

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.166 OF 2024

DISTRICT : PALGHAR

Sub.:- Promotion

Shri Vijay Ramkrushan More.)
Age : 54 Yrs, Occu.: Service,)
R/at Plot No.1, Road No.3,)
Sneh Kunj, New Panvel – 410 207.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Secretary,)
Tribal Development Department,)
Mantralaya, Mumbai – 400 032.)
2. The Commissioner of Tribal)
Development Department, Nashik.)
3. Additional Tribal Commissioner,)
Nehru Nagar, Ambika Nagar No.3,)
Thane West, Thane – 400 080.)
4. Project Officer.)
Prime Furnishing, Shop Nos. 9 & 10,)
Krushi Bazar Samiti, Chinchpada,)
Pen, Maharashtra – 402 107.)
5. General Administrative Department,)
Through the Secretary,)
Tribal Development Department,)
Mantralaya, Mumbai – 400 032.)...**Respondents**

Shri Sandip S. Dere, Advocate for Applicant.

Smt. A.B. Kololgi, Presenting Officer for Respondents.

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

DATE : 11.03.2024

JUDGMENT

1. The Applicant is found to be eligible for promotion to the post of 'Project Officer (Grade-2) Group-A' on the basis of decision in DPC dated 13.02.2023. However, when Applicant was working as Assistant Project Officer in office of ITDP, Pen; District Raigad, he was subjected to FIR No.122 of 2016 for the offences punishable under Sections 406, 409, 417, 420, 465, 468, 471 read with 34 of Indian Penal Code 1860 registered at Khandeshwar Police Station, Navi Mumbai. The Applicant contends that FIR No.122 of 2016 at Khandeshwar Police Station, Navi Mumbai was registered against Applicant and others at the insistence of Smt. Ranjana V. Dabadhe @ Ranjana Killedar.

2. The Additional Tribal Commissioner, Nashik by Order dated 04.10.2018 had constituted 'Enquiry Committee' of (i) Assistant Commissioner (Accounts), (ii) Assistant Accounts Officer and (iii) Accounts Clerk from office of Additional Commissioner, Tribal Development, Nashik to submit 'Enquiry Report'. The said Enquiry Committee submitted its report on 09.07.2019 to the Additional Tribal Commissioner, Nashik after conducting Preliminary Enquiry in respect of the delinquent Government Servants including Applicant. The Enquiry Committee in its Enquiry Report dated 09.07.2019 had specifically held that Applicant was not given any opportunity to put-up his defence before lodging FIR No.122 of 2016 at Khandeshwar Police Station, Navi Mumbai as he was subjected to certain allegations of Misappropriation of Funds. However,

Enquiry Committee found that Applicant had given opinion otherwise and he was falsely implicated in the Criminal Case out of personal vengeance. The Enquiry Committee has given clear finding of non-involvement of Applicant in the allegations of Misappropriation of Funds. The Enquiry Report mentioned that entire procedure of lodging FIR No.122 of 2016 at Khandeshwar Police Station, Navi Mumbai was conducted ex-parte without giving Applicant an opportunity to put-up his say, as the allegations were about Misappropriation of Funds.

3. We have gone through the Enquiry Report dated 09.07.2019 submitted by Enquiry Committee to the Additional Commissioner, Tribal Development, Nashik.

4. The learned Advocate for Applicant has drawn our attention not only to contents of Enquiry Report but to fact that Additional Commissioner, Tribal Development, Thane by letter dated 04.03.2021 had forwarded the said Enquiry Report to Project Officer, ITDP, Pen; District Raigad who in turn had sent it for appropriate action to Senior Police Inspector of Khandeshwar Police Station, Panvel, District Raigad on 22.03.2021. However, Senior Police Inspector, Khandeshwar Police Station, Pen; District Raigad replied on 29.04.2021 that the name of Applicant from FIR No.122 of 2016 cannot be dropped as 'Charge-Sheet' was already filed under Case No.MC 3799/2018.

5. The learned Advocate for Applicant further submitted that meeting of DPC was conducted on 13.02.2023 wherein the name of Applicant was at 'Serial No.10'. However, as the

Criminal Case was pending against the Applicant, his name was not considered for promotion though officers junior to him were given promotions to post of Project Officer, Group-B on 11.07.2023. The Applicant had thereafter filed OA No.1031/2023. The Respondents including Tribal Development Department and General Administration Department were directed by Order dated 04.12.2023 that name of Applicant should be considered for promotion to post of Project Officer, (Grade-2) Group-A.

6. The learned Advocate for Applicant then submitted that the procedure of opening of 'Sealed Cover Envelope' was followed by the Respondents and proceedings were recorded on 08.12.2023 by Tribal Development Department.

7. We have gone through the File Notings of Tribal Development Department about case of Applicant wherein it is specifically mentioned that Enquiry Committee has recommended that name of Applicant should be deleted from FIR No.122 of 2016 at Khandeshwar Police Station, Navi Mumbai. It is further noted that Applicant had on the contrary opposed the disbursement 50% of Advance for certain projects under "Nucleolus Budget" of Tribal Development Department. Further, it is opined that as Applicant was not at fault; proposal be submitted to GAD to open 'Sealed Cover Envelope' to promote the Applicant to post of Project Officer, Group-B.

8. The Tribal Development Department as per Order dated 04.12.2023 had forwarded proposal dated 01.01.2024 for obtaining permission from General Administration Department

as per Enquiry Report dated 09.06.2019 that it was clear that Applicant's name wrongly included in the FIR No.122 of 2016 and he was not involved in any criminal activity or any misconduct. The proposal of Tribal Development Department had mentioned that for the year 2023, there are 3 pots vacant of Project Officer Grade-2. Hence, as per Enquiry Report and Order dated 04.12.2023 in OA No.1031/2023, permission be given to open Sealed Envelope Cover and promote the Applicant. The General Administration Department considered proposal dated 01.01.2024 and directed Tribal Development to consider the case of Applicant as per DPC dated 13.02.2023 whereby Tribal Development Department had kept the name of Applicant in Sealed Envelope Cover. The Tribal Development Department decide to keep the name of Applicant in Sealed Envelope Cover and did not promote the Applicant. Our attention was drawn to Exh.'U' which shows opinion given by GAD wherein the proposal was sent back to Tribal Development Department. However, it is evident that Tribal Development Department referred to decision in earlier DPC meeting of 13.02.2023 but again decided on 18.01.2024 that Applicant could not give promotion to post of Project Officer, Group-B on account of pendency of Criminal Case relating to FIR No.122 of 2016 at Khandeshwar Police Station, Navi Mumbai and these facts are required to be placed before the Tribunal in this OA No.166 of 2024.

9. We were quite surprised to come across that this decision dated 18.01.2024 of Tribal Development Department which was communicated to office of Chief Presenting Officer, which is the last decision in this OA No.166 of 2024. In fact, the Tribunal is well conversant with this matter as earlier in OA No.1031/2023, we had directed the Tribal Development Department to open

'Sealed Cover Envelope' by taking into account that Applicant is found innocent in the 'Enquiry Report' and that conscious decision had already been taken by Tribal Development Department on 23.10.2023 not to proceed with 'Departmental Enquiry' against Applicant.

10. We must also note an interesting fact pointed out by learned Advocate for Applicant that Tribal Development Department in the meeting of DPC held on 13.02.2023 had invited Smt. Ranjana Killedar as 'Member' to represent 'Backward Class' and it was same Smt. Ranjana Killedar who was Complainant against Applicant and others in FIR No.122 of 2016 at Khandeshwar Police Station, Navi Mumbai. Therefore, considering her past role as Complainant in FIR No.122 of 2016 at Khandeshwar Police Station, Navi Mumbai and considering that Applicant was seeking promotion to post of Project Officer (Grade-2) Group-a, Smt. Ranjana Killedar should not have been invited as 'Member' to represent 'Backward Class' in meeting of DPC held by Tribal Development Department on 13.02.2023. Any other equivalent rank officer should have been invited as 'Member' to represent 'Backward Class'. We thus find it rather strange that an officer who as 'Complainant' had lodged FIR No.122 of 2016 at Khandeshwar Police Station, Navi Mumbai against Applicant & others and when name of Applicant was going to be considered for promotion to post of Project Officer Group-B, the Tribal Development Department chose not to be diligent and circumspect to not invite Smt. Ranjana Killedar at least Smt. Ranjana Killedar herself was expected to recuse when name of Applicant was taken up for consideration in meeting of DPC held on 13.02.2023.

11. However, we come across no such observations in 'File Notings' which were produced by Tribal Development Department. Thus, there was complete violation of the 'Principles of Natural Justice'. It is true that when any Criminal Case is pending, then name of such Government Servant cannot be considered for promotion by DPC. However, in view of peculiar facts and circumstances of the case of Applicant, it has to be examined and treated on a different footing when there is clean chit given to the Applicant. Observance of 'Principles of Natural Justice' i.e. '*Audi alteram partem*' are not followed from very beginning as strongly contended by Applicant and so recorded specifically in Enquiry Report. Only because the name of Applicant was mentioned in FIR No.122 of 2016 at Khandeshwar Police Station, Navi Mumbai, he was therefore not found entitled for promotion to post of Project Officer Group-B is incorrect and can no longer be held justiciable because Applicant after being found innocent in 'Enquiry Report' cannot be treated differently in manner in relation to be eligible for promotion as conscious decision had already been taken by Tribal Development Department on 23.10.2023 not to proceed with 'Departmental Enquiry' against Applicant. The name of Applicant should have been considered for promotion to post of Project Officer Group-B when no indiscriminating role was attributed to him in 'Enquiry Report' and this finding acknowledged by Tribal Development Department when conscious decision was taken on 23.10.2023 not to proceed with Departmental Enquiry against Applicant. Further, it is necessary to keep in mind that when such Enquiry Report has given clear affirmative findings such as in case of Applicant and it is subsequently accepted once by 'Appointing Authority' by

not proceeding with 'Departmental Enquiry', then such Government Servant is to be treated as innocent and not held guilty even by inaction as has happened in case of Applicant who has been denied service progression by promotion by Appointing Authority.

12. Thus, we allow this OA No.166 of 2024 and we direct Tribal Development Department that if Applicant is found fit, he be promoted to post of 'Project Officer, Group-B' within 'Three Weeks' from uploading of this Judgment. However, it is made clear that while deciding fitness of Applicant for post of Project Officer, Group-B, the pendency of Criminal Case should not come in way of granting promotion to Applicant. We must take note of the fact that Criminal Application No.1238 of 2017 filed by Applicant in Hon'ble Bombay High Court was last heard on 07.03.2023 but it is 'Subjudice'. Finally, we also observe that as Applicant's juniors stand promoted on 11.07.2023, if he is now promoted by Tribal Development Department to post of Project Officer Group-B, then Applicant be given 'Deemed Date'.

13. With these directions, the OA No.166 of 2024 stands disposed off. No order as to costs.

Sd/-

(DEBASHISH CHAKRABARTY)
Member-A

Sd/-

(MRIDULA BHATKAR, J.)
Chairperson

Mumbai

Date : 11.03.2024

Dictation taken by :

S.K. Wamanse.

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