

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No.30 of 2023 (S.B.)

Ramesh S/o Baban Ghogare,
Aged 54 years, Occu. Service,
R/o at Post - Bharatpur, Tq. Balapur, District Akola.
Currently residing at Unnati Nagar,
MAHDA Colony, Kaulkhed, Akola, Tq. & District Akola.

Applicant.

Versus

- (1) State of Maharashtra,
Through Chief Secretary,
Home Department, M.S. Mantralaya,
Mumbai-400032.
- (2) Director, General of Police,
Police Head Quarter, Shahid Bhagat Singh Marg, Kulaba,
Mumbai-400001.
- (3) Superintendent of Police, Akola, Tq. & District Akola.

Respondents.

Shri V.R. Deshpande, Advocate for the applicant.

Shri V.A. Kulkarni, learned P.O. for respondents.

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

Dated :- 13/02/2024.

JUDGMENT

Heard Shri Kunal Pande, learned counsel holding for Shri V.R. Deshpande, learned counsel for the applicant and Shri V.A. Kulkarni, learned P.O. for the respondents.

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

The petitioner was appointed as a Constable on 01/06/1993. Crime No.173/2020 was registered against him for the offence punishable under Section 7 of the Prevention of Corruption Act,1988 on 05/06/2020. The respondent no.3 without giving any opportunity to the applicant directly dismissed him as per the provisions of Article 311 (2) (b) of the Constitution of India. The applicant approached to this Tribunal for filing O.A.No.561/2020. This Tribunal relying on the Judgments of the Hon'ble Supreme Court in cases of ***Jaswant Singh Vs. State of Punjab & Ors., AIR 1991 SC,385*** and ***Sudesh Kumar Vs. State of Hariyana & Ors. (2005) II SCC,525*** has held that the dismissal under Article 311 (2) (b) without conducting any enquiry cannot be done and therefore the O.A.No.561/2020 was allowed by this Tribunal and dismissal order dated 05/06/2020 was quashed and set aside. The operative part of the order in O.A.No.561/2020 is reproduced below –

“A. The O.A. stands allowed.

B. The order of dismissal Annex-P-1, dated 05.06.2020 is hereby set aside.

C. The respondent no. 3 is at liberty to conduct enquiry as per Rule prescribed and to follow the procedure and take necessary decision after the outcome of enquiry.

D. No order as to costs.”

3. It was made clear in the order itself that the respondents are at liberty to conduct the departmental enquiry and take necessary decision after the outcome of enquiry.

4. During the course of submission learned P.O. submits that no any departmental enquiry is conducted against the applicant because of pendency of criminal case.

5. Now it is well settled that pendency of criminal is not a ground to deny the salary / time bound promotion etc. The Hon'ble Supreme Court in the case of the ***Union of India Vs. K.V. Jankiraman and others reported in (1991) 4 SCC 109***, decided on 27.08.1991 and in the case of ***Union of India And Others Vs. Anil Kumar Sarkar(2013) 4 SCC 161*** has held that pendency of criminal case or departmental enquiry cannot be a ground to deny the promotion. In the present case the respondents have not conducted any departmental enquiry. The pendency of criminal case cannot be a ground to deny his salary. At this stage no any charges are proved against the applicant. Hence, the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The respondent no.3 is directed to decide the representations of applicant dated 04/04/2022 and 14/09/2022 and grant appropriate salary, pay allowances etc., if he is eligible for the same.
- (iii) No order as to costs.

Dated :- 13/02/2024.

(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 : 13/02/2024.