

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.109 OF 2015**

**WITH**

**ORIGINAL APPLICATION NO.110 OF 2015**

**DISTRICT : PUNE**

Smt. Jayshree Popat Jadhav (Mali), )  
Tahsildar, Office of District Rehabilitation )  
Officer, Old Zilla Parishad Building, Pune )  
R/o 18, Queens Garden, )  
General Vaidya Chowk, Pune )  
Address for service of notice: )  
Shri A.V. Bandiwadekar, Advocate, )  
9, Ram Kripa, Lt. Dilip Gupte Marg, Mahim, )  
Mumbai 400016 )..Applicant

Versus

1. The State of Maharashtra, )  
Through Additional Chief Secretary )  
(Revenue), Revenue & Forest Department,) )  
Mantralaya, Mumbai 400032 )
2. Mr. B.B. Waghmode, )  
Sub Divisional Officer, Khamgaon, )  
District Buldhana )..Respondents



Shri A.V. Bandiwadekar – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for Respondents in OA No.109 of 2015

Shri K.B. Bhise - Presenting Officer for Respondents in OA No.110 of 2015

CORAM : Shri Rajiv Agarwal, Vice-Chairman  
Shri R.B. Malik, Member (J)

DATE : 18<sup>th</sup> February, 2016

PER : Shri R.B. Malik, Member (J)

### J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant, Shri A.J. Chougule, the learned Presenting Officer for Respondents in OA No.109 of 2015 and Shri K.B. Bhise, the learned Presenting Officer for Respondents in OA No.110 of 2015.

2. These two OAs made by the same applicant can be disposed off by this common judgment. The applicant currently working as Tahsildar facing prosecution and Departmental Enquiry (DE) on the allegations of gross financial impropriety culpable in nature has been denied promotion to the post of Deputy Collector although some similarly placed personnel came to be promoted. The applicant is up before us seeking



redressal. In OA No.109 of 2015 she seeks to impeach the list of promotees for non-inclusion of her name and seeks promotion. In the sister OA she seeks directions to the respondents to act in accordance with a circular dated 20.10.2010 and GR dated 3.4.2000 effectively asking the respondents not to take any final decision in the pending DE till such time as the prosecution against her was decided.

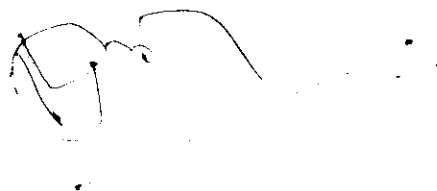
3. We have perused the record and proceedings. As a matter of fact the facts as such are not much in dispute. The applicant came to be appointed by direct recruitment to the post of Tahsildar on 23.11.2001. She cleared her probation w.e.f. 3.6.2004 on 12.9.2011. In the meanwhile when she was posted as Tahsildar, Mangalweda in Solapur District certain alleged offences took place. The applicant and others came to be proceeded against. The penal provisions of Sections 406, 408, 409, 464, 465, 467, 468, 471 & 477A of the Indian Penal Code came to be invoked in the FIR. The FIR was registered on 24.4.2007. The applicant was arrested and was in police custody for more than 48 hours. She came to be placed under suspension on 5.6.2007. She was reinstated on 27.2.2012. Special Case No.28 of 2007 came to be lodged against her before the Special Court, Pandharpur.

4. At another level on the same set of facts and allegations a DE was initiated against her on 26.3.2010. The

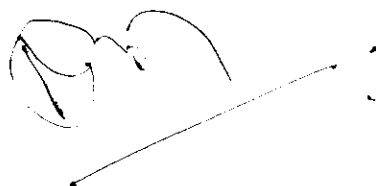


allegations in the DE and the prosecution were in substance the same. In the DE a 10 pronged charge sheet was made against the applicant. The Enquiry Officer (EO) submitted his report on 4.10.2013 holding inter alia that all the charges against the applicant were proved. A show cause notice dated 29.10.2013 having been issued the applicant submitted a detailed reply on 17.1.2014. From then onwards no final decision has been taken and if one were to go on the basis of the recitals in the affidavits filed on behalf of the respondents it would appear that in the first place according to them the applicant is facing charges of serious nature and the prosecution is pending.

5. In the above background, a factual position that emerges as indisputable is that the applicant was considered for promotion in the DPCs held for the years 2012 and later on. She was, as mentioned above, under suspension for quite a length of time and naturally her ACRs were not available for that period. We may without much ado at this stage itself mention that no capital could be made on that score because there are rules that provide for the course of action to be adopted in such circumstances inter alia by taking recourse to the ACRs of the period pre-suspension. Therefore, any attempt to feign complete helplessness in such circumstances is clearly futile.



6. Further, it is equally clear that a number of employees so similarly placed as the applicant were lucky enough to have been considered for the promotion and they have actually been promoted. The applicant has at places more than one named them and there are certain documents also but we can act on a surer source viz. the additional affidavit in reply filed by Shri Santosh Vithoba Gawde, Under Secretary, Revenue and Forest Department in deference to our order of 4.1.2016. The contents thereof till para 13 are really repetition of the contents of the earlier affidavits of reply, sur-rejoinder etc. However, we may peruse this affidavit from para 14 onwards to the extent it assists us. It would appear there from that Smt. Savita Palve and Smt. Swati Suryavanshi came to be promoted to the higher post but then it is mentioned that the applicant committed serious fraud and a criminal case was registered against her as well as a DE was initiated. Now, as far as Smt. Palve is concerned going by the affidavit under consideration in para 14 (unnumbered sub para 2) it is clearly admitted that Smt. Palve was also facing prosecution after the Ld. Judicial Magistrate First Class, Vashi ordered enquiry under Section 156(3) of the Criminal Procedure Code (CrPC). She was also working as Tahsildar, Vashi and the case against her was pending. In fact for a long time though her probation was not clear she was considered for promotion and was found fit for the post of Deputy Collector and her name was included in the zone of consideration. As far as Smt. Suryavanshi was



concerned she was working as Tahsildar in a Taluka of District Hingoli. A DE was pending against her for the alleged irregularities and even a criminal case was also pending for allegedly having been found in possession of weapon or ammunition probably in contravention of the provisions of Arms Act. It is made clear in the affidavit under consideration that the DPC considered her for promotion meaning thereby she was promoted subject to the outcome of the prosecution and DE.

7. It is further mentioned in that affidavit that Smt. Palve's case was considered by the DPC but a conscious decision was taken not to promote her in view of the pending criminal case. At this stage itself it needs to be noted that from a document at Exhibit 'N' page 177 of the paper book it would appear quite clearly that on 30.1.2014 the applicant was told to give her preference probably for being posted as Deputy Collector, which she did give but still her case was not even placed at par with Smt. Palve and her case was not even considered subject to the outcome of the pending criminal and departmental proceedings.

8. It is admitted by the respondents that 10 Tahsildars came to be promoted to the post of Dy. Collector including Smt. Palve referred to above for which the following recitals in para 17 need to be fully quoted:



“In this respect it is submitted after completion of her probation period the case of Smt. Palve was placed before the DPC in the meeting dated 1.11.2013. In the said meeting name of the applicant was also considered and she found fit for promotion. But since a criminal case was pending against her. The DPC has not recommended her for promotion. Therefore the question of allotment of division and posting on promotion does not arise.”

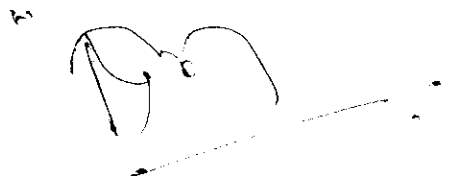
9. At this stage itself be it noted that on respondents' own showing the only reason why the applicant was not held entitled to promotion was the pendency of the criminal case though she was found fit for promotion. Now, as already discussed above there is no difference at all in the case of the applicant and a few others including Smt. Palve. In para 23 of the said affidavit (page 222 of the paper book) the case of one Shri Pawar is mentioned. He was in fact involved in what has been described Food Scam. He had been suspended on 29.6.2008. He challenged that order before His Excellency the Governor of Maharashtra and his suspension was revoked. But his junior had been promoted by then with the result Shri Pawar brought OA No.194/14 before this Tribunal and an interim order was made with regard to his promotion which has been complied with and Mr. Pawar came to be promoted as Dy.



Collector on 12.6.2013 with the concurrence of the GAD. It is absolutely clear, therefore, that the allegations against Mr. Pawar were equally serious or may be more serious than the applicant. In Mr. Pawar's case this Tribunal made an order of promotion. Therefore, if we were to consider the case of the applicant alongside the cases of the other employees so similarly placed as the applicant is it is very clear that there is no reason why she should be discriminated against. Granting all latitude to all concerned, were the applicant to be convicted or found ultimately guilty in the DE it is not as if the establishment would become totally helpless. And here again one is left wondering as to how her case is any the different from the others who have figured in the above discussion.

10. The GR of 2.4.1976 in fact provides the guidelines on how to go about in such matters. It is not necessary to reproduce the whole GR and it would suffice to mention that the employee under some kind of a cloud of prosecution or DE such as the present applicant can be considered for promotion and it is not as if the said employee must be kept hanging so to say.

11. The applicant, in OA No.110 of 2015 has made a reference to a GR of 3.4.2000 and a circular dated 20.10.2010. This was with a view to highlight that so long as the prosecution before the Court remained pending even if the DE

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proceeded simultaneously the final order in the DE should not be made. That is a stand consistent with the case of the applicant that the final outcome of the DE should be held in abeyance, stayed as it were.

12. The respondents, however, relied upon a GR of 12.2.2013 issued to streamline the procedure for initiation of prosecution proceedings under the Prevention of Corruption Act, 1988. Therein the 2000 GR has been read along with 5 other GRs and they have been superseded by 2013 GR (अधिक्रमित करुन). There are several segments in that GR which we are not concerned with herein. We are concerned with the 9<sup>th</sup> one. It is mentioned therein, in effect that even if prosecution was pending the DE can be ordered. The prosecution takes long time for its disposal and, therefore, it becomes difficult to take immediate action against the delinquent. Para 4.2 of a certain rule has been referred to and it is then mentioned that the concerned authorities should take a conscious decision on whether to initiate DE and that should be at the level of disciplinary authority.

13. As a matter of fact in good measure the issue boils down in these OAs also to whether conscious decision has been taken or should be asked to be taken. However, relying upon the elementary principles of the interpretation of statute which must in the context include the instruments like GR etc. is as



to whether the 2013 GR issued by the GAD should be held prospective or retrospective. In our opinion, if the applicant claims a right not to be punished in the DE till such time as the prosecution proceedings terminated to logical conclusion. At the time the move was made 2013 GR had already come into force because as already noted above the EO submitted his report on 4.10.2013 upholding all the charges and the show cause notice was issued on 29.10.2013 and was replied to on 17.1.2014. The 2013 GR becomes effective from 12.2.2013. We would, therefore, hold that the present OAs will be governed by 2013 GR. We do not think we can give directions to the respondents to act in accordance with the superseded GR of 2000 and the efficacy of 2010 circular would in the manner of speaking be still on a lower level and it can never override a GR regard being had to the source thereof.

14. The upshot is that the respondents were bound to treat the applicant at par with others who were similarly placed and the reasons advanced by them to justify their action against the applicant are unsustainable. They will have to reconsider the case of the applicant which of course will be subject to the outcome of the pending judicial and administrative proceedings against the applicant. We are not giving a positive direction to promote the applicant but then the applicant will have to be considered for promotion and if found fit she will have to be promoted. That after all was done in case of others whose



names have appeared hereinabove. The respondents also will have to take a conscious decision about the course of action to be adopted with regard to the pending DE against the applicant in view of the pendency of the criminal prosecution against her.

15. The respondents are hereby directed to reconsider the case of the applicant for promotion to the post of Deputy Collector subject to the outcome of the judicial and administrative proceedings against the applicant in the manner they dealt with the cases of the officers whose names have figured hereinabove. The respondents may convene if necessary a Special DPC to comply herewith and consider the case of the applicant and if found fit to promote her. The respondents are further directed to take a conscious decision with regard to the DE in terms of the GR of 16.2.2013. The compliance with these directions be made within three months from today. These OAs are allowed to this extent with no order as to costs.

Sd/-

**(R.B. Malik)** 7 11 ✓  
**Member (J)**  
**18.2.2016**

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**  
**18.2.2016**

Dictation taken by: S.G. Jawalkar.