

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 814 of 2022 (S.B.)

Naina W/o Shekhar Pohekar,
Aged about 51 years, Occ. Service,
R/o Kapilvastu Nagar, Gorakshan Road,
Akola, Dist. Akola.

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.

Respondents.

Shri S.P. Palshikar, Advocate for the applicants.
Shri M.I. Khan, learned P.O. for respondents.

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

Dated :- 09/12/2022.

JUDGMENT

Heard Shri S.P. Palshikar, learned counsel for applicant
and Shri M.I. Khan, learned P.O. for respondents.

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

The applicant was appointed as a Police Constable and
posted at Akola. She was promoted as a Police Sub Inspector (PSI)
through the Maharashtra Public Service Commission (MPSC). In the
year 2011, she was further promoted as an Assistant Police Inspector

(API). In the year 2022, she was promoted as a Police Inspector (PI) and at present she is working in that capacity at Police Training Centre, Akola.

3. On 04/12/2012 the complaint was lodged regarding the acceptance of bribe by the applicant. The Crime No.3100/2012 was registered for the offence punishable under section 7 of the Prevention of Corruption Act. On 12/12/2012, the applicant was arrested. On 13/12/2012, the applicant was put under suspension. On 16/01/2015, suspension was revoked, but suspension was treated as it is and no any salary of the suspension period was paid except the subsistence allowance.

4. On the same charges, the departmental inquiry was initiated. As per order dated 30/09/2019, the applicant was reverted from the post of Assistant Police Inspector (API) to Police Sub Inspector (PSI) for two years. The appeal was preferred before the State Minister of Home. The State Minister of Home passed the order dated 11/11/2020. The appeal was allowed and punishment was set aside and warning was given to the applicant. The applicant approached to this Tribunal for direction to the respondents to treat the suspension period from 12/12/2012 to 21/01/2015 as a duty period and pay all the consequential benefits. The applicant further prayed

for direction to respondent no.2 to grant deemed date of promotion in favour of applicant as a Police Inspector (PI).

5. The O.A. is strongly opposed by the respondents. It is submitted that because of the departmental inquiry, the applicant was not promoted. The order passed by the Appellate Authority, i.e., the Minister is legal and proper. The applicant has demanded and accepted the bribe therefore in the departmental inquiry she was reverted from the post of Assistant Police Inspector (API) to Police Sub Inspector (PSI). In the appeal, warning is given. At last submitted that the O.A. be dismissed.

6. Heard learned counsel for the applicant Shri S.P. Palshikar. He has pointed out the copy of order dated 28/07/2017 (P-66 to 70) passed by the Special IGP, M.S., Mumbai. He has submitted that the applicant was not given promotion because of the punishment, but in the appeal the punishment was set aside and only warning was given to the applicant and therefore she is entitled for deemed date of promotion. Hence, prayed to allow the O.A.

7. Heard learned P.O. for respondents Shri M.I. Khan. He has strongly opposed the O.A. As per his submission, the order passed by the respondents regarding suspension is legal and proper. She was punished and therefore she was not promoted and hence she cannot claim for deemed date of promotion.

8. From the perusal of order dated 15/06/2017 passed in Special Case No.19/2015, it is clear that the applicant was arrested for the offence punishable under Sections 7,12 13 (1) (d) of the Prevention of the Corruption Act. The applicant was discharged of the said offence. Thereafter, the applicant made representation and the order of suspension was revoked, but suspension period was treated as it is and no salary except the subsistence allowance was paid to the applicant.

9. Once the applicant is discharged from the Criminal offence, then it is duty for the authority to revoke the suspension and shall treat the suspension period as a duty period. The order dated 15/06/2017 clearly shows that without recording any evidence the applicant was discharged. It appears from the order that the application Exh-X 23 & 28 was moved by the Anti Corruption Bureau before the Special Court. It shows that though the applicant / accused was a public servant, sanction has been declined by the Sanctioning Authority to prosecute her under the said offence. As such, it is clear that charge sheet has been filed against the applicant for the offence under Prevention of Corruption Act without any sanction. The prosecution admitted that there is no previous sanction to prosecute the applicant and therefore the applicant was discharged. It is clear that without recording any evidence, the applicant was discharged

before framing the charge. Therefore, it is clear that there was no material to frame the charges for the offence for which she was arrested. Hence it was the duty of the respondents to revoke the suspension period and the said period should have been treated as a duty period with all consequential benefits.

10. The applicant has approached to this Tribunal because of the punishment, she was reverted from the post of Assistant Police Inspector (API) to Police Sub Inspector (PSI). She has preferred appeal before the State Minister of Home. In the appeal, State Minister of Home has set aside the punishment order and only warning was given to the applicant. As per the submission of learned counsel for the applicant, other juniors namely Khedekar Raosaheb Manjabapu etc. were promoted and therefore she is entitled for deemed date of promotion.

11. Nothing is on record to show that the applicant is senior to Khedekar Raosaheb Manjabapu etc. The documents filed on record do not show that those are the seniority list. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to treat the suspension period as duty period from 12/12/2012 to 21/01/2015 and shall pay all the consequential benefits after deducting the subsistence allowance paid to the applicant.

(iii) The respondents are directed to consider the representation of the applicant dated 11/04/2022 (A-14,P-60) for granting deemed date of promotion within a period of three months.

(iv) No order as to costs.

Dated :- 09/12/2022.

(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 Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 09/12/2022.

Ok**