

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1156 of 2022 (DB)

Kannajirao S/o Suryanarayan Vemulkonda,
aged 56 years, Occ. Service, R/o 92, Shree Nagar,
Ring Road, Near Narendra Nagar, Nagpur-15.

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 the Govt. service as an Assistant Executive Engineer through MPSC and was initially posted at Nashik on 11/09/1995. In the year 1999, he was promoted as Executive Engineer. On 19/11/2014, he was further promoted as Superintending Engineer. On 30/07/2020, he was working as a

Superintending Engineer, Irrigation Department, Nagpur. His next promotion is due as Chief Engineer as per the seniority cum merit. Juniors to the applicant have been promoted, but the applicant's name has not been considered. Against the applicant FIRs were registered in 2018 (Page no.11 of the O.A.) which are as follows –

- (i) The first FIR No.101/2018 was registered on 10/07/2018 at Police Station, Chandur Railway.
- (ii) The second FIR No.198/2018 was registered on 15/10/2018 at Police Station, Bhatkuli, Dist. Amravati.

3. In the departmental inquiry, the final order was passed on 11/06/2021 (A-2,P-30 to 33). In this departmental inquiry, the only punishment inflicted upon the applicant is "Attachment of Stigma" (ढुडुडु डेवणुडुडुत डुडुडु) (Annex-A-2,P-32).

4. In the second departmental inquiry, the final order was passed on 12/05/2022 (Annex-A-4,P-41). In this departmental inquiry, the applicant was totally exonerated from all the charges (P-43). The DPC has taken place on 25/04/2022 (P-53) and the applicant's name was kept in sealed cover.

5. The learned counsel for applicant has filed Pursis dated 31/01/2023 mentioning applicant's C.Rs. which are as follows –

1. 2015-2016 - Outstanding
2. 2016-2017 - Very Good
3. 2017-2018 - Outstanding
4. 2018-2019 - Very Good
5. 2019-2020 - Outstanding

- 6. 2020-2021 - Outstanding
- 7. 2021-2022 - Outstanding

6. From above C.Rs., it appears that the applicant is eligible for promotion.

7. 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-8,P-60 to 71) and also the Judgment of the Hon'ble Supreme Court Judgment in the case of ***Union of India and Others versus K.V. Jankiraman & Ors.(19914) 4 SCC,109*** 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 applicant has also relied on the said Judgment.

8. Besides this, the learned counsel for applicant has also relied on the case of ***Union of India & Ors. Vs. Anil Kumar Sarkar (2013) 4 SCC,161***. 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 pending 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 the 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 are promoted.

9. 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 to file reply. Time was granted with the condition that if reply is not filed on the next date i.e. 04/01/2023, matter will be decided on merit. When the matter came up for hearing on 04/01/2023, on that date also the 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 for next date, i.e., 12/01/2023 to take instructions by the learned P.O. that 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. orally submitted that no charge sheet has been filed pertaining to all FIRs registered in the year 2018. Thus, laxity of the respondents in taking criminal cases to their logical conclusion is apparent. Hence, we pass the following 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 court 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.*