

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1155 of 2022 (DB)

Rajesh S/o Shriram Sontakke,
aged 54 years, Occ. Service,
R/o C-504 Swapnil Trisha Apartment, Buty Layout,
Laxmi Nagar, Nagpur-440 022.

Applicant.

Versus

The State of Maharashtra,
through its Additional Chief Secretary,
Water Resources Department, Mantralaya,
Mumbai-32.

Respondents.

Shri S.P. Palshikar, Advocate for applicant.
Shri A.M. Ghogre, learned P.O. for respondents.

Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman.
And
Hon'ble M.A. Lovekar, Member (J).

Date of Reserving for Judgment : 12th January, 2023.

Date of Pronouncement of Judgment : 7th February, 2023.

JUDGMENT

Per : V.C.

(Delivered on this 7th day of February, 2023)

Heard Shri S.P. Palshikar, learned counsel for the
applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. Facts of the case in brief are as under -

The applicant entered into government service in the year
1992 as a Lecturer in the Government Polytechnic through MPSC. He

was selected as an Assistant Executive Engineer through MPSC in the year 1993. He joined as Assistant Executive Engineer. He was further promoted as Executive Engineer in the year 1997. Thereafter he was promoted as Superintending Engineer in the year 2012. By order dated 28/03/2005, he was granted two advance increments w.e.f. 01/10/2002. Again on 04/04/2009 he was further granted two advance increments. On 15/10/2012 (A-2,P-29 to 40) a charge sheet was served on the applicant and 45 others against whom inquiry was initiated. On 20/11/2017, Inquiry Officer was appointed. On 08/07/2019 (A-3,P-41 to 46) Inquiry Officer submitted his report and the applicant was exonerated and at present the matter is pending before the disciplinary authority which is likely to be decided soon as submitted by learned counsel. During the course of hearing, learned counsel for applicant submitted that as per instructions received from his client, file has been approved at the highest level of Govt. and order of exoneration is likely to be issued soon. Person junior to the applicant namely P.G. Mandade was promoted as Chief Engineer. Further juniors to applicant have been promoted. Against the applicant, 3 FIRs were registered in 2018 which are as follows –

- (i) The first FIR No.101/2018 was registered on 10/07/2018. It was registered at Police Station, Chandur Railway for the offence punishable under Sections 420,468,471,197,198,199,200,119,120-B of the I.P.C. in case

of Waghadi Project and in that case even after period of about four years, charge sheet has not been filed.

- (ii) 2nd FIR No.198/2018 was registered on 15/10/2018 at Police Station, Bhatkuli, Dist. Amravati under Sections 420,471,465,438, 34 of the I.P.C. with 13 (1) (a) (d) & 13 (2) of the Prevention of Corruption Act, 1998. In that case also as on date charge sheet is not filed.
- (iii) 3rd FIR No.64/2018 was registered on 4/8/2018 at Police Station, Chandur Railway, District Amravati for the offences punishable under Sections 119,120-B,197, 198, 199, 200,420,468,471 of the I.P.C. and also Section 13 (2), r/w Section 13 (1) (a) under the Prevention of Corruption Act, 2018. In this case also charge sheet is not filed (P-9 & 10 of the O.A.).

3. Thereafter during the course of hearing on 10/01/2023, this Bench directed the P.O. to take instructions till 12/01/2023 regarding filing of charge sheet. During hearing on 12/01/2023, the learned P.O. submitted that pursuant to none of the FIRs, charge sheet has been filed till now.

4. Though notices were issued on 24/11/2022, the respondents have not yet filed reply. The matter was heard on merits. In another case the charge sheet was served on 15/10/2012 (A-2, P-29). The inquiry report was submitted by the Inquiry Officer on 08/07/2019 (A-3,P-41 to 46) and the Inquiry Officer has concluded (at page no.46) that charge is not proved.

5. The learned counsel for applicant has submitted at page nos.14 and 15 of the O.A. that the remarks of A.C.Rs. of applicant as below –

- (i) From 27/09/2012 to 31/03/2013 - Very Good
- (ii) From 01/04/2014 to 07/11/2014 - Outstanding
- (iii) From 08/11/2014 to 31/03/2015 - Outstanding
- (iv) From 01/04/2016 to 31/08/2016 - Outstanding
- (v) From 26/09/2016 to 31/03/2017 - Very Good
- (vi) From 01/11/2017 to 31/03/2018 - Very Good
- (vii) From 01/04/2018 to 31/03/2019 - Very Good
- (viii) From 01/04/2021 to 31/03/2022 - Outstanding i.e. recently.

6. So, it appears that by gradation of C.Rs., the applicant is very much eligible for promotion. Learned counsel for the applicant has filed copy of Minutes of DPC dated 25/04/2022 (A-13,P-206 to 212) where the applicant's name has been considered and in remarks column, it is written that as per Clause-1 (9) of the G.R. dated 15/12/2017 (P-209) his promotion to Chief Engineer on temporary basis is denied by conscious decision taken by competent authority.

7. After perusal of the documents filed on record, it appears that all the FIRs were filed in the year 2018, but sanction of prosecution was given in April,2021, but even till closing of the hearing, no charge sheet has been filed as submitted by both the

learned counsel as well as learned P.O. Thus, laxity of the respondents in taking criminal cases to their logical conclusion is apparent.

8. In view of these facts, the case of the applicant's promotion is squarely covered by the provisions of the Government G.R. dated 15/12/2017 (A-9,P-71 to 82) and also the Judgment of Hon'ble Supreme Court Judgment in the case of ***Union of India and Others versus K.V. Jankiraman & Ors.(1991) 4 SCC,109*** (Annex-A-10,P-83 to 103) in which it is held that "*Promotion – sealed cover procedure – sealed cover to be opened in case of complete exoneration of the employee from all charges and notional promotion to be given from the date of his juniors promoted—arrears of salary may be granted from the date of notional promotion having regard to the circumstances of the case.*" The learned counsel for the applicant has also relied on the said Judgment.

9. Besides this, the learned counsel for the applicant has also relied on the case of ***Union of India & Ors. Vs. Anil Kumar Sarkar (2013) 4 SCC,161***. (Annex-A-11,P-104). This Judgment lays down that in cases where the criminal proceeding or departmental inquiry are likely to take longer period, employee should be promoted even though pending the result in Court cases or in departmental inquiry. Since employee will be promoted on temporary basis in view

of the court order, he will be liable to suffer if outcome of departmental inquiry or criminal case goes against him. Subject to the outcome of such departmental inquiry and criminal cases, employee should be given temporary promotion with effect from the date his juniors, since these promotions are as per the decision of the court.

10. It may be observed that the matter was first listed on 24/11/2022 and though notices were issued to the respondents, they did not file any reply. When the matter was listed on 12/12/2022, the learned P.O. sought time. Time was granted on the condition that if reply is not filed on the next date i.e. 04/01/2023, matter will be decided on merits. When the matter came up for hearing on 04/01/2023, reply was not filed. Again the matter was heard on 10/01/2023, the learned P.O. only pointed out that sanction to prosecute the applicant was accorded in April,2021, but no reply was filed. The matter was adjourned to 12/01/2023 to take instructions by the learned P.O. whether charge sheet has been filed or not. The matter came up for hearing on 12/01/2023. On that date, the learned P.O. made a statement that pursuant to FIRs. of 2018, charge sheet is not filed against the applicant till today. Though the learned P.O. vehemently opposed the matter on merits fact remains that in spite of grant of ample opportunity, the respondents did not file reply. Hence, the order -

ORDER

(i) The O.A. is allowed in the following terms -

The respondents are directed to promote the applicant on temporary basis subject to outcome of pending cases as held by the Hon'ble Supreme Court forthwith, from the date on which his juniors were promoted.

(ii) No order as to costs.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice Chairman

Dated :- 07/02/2023.

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 V.C. and Hon'ble Member (J).

Judgment signed on : 07/02/2023.*