

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No.971 of 2022 (D.B.)

Deepak S/o Ramkrishna Koli,
aged 53 years, Occ. Service,
R/o Khamgaon Road, Sundarkhed,
Dist. Buldhana.

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 applicant.

Shri M.I. Khan, learned P.O. for respondents.

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

Dated :- 02/02/2024.

JUDGMENT

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

2. As per the M.A.T., Principal Bench, Mumbai office order / letter No.MAT/MUM/JUD/1350/2023, dated 21/11/2023, the Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai has given direction to

this Tribunal to decide the Division Bench matters if the matter is covered by the Judgments of Hon'ble Supreme Court, Hon'ble High Court and the Benches of the M.A.T. etc.

3. The learned P.O. has filed letter dated 01/02/2024 sent by the Additional Superintendent of Police (ACB), Mumbai. It is marked Exh-X for identification. As per this letter, Special case for A.C.B. is pending against the applicant in the Court of Malkapur, District Buldana.

4. As per the submission of learned counsel for applicant, this O.A. is covered by the various Judgments of the Hon'ble Supreme Court in the case of the ***Union of India Vs. K.V.Jankiraman And Others reported in (1991) 4 SCC 109***, decided on 27.08.1991 and in the case of ***Union of India And Others Vs. Anil Kumar Sarkar(2013) 4 SCC 161***, decided on 15.03.2013 and also the Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.1672/2022, decided on 05/10/2022. Hence, the matter is heard and decided finally with the consent of learned counsel for both the parties.

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

The applicant was appointed on the post of Police Sub Inspector on 17/08/1992. He was promoted on the post of Assistant

Police Inspector on 24/10/2002. Thereafter, the applicant was promoted as Police Inspector on 10/05/2007. Next promotion of the applicant is that of Dy. Superintendent of Police / Assistant Commissioner of Police.

6. On 12/06/2020, respondent no.2 published the list of persons who were due for promotion. In that list the name of applicant is shown at Sr.No.33. But in the remarks column, it is mentioned that the ACRs of the year 2017-18 and 2018-19 are not available. Thereafter, on 24/01/2022 again another list was published for promotion. The name of applicant is shown at Sr.No.20, but ignoring his claim juniors to the applicant were promoted. The applicant has made representation, but the respondents have not taken any cognizance. Hence, the applicant approached to this Tribunal for the following reliefs –

“(i) issue necessary directions to the respondents to consider and issue order of promotion in favour of the applicant as a Dy. Superintendent of Police / Assistant Commissioner of Police forthwith in accordance with law;
(ii) further be pleased to direct the respondent No.2 to give deemed date of promotion as a Dy. Superintendent of Police / Assistant Commissioner of Police as of year 2020 when his name was shown in the list promotion by granting him all monetary benefits arising therefrom.”

7. The O.A. is strongly opposed by the respondents. It is submitted that the applicant was not in the zone of consideration for promotion, because, he was dismissed from service. Thereafter, the

said dismissal was set aside by the Home State Minister as per the order dated 29/08/2019. Thereafter, the respondents have taken the name of applicant in the zone of consideration before the DPC and sealed cover procedure was followed as per the G.R. dated 15/12/2017. It is submitted that the applicant is facing criminal case in respect of acceptance of bribe punishable under Section 7 and 13 r/w Section 13 of the Prevention of Corruption Act. The said special case is pending before the Special Court, Malkapur District Buldana and therefore the applicant is not promoted.

8. During the course of submission, the learned counsel for applicant has pointed out the order passed by State Home Minister dated 29/08/2019. The operative part of the order is reproduced as below –

निर्णय

- १) वादी श्री. दिपक रामकृष्ण कोळी पोलीस निरीक्षक, तत्का. नेम. धुळे शहर पोलीस ठाणे यांचा अपील अर्ज मान्य करण्यात येत आहे.
- २) वादी श्री. दिपक रामकृष्ण कोळी पोलीस निरीक्षक, तत्का. नेम. धुळे शहर पोलीस ठाणे शिस्तभंग प्राधिकारी यांनी अंतिम आदेशात दिलेली "शासन सेवेतून सक्तीने सेवानिवृत्त करणे (Compulsorily retired from service)" ही शिक्षा रद्द करून "पोलीस निरीक्षक पदाच्या मुळ पदावर ०३ वर्षाकरीता ठेवणे" ही शिक्षा देण्यात येत आहे.
- ३) वादी श्री. दिपक रामकृष्ण कोळी पोलीस निरीक्षक, तत्का. नेम. १ धुळे शहर पोलीस ठाणे यांना ३ वर्षाकरीता अकार्यकारी पदावर ठेवण्यात यावे.

- ४) वादी श्री. दिपक रामकृष्ण कोळी पोलीस निरीक्षक, तत्का, नेम. धुळे शहर पोलीस ठाणे यांना शासनसेवेत रुजू करताना सर्व नियमांचे पालन करून नोकरी करण्याचे हमीपत्र त्यांच्याकडून घेण्यात यावे.
- ५) वादी श्री. दिपक रामकृष्ण कोळी, पोलीस निरीक्षक, तत्का नेम. धुळे शहर पोलीस ठाणे यांना ०२ वर्षे निरीक्षणाखाली ठेवून पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई यांनी त्याबाबतचा अहवाल दरमहा प्रमाणित करावा.
- ६) वरीलप्रमाणे क्र.४) व ५) प्रमाणे कसुरी आढळून आल्यास पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई यांनी वादी श्री. कोळी यांचेविरुद्ध नियमानुसार योग्य ती कारवाई करावी.
- ७) वादी श्री, दिपक रामकृष्ण कोळी पोलीस निरीक्षक, तत्का. नेम. धुळे शहर पोलीस ठाणे यांना "शासन सेवेतून सक्तीने सेवानिवृत्त करणे" केल्याच्या दिनांकापासून सेवेत पुनःस्थापना करण्याच्या दिनांकापर्यंतचा पुनःस्थापित केल्यापर्यंतचा सेवाबाह्य कालावधी हा निवृत्तीवेतनाखेरीज अन्य कोणत्याही प्रयोजनार्थ कर्तव्यकाळ म्हणून नियमित करण्यात येऊ नये. विना काम विना वेतन (No Work No Pay) या तत्वानुसार पुढील कार्यवाही करावी.
- ८) वरील निर्णयाप्रमाणे संबंधितांनी आवश्यक ती कार्यवाही करावी.

9. As per the submission of learned counsel for applicant, the punishment of dismissal was set aside by the State Home Minister. Instead of that, he was kept on the post of Police Inspector for a period of three years, this order is dated 29/08/2019. Three years period is already lapsed and therefore the applicant is entitled for promotion even during the pendency of criminal case.

10. The learned counsel for the applicant has pointed out the Judgments of the Hon'ble Supreme Court in the case of the **Union of**

India Vs. K.V.Jankiraman And Others reported in (1991) 4 SCC 109, decided on 27.08.1991 and in the case of ***Union of India And Others Vs. Anil Kumar Sarkar(2013) 4 SCC 161***, decided on 15.03.2013 and also the Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.1672/2022, decided on 05/10/2022.

11. During the course of submission, the learned P.O. has submitted that the applicant had challenged the dismissal order before this Tribunal and the O.A. was dismissed on 07/07/2023. The learned counsel for applicant has submitted that it will not make any effect because the dismissal order was set aside by the State Home Minister.

12. The learned counsel for applicant has submitted that the order of State Home Minister dated 29/08/2019 was challenged in O.A.No.418/2021. Though the O.A. was dismissed, but the effect of the order now is over, because, as per the punishment imposed by the State Home Minister, the applicant was kept on the original post of Police Inspector for a period of three years. This order is dated 29/08/2019. Therefore, after three years the applicant is entitled for promotion.

13. The learned P.O. has submitted that in the next DPC, the name of applicant will be considered by the respondents.

14. The learned counsel for the applicant has pointed out the list of Police Inspector who are in the zone of consideration for promotion on the post of Dy. Superintendent of Police / Assistant Commissioner of Police. It is dated 19/10/2023. The name of applicant is shown at Sr.No.4.

15. There is no dispute that the respondents have followed the sealed cover procedure as per the guidelines given in the G.R. dated 15/12/2017. As per the procedure laid down in the said G.R., the sealed cover is to be opened in the next DPC. The respondents may not grant promotion due to the pendency of criminal case.

16. The Hon'ble Supreme Court in the case of the ***Union of India Vs. K.V.Jankiraman And Others reported in (1991) 4 SCC 109***, decided on 27.08.1991 and in the case of ***Union of India And Others Vs. Anil Kumar Sarkar(2013) 4 SCC 161***, decided on 15.03.2013, has held that the promotion cannot be denied because of the pendency of criminal case / departmental enquiry. Promotion can be granted subject to the decision of departmental enquiry / criminal case. In the recent Judgment the Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.1672/2022 has held that pendency of criminal offence / case cannot be a ground to deny the promotion. Therefore, respondent nos.2 and 3 (in that petition) was directed to

grant temporary promotion to the petitioners. The same view was taken in Writ Petition No.4921/2019, decided on 30/04/2020.

17. The learned counsel for applicant has also pointed out the Judgment of this Tribunal in O.A.No.427/2023, decided on 07/12/2023.

18. There is no dispute that the cantina of decisions of the Hon'ble Supreme Court, Hon'ble High Court and this Tribunal clearly show that during the pendency of criminal case or departmental enquiry, promotion can be granted subject to the decision of criminal case or departmental enquiry. The applicant is facing criminal case pending before the Special Court, Malkapur, District Buldana. His name is in the list of zone of consideration. His name is at Sr.No.4. In the last DPC, the applicant was considered, but because of the pendency of criminal case, sealed cover procedure was applied as per the G.R. dated 15/12/2017. The Hon'ble Supreme Court and Hon'ble Bombay High Court directed to open the sealed cover and promote the candidates subject to the decision of criminal case / departmental enquiry.

19. The applicant is entitled for promotion in view of the above cited decisions of the Hon'ble Supreme Court and Hon'ble Bombay High Court. There is no dispute that no any departmental enquiry is

pending against the applicant except criminal case. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to promote the applicant on the post of Dy. Superintendent of Police / Assistant Commissioner of Police and give deemed date of promotion subject to decision of criminal case pending against him, as per the law. However, the applicant shall not be entitled to claim any arrears.

(iii) The respondents shall comply the direction in coming DPC.

(iv) No order as to costs.

Dated :- 02/02/2024.

**(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 P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 02/02/2024.