

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1105 of 2023 (D.B.)

Mrs. Aruna Ajaykumar Kapkar,
Aged 50 years, Occ. Service,
R/o Ramtek Tah. Ramtek, Dist. Nagpur. 441106.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai - 400032.
- 2) The Settlement Commissioner and
Director Land Records, Pune,
2nd and 3rd Floor, New Administrative Building,
Opposite Council Hall, Agarkar Nagar, Pune-411001.
- 3) The Deputy Director of Land Records,
Nagpur Region, Old Secretariat Building,
Civil Lines, Nagpur.
- 4) The Superintendent of Land Records,
Nagpur, Civil Lines, Nagpur.

Respondents.

Shri S.K. Patil, Advocate for the applicant.
Shri M.I. Khan, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 03/04/2024.

J U D G M E N T

Heard Shri S.K. Patil, learned counsel for the applicant
and Shri M.I. Khan, learned P.O. for the respondents.

2. The regular Division Bench is not available. The Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai issued Circular No.MAT/MUM/JUD/469/2023, dated 24/04/2023. As per the direction of Hon'ble Chairperson, if both the parties have consented for final disposal, then regular matter pending before the Division Bench can be disposed off finally.

3. As per the M.A.T., Principal Bench, Mumbai office order / letter No.MAT/MUM/JUD/1350/2023, dated 21/11/2023, the Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai has given direction to this Tribunal to decide the Division Bench matters if the matter is covered by the Judgments of Hon'ble Supreme Court, Hon'ble High Court and the Benches of the M.A.T. etc.

4. The matter is heard and decided finally with the consent of learned counsel for both the parties.

5. The case of the applicant in short is as under –

The applicant was initially appointed on 05/06/2004 on the post of Clerk from NT-D / Vanjari category with the respondent establishment. At present she is working at Ramtek. The applicant was promoted from time to time. The applicant was not considered for promotion on the post of Deputy Superintendent of Land Records on the ground that Criminal case and departmental enquiry pending

against her. Therefore, the applicant approached to this Tribunal for direction to the respondents to promote her on the post of Deputy Superintendent of Land Records, Group-B. She has filed the present O.A. for the following reliefs –

“(8) (i) Hold and declare that the Applicant is entitled for promotion to the post of Deputy Superintendent of Land Records, Group B from the post of Shirastedar/Headquarter Assistant, Group C post and she has been illegal and arbitrarily denied promotion to the post of Deputy Superintendent of Land Records, Group B from the post of Shirastedar / Headquarter Assistant, Group C post, by the Respondent No.2.

ii] Direct the Respondent No. 2 to include the name of the Applicant in the list of the employees found eligible for promotion to the post of Deputy Superintendent of Land Records, Group B from the post of Shirastedar/Headquarter Assistant, Group C post, dated 25/08/2023, being entitled for promotion as per her seniority.”

6. The O.A. is strongly opposed by the respondents. It is submitted that the applicant was absent from duty before lodging the F.I.R. against her. The applicant was on medical leave. Leave was not sanctioned. The applicant was absconding and she was busy in avoiding her arrest and to secure anticipatory bail. The Criminal case was registered against her and therefore departmental enquiry was started against the applicant for the charges levelled against her. The departmental enquiry is still pending. Hence, the applicant cannot be promoted.

7. During the course of submission, the Id. Counsel for applicant has pointed out the Judgments of the Hon'ble Supreme Court in the case of the ***Union of India and Others versus K.V. Jankiraman & Ors.(1991) 4 SCC,109*** and ***Union of India & Ors. Vs. Anil Kumar Sarkar (2013) 4 SCC,161.***

8. Heard learned P.O. Shri M.I. Khan. He has pointed out the operative part of the Judgment of this Tribunal in O.A. 971/2022 –

“(i) The O.A. is allowed.

(ii) The respondents are directed to promote the applicant on the post of Dy. Superintendent of Police / Assistant Commissioner of Police and give deemed date of promotion subject to decision of criminal case pending against him, as per the law. However, the applicant shall not be entitled to claim any arrears.

(iii) The respondents shall comply the direction in coming DPC.

(iv) No order as to costs.”

9. There is no dispute that the F.I.R. registered against the applicant is quashed by the Hon'ble Bombay High Court, Bench at Nagpur in Criminal Application (APL) No.718/2021 as per the order 18/08/2023. Now there is no any Criminal case against the applicant, as submitted by the side of applicant.

10. There is no dispute that still departmental enquiry is going on against the applicant. The respondents cannot deny the promotion on the said ground. The Hon'ble Supreme court in the cases of the ***Union of India and Others versus K.V. Jankiraman & Ors.(1991) 4***

SCC,109 and **Union of India & Ors. Vs. Anil Kumar Sarkar (2013) 4 SCC,161** has held that the promotion can be granted subject to the decision of departmental enquiry / criminal case. On the same direction, this Tribunal has also allowed the O.A.No.1156/2022.

11. The learned P.O. has also pointed out the operative part of the order in O.A. No.971/2022. The applicant was not considered for promotion on the ground that the departmental enquiry / criminal case was pending. Now there is no Criminal case pending against the applicant. The departmental enquiry is pending against the applicant. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to promote the applicant on the post of Deputy Superintendent of Land Records subject to decision of departmental enquiry pending against her.

(iii) The respondents shall take decision in the coming DPC.

(iv) No order as to costs.

Dated :- 03/04/2024.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 03/04/2024.