

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 318 of 2021 (DB)**

Ashwini Ramdas Gaikwad,  
Aged 36 years, Occ. Service,  
R/o Ashiyani Building, Lane No.5,  
Amar Nagar, V.M.V. Road, Amravati.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Additional Chief Secretary,  
Home Department, Mantralaya, Mumbai-32.
- 2) The Director General of Police,  
Having its office near Regal Theater, Kolaba,  
Mumbai.
- 3) Superintendent of Police,  
Akola, Tq. & Dist. Akola.

**Respondents.**

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**Shri S.P. Palshikar, Advocate for the applicant.**

**Shri A.M. Ghogre, learned P.O. for respondents.**

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

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**Date of Reserving for Judgment : 6<sup>th</sup> October, 2022**

**Date of Pronouncement of Judgment : 20<sup>th</sup> October, 2022**

**JUDGMENT**

**Per : Vice Chairman.**

**(Delivered on this 20<sup>th</sup> day of October, 2022)**

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

2. The applicant entered into the Government service as a Women Police Sub Inspector and her appointment was through M.P.S.C. in the year 2012. After completing the training, she was posted at Nagpur in the year 2013. She was transferred to Murtizapur in the same capacity in the year 2016. Since an offence was registered against the applicant, she, along with other two employees, were suspended vide order dated 16/02/2018. The applicant had approached this Tribunal by filing the O.A. No. 322/2020. This Tribunal vide order dated 13/07/2020 (Annex-A-2) issued a direction to revoke the suspension order. The suspension was revoked and she was posted at Control Room, Akola vide order dated 14/07/2020. The applicant is due for promotion as an Assistant Police Inspector (API). The respondent nos.2 and 3 informed the applicant that because the departmental proceedings are pending and criminal case is also pending, her case for further promotion could not be considered.

3. As per submission of learned counsel for the applicant, as per the seniority list and also as per the G.Rs. dated 15/12/2017 and 01/08/2019, the applicant is entitled for promotion. The applicant is relying on the Judgements of this Tribunal in O.A.No.879/2017, decided on 11/03/2020 (Annex-A-8) and O.A.No.170/2010, decided on 07/08/2014 (Annex-A-9). The learned counsel for the applicant

submitted that the names of batchmates of the applicant were forwarded by the Competent Authority for promotion as API ignoring the legitimate claim of the applicant and therefore she approached this Tribunal by filing the present O.A. The applicant has prayed for the following reliefs –

*“(i) Direct the respondent no.2 to consider and grant promotion to the applicant from the post of P.S.I. to A.P.I.*

*(i-A) To quash and set aside the communication dated 17/12/2021.*

*(i-B) Direct the respondents to put forth the case of the applicant for promotion in the forthcoming DPC and take a decision particularly in view of the condition No.1.9 of the G.R. dated 15/12/2017.*

*(ii) To direct the respondent no.2 to grant deemed date of promotion in favour of applicant as of 26/02/2021 and grant her all consequential and monetary benefits arising therefrom.”*

4. The learned P.O. has filed minutes of DPC meeting for the year 2019-2020 held on 11/02/2020. The minutes of DPC meeting for the year 2021-2021 held on 8/12/2021 are as mentioned in para-3 below –

(३) पोडनि गायकवाड यांनी पदोन्नतीकरिता मा. म.प्र.न्या., नागपूर यांच्याकडे मुळ अर्ज क्र.३१८/२०२१ दाखल केला होता. सदर प्रकरणी मा. मॅट, नागपूर यांच्या आदेशानुसार पोडनि गायकवाड यांचे पदोन्नतीचे प्रकरण वर्तुळीत पध्दतीने विभागीय पदोन्नती समोर सादर केले असता, विभागीय पदोन्नती समितीने दिनांक ८/१२/२०२१ रोजी तीचे पात्रता तपासून पदोन्नतीकरिता अपात्र ठरविण्यात आले आहे.

5. He has filed minutes of 3<sup>rd</sup> DPC meeting for the year 2020-2021 which was held on 8/2/2021. In that DPC it is not written

that the applicant was under suspension from 16/2/2018 to 14/7/2020. However, in DPC dated 8/12/2021, ACR between 14/7/2020 to 8/12/2021 i.e. for a period of 4 months 25 days i.e. about five months has not been considered and applicant's case has been put in sealed cover with a comment that 'marks are less'. Since ACR has not been produced or written, it cannot go against the applicant, it will go in favour of the applicant and it will be treated as B+ i.e. equal to marks '5' as per the G.R. dated 1/8/2019 Annex-A-4, Table-II.

6. Now, if this is considered, then in the DPC dated 8/12/2021 the total marks obtained by the applicant will be as follows –

<b>Sr. No.</b>	<b>Year</b>	<b>Grade of ACR</b>	<b>Marks</b>
1.	2015-2016	B+	5
2.	2016-2017	A	6
3.	2017-2018	B+	5.8 equal to 6
4.	2018-2019	Under suspension	
5.	2019-2020	Under suspension	
6.	2020-2021	Suspension only from 16/2/2018 to 14/7/2020	

7. The ACR from 15/7/2020 to 31/3/2021 i.e. 4 months and 25 days i.e. about five months period is not produced on record. In all probability it was not written.

8. The respondent no.2 has filed reply on 11/4/2022 (P-108 to 112). In the reply, it is mentioned in para-3 (P-109) that (1) she could not achieve the bench mark of '20 points' on the basis of her

grading of ACRs., as required by DPC for promotion from P.S.I. to A.P.I.

9. Now from above cited table, it is clear that the applicant had already scored '22 points' which was more than the bench mark as submitted by respondent no.2 in his reply in para-3 on page no.109 and hence the applicant was eligible for promotion from the DPC dated 9/2/2022.

10. Reply is filed by respondent nos.2 and 3 on 1/9/2021 (P-98 to 101). Para-6 (P-100) of the reply is reproduced as below—

*“(6) It is pertinent to note here that, the applicant’s case for promotion has been considered twice by the department as per the provisions of above quoted government resolution and the DPC had taken a conscious decision not to promote the applicant on the post of API. As stated above the applicant’s case will again be considered in the forthcoming DPC for the year 2020-2021 and the applicant’s case will be examined as per the G.R. dated 15/12/2017 and the result of the same will be communicated to the applicant.”*

11. After direction of this Tribunal, affidavit-in-reply is filed on behalf of respondent no.2 on 11/4/2022 (P-108 to 112). It appears from para-4 of the reply that the DPC had taken place on 9/2/2022 (P-110). The learned P.O. has filed affidavit-in-reply on behalf of respondent no.2 on 27/9/2022 and he has submitted the following Chart-

<b>Sr.No.</b>	<b>Year</b>	<b>Grade</b>
1	1/4/2014 to 1/7/2014	B+ve, Positively Good
2	4/8/2014 to 5/1/2015	B+ve, Positively Good
3	1/4/2015 to 31/3/2016	B+ve, Positively Good
4	30/6/2016 to 31/3/2017	A, Very Good
5	16/2/2018 to 31/3/2018	Suspended
6	1/4/2018 to 31/3/2019	Suspended
7	16/7/2019 to 31/3/2020	Suspended
8	1/4/2020 to 27/6/2020	Suspended

12. On perusal of the Chart, it appears that though the respondents have considered sufficient C.Rs., the C.R. during the suspension period was not necessary, but they have failed to produce the C.R. from 15/7/2020 to 31/3/2021 since DPC has taken place on 9/2/2022 for the year 2020-2021. As per para-4 (P-110) of reply of respondent no.2 dated 11/4/2022, it was mandatory to consider C.R. between 15/7/2020 to 31/3/2021.

13. In the absence of C.R. for the period for which the C.Rs. are not written, if adverse C.R. is not communicated, it will go in favour of the employee and he cannot be blamed for that. Since writing of C.R. and preservation of C.R. is the responsibility of the respondents department on this count also it is presumed that the applicant's C.R.

between 15/7/2020 to 31/3/2021 must be B+ve since C.Rs. between 2015-2016,2016-2017 and 2017-2018 are “B+”, “A” and “B+” respectively. In that case, in the year 2020-2021 the applicant gets 5 marks as B+ve and in this situation, the total marks achieved by the applicant come to ‘22’ which is above the bench marks of ‘20’ as mentioned by respondent no.2 in the reply in para-4 at page no.110. So the applicant achieved more than 20 marks which was stipulated by respondent no.2.

14. Assuming for a moment that the applicant got only B grade during the period from 15/7/2020 to 31/3/2021, then also she will get 4 marks and total comes to 21 which is above the bench mark. It is also clear that as per the GAD G.R. dated 1/8/2019 (P-121) there is a special provision as mentioned at page no.44 of the G.R. in para-6 that backward class employee should be given 10% extra marks to achieve the Bench mark. In the present case, the applicant is also backward class employee, however, without taking benefit of that G.R. the applicant is already attaining the Bench mark.

15. The respondent nos.2 and 3 have filed reply dated 1/9/2021 (P-98 to 101). In para-4 of the reply (P-99), it is mentioned that the applicant was facing criminal prosecution as well as departmental enquiry as the applicant was arrested under the Anti Corruption Act. In order dated 15/06/2022 in para-3, this Tribunal has

observed that “*We fail to understand that when D.E. was ordered and completed then why it was kept in Dormant file. The final order should have been issued; if there is any hurdle in passing final order; respondents should communicate to the Bench.*” This order was not complied with.

16. It is pointed out that the Hon’ble Apex Court in Civil Appeal No.2537/2013 (Arising out of SLP (C) No.1933 of 2011) in the case of **the Union of India & Ors. Vs. Anil Kumar Sarkar** has observed in para-17 as under –

“ *The conclusion No.1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary / criminal proceedings are pending against the employee.*”

17. In view of the Judgment of Hon’ble Apex Court and various Hon’ble High Courts holding that any criminal case / departmental inquiry should not come in the way of promotion of any employee, the respondents in respect of criminal case / departmental inquiry can take decision at their own level and final outcome will be as per the final decision.

18. In view of the Judgment quoted supra, the applicant’s promotion cannot be withheld because of any pending criminal case or departmental inquiry.



19. In view of the above facts and circumstances, the respondents cannot deny the promotion to the applicant. Hence ,the following order-

**ORDER**

- (i) The O.A. is partly allowed.
- (ii) The respondents are directed to promote the applicant with effect from the date of DPC dated 9/2/2022 within a period of two months from the date of receipt of this order and communicate to the applicant and file compliance report to this Tribunal.
- (iii) However the applicant will not be entitled for any promotional backwages. The applicant will be entitled to get pay of promotional post from the date of joining on the promotional post.
- (iv) The respondents are at liberty to take action against the applicant after final outcome in the criminal case under the Anti Corruption Act / departmental inquiry, as per the prevailing rules and regulations.
- (v) No order as to costs.

**(M.A.Lovekar)**  
**Member (J)**

**( Shree Bhagwan)**  
**Vice Chairman.**

**Dated** :- 20/10/2022.

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 : 20/10/2022.

Uploaded on : 20/10/2022.