

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 485/2021 (D.B.)

Dilip S/o Shamrao Tekade,
Aged about 57 years,
Occ. Service, R/o 22, Navjeevan Colony,
Ajni, Wardha Road, Nagpur – 440 015.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-400 032.
- 2) The Principal Chief Conservator of Forests,
(HOFF) Maharashtra State, Van Bhavan,
Ramgiri Road, Civil Lines, Nagpur-440 001.

Respondents.

Shri R.M. Fating, Advocate for the applicant.

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

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Justice M.G. Giratkar,
Member (J).**

Date of Reserving for Judgment : 13th January,2022.

Date of Pronouncement of Judgment : 24th January,2022.

JUDGMENT

Per : Member (J).

(Delivered on this 24th day of January, 2022)

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

2. The applicant has filed the present O.A. with a following prayer –

“(i) hold and declare that the applicant is entitled to get promotion on the post of Divisional Forest Officer by virtue of seniority;

(ii) direct the respondents to evaluate the case of the applicant and take conscious decision in the matter of promotion of the applicant on the post of Divisional Forest Officer in view of provisions in clause 9 of para 1 of Government Resolution dated 15/12/2017 (Annexure-A-16) in the interest of justice;

(ii) (a) quash and set aside the impugned communication dated 18/10/2021 issued by the respondent no.1, Principal Secretary, Department of Revenue and Forest, Mantralaya, Mumbai, thereby mechanically rejecting the promotion of the applicant on the ground of non-fulfilment of clause 9 (b) and 9 (g) of G.R. dated 15/12/2017, without there being any concrete and valid reasons for rejection of the promotion of the applicant, in the interest of justice;

(ii) (b) direct the respondent no.1 to consider the applicant for ad-hoc promotion on the post of Divisional Forest Officer, as the applicant is fulfilling all criteria enumerated in clause 9 (a) to 9 (g) of G.R. dated 15/12/2017, in the interest of justice.

(iii) grant any other relief which this Hon’ble Tribunal deems fit just and proper in the facts and circumstances of the case.”

3. The case of the applicant in short as under –

4. The applicant was appointed as Range Forest Officer (RFO) by the MPSC. He was appointed on the said post on 13/2/1987. Thereafter, the applicant had undergone training as required. The applicant was posted at several places i.e. at Nagpur, Gondia, Bhandara and Wardha Districts as a Range Forest Officer.

5. The applicant came to be promoted on the post of Assistant Conservator of Forests vide G.R. dated 21/2/2014 issued by the respondent no.1. He was posted as Assistant Conservator of Forests (EGS and Wild Life), Gondia. The applicant joined his duty on the said post on 11/3/2014. The applicant was continuously working with the respondents and discharging duties as Assistant Conservator of Forests. The State of Maharashtra vide G.R. dated 3/9/2014 declared the Assistant Conservator of Forests as Head of office and in pursuance thereof the applicant had taken charge of Sadak Arjuni Range against Tiroda Range in Gondia district. The applicant handed over the charge of Tiroda Range to Shri A.O. Thakkar, Assistant Conservator of Forests (Tendu and Campa), Gondia on 27/1/2015.

6. After completion of 24 years of service, the applicant was due for second benefit of Assured Career Progression Scheme (ACPS). Accordingly, the second benefit of ACPS had been extended

to the applicant w.e.f. 1/1/2014 in the cadre of Divisional Forest Officer (DFO).

7. The applicant was falsely implicated in the criminal case, after handing over the charge of Tiroda Range. He is prosecuted for an offence punishable under Section 7,13 (1), 13 (2) of the Prevention of Corruption Act. The applicant made representation on 9/2/2015 before the Divisional Conservator of Forests, Gondia clarifying the issue in which he is falsely implicated and elaborated the entire facts of alleged allegations. Accordingly, the Deputy Conservator of Forests, Gondia primarily investigated the fact and submitted the report before the Chief Conservator of Forests (Territory), Nagpur on 11/2/2015. The Chief Conservator of Forests submitted the preliminary report to the respondent no.1 on 12/2/2015. The applicant is due for promotion as Divisional Forest Officer (DFO). The respondent no.2 vide communication dated 22/5/2019 submitted information of Assistant Conservator of Forests (ACF) who were in the zone of consideration for promotion to the respondent no.1. The name of the applicant had also been included in the selection list of 2018-2019. The applicant was senior most in the cadre of Assistant Conservator of Forests (ACF). However, he was not considered for promotion as the court matter is pending against the applicant, his proposal has been kept pending in sealed envelope. The name of the

applicant has also been included in the selection list of 2019-2020, but the decision of promotion of applicant was not taken.

8. The respondent no.1, the State of Maharashtra has issued communication dated 18/10/2021 thereby communicated to the respondent no.2 that the criminal case is pending against the applicant for an offence punishable under Section 7,13 (1), 13 (2) of the Prevention of Corruption Act and therefore in view of Clause 9 (b) and 9 (g) of the G.R. dated 15/12/2017, the applicant cannot be promoted to the post of Divisional Forest Officer. Hence, by filing present O.A. the applicant is challenging the impugned order.

9. The respondents have filed their reply and strongly objected the O.A. It is submitted that the guide lines are given in the G.R. dated 15/12/2017. As per the G.R. if the criminal case / departmental enquiry is pending, then the decision of the DPC is to be kept in sealed envelope and it is to be open in the next DPC.

10. It is submitted that the applicant was suspended vide order dated 18/2/2015. Subsequently, it was revoked and he was given posting as Assistant Conservator of Forests (ACF), Working Plan Division, Amravati. The respondent no.2 submitted proposal for preparing select list of 2018-19 and 2019-20 in which name of the present applicant was included. The Departmental Promotion Committee (DPC) meeting was held on 12/6/2019 and 27/8/2020

respectively and kept the name of the applicant under sealed cover as the case of anti-corruption is pending against him. The decision of the respondents is taken as per the clause 9 (b) & 9 (g) of the G.R. dated 15/12/2017. At last it is submitted that the decision taken of the respondents is perfectly legal and correct and therefore the O.A. is liable to be dismissed.

11. The learned counsel for the applicant submitted that the pendency of criminal case cannot be a ground for the promotion of the applicant. Since last 5 years criminal case is pending before the Special Court at Gondia. The applicant is not responsible for the delay of the said criminal case.

12. The learned counsel for the applicant submitted that the applicant has crossed more than 57 years age and he is due for retirement shortly. Therefore, the impugned order passed by the respondents is liable to be quashed and set aside. The respondents be directed to promote the applicant on the post of Divisional Forest Officer.

13. Heard the learned P.O. He has pointed out the G.R. dated 15/12/2017. The learned P.O. has submitted that the applicant is facing the charges of corruption case which are still pending before the Special Court Gondia. In view of the provisions of Clause 9 (b) & (g) in the G.R. dated 15/12/2017, the applicant is not entitled for

promotion. The decision taken by the respondents is perfectly legal and correct and hence the O.A. is liable to be dismissed. In support of his submission, he pointed out the Judgment in case of **State of Tamil Nadu & Ors. Vs. E. Rangachari (2012) 12 SCC,462.**

14. There is no dispute that the applicant was trapped by the ACB. The applicant is charge-sheeted. The said criminal case is pending before the Special Court, Gondia. The applicant was suspended. Subsequently, the suspension was revoked and he was posted at Amravati and thereafter at Nagpur.

15. The applicant was eligible for promotion to the post of Divisional Forest Officer, therefore, his case was considered by the DPC. As per the guidelines in G.R. dated 15/12/2017, the result of DPC was kept in pending and it was also kept before the subsequent DPC of the year 2019-20. The applicant was not given promotion, because, of the pendency of criminal case. The respondents has informed the applicant that in view of the clause 9 (b) and 9 (g) of the G.R. dated 15/12/2017, he cannot be promoted to the post of Divisional Forest Officer.

16. The G.R. dated 15/12/2017 is very much clear, therefore, clause no.9 of the said G.R. is reproduced as under –

९) विभागीय पदोन्नती समितीच्या मूळ बैठकीच्या दिनांकापासून दोन वर्षे झाल्यानंतरही मोहोरबंद पाकीटात निष्कर्ष ठेवलेल्या अधिकारी/कर्मचाऱ्यांच्या, शिस्तभंगविषयक /न्यायालयीन कार्यवाही प्रकरणी अंतिम निर्णय झालेला नसल्यास, अशा प्रकरणी नियुक्ती प्राधिकारी स्वविवेकानुसार संबंधीत अधिकारी/कर्मचाऱ्याला तदर्थ पदोन्नती देण्याबाबत जाणीवपूर्वक निर्णय घेईल. असा निर्णय घेताना नियुक्ती प्राधिकारी, खालील मुद्दे विचारात घेईल.

- अ) संबंधितांविरुद्धची शिस्तभंगविषयक/न्यायालयीन कार्यवाही बराच काळ प्रलंबित राहण्याची शक्यता,
- ब) दोषारोपांचे गांभीर्य,
- क) द्यावयाची पदोन्नती जनहिताच्या विरुद्ध जाईल का,
- ड) शिस्तभंगविषयक/न्यायालयीन कार्यवाही लांबण्यास संबंधीत अधिकारी /कर्मचारी जबाबदार आहे का?
- इ) संबंधित अधिकारी/कर्मचाऱ्यास तदर्थ पदोन्नती दिल्यानंतर, पदोन्नतीच्या पदावर काम केल्यामुळे, संबंधित अधिकारी/कर्मचाऱ्याच्या शिस्तभंगविषयक /न्यायालयीन कार्यवाहीच्या प्रकरणांवर परिणाम होण्याची शक्यता आहे का? किंवा संबंधीत अधिकारी/कर्मचारी पदोन्नतीच्या पदाचा त्यासाठी दुरुपयोग करण्याची शक्यता आहे का?
- फ) न्यायालयीन कार्यवाही बाबतची सद्यस्थिती / अभियोगाबाबतचे किती टप्पे पार पडले याबाबतची माहिती करून घ्यावी.
- ग) सेवानिवृत्तीस १ वर्ष शिल्लक असेल तर पदोन्नती न देण्याच्या अनुषंगाने सेवानिवृत्तीचा कालावधी विचारात घेणे (तदर्थ पदोन्नती दिल्यास वरिष्ठ वेतनश्रेणी प्राप्त झाल्यामुळे सेवानिवृत्तीनंतर मिळणारे सेवानिवृत्ती वेतनाचा ज्यादा लाभ प्राप्त होणार असल्यामुळे सेवानिवृत्तीस एक वर्ष शिल्लक असलेल्यांना तदर्थ पदोन्नती देण्यात येऊ नये याकरीता ही बाब तपासणे आवश्यक आहे.)

17. As per the clause 9 (b), the offence punishable under the Prevention of Corruption Act is serious offence against the applicant and looking to the seriousness of the charge sheet pending against

the applicant, he is not promoted as per the clause 9 (b) of the said G.R. The applicant is about to retire and therefore he is not promoted as per clause 9 (g) of the said G.R. The decision taken by the respondents for not promoting the applicant cannot be said to be illegal in view of the guidelines in the G.R. dated 15/12/2017.

18. The Hon'ble Supreme Court in case of **State of Tamil Nadu & Ors. Vs. E. Rangachari (2012) 12 SCC,462** has held that tainted officer cannot be promoted during pendency of the criminal case, he may, after acquittal in criminal case would be entitled to all reliefs according to the rules. Therefore, in view of the Judgment of Hon'ble Apex Court, refusal of promotion to the applicant on the post of Divisional Forest Officer because of pendency of criminal case cannot be said to be faulted.

19. In that view of the matter, the O.A. is dismissed. No order as to costs.

(Justice M.G. Giratkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 24/01/2022.

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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 V.C. and Member (J).

Judgment signed on : 24/01/2022.

Uploaded on : 24/01/2022*