

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.790/2009.

(D.B.)

Suresh Laxman Baviskar,
Aged about 40 years,
Occ-Service,
R/o B-7/2, Govt. Quarters,
Ravi Nagar, Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Agriculture,
Mantralaya, Mumbai-32.
2. The Commissioner of Agriculture,
Central Building, Pune-1.

Respondents

Shri S.M. Khan, the Ld. Advocate for the applicant.
Shri A.M. Ghogre, the Ld. P.O. for the respondents.

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

JUDGMENT

(Delivered on this 10th day of August 2018.)

Per:-Vice-Chairman (J)

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

2. The applicant came to be appointed as Deputy Director of Agriculture in 1985 and was further promoted as District Superintending Agriculture Officer in 1998. His last posting was as Principal, Regional Agricultural Management Extension Training Institute, Amravati. He was kept under suspension vide order dated 30.9.2009 and till today he is under suspension. It is stated that the applicant was kept under suspension on false charge of leaking question papers of the examination of Agriculture Supervisors. A departmental enquiry has already been conducted against the applicant for such a charge.

3. In the Departmental Promotion Committee (DPC) meeting held in September 2009, cases of eligible candidates for promotion to the post of Joint Director of Agriculture, super Class-I post has been considered. However, though the applicant is senior, his case has not been considered. The applicant has, therefore, prayed for appropriate directions requiring the respondents to consider his claim for promotion from Class-I post to super Class-I

post as per directives contained in the G.R. dated 22.4.1996, a copy of the above G.R. dated 22.4.1996 has been placed on record and it is at page Nos. 35 and 36 (both inclusive).

4. The respondent Nos. 1 and 2 have resisted the claim and submitted that the applicant's name was recommended by the concerned Departmental Promotion Committee with a condition that a conscious decision of promoting the applicant may be taken in view of the departmental proceedings initiated against him and from time to time a conscious decision has been taken against the applicant and it was decided not to promote him, considering the serious charges levelled against him and also considering the fact that the applicant was under suspension.

5. The learned counsel for the applicant has invited our attention to Clauses 2 and 3 of the G.R. dated 2.4.1976. Said clause 2 and 3 read as under:-

“2. The stage of preparing of select list:

(a) At the time of drawing up of the select list, the case of a person facing an investigation or departmental enquiry should be considered in the same manner in which the cases of other persons are considered i.e. on the basis of his

previous record of service. If on the basis of his record, he is found fit for promotion, his name should be included in the select list at the appropriate place; but this inclusion should be considered to the purely provisional to be reviewed after the conclusion of the departmental enquiry or investigation if on conclusion of the investigation it is decided that a departmental enquiry is not necessary. This position will apply to all persons irrespective of whether they are under suspension or not.

- (b) If the state of his record is such that because of his suspension, his record for the past 2/3 years is not available and so no decision either way can be taken then the Selection Committee should keep his case 'open' i.e. to be considered at the later date without prejudice to him because of the delay.
- (c) If, on the basis of his record, he is not found fit for promotion, no further question arises.

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 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.”

6. Perusal of the aforesaid G.R. clearly shows that during the pendency of proceedings, question of promoting a person under suspension, does not arise and such a person shall not be promoted. Clause 3 (a) and (b) of the G.R. dated 2.4.1976 clearly shows that a conscious decision is required to be taken in case of a person who is under suspension after considering the nature of charges levelled against him. The applicant is admittedly under suspension and he was under suspension at the time of considering of his claim for so-called promotion and, therefore, a conscious decision was required to be taken by the competent authority.

7. The learned P.O. has placed on record relevant documents, wherefrom it seems that a conscious decision

has been taken. Case of the applicant was referred to the Additional Chief Secretary (Agriculture) by the then Deputy Secretary as per Annexure R-1 dated 13.11.2009. The learned P.O. has also placed on record the minutes of the various meetings, in which the case of the applicant was considered from time to time, such as minutes of the meeting dated 5.9.2009 (Pages 41 to 45) (both inclusive) and minutes of the meeting dated 13.11.2009 (Pages 46 to 52) (both inclusive) and considering the allegations levelled against the applicant, the Competent Committee decided not to promote the applicant and also because the applicant was under suspension and the departmental enquiry of serious charges was pending against him. No malafides are alleged against the Competent Committee and, therefore, in such circumstances, we are satisfied that the respondents have taken a conscious decision not to promote the applicant, considering serious nature of allegations against him and same decision is perfectly as per the guidelines issued in the G.R. dated 2.4.1976. We, therefore, do not find it a fit case to interfere in the decision taken by the respondent Competent Committee. Hence, we proceed to pass the following order:-

ORDER

The O.A. is dismissed with no order as to costs.

(Shree Bhagwan)
Member (A)

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

Dt. 10th August 2018.

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