune.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary, (Jail),)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. The Addl. Director General of Police,)
Pune.)
3. Inspector General of Prisons,)
Pune.)...**Respondents**

Shri S.S Dere, learned advocate for the Applicant.

Smt K.S Gaikwad, learned Presenting Officer for the Respondents.

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

DATE : 28.03.2023

J U D G M E N T

1. The applicant prays that the Tribunal be pleased to quash and set aside the promotion order dated 24.6.2022 and further direct Respondent no. 1 to consider the name of the applicant for promotion to the post of Deputy Superintendent, Central Jail/Superintendent, District Jail, Class-I (Gazetted Group-B). However, learned counsel for the applicant states that relief as prayed for in prayer clause 10(a) to quash and set aside the promotion order dated 24.6.2022 is not pressed. However, he presses for relief clause 10(b), that the Respondents be directed to consider the application for promotion to the post of Dy. Superintendent, Central Jail/Superintendent, District Jail, Class-I.

2. Learned counsel for the applicant has submitted that Respondent no. 2 on 18.2.2022 constituted a Departmental Promotion Committee (DPC) for promotion of the post of Dy. Superintendent, Central Jail/Superintendent, District Jail, Class-I. In all 10 posts were vacant and the name of the applicant is at Sr. No. 18. Learned counsel for the applicant has submitted that candidates were called in the ratio of 2 : 1 and therefore, the applicant was also called. Learned counsel for the applicant has submitted that some of the candidates who were above him considered and as departmental enquiry and criminal cases were pending against them, they were declared by the Departmental Promotion Committee in its meeting held on 18.2.2022. Learned counsel has submitted that Respondent no. 1, by order dated 24.6.2022, promoted 8 candidates to the post of Dy. Superintendent, Central Jail/Superintendent, District Jail, Class-I. Thus, all the 8 posts above mentioned in the order dated 24.6.2022 were filled in by promotion. Learned counsel for the applicant has submitted that Respondent no. 2, selected 9

candidates including the name of Mr Mangesh Jagtap, but Respondent no. 1 kept the 10th post vacant for one of the candidates as per the judgment passed by the Hon'ble High Court. However, when Respondent no. 2, came to know that criminal case is pending against Mr Jagtap, his name was removed from the promotion list. Learned counsel for the applicant has submitted that applicant made representation o 24.6.2022 to the Secretary, Home Department, stating therein as Shri Mangesh H. Jagtap was at Sr. No. 9 and as criminal case was pending against him, his name is removed from the promotion list and hence the case of the applicant who is next most eligible person in the promotion list should be considered for promotion to the post of Dy. Superintendent, Central Jail/Superintendent, District Jail, Class-I.

3. Learned counsel for the applicant has submitted that the Additional Inspector General of Police, forwarded the proposal by letter dated 1.7.2022 to the Home Department, that the applicant case should be considered for promotion to the post of Dy. Superintendent, Central Jail/Superintendent, District Jail, Class-I. Learned counsel has submitted that till date the Respondent no. 1 did not consider the representation of the applicant and the letter sent by Respondent no. 2. Learned counsel for the applicant has submitted that as the applicant is eligible and entitled for promotion, Respondent no. 1 should promote the applicant since Respondent no. 2 has recommendation and asked to consider the case of the applicant for promotion. Learned counsel for the applicant has submitted that on instruction from the applicant, who is present in the Court that he wants to waive his arrear of pay and allowance and prays for fixation of notional pay and seniority from 24.6.2022.

4. Learned P.O on instructions from Shri Vinayak Chavan, Deputy Secretary, Home Department who is present before this Tribunal submits that the name of the applicant could not be considered because the entire file regarding promotion of all the persons was sent to the Hon'ble Minister in order to decide the issue of promotion in respect of Mr Nagesh Patil, who was at Serial No. 1 in the promotion list. Mr Nagesh Patil, has filed Original Application No. 633/2022 before this Tribunal and therefore to take decision in respect of promotion of his case, the file was sent to G.A.D on 15.9.2022 to take conscious decision. The General Administration Department took decision not to give promotion to Mr Nagesh Patil on 16.11.2022. Learned C.P.O has submitted that on 28.11.2022 the proposal to consider the case of the applicant along with two posts were approved. Therefore, D.P.C meeting was recently conducted on 9.2.2023 and now the proposal was received by the Government. The said proposal is forwarded to the Hon'ble Minister on 10.2.2023. It is contended by learned P.O that when order of promotion of 8 candidates was issued on 24.6.2022, the 10th post was not available because at that time the name of Mr Mangesh Jagtap was dropped as criminal case was pending against him, and therefore, the name of the applicant was not recommended.

5. In this matter, our query was simple when the order of 8 posts was issued on 24.6.2022 and two posts were vacant. Out of that one post was kept reserved for Mr Nagesh Patil, as he has filed O.A 633/2022, which was pending and his case was to be considered. However, one post was vacant and that is 10th post and the name of the applicant was next immediate to the selected candidate.

6. We have taken into account the proposal/submissions sent by the Addl. Director General of Prison, Mr Sunil Ramanand to the Addl. Chief Secretary, (Appeal & Security) (Prison), Home Department, Mantralaya, Mumbai. In para 4, he has specifically mentioned the legal position of the sealed cover and so also he has mentioned that two posts are vacant and the applicant and one Mr Gaikwad are held eligible in the D.P.C meeting held on 18.2.2022. He has specifically pointed out in the last paragraph that the select list is valid up to 31.8.2022. Therefore, before that the two posts are to be filled in by promotion as per his suggestion. In view of the said letter dated 1.7.2022, there was a time period of two months which was reasonably sufficient for any administration to take steps and decide that one post is to be filled in by promotion who was found eligible in the D.P.C meeting. As per the file record and the submissions we were informed that the file of Mr Nagesh Patil was sent on 15.9.2022. Hence, there was no question to take stand that the file was pending with the Hon'ble Minister. Thus, the Home Department could not take any decision. It is entirely a fault on the part of the Home Department, who could not take decision well within the time span of two months. The right of the applicant was crystalized when his name was considered by the D.P.C. and declared him eligible. This inaction on the part of the Government is a matter of concern before us as inaction is also part of power of judicial review. The explanation given by the learned P.O is not acceptable as we wanted to see the Rules of business in respect of movement of the file. We called the Government to produce the rules of procedure of business in that respect and however, nothing is brought before us. When the applicant was held eligible for promotion to the post of Dy. Superintendent, Central Jail/Superintendent, District Jail, Class-I, the stand taken by G.A.D and Home Department that the select list lapsed on 31.8.2022 is not acceptable.

7. We are of the view that when the name of the applicant was found eligible for promotion, the post was vacant. It shows that the Respondents wanted to fill up all the 10 posts. However, when two persons were found not eligible on account of pending criminal case or departmental enquiry, then the right of the next eligible candidate gets crystalized.

8. In view of the above, we pass the following order.

(a) The Original Application is allowed.

(b) As the applicant is found eligible for promotion to the post of Dy. Superintendent, Central Jail/Superintendent, District Jail, Class-I, in the D.P.C meeting held on 24.6.2022, the applicant is deemed to be promoted from 24.6.2022.

(c) The applicant is entitled for seniority and notional increment from the date of his promotion, i.e, from 24.6.2022.

(d) The order of promotion of the applicant should be issued on or before 13.4.2022.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 28.03.2023
Dictation taken by : A.K. Nair.