

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 115 of 2022 (D.B.)**

Mangesh S/o Ashok Borkar,
Aged about 40 years,
Occ. Service, R/o Ambedkar Ward,
Ambadi, Post- Silli, Tah. and District Bhandara.

Applicant.

Versus

- 1] State of Maharashtra,
Through Secretary, Co-Operative Marketing & Textile Department,
Mantralaya, Mumbai-32.
- 2] Commissioner for Co-Operation & Registrar of
Co-Operative Societies, Pune.
- 3] Divisional Joint Registrar, Co-Operative Societies,
Dhanwate Chambers, Sitabuldi, Nagpur.

Respondents.

**S/Shri Manish Thombre, G.K. Bhusari, Advs. for the applicant.
Shri H.K. Pande, learned P.O. for respondents.**

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

Dated :- 29/11/2023.

JUDGMENT

Heard Shri G.K. Bhusari, learned counsel for the applicant
and Shri H.K. Pande, learned P.O. for the respondents.

2. The learned counsel for the applicant submitted that this
O.A. is covered by the Judgment of this Tribunal in O.A.1126/2022
and the Judgment of the Hon'ble Bombay High Court, Bench at
Aurangabad in W.P.No.1672/2022. It is also covered by Govt. G.R.

dated 15/12/2017 and the Judgment of this Tribunal in O.A.No.1155/2022.

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

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

The applicant was appointed on 09/06/2009 as a Co-Operative Officer, Grade-I, Armori, Dist. Gadchiroli. Thereafter, the applicant was transferred from Armori to Deori on 01/06/2013. Thereafter, he was transferred to Lakhani, Dist. Bhandara. The applicant was due for promotion, but he is not promoted. Juniors to the applicant namely Smt. R.B. Walavi, R.R. Madane, A.B. Rahij and Smt. A.B. Kolambkar are promoted. The name of applicant is shown at seniority list no.131, whereas, juniors to the applicant, i.e., Smt. R.B. Walavi, R.R. Madane, A.B. Rahij and Smt. A.B. Kolambkar are shown at seniority nos. 133,134,135 & 136. These juniors are promoted. Therefore, the applicant has approached to this Tribunal for

direction to the respondents to promote him on the post of Assistant Registrar, Co-Operative Societies, Group-B. The applicant has made representation dated 31/12/2021, but it is not decided by the respondents. Hence, the applicant approached to this Tribunal for the following reliefs –

“A) issue an appropriate order or directions to the respondent authorities to hold and declare that the applicant is entitled for promotion from the cadre of Co-Operative Officer, Grade-I to the cadre of Assistant Registrar, Cooperative Societies, Group-B, in the interest of justice;

B) issue an appropriate order or directions to promote the applicant from the cadre of Co- Operative Officer, Grade-I to the cadre of Assistant Registrar, Cooperative Societies, Group-B, w.e.f. 30/12/2021 on which the junior employees were promoted, in the interest of justice;

C) issue an appropriate order or directions to respondent authorities to grant all consequential benefits to the applicant, in the interest of justice;

D) Saddle the costs of the proceedings upon the respondents;

E) Grant any other relief in favour of the applicant which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

5. The O.A. is strongly opposed by the respondents. It is submitted that the offence punishable under Sections 420 and 465 of the IPC r/w section 43 of Maharashtra Money Lending Act, 2014, vide Crime No.102/2016 was registered against the applicant. It is submitted by the respondents that the said case is pending before the

J.M.F.C., Deori, Dist. Gondia and therefore the applicant cannot claim promotion during the pendency of the said criminal case.

6. The departmental inquiry was also initiated against the applicant and therefore the applicant is not promoted on the post of Assistant Registrar as prayed, therefore, the O.A. is liable to be dismissed.

7. During the course of submission, the learned counsel for applicant has pointed out the G.R. 15/12/2017 (P-51). The material portion of the G.R. is reproduced as below –

“९) विभागीय पदोन्नती समितीच्या मूळ बैठकीच्या दिनांकापासून दोन वर्षे झाल्यानंतरही मोहोरबंद पाकीटात निष्कर्ष ठेवलेल्या अधिकारी/ कर्मचाऱ्यांच्या, शिस्तभंगविषयक / न्यायालयीन कार्यवाही प्रकरणी अंतिम निर्णय झालेला नसल्यास, अशा प्रकरणी नियुक्ती प्राधिकारी स्वविवेकानुसार संबंधीत अधिकारी/कर्मचाऱ्याला 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) दोषारोपांचे गांभीर्य,

क) द्यावयाची पदोन्नती जनहिताच्या विरुद्ध जाईल का,

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

इ) संबंधित अधिकारी/कर्मचाऱ्यास तदर्थ पदोन्नती दिल्यानंतर, पदोन्नतीच्या पदावर काम केल्यामुळे, संबंधित अधिकारी/कर्मचाऱ्याच्या शिस्तभंगविषयक / न्यायालयीन कार्यवाहीच्या प्रकरणांवर परिणाम होण्याची शक्यता आहे का? किंवा संबंधित अधिकारी/कर्मचारी पदोन्नतीच्या पदाचा त्यासाठी दुरुपयोग करण्याची शक्यता आहे का?

फ) न्यायालयीन कार्यवाही बाबतची सद्यस्थिती / अभियोगाबाबतचे किती टप्पे पार पडले याबाबतची माहिती करून घ्यावी.

ग) सेवानिवृत्तीस १ वर्ष 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.

११) विभागीय पदोन्नती समितीच्या पहिल्या बैठकीनंतर दोन वर्षांनी शिस्तभंगविषयक/न्यायालयीन कार्यवाहीच्या अंतिम निर्णयाच्या अधिन संबंधित अधिकारी/कर्मचाऱ्यास तदर्थ पदोन्नती देणे आवश्यक आहे, असे सक्षम प्राधिकाऱ्याचे मत झाल्यास मोहोरबंद पाकिट उघडण्यात येऊ नये. विभागीय पदोन्नती समितीची बैठक बोलावून संबंधित अधिकारी / कर्मचाऱ्याची पात्रता/अपात्रता नव्याने तपासावी. पुन्हा नव्याने पात्रता तपासल्यानंतर संबंधित अधिकारी/कर्मचारी पदोन्नतीसाठी पात्र ठरल्यास, त्यांना ११ महिन्यांसाठी किंवा विभागीय चौकशी/न्यायालयीन कार्यवाही अंतिम होईल यापैकी जे अगोदर होईल तेवढ्या कालावधीसाठी खालील अटीच्या अधीन राहून निव्वळ तदर्थ पदोन्नती देण्यात यावी. खालील अटी व शर्ती तदर्थ पदोन्नतीच्या आदेशामध्ये सुस्पष्टपणे नमूद कराव्यात :

i) शिस्तभंगविषयक/न्यायालयीन कार्यवाहीच्या अधिन दिली जाणारी तदर्थ पदोन्नती केवळ तात्पुरती असेल व या तदर्थ पदोन्नतीमुळे नियमितपणाचे व ज्येष्ठतेचे कोणतेही लाभ अशा अधिकारी/कर्मचाऱ्यांना मिळणार नाहीत.

ii) ही तदर्थ पदोन्नती "पुढील आदेशापर्यंत असेल". तसेच कोणत्याही वेळी दिलेली तदर्थ पदोन्नती रद्द करून मुळ पदावर पदावनत करण्याचा हक्क शासन राखून ठेवित आहे."

8. The learned counsel for the applicant has pointed out the copy of report of the Inquiry Officer. The Inquiry Officer exonerated the applicant. The material portion of the report is reproduced as below –

“सादर प्रकरणांत सादरकर्ता अधिकारी तसेच अपचारी यांनी चौकशी दरम्यान सादर केलेल्या पुराव्याच्या आधारे अपचारी यांच्यावर ठेवण्यात आलेला दोषारोप क्रमांक-१. दोषारोप क्रमांक-२ दोषारोप क्रमांक-३ सादरकर्ता अधिकारी यांनी कोणताही ठोस पुरावा सादर केलेला नाही तसेच अपचारी यांनी चौकशी दरम्यान बचावा करीता पुरावे चौकशी दरम्यान दाखल केलेले आहे तसेच त्यांनी त्यांच्या अंतिम टाचणात विचारलेल्या सर्वच आरोपाची पूर्तता केली असून सोबत सादर केल्याची ठोस पावती दिलेली आहे. त्यामुळे ठेवण्यात आलेला तीनही दोषारोप ठोस पुराव्या अभावी सिध्द होत नाही.”

9. In the departmental inquiry, the applicant was exonerated from the charges levelled against him. Criminal case is pending against the applicant. The respondents have not decided the representation of the applicant. In the reply, it is submitted that because of the criminal case, the applicant is not promoted.

10. The Hon'ble Bombay High Court, Bench at Aurangabad in W.P. No.1672/2022 has held that as per the G.R. dated 15/12/2017, an employee who is facing a disciplinary action or prosecution is subjected to the procedure contemplated by the G.R. Clause-6

contemplates re-consideration by the Committee, if the performance of an employee is enclosed in the sealed envelope. If such an employee who is reinstated and against whom the disciplinary action has not begun, then he can be held to be illegal for promotion subject to the parameter. If the disciplinary action culminates into penalty, then his claim can be deferred to the next meeting without opening the sealed envelope.

11. The relevant portion of the G.R. dated 15/12/2017 was considered by the Hon'ble High Court and directed the respondents to promote the petitioner temporarily on the post of Supervisory Clerk w.e.f. 15/06/2021 within a period of three weeks from the date of the order. However, the petitioner shall not be entitled to claim any arrears.

12. The learned counsel for applicant has pointed out the Judgment of this Tribunal in O.A.No.1115/2022. As per this Judgment, the respondents were directed to promote the applicant on temporary basis subject to outcome of pending cases from the date on which his juniors were promoted.

13. There is no dispute that the applicant is exonerated from the departmental inquiry. The criminal case is pending before the J.M.F.C., Deori, Dist. Gondia. The respondents have to follow the G.R. dated 15/12/2017. Hence, the following order –

ORDER

(i) The respondents are directed to promote the applicant on temporary basis subject to outcome of pending criminal case from the date on which his juniors were promoted.

(ii) The O.A. is disposed of.

(iii) No order as to costs.

Dated :- 29/11/2023.

**(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 P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 29/11/2023.