

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 186 / 2013 (D.B.)**

Ravindra Vinayak Chopde,  
Aged 48 Yrs., Occupation : Service,  
R/o C-12/3, Government Colony,  
Ravi Nagar, Nagpur.

**Applicant.****Versus**

- 1) The State of Maharashtra,  
through Secretary,  
Higher and Technical Education Department,  
Mantralaya, Mumbai.
- 2) The State of Maharashtra,  
Through its Secretary,  
Department of School Education & Sports,  
Mantralaya, Mumbai.
- 3) The Director of Higher Education,  
(M.S.), Central Building, Pune.
- 4) The Joint Director of Higher Education,  
Nagpur Division, Old Morris College Building,  
Sitabuldi, Nagpur.

**Respondents**

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**Shri A.P.Ragute, Id. Advocate for the applicant.**

**Shri M.I.Khan, Id. P.O. for the respondents.**

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**Coram :- Hon'ble Shri J.D. Kulkarni, Vice-Chairman (J) &  
Hon'ble Shri Shree Bhagwan, Member (A).**

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**JUDGMENT****PER : VICE CHAIRMAN (J)****(Delivered on this 19<sup>th</sup> day of September, 2018)**

Shri A.P.Raghute, Id. counsel for the applicant and Shri M.I.Khan, Id. P.O. for the respondents.

2. The applicant was appointed in Sales Tax Department in 1984 initially and thereafter, he was appointed as Superintendent, General State Services, Class – III on 30/09/1993. On 22/04/1994, the office of Education Officer (Secondary) Zilla Parishad, Bhandara received one letter dated 16/04/1994 eliging that fake E.B.C. bills were send by the office of Deputy Director, Vocational Institution. The Education Officer lodged report against the applicant in the said matter on 05/05/1994. The applicant obtained anticipatory bail from the Hon'ble High Court in the said matter. The respondent no. 1, contemplate the departmental enquiry and transfer the applicant to Ratnagiri and subsequently he was kept under suspension by order dated 29/09/1999.

3. The applicant was reinstated since he was innocent in August, 2001, but in the meantime some colleagues from his batch were promoted from GSS Class-III to MES Class-II. The promotion was however, denied to the applicant. In the meantime, he was posted in the office of respondent no. 4 i.e. Joint Director of Higher Education, Nagpur, Division, Nagpur on 28/01/2005. The batchmates of the applicant got second promotion as Administrative Officer vide order dated 26/08/2005, but the applicant was deprived of such promotion. The

applicant has therefore, been claiming following reliefs in this O.A., such reliefs are as below:-

*“(A) To declare that the applicant was entitled to get promotion for the first time in the year 1999 from the post of GSS-II to MES-II and to get promoted on the post of Administrative Officer in the year 2005;*

*(B) To direct the respondent to promote the applicant on the post of Jr. Administrative Officer w.e.f. 1999 and Administrative Officer in 2005 with pay scale accordingly as per law;*

*(C) To direct respondent no. 4 to pay interest on arrears of salary in pursuance to the order of respondent no. 1 dated 09/12/2010 of Rs. 1,69,182@ 18% p.a. from the date of order.*

*(D) To pay the arrears of difference of pay by virtue of promotion first in the year 1999 and second in the year 2005 to the post of Jr. Administrative Officer and Administrative Officer respectively. ”*

4.        The respondent no. 1, resisted the claim and submitted that the applicant was under suspension when his case was considered for promotion and in the selection committee meeting held on 11/12/1998, it was decided not to give promotion to the applicant since the departmental enquiry was pending.

5.        In the meantime, in 2005, the Department of Education was divided in Department School Education and Department of Higher Education. The applicant was appointed to work in the Department of

Higher Education and accordingly his services were transferred to that department and therefore, there was no question of considering his case for promotion to School Education Department. The respondent no. 1, 3 and 4 also filed additional affidavit on 11/06/2015 and submitted that since the applicant was under suspension and a departmental enquiry was pending, a conscious decision was taken not to promote him, as per the existing rules.

**6.** The Id. P.O. has placed on record, the document marked Exh. "X" to show that the conscious decision was taken by the Government not to promote the applicant. The Id. counsel for the applicant submits that, had it been a fact that departmental enquiry was pending against the applicant and the applicant was found fit for promotion, sealed covered proceedings should have been followed and the applicant should have been promoted subject to outcome of departmental enquiry. It is stated that, the department has not followed the G.R. dated 22/04/1996. The said G.R. is however, not placed on record. The Id. P.O. has invited our attention to the G.R. dated 02/04/1976, issued by the Government of Maharashtra in its General Administration Department Circular No. SRV-1075/X. This G.R. speaks about the procedure to be followed in the case of persons whose conduct is under investigation or against whom departmental enquiry was pending.

7. Clause-3 regarding interim promotion during pendency of proceedings is material to consider the case of applicant and the said clause reads as under:-

“3. Interim promotion during the pendency of the proceedings:-

If the person is found fit and his name is provisionally included in the select list:-

(a) During the pendency of the proceedings, the question of promoting a person under suspension does not arise such a person shall not be promoted.

(b) In respect of a person who is not under suspension, the competent authority should take a conscious decision, after taking into consideration the nature of the charges levelled whether the person should be promoted without waiting for the conclusion of the enquiry. If it is decided that he should be so promoted such promotion will be provisional and will be reviewed on the conclusion of the investigation or enquiry. “

8. The plain reading of the aforesaid clause and particularly Clause-A clearly shows that the question of promoting a person under suspension does not arise and such a person shall not be promoted. Admittedly, in the present case, the applicant was under suspension at the time of D.P.C. meeting for considering the promotion of the candidate

including the applicant and, therefore, there was no question of promoting the applicant.

9. The Id. counsel for the applicant submits that, the applicant got the clean chit in the departmental enquiry and, therefore, there is no hurdle for respondents not to consider the promotion of the applicant. We have gone through the order passed in departmental enquiry which is at P.B., Pg. No. 22-24 (Annexure-A-6). From the said order, it seems that different of these charges framed against the applicant, charge no. 1 was found partly proved whereas the charges no. 2 to 6 were not proved. The applicant was held guilty, but was just cautioned. This order has been passed on 09/09/2010. This may give cause of action for the applicant to consider his case for promotion. As already stated, the respondents are coming with a case that the D.P.C. has taken a conscious decision not to consider the case of the applicant for promotion, since he was under suspension and departmental enquiry was pending against him and in our opinion, the said decision was very much legal as per the guidelines in the G.R. dated 02/04/1996. The Id. P.O. has placed reliance on the Judgment delivered by the Hon'ble Apex Court in case of **Manoj Kumar Singh Vs. Coal India Ltd. & Ors. reported in (2006) 13 Supreme Court Cases 705** wherein it has been held that denial of promotion pending vigilance or preliminary enquiry as to misconduct, as

per applicable circulars making vigilance clearance a prerequisite of promotion is legal.

**10.** The Id. P.O. has also placed reliance in case of **State of Rajasthan Vs. Ucchab Lal Chhanwal reported in 2014 (1) Supreme Court Cases 144** and submits that Juniors, who are alleged to be promoted are not parties to the petition and, therefore, the petition shall be dismissed. In our opinion, this case law may not be applicable to the present set of facts, since the applicant has not challenged the promotion of any Juniors and he is only claiming deemed date of promotion from 1999.

**11.** From the discussion in foregoing paras, we are, therefore, satisfied that since the applicant was under suspension when his case was considered for promotion by the D.P.C., the D.P.C. rightly rejected his claim for promotion, in view of the G.R. dated 02/04/1976. Admittedly, the departmental enquiry against the applicant has now been completed and he is only cautioned. But vide order dated 09/12/2010, the respondent authority may consider the case of the applicant for his appropriate promotion. Though the grievances of the applicant will be governed by G.A.D. circular No. I keW; i zAkI u foHkx] , I vkjOgh&1075@, DI ] fn-02-04-1976-

**12.** However, recently the Government of Maharashtra has issued G.R. No. I keW; i zAkI u foHkx] , I vkjOgh&2015@i zcz310@dk- 15-12-2017 and

its further amendment vide G.R. no. [redacted], [redacted] 2015@idB10@  
dk; [redacted] 30/08/2018- In G.R. dated 30/08/2018, under the heading  
Government decision in para nos. 1 and 2 a detailed explanation has  
been given to deal with such cases. The said Circular, however, cannot be  
applied retrospectively.

**13.** In view of findings given in the departmental enquiry, we  
therefore, pass the following order:-

**ORDER**

1. O.A. is partly allowed.
2. The respondents are directed to consider the case of the applicant  
for promotion to the post of Junior Officer/ Administrative Officer as  
the case may be in view of the order dated 09/09/2010, in the  
departmental enquiry and may pass necessary order on its own  
merits without being influenced by any of the observations made in  
this order.
3. The decision in this regard shall be taken **within two months** from  
the date of this order and shall be communicated to the applicant in  
writing.

**(Shree Bhagwan)**  
**Member (A)**

**(J.D.Kulkarni)**  
**Vice Chairman (J)**

Dated :- 19/09/2018.

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