

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1428 OF 2023**

**DISTRICT : PUNE**  
**Sub.:- Promotion**

Shri Vilas Sudhakar Kendre. )  
Age : 45 Yrs, Working as Office )  
Superintendent in Social Welfare )  
Department, Pune and residing at )  
Sainagar, Dehuroad, Pune. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Social Justice & Special Assistance )  
Department, Mantralaya, )  
Mumbai – 400 032. )
2. The Commissioner of Social Welfare, )  
3, Church Road, M.S, Pune – 411 001)...**Respondents**

**Smt. Punam Mahajan, Advocate for Applicant.**

**Smt. K.S. Gaikwad, Presenting Officer for Respondents.**

**CORAM : Smt. Justice Mridula Bhatkar, Chairperson**  
**Debashish Chakrabarty, Member-A**

**DATE : 06.12.2023**

**JUDGMENT**

1. The Applicant who is working as ‘Office Superintendent’, Social Welfare Department, Pune seeks relief that the Respondents be directed to open Sealed Cover Envelope kept by DPC held for promotion to the post of ‘Social Welfare Officer, Group-B’. The

Applicant, if found fit seeks promotion to the post of 'Social Welfare Officer, Group-B' along with Deemed Date, Pay and Allowances and all other consequential Service Benefits within a period of Two Weeks from the date of the order of this Tribunal.

2. The learned Advocate for the Applicant submits that the case of the Applicant was considered in the DPC held on 13.12.2022 when he was found eligible for promotion to the post of Social Welfare Officer, Group-B. However, at the relevant time, his case was kept in Sealed Cover Envelope by DPC on the ground that Applicant was facing DE.

3. The learned Advocate for the Applicant submits that by impugned order dated 28.07.2023, the Respondent No.2 has closed the DE of the Applicant for reasons that his conduct was found satisfactory and after going through the record. The learned Advocate for the Applicant submits that in the said impugned order, the Respondent No.2 who is Commissioner of Social Welfare, Pune has mentioned that Applicant should take care in future and work with dedication. The Respondent No.2 warned the Applicant that he should not commit mistakes.

4. The learned Advocate for the Applicant submitted that as DE was closed against the Applicant, the Sealed Cover Envelope kept by DPC should be opened immediately. She submitted that as per Clause 12 of GAD G.R. dated 15.12.2017, if Government Servant is either exonerated from the DE or acquitted from Criminal Case, then the Sealed Cover Envelope kept by DPC should be opened immediately by the Competent Authority. She submits that the case of the Applicant is on better footing because there is no question of he is getting acquitted or exonerated. The DE against the Applicant was closed, so there was no question of imposing even any Minor Penalty under MCS (D & A) Rules 1979. She submits that the Respondent

No.1 has treated it as case of imposing Minor Penalty on the Applicant and therefore till today, the Sealed Cover Envelope kept by DPC has not been opened by Competent Authority.

4. The learned Advocate for the Applicant relies on the impugned order dated 28.07.2023 and states that as the DE was closed by this order, it is now prayed that the Competent Authority be directed to open the Sealed Cover Envelope kept by DPC. She further submits that now the Applicant is placed at Serial No.5 in the Seniority List dated 01.02.2023. However, the juniors of the Applicant in the Seniority List - (i) Smt. N.S. Raite, who is at Serial No.6 and (ii) Smt. Shalini Prabhe, who is at Serial No.7 were promoted as Social Welfare Officer, Group-B by order dated 17.10.2023 of Respondent No.1. Hence, Applicant's case is also to be considered as per decision taken by DPC held on 13.12.2012 and if he is found fit, the Applicant must be promoted as Social Welfare Officer, Group-B with effect from the date of Promotion Order of the juniors as per said Seniority List dated 01.02.2023.

5. The learned Advocate for the Applicant further relies on Para 9 of the Judgment of this Tribunal in **O.A.No.752/2022, dated 29.09.2022 (Nitin R. Garje Vs. State of Maharashtra & Ors.)**, which is as under :-

*“9. The case of the applicant has to be considered on the basis of select list of the year 2018-19. The decision of G.A.D or the Revenue and Forest Department that the case of the applicant will be considered from the select list of 2020-21 is illegal and contrary to the decision of the judgment of **K.V. Jankiraman** (supra). We understand that once the Department proceedings are dropped against a person and if at all he is found fit in the earlier D.P.C. meeting, then he should not be made to wait for issuing promotion orders for such a long time of 11 months.”*

6. The learned PO while defended the action of Respondents to keep the Applicant's case for promotion to post of Social Welfare Officer Group-B in Sealed Cover Envelope after DPC was held on

13.12.2022 as the Applicant was facing DE. The order of closure of DE was not issued and therefore the 'Competent Authority' has rightly not opened the 'Sealed Cover Envelope' kept by DPC. She pointed out relevant portion from the impugned order dated 28.07.2023 of Commissioner, Social Welfare Department.

7. The learned PO further relies on the Affidavit-in-Reply filed on 24.11.2023 by Shri Prasad Khairnar, Assistant Commissioner, Social Welfare Department, Mumbai City and on the basis of contents of Para Nos.7 and 8 of the said Affidavit-in-Reply, she submitted that Applicant will receive his promotion in the year 2023-2024 as due to on-going dispute in which MAT Bench at Nagpur in OA Nos.523 to 525/2021 has stayed the 20% of the promotional quota, the Respondents do not have any vacancies to promote the Applicant to the post of Social Welfare Officer, Group-B.

8. It is an admitted fact that the DE against the Applicant is admitted closed by impugned order dated 28.07.2023 of Respondent No.2. When the DE itself is closed, there is no question of Applicant being exonerated as submitted by learned Advocate for the Applicant. In the impugned order dated 28.07.2023, the Respondent No.2 has instructed the Applicant that he should be careful in future and not commit mistakes. Even 'Minor Penalty' can be imposed in DE only if Government Servant is held guilty by the Disciplinary Authority. In the present case, there is a closure of the DE, so no penalty has been imposed on the Applicant. So the word used 'समज' in impugned order dated 28.07.2023 has to be understood as words of caution from Respondent No.2 who is Commissioner of Social Welfare, Pune which must be always remembered and acted upon by Applicant. The word 'समज' cannot be considered as 'Censure' which is 'Minor Penalty' under MCS (D & A) Rules 1979. In Marathi, the word 'Censure' means 'उपका' i.e. putting some blame and giving warning to concerned Government Servants. Thus, the word 'समज' which is used in

impugned order of Respondent No.2 dated 28.07.2023, cannot be equated with 'उपका'. Therefore, no 'Minor Penalty' of 'Censure' was imposed on Applicant under MCS (Discipline and Appeal) Rules 1979.

9. We advert to the impugned order dated 28.07.2023 of Respondent No.2. It discloses that after going through the charge-sheet and the imputations therein detailed opinion about the same was sought accordingly. The remarks were submitted by the 'Controlling Authority' who is Joint Commissioner (Education), Social Welfare, Pune. The said 'Controlling Authority' by letter dated 24.06.2022 informed the Respondent No.2 that the work of the Applicant was satisfactory, but the 'Controlling Authority' made available the photocopies of necessary documents only on 21.07.2023 i.e. after more than one year. Thereafter, Respondent No.2 by impugned order of 28.07.2023 closed the DE against the Applicant. We fail to understand that though the decision of closure of DE could have been taken earlier on the basis of report of 'Controlling Authority' submitted by letter dated 24.06.2022 why the photo-copies of relevant documents required by Respondent No.2 were not made available earlier by the 'Controlling Authority' and were belatedly submitted after almost 13 months on 21.07.2023.

10. The provisions of Rule 10 of M.C.S. (D & A) Rules 1979 are regarding imposition of 'Minor Penalty'. However, to considers only case of DE for imposing any 'Minor Penalty', the 'Disciplinary Authority' should arrive at the finding that all the Articles of Charges or any of them are proven for which Minor Penalty should be imposed. This is not so in the present case, as the DE against the Applicant is closed by Disciplinary Authority. Therefore, the transferring case of Applicant, as mentioned in the impugned order dated 28.07.2023 from Rule 8 to Rule 10 of M.C.S. (Discipline & Appeal) Rules, 1979 is baseless. Under such circumstances, we are of the view that Sealed Cover Envelope kept by the DPC held on

13.12.2022 is to be opened. We have considered this issue and passed similar case in OA No.752/2023, dated 29.09.2022. Hence, we pass the following order.

**ORDER**

- (i) The Original Application is allowed.
- (ii) The Respondent No.1 is directed to open the Sealed Cover Envelope kept by DPC held on 13.12.2022 and issue order of promotion of the Applicant to the post of Social Welfare Officer, Group-B, if he is found fit for promotion within Four Weeks from the date of this order.
- (iii) No order as to Costs.

Sd/-

**(DEBASHISH CHAKRABARTY)**  
**Member-A**

Sd/-

**(MRIDULA BHATKAR, J.)**  
**Chairperson**

Mumbai

Date : 06.12.2023

Dictation taken by :

S.K. Wamanse.

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