

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 989/2018 (D.B.)

Manish S/o Radheshyam Choumwal,
Aged about 46 years,
R/o Pattalwar Line, Tilak Chowk,
Paratwada, Dist. Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Urban Development,
Mantralaya, Mumbai-32.
- 2) Commissioner and Director of Municipal Administration,
Office of Director of Municipal Administration,
Government Transport Services Building,
3rd Floor, Sir Pochkhanwala Road,
Warli, Mumbai-400030.
- 3) Collector, Amravati
- 4) Municipal Council, Nagar Parishad Akot,
Dist. Akola through its Chief Officer.
- 5) S.P. Mete,
Presently working at the office of Nagar Parishad,
Warud, Dist. Amravati.
- 6) Santosh B. Mulkalwar,
Nagar Parishad,
Working in the office of Nagar Parishad,
Wanadongri, Dist. Nagpur.

Respondents

Shri N.R.Saboo, Id. Advocate for the applicant.

Shri S.A.Sainis, Id. P.O. for the respondents.

Shri L.H.Kothari, Id. Counsel for the respondent no. 5.

**Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman &
Hon'ble Shri M.A.Lovekar, Member (J).**

JUDGMENT

Judgment is reserved on 28th Nov., 2022.

Judgment is pronounced on 06th Dec., 2022.

(Per:-Member (J))

Heard Shri N.R.Saboo, learned counsel for the applicant, Shri S.A.Sainis, learned P.O. for the Respondents and Shri L.H.Kothari, Id. Counsel for the R-5.

2. Case of the applicant is as follows. The applicant was employee of Municipal Council, Achalpur. By order dated 12.12.2007 (A-1) passed by respondent no. 2 he was absorbed in State Cadre. In June, 2016 when he was working in Municipal Council, Anjangaon Surji, by order dated 24.06.2016, he was placed under suspension. Suspension was revoked vide order dated 01.03.2018. Vide order dated 30.06.2018 he was transferred to Nagar Parishad, Akot. Enquiry was neither proposed against him nor was he served with a chargesheet. Therefore, he should have been considered for the promotional post of State Engineering Services (Civil, Grade-B). Vide Circular dated 31.10.2017 (A-3)

provisional seniority list of Maharashtra Municipal Engineering Services (Civil Grade-C) was notified. Options were called from eligible employees for promotion from Grade-C to Grade-B, by the Deputy Director, Municipal Administration on 26.10.2018. Such option was called also from respondents 5 & 6 though they were junior to him, but not from the applicant. Being aggrieved by this the applicant made a representation (A-4) to the Director, Municipal Administration. It was not considered. Respondent no. 2 issued the impugned order dated 28.11.2018 (A-5) promoting several Grade-C employees to Grade-B, including respondents 5 & 6. Hence, this original application for following reliefs-

“i) Quash and set aside order of promotion dated 28.11.2018 issued by respondent no. 2 Director of Municipal Administration, Mumbai at Annexure-A-5, in granting promotion to junior employees including respondent no. 5 & 6 in the Maharashtra Municipal Engineering Service (Civil) Grade B.

ii) By appropriate order be pleased to allow the original application with further direction to the respondent – department to grant and consider the promotion of the applicant in the cadre Maharashtra Municipal Engineering Service (Civil) Grade B and grant deemed date to the applicant for such promotion along with all the consequential benefits and arrears payable to the applicant in view of the promotion.

iii) To grant any other relief, which this Hon'ble Tribunal deems fit."

3. Reply of respondent no. 2 at pages 48 to 53 contains following averment. The meeting of D.P.C. was held on 23.10.2018. The applicant was placed under suspension on 24.06.2016. Suspension was revoked on 28.02.2017. Thus, on the date of D.P.C. the applicant was no longer under suspension. However, criminal case registered at Anjangaon Surji on 23.06.2016 (F.I.R. No. 0277) was pending on the date of D.P.C.. Therefore, the D.P.C. adopted "sealed envelope procedure" as per para 1 (c) of G.R. dated 15.12.2017 and G.R. dated 30.11.2018 (A-R-1 collectively).

4. Para 1-C of G.R. dated 15.12.2017 stipulates that if on the date of D.P.C. judicial proceeding is pending "sealed envelope procedure" has to be adopted. This G.R. also lays down further guidelines to take care of various contingencies. Para 4 of this G.R. provides for review of case of such employee six months after the D.P.C. wherein the sealed envelope procedure is resorted to on account of pendency of departmental inquiry. Para 7 of this G.R. lays down that if either departmental or judicial proceeding is pending even at the time of review (after six months as provided in para 4) the decision (with regard to promotion) shall not be taken by opening the sealed envelope. Para 9 of the G.R. states that if the departmental or judicial proceeding is still pending even after two years from the date of D.P.C. the appointing authority shall, by

exercising his discretion/ volition, take a conscious decision about promoting such employee on adhoc basis regard being had to Clauses A to G of said para. Para 11 of the G.R. states –

“विभागीय पदोन्नती समितीच्या पहिल्या बैठकीनंतर दोन वर्षांनी शिस्तभंगविषयक/ न्यायालयीन कार्यवाहीच्या अंतिम निर्णयाच्या अधिन संबंधित अधिकारी/ कर्मचा-यास तदर्थ पदोन्नती देणे आवश्यक आहे, असे सक्षम प्राधिका-याचे मत झाल्यास मोहोरबंद पाकिट उघडण्यात येवू नये. विभागीय पदोन्नती समितीची बैठक बोलावून संबंधित अधिकारी/ कर्मचा-याची पात्रता / अपात्रता नव्याने तपासावी. पुन्हा नव्याने पात्रता तपासल्यानंतर संबंधित अधिकारी/कर्मचारी पदोन्नतीसाठी पात्र ठरल्यास, त्यांना ११ महिन्यांसाठी किंवा विभागीय चौकशी/न्यायालयीन कार्यवाही अंतिम होईल यापैकी जे अगोदर होईल तेवढ्या कालावधीसाठी खालील अटीच्या अधिन राहून निव्वळ तदर्थ पदोन्नती देण्यात यावी. खालील अटी व शर्ती तदर्थ पदोन्नतीच्या आदेशामध्ये सुस्पष्टपणे नमूद कराव्यात-

१) शिस्तभंगविषयक/न्यायालयीन कार्यवाहीच्या अधिन दिली जाणारी तदर्थ पदोन्नती केवळ तात्पुरती असेल व या तदर्थ पदोन्नतीमुळे नियमितपणाचे व ज्येष्ठतेचे कोणतेही लाभ अशा अधिकारी/कर्मचा-यांना मिळणार नाहीत.

२) ही तदर्थ पदोन्नती ‘पुढील आदेशापर्यंत असेल’ तसेच कोणत्याही वेळी दिलेली तदर्थ पदोन्नती रद्द करून मूळ पदावर पदावनत करण्याचा हक्क शासन राखून ठेवीत आहे.”

5. G.R. of G.A.D., Government of Maharashtra dated 01.08.2019 is compilation of various G.Rs. issued from time to time by way of guidelines for giving promotions. It *inter alia* refers to G.Rs. dated 15.12.2017 and 30.08.2018. We have dealt with relevant guidelines contained in G.R. dated 15.12.2017. Specific assertion of respondent 2 is that in case of the applicant, in D.P.C. dated 23.10.2018, sealed envelope

procedure was adopted because of pendency of criminal case against him. This has not been controverted by the applicant by filing a rejoinder. In fact the O.A. is silent, regarding suspension of the applicant being on account of registration of offence and pendency of a criminal case registered in furtherance thereof.

6. By G.R. dated 30.08.2018 para 1 (4) of G.R. dated 15.12.2017 was amended w.e.f. 15.12.2017. It adds Clauses a and b which lay down the procedure to be adopted in cases where the employee is undergoing punishment. Such contingency has not arisen in the instant case.

7. Thus, it is apparent that on the date of D.P.C. criminal case was pending against the applicant i.e. before the date on which the D.P.C. was held he was chargesheeted in a criminal case.

8. Having regard to the factual and legal background discussed above, this original application deserves to be disposed of by passing the following order:-

O R D E R

The D.P.C. shall, in the matter of promotion of the applicant, proceed in accordance with para 11 of G.R. dated 15.12.2017, take necessary decision **within one month from today and communicate the same to the applicant forthwith.** In case the applicant is aggrieved by the said decision he would be at liberty to file appropriate proceeding in

accordance with law. With these directions the original application is disposed of with no order as to costs.

(M.A.Lovekar)
Member(J)

aps

Dated -06/12/2022

(Shree Bhagwan)
Vice Chairman

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman
& Hon'ble Member (J).

Judgment signed : 06/12/2022.
on and pronounced on

Uploaded on : 07/12/2022.