

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 768 OF 2016 (D.B.)**

Devidas S/o Shivilal Rathod,  
Aged about : 51 years, Occ. Service,  
R/o Hansraj Nagar, Shegaon Road,  
Khamgaon, Distt. Buldhana.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Department of Law and Judiciary,  
Mantralaya, Mumbai-32.
- 2) The Charity Commissioner (M.S.), 3  
Anni Besant Road, Warli, Mumbai.
- 3) Enquiry Officer and Deputy Charity Commissioner,  
Akola Region, Office at Murtizapur Road,  
Akola.

**Respondents**

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**Shri N.R.Saboo, the Id. Adv. for the applicant.**

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

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

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**JUDGMENT**

**(Delivered on this 27<sup>th</sup> day of April, 2018)**

**ORDER**

**PER:-VICE CHAIRMAN (J)**

Heard Shri N.R.Saboo, the learned counsel for the applicant and Shri M.I.Khan, the learned P.O. for the respondents.

2. The applicant in this O.A. is serving as a Senior Clerk, in the Public Trust, Registration Office at Buldhana. On 21/12/2015, the memorandum of charge was served on him and the respondent no. 2 appointed respondent no. 3 as enquiry officer in the inquiry against the applicant. The witnesses were examined and cross-examined and the statements were also recorded. The inquiry was closed and inquiry report was forwarded to respondent no. 2.

3. According to the applicant, as per seniority list for the cadre of Senior Clerk, the applicant is due for promotion to the post of Inspector/ Accountant and his name has also been proposed to D.P.C. However, the applicant has been denied promotion on the ground that he is facing departmental enquiry.

4. According to the applicant, it seems from the communication dated 14/10/2016 issued by the respondent no.3, that the Deputy Charity Commissioner, Mumbai vide communication dated 21/09/2016 informed about the order passed by the respondent no. 2 for re-enquiry against the applicant and the applicant was called upon to remain present before the inquiry officer on 20/10/2016. The said decision of the Charity Commissioner has been challenged in this O.A. The applicant

therefore, prays that the decision of the respondent no. 2 i.e. Charity Commissioner, Mumbai to hold re-inquiry on the memorandum of charge dated 21/12/2015 be quashed and set aside and the respondents be directed to consider the applicant's claim for promotion.

5. During the pendency of the O.A., the applicant's claim has been considered for promotion, but his promotion has been rejected on the ground that the applicant was facing disciplinary proceedings. The applicant, therefore, amended the O.A. and prayed that the respondents be directed to grant promotion to the applicant and the decision of the D.P.C. not to consider the claim of the applicant for promotion be quashed.

6. The respondent nos. 2 and 3 tried to justify the decision taken by the Charity Commissioner. It is stated that the Charity Commissioner being Disciplinary Authority is authorised under rule 9(2) of the Maharashtra Civil Services, (Discipline and Appeal) Rules, 1979 to order re-inquiry. As regards promotion, it is stated that the D.P.C. meeting was held on 17/05/2016 and the applicant's case was considered and it was noticed by the Committee that the departmental enquiry was pending against the applicant. The D.P.C., therefore, took a conscious decision and held the applicant not eligible for promotion, since departmental enquiry on grave charges is pending against the applicant. The two material points to be considered in this case are :-

- (i) Whether the disciplinary authority can send back the matter for re-inquiry before the inquiry officer?
- (ii) Whether the applicant can be denied promotion on the ground that departmental enquiry is pending against him?

7. The Id. P.O. has invited our attention to Rule 9 of the Maharashtra Civil Services, (Discipline and Appeal) Rules, 1979. Rule 9 of the Discipline & Appeal Rules states about the action on the inquiry report. In the present case admittedly, the inquiry was not conducted by the disciplinary authority, but it was conducted by the authority other than the disciplinary authority. Rule 9 (1) (2) states about the action on the inquiry report and the said rules is as under :-

Action on the inquiry report:-

- (i) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report, and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of rule 8 of the these rules as far as may be.
- (ii) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not the said Government servant.

The plain reading of the Rule 9 (1) clearly shows that the disciplinary authority, if it is not inquiring authority, itself may remit the

case to the enquiry authority for further inquiry. The only requirement is that for such purpose, the disciplinary authority shall record reasons in writing. In the present case, the Charity Commissioner is the disciplinary authority and while remitting the case for re-inquiry on certain points has recorded, reasons as to why he wants the matter to be remanded back for re-inquiry. The copy of the said order has been placed on record and the applicant himself has placed it on record at Annexure-A-10 at P.B., Pg. No. 28-B and 28-C. The Charity Commissioner has not taken a final decision on the inquiry, but has remanded the case back to the inquiry officer. The said order seems to be reasoned one. There is absolutely no reason as to why the applicant was avoiding to appear before the inquiring officer for additional inquiry in the matter. The order passed by the Charity Commissioner, therefore, cannot be said to be illegal and it is perfectly in view of the provisions of Rule 9 (1) of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979.

8. As regards the claim of the applicant for promotion, it is stated that the case of the applicant was considered in the D.P.C. meeting, who took decision as under:-

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foHAKxh; pk&I' Ah I q vkgs R; keGsrnsi nkWurhl vik= BjysvkgR-

9. From the aforesaid decision, it seems that the D.P.C. has decided that the applicant is not illegible for promotion only on the basis of pending inquiry. Time and again, the Government has issued G.Rs. as regards decision to be taken as regards promotion during the pendency of D.E./Criminal proceedings. The law on this point is well settled and now the settled position is that, in case there is D.E./ Criminal prosecution against the employee, such employee has to be considered for promotion. But the decision in that regard is to be kept under sealed cover. If the employee is honourably acquitted in criminal trial or exonerated in D.E. as the case may be, his case will have to be re-opened and he will have to be considered according to the decision. The decision in the D.P.C. not to promote the applicant only on the ground that the inquiry is pending against him on serious charges ,therefore, is not proper. In view thereof, we proceeded to pass the following orders:-

### **ORDER**

1. The O.A. is partly allowed.
2. Request of the applicant to quash and set aside the decision taken by respondent no. 2 to hold re-inquiry on memorandum of charge dated 21/12/2015, is rejected.

3. The respondents are directed to take a decision on the promotion of the applicant on merits in the D.P.C. However, the decision to be taken, shall be kept under sealed cover and the said decision will be subject to final outcome of D.E. against the applicant.

4. No order as to costs.

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

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

**Dated :- 27/04/2018**  
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