

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 1126 of 2022 (D.B.)**

Kantappa Bhimaraya Khot,
Age about 43 years, Occ.: Service,
R/o C/o. Varsha Ingole,
Near Vitthal Mandir, Mayur Colony,
Tukaram Square, Akola.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Principal Secretary(Agri),
Agriculture, Animal Husbandry, Dairy
Development & Fisheries Department,
Mantralaya(Extn.), Chamber No.525,
Madam Kama Road, Mumbai-32.
- 2) The Commissioner (Agriculture),
Agriculture Commissionerate,
Shivaji Nagar, Pune -1.
- 3) Director (Horticulture),
Agriculture Commissionerate,
Shivaji Nagar, Pune -1.

Respondents.

Shri R.M. Fating, Advocate for the applicant.
Shri A.M. Ghogre, learned P.O. for respondents.

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

Dated :- 13/07/2023.

JUDGMENT

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.

2. Heard Shri R.M. Fating, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents. The learned counsel for both the parties have consented for final disposal and argued the matter finally.

3. The applicant has approached to this Tribunal for the following reliefs –

“i) Quash and set aside the impugned charge-sheet dated 31.10.2022(ANNEXURE A1) issued by the Respondent, in the interest justice.

ii) Hold and declare that the action on the part of the Respondents, for not issuing promotion order in favour of the Applicant on the pretext of pendency of departmental enquiry which has been initiated after the meeting of Departmental Promotion Committee, is contrary to the Govt. Resolution dated 30.08.2018.”

4. The learned counsel for applicant submits that he is not pressing prayer Clause no.1 in respect of the charge sheet dated 31/10/2022. He is only pressing prayer Clause no.2. Hence, the O.A. is decided in respect of prayer Clause no.2 only. The applicant is at liberty to make appropriate proceedings in respect of prayer clause no.1.

5. The applicant was appointed on the post Agriculture Officer on 13/07/2009. The applicant was due for promotion. His case was put up before the Departmental Promotion Committee (DPC). As per the order dated 07/09/2022 the name of applicant was at Sr.No.8 in the list of promotion, but the applicant was not promoted because of the subsequent development, i.e., in respect of charge sheet dated 31/10/2022.

6. The learned counsel for applicant submitted that in the order dated 07/09/2022, the name of applicant is at Sr.No.8 in the list of promotion. The case of the applicant was considered by the DPC, but he is not promoted only because of the subsequent charge sheet dated 31/10/2022. The learned counsel for applicant submitted that subsequent development / criminal case / departmental inquiry / charge sheet cannot be a ground to deny the promotion. In support of his submission pointed out decision of M.A.T., Principal Bench, Mumbai in O.A.No.157/2019. The learned counsel for applicant has pointed out the Judgment of this Tribunal in O.A.Nos. 1155/2022 and 1156/2022. He has also pointed out the Judgment of Hon'ble Supreme Court in the case of ***Union of India and ors. Vs. Anil Kumar Sarkar (2013) 4 SCC,161***. At last, submitted that the applicant is entitled for promotion as per the decision taken in the DPC, as per order dated 07/09/2022.

7. The O.A. is opposed by the respondents on the ground that the departmental inquiry is initiated against the applicant and procedure is followed as per the G.R. dated 15/12/2017. The learned P.O. has submitted that because of the pendency of departmental inquiry, the applicant cannot be promoted.

8. The Principal Bench of this Tribunal in O.A.No.157/2019 has recorded its findings. The para nos.13 and 14 are reproduced as under –

“13. Having found that the Applicant cannot be deprived of posting on promotion, the learned P.O. was asked to take instruction from the Department about the vacancy position of the promotional post. The learned P.O. on instructions stated that there will be vacancy of promotional post by the end of October, 2019 and the Applicant can be posted against that vacancy if the Applicant is held entitled for posting by the Tribunal. As such, in view of statement made by the learned P.O, there is no need to disturb other promotions effected in between 2014 till date and in view of future vacancy, the Applicant can be posted on promotional post at the end of October, 2019.

14. For the aforesaid reasons, I have no hesitation to sum-up that the impugned action of not implementing promotion order of the Applicant is not sustainable in law and the Applicant is required to be given posting having cleared by DPC in 2014 itself. Subsequent registration of crime cannot be a ground to deprive him of the promotional post. Needless to mention that the Department is at liberty to conclude the D.E. and to take further action as permissible in law.”

9. The same findings are recorded by this Tribunal in O.A.Nos.1155/2022 and 1156/2022.

10. In the case of ***Union of India and ors. Vs. Anil Kumar Sarkar*** (*supra*) the Hon'ble Supreme Court has held that "the promotion cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, their must be at the relevant time pending at the stage when charge memo/charge-sheet has already been issued to the employee....".

11. In the case of ***Union of India Vs. K.V. Jankiraman*** reported in SCC 124. In para-32, the Hon'ble Supreme Court has held as under –

"The Tribunal has rightly directed the authorities to open the sealed cover and if the respondent was found fit for promotion by the DPC, to give him the promotion from the date his immediate junior Shri M. Raja Rao was promoted pursuant to the order dated 03/04/1986. The Tribunal has also directed the authorities to grant to the respondent all the consequential benefits-----the Tribunal has further stated in the impugned order that its order would not mean that the disciplinary proceedings instituted against the respondent-employee should not go on. We see no reason to interfere with this order. The appeal, therefore, stands dismissed. In the circumstances of the case, however, there will be no order as to costs."

12. Above cited Judgments show that the departmental inquiry subsequent to the date of DPC cannot be a ground to deny the

promotion. In the present matter, the applicant was interviewed by the DPC and the applicant has succeeded in the DPC. The Government of Maharashtra, General Administration Department (GAD) has approved the minutes of the DPC. The applicant was also directed to give options for revenue division after promotion. This itself shows that the applicant was already promoted, but said promotion was not granted to him only because the charge sheet / departmental inquiry is pending against him. From the perusal of the departmental inquiry / charge sheet dated 31/10/2022 shows that it is a subsequent development after the DPC. The DPC was held in the month of May,2022 and as per the order dated 07/09/2022 the GAD has approved the minutes of the DPC. The name of applicant in the promotion list is at Sr.No.8. The subsequent development / departmental inquiry as per the charge sheet dated 31/10/2022 cannot be a ground to deny promotion to the applicant. Hence, the following order –

ORDER

- (i) The O.A. is allowed in respect of prayer clause no.2 only.
- (ii) The respondents are directed to promote the applicant on temporary basis subject to outcome of pending departmental inquiry as held by the Hon'ble Supreme Court.

(iii) The respondents are directed to issue promotion order of the applicant by giving deemed date of promotion from the date on which the applicant's junior (Shri A.N. Deshmukh) was promoted.

(iv) No order as to costs.

Dated :- 13/07/2023.

(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 : 13/07/2023.