

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**


**ORIGINAL APPLICATION NO 196 OF 2011**

**DISTRICT : SINDHUDURG**

Shri Prakash Sakharam Paste, )  
Occ : Talath., )  
R /at Post Tal-Dodamarg, )  
Dist-Sindhudurg. )...**Applicant**

**Versus**

1. The Collector, )  
Office at Oras, )  
Dist-Sindhudurg. )  
2. The Deputy Collector, )  
Office at Oras, )  
Dist-Sindhudurg. )  
3. The Special Land Acquisition )  
Office, Tilari Hydro Electric )  
and Irrigation Project, )  
having office at Oras, )  
Dist-Sindhudurg. )...**Respondents**



Shri K.R Jagdale, learned advocate for the Applicant.

Mrs Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**Shri R.B. Malik (Member) (J)**

**DATE : 10.02.2016**

**PER : Shri Rajiv Agarwal (Vice-Chairman)**

**ORDER**

1. Heard Shri K.R Jagdale, learned advocate for the Applicant and Mrs Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant, seeking promotion from the post of Talathi to the post of Circle Officer, as his junior have already been promoted, superseding him. The Applicant has challenged communication dated 6/12.3.2013, issued by the Respondent no. 1.


3. Learned Counsel for the Applicant argued that the Applicant joined service as Talathi on 1.7.1991. He passed the Sub-Service Departmental (S.S.D) Examination and Revenue Qualifying Examination in

1992 and 2000 respectively. As per the interim seniority list as on 1.1.2009, the Applicant's name was at Sr. No. 21 while a person by the name Shri Kudalkar was at Sr. No. 25. However, when the final seniority list was published on July 2009, Shri Kudalkar's name was at Sr. No. 24 while the Applicant was at Sr. No. 25. Learned Counsel for the Applicant argued that the Applicant had filed O.A no 910/2010 before this Tribunal. By order dated 26.10.2010, this Tribunal disposed of the said Original Application with the direction to the Respondents to give proper placement to the Applicant in the seniority list and also consider the Applicant for promotion to the next higher post by the D.P.C as expeditiously as possible. Learned Counsel for the Applicant contended that in the D.P.C meeting held on 26.11.2010, the Applicant's name was placed in the seniority list of Talathis at Sr. No. 24 and Shri Kudalkar was placed at Sr. No. 25. However, the Applicant was not considered for promotion, as a criminal case was pending against him. Learned Counsel for the Applicant argued that this Tribunal by order dated 21.11.2002 in O.A no 1188 of 2001 has directed the authorities to consider the case of the employee for promotion in the light of Government Circular dated 2.4.1976. Learned Counsel for the Applicant contended that the Applicant could have been promoted, pending decision of criminal case against him. Learned Counsel for the Applicant further contended that the Applicant belongs to Project Affected



Person (PAP) category. As per G.R dated 16.8.1997, preference is required to be given to P.A.Ps in promotion also. This has not been considered by the Respondents.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant had earlier filed O.A no 910/2010. While disposing of the said O.A, this Tribunal has directed the Respondents to correct the seniority of the Applicant vis-à-vis Shri Kudalkar and consider him for promotion in the next D.P.C. A meeting of D.P.C was accordingly held on 26.11.2010. The seniority of the Applicant in the cadre of Talathi as on 1.1.2010 was corrected and he was placed above Shri Kudalkar. The D.P.C did not consider the Applicant's case for promotion, as a criminal case under the Prevention of Corruption Act was registered against him. The provisions of Circular dated 2.4.1976 and 22.4.1996 were duly considered by the Committee. Learned Presenting Officer contended that the orders of this Tribunal dated 26.10.2010 have been fully complied with. The Applicant's prayer in relief clause 9(aa) is therefore, not tenable. Learned Presenting Officer further argued that G.R dated 16.8.1997, relied upon by the Applicant (Exhibit-G) does not provide for reservation in promotion for PAPs. Such reservation in promotion is provided only for vertical reservation categories.




5. Learned Presenting Officer contended that the Applicant's case for promotion was again considered by the Departmental Promotion Committee (D.P.C) in its meeting held on 7.4.2011. The Applicant was not considered for promotion as a criminal case has been filed against him by the Anti Corruption Bureau (A.C.B) under the Prevention of Corruption Act. The matter was pending before the Government for sanction for prosecution of the Applicant. The Applicant was informed by the Respondent no.1 by letter no. 12.3.2013 (Exhibit-F) that his case was once again considered for promotion in the D.P.C held on 5.3.2013. His representation dated 15.10.2010 and 20.4.2012 were considered. As there is no provision for reservation in promotion for PAP, the Applicant was held to be not eligible for promotion. The seniority list as on 1.1.2012 has been recast in the light of judgment of this Tribunal dated 22.2.2013 in O.A nos 73/2013 and 74/2013 and the Applicant was not found eligible for promotion. Learned Presenting Officer argued that the Applicant is not eligible for promotion and this Original Application may be dismissed.

6. We find that the Applicant has amended this Original Application and challenged the proceedings of D.P.C held on 5.3.2013. It is mentioned that orders of this Tribunal dated 26.10.2010 in O.A no 910/2010 were ignored and the claim of the Applicant that he was



entitled to be promoted from PAP category was ignored. We have carefully perused order of this Tribunal dated 26.10.2010. The request of the Applicant for proper placement in the seniority list was duly considered by the Respondents and the Applicant was placed above Shri Kudalkar in the seniority list. His case for promotion was also considered in D.P.C held on 26.11.2010. This Tribunal had not given any other direction. There is no provision in the G.R dated 16.8.1997 for reservation in promotion for PAPs. We do not find that the Respondents have defied this Tribunal's order dated 26.10.2010. It is seen that the Applicant was denied promotion on earlier occasions as a criminal case was filed against him by A.C.B under the Prevention of Corruption Act. A proposal has been submitted to the Government for grant of sanction for prosecuting the Applicant and by order dated 29.3.2013, sanction has been received (para 5 of the affidavit in reply dated 6.1.2016). The fact remains that the Applicant is facing a criminal case involving moral turpitude. No doubt, as per Government circular dated 2.4.1976, a person facing a criminal case, can be promoted. However, it has to be a conscious decision of the Competent Authority. The Respondents have cited Government Circular dated 20.7.2006, which provides that a Government servant facing criminal trial involving serious offences, should not be promoted. The Respondents have taken a conscious decision not to promote the Applicant till the criminal case against him



is decided. The Applicant's claim that this Tribunal in earlier proceeding filed by him in O.A no 910/2010 by order dated 26.10.2010 directed the Applicant to be promoted is misconceived. This Tribunal has only directed the Respondent to consider the Applicant for promotion. The case of the Applicant was considered by the Respondents in at least 3 meetings of D.P.C and a conscious decision was taken not to promote him. This Tribunal has neither given any direction earlier, nor is giving any directions now to promote the Applicant.

7. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member (J)**

Sd/-

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

**Place : Mumbai**

**Date : 10.02.2016**

**Dictation taken by : A.K. Nair.**