

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

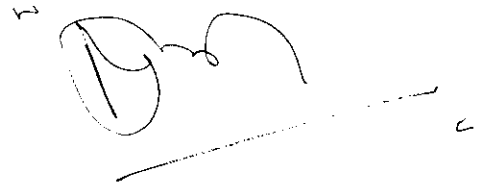
**ORIGINAL APPLICATION NO.546 OF 2015**

**DISTRICT : PUNE**

Smt. Sushma Pandurang Paikekari, )  
Naib Tahasildar in the office of Tahsildar, )  
Taluka Maval, District Pune )  
R/o Dhamale Building, Vadgaon-Maval, Pune )  
Address for service of notice: )  
Shri A.V. Bandiwadekar, Advocate, )  
9, 'Ram-Kripa', Lt. Dilip Gupte Marg, Mahim, )  
Mumbai 400016 )..Applicant

Versus

1. The State of Maharashtra, )  
Through Additional Chief Secretary )  
(Revenue), Revenue & Forest Department,) )  
Mantralaya, Mumbai 400032 )
2. Smt. S.R. Patil, )  
Tahsildar in the office of District )  
Resettlement Officer in the office of the )  
District Collector, Pune, )  
Old Building of Z.P., Pune-1 )..Respondents



Shri A.V. Bandiwadekar – Advocate for the Applicant  
Shri K.B. Bhise – Presenting Officer for the Respondents

CORAM : Rajiv Agarwal, Vice-Chairman  
R.B. Malik, Member (J)

DATE : 7<sup>th</sup> April, 2016

PER : R.B. Malik, Member (J)

### **J U D G M E N T**

1. The refusal by the respondents to consider her for promotion to the post of Tahsildar has brought the aggrieved applicant Naib Tahsildar up before us in this Original Application (OA) under Section 19 of the Administrative Tribunals Act, 1985 (Act). The cause apparently is a pending Departmental Enquiry (DE) but there has been no practical application of mind to the GAD circular No.SRV-1075/X dated 2<sup>nd</sup> April, 1976 (1976 circular) and the GAD GR No.SRV-1095/Pra.Kra.29/95/XII dated 22<sup>nd</sup> April, 1996 (1996 GR).


2. We have perused the record and proceedings and heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri K.B. Bhise, the learned Presenting Officer (PO) for the Respondents.



3. The date of birth of the applicant is 16.8.1975. She belongs to NT/C category being Hindu Dhanagar. She was appointed by nomination (direct recruitment) as Naib Tahsildar (NT) on 20.11.2001. Her probation however was cleared somewhat belatedly by the order dated 29.6.2010 though with effect from 5.3.2004. Since then, so claims the applicant her services continued on long term basis.

4. In 2007 the applicant was posted as Resident NT, Taluka Mangalvedha in Solapur District. At that time an allegedly high magnitude and serious criminal acts were attributed to a number of executive personnel including the applicant. Offences came to be registered vide CR No.72 of 2007 of P.s. Mangalvedha under Sections 406, 408, 409, 464, 465, 467, 468, 471 and 477A of the Indian Penal Code (IPC). A number of those who were accused of the above offence were senior and holding higher posts compared to the applicant and some may have been junior and holding lower posts compared to the applicant. They were in fact arrested also and in due course charge sheet was laid before the Court of Competent Criminal Jurisdiction.

5. But the applicant was not arrested. She was not sent up to the Court to answer any criminal charge. The Superintendent of Police, Cyber Cell, Pune informed Collector, Solapur vide his communication of 28.11.2011 [Exhibit C, page

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33 of the Paper Book (PB)] that no incriminating material could be gathered against the applicant and therefore she was not arrayed as an accused in that matter.

6. Tahsildar (as she then was) Smt. Jayshree Popat Jadhav (Mali) was also allegedly involved in that matter. She was arrested and was also post bail made an accused. As already noted above the applicant did not have to suffer either arrest or prosecution. Smt. Jayshree Jadhav however received the same treatment at official level inter alia by denying to her the promotion just as is the case of the applicant. Smt. Jayshree brought two OAs bearing Nos.109 of 2015 and 110 of 2015 (Smt. Jayshree Popat Jadhav (Mali) Versus State of Maharashtra and one Another. This Bench by the judgment dated 18.2.2016 directed the respondents to consider for promotion the case of the said Smt. Jayshree. The cases of that and this applicant are substantially similar.

7. However, just like all others who faced the music the applicant was also placed under suspension. She came to be suspended on 19.11.2007. She was reinstated on 4.6.2013 while it was on 28.11.2011 that the police informed the Collector that no incriminating material could be had against her.



8. Again just like those others the applicant was proceeded against departmentally. Enquiry Officer (EO) and Presenting Officer came to be appointed. Charge sheet dated 26.3.2010 was served upon the applicant. The EO conducted the enquiry and submitted his detailed 39 page report on 4.10.2013. He held that all the nine charges were proved against the applicant. The applicant was asked to show cause against the proposed action which she did by a detailed 17 page reply dated 4.3.2014. The DE stands at that stage even as of now.

9. Now, as per the select list of promoted candidates to the post of the Tahsildar from NTs of 10.9.2012 the applicant though at the top of the seniority list was not promoted because she was under suspension "निलंबित असलेने अपात्र". She was reinstated on 4.6.2013. She made representations about it. In the DPC held on 8.7.2014 for the ad hoc promotion (तदर्थ) to the post of Tahsildar the applicant was not found fit to be promoted because the charges proved against her were serious in nature. The exact Marathi words may be reproduced, "श्रीमती पैकेकरी यांच्या विरुद्ध सिध्द झालेले दोषारोप गंभीर स्वरूपाचे असल्याने त्यांना समितीने अपात्र ठरविले आहे".

10. Therefore, in the impugned order dated 13.8.2014 (Exhibit A page 28) the name of the applicant did not appear. The respondent no.2 was just below her in the seniority list of



NTs and he has been promoted. Therefore, he has been impleaded hereto.

11. The above discussion crystallizes the whole matter into determining as to whether the approach of the respondents to deny to the applicant even her basic constitutional right for being considered for promotion to the post of Tahsildar in the presence of the circular of 1976 and the GR of 1996 is logically accurate and we do not think it to be so.

12. In Smt. Jayshree P. Jadhav's case, as already mentioned above, we had an occasion to deal with substantially the same issue. Not only that but the applicant in that matter was exactly similarly placed as the present applicant, with the only difference that she being the Tahsildar was seeking promotion to the post of Deputy Collector while the present applicant being a NT seeks promotion to the next higher post of Tahsildar. The facts giving rise to the registration of crime were such in which the present applicant as well as Smt. Jayshree P. Jadhav were involved along with several others. It bears repetition that in Smt. Jayshree P. Jadhav's case she in fact was arrayed as an accused before the court unlike the present applicant and to that extent the present applicant in somewhat better placed.



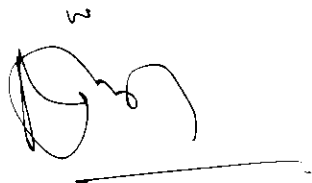
13. In Smt. Jayshree P. Jadhav (supra) we dealt with the various aspects of the matter including the fact as to how some others who were facing DE or in fact prosecution also were still considered for promotion and were actually promoted. It is not necessary for us to mention the names of those employees. In the affidavits in this very matter also those names appeared. And most pertinently in the order of 13.8.2014 which has ultimately brought the applicant before this Tribunal one Shri Mahadev Bhaguji Bhavari came to be promoted making it clear that the said promotion was subject to the outcome of the DE and in that action the circular of 1976 and GR of 1996 were mentioned and it was further mentioned that if he was punished as a result of the DE then he would have to give an undertaking in advance that he would suffer the punishment in the promoted post. This precisely is what the two instruments above referred to provide and there is absolutely no reason why the applicant should have been treated in a manner different than the above referred employee. We do not think that the mere fact that according to the authorities the delinquency of the applicant was serious that *ipso facto* should be a reason to deny to the applicant her claim for being considered for promotion. It is quite clear that the decision of the authorities in that behalf will not be final and even after the applicant was punished assuming she was, she still will have the judicial remedy open to take recourse to and therefore if the idea is to suggest that the applicant should be kept waiting endlessly

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then a system bound by the constitutional provisions could certainly not countenance such a course of action to be adopted.

14. Exhibit R-1 is annexed to one of the affidavits of the respondents (page 172 of the paper book). It is dated 31.7.2014. It shows that the applicant was punished under the provisions of Rule 10(b) of MCS (Discipline & Appeal) Rules and the next increment was stopped for two years with cumulative effect. This aspect of the matter has not been controverted in the affidavit in rejoinder filed by the applicant (page 174 of the paper book). But then we remain at the same point that if it was open to the applicant to give an undertaking to suffer punishment on the higher post she could have been considered for promotion. Further this order has been annexed to the affidavit in reply but it does not appear from the record that the ultimate decision (in Exhibit A) was in any manner influenced by this particular minor punishment. The authorities were influenced mainly by the serious incident discussed in extenso hereinabove. So be it.

15. The upshot, therefore, is that the applicant has clearly been discriminated against in a manner which is hostile and the action impugned herein runs into the teeth of constitutional mandate inter alia of Article 311 thereof. Broadly so speaking this OA will also have to be disposed off as





in the same manner as we did the OAs of Smt. Jayshree P. Jadhav.

16. The respondents are hereby directed to reconsider the case of the applicant for promotion to the post of Tahsildar subject to the outcome of the DE against the applicant and adopt the same course of action that they did in the case of a few other similarly placed employees including Shri Mahadev Bhaguji Bhavari. The respondents are directed to take a conscious decision about the applicant. The respondents may convene, if necessary, a special DPC to comply herewith and consider the case of the applicant and if found fit to promote her. In case the applicant is held eligible for being promoted then the said promotion to be given to her subject to the undertaking that if punished in the DE pending against her and the punishment, if any, if it is still continuing in the enquiry under Rule 10(2) she would undergo the punishment on the promotional post. The respondents do comply with these directions within three months from today. The OA is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member (J)**  
**7.4.2016**

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**  
**7.4.2016**

Dictation taken by: S.G. Jawalkar.