

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.335 OF 2020**

**DISTRICT : MUMBAI**

Shri Shashank Madhav Sathe. )  
Joint Secretary, Industry, Energy and )  
Labour Department, Mantralaya, )  
Mumbai – 400 032. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Additional Chief Secretary )  
(Services), General Administration )  
Department, Mantralaya, )  
Mumbai – 400 032. )

2. The Additional Chief Secretary )  
(Labour), Industry, Energy & Labour )  
Department, Mantralaya, )  
Mumbai – 400 032. )...**Respondents**

**Mr. S.M. Sathe, Applicant in person.**

**Mr. A.J. Chougule, Presenting Officer for Respondents.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 18.01.2022**

**JUDGMENT**

1. Heard Applicant in person and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. This Original Application has been filed on 21.07.2020 claiming following reliefs :-

- (i) The action of Respondents stating that they have taken conscious decision for not promoting the Applicant to the post of Joint Secretary be declared null and void.
- (ii) Applicant be given regular promotion to the post of Joint Secretary w.e.f. 01.05.2016.
- (iii) Pay and allowances of promotional post of Joint Secretary w.e.f.01.05.2016 be granted.
- (iv) Applicant be granted interest at the rate of 20% on pay and allowances.
- (v) Compensatory cost of Rs.5000/- be saddled on the Respondents.

3. Admitted facts are as under :-

The Applicant was serving in the cadre of Deputy Secretary on the establishment of Respondent No.2 viz. Additional Chief Secretary, Industry, Energy and Labour Department. He was due for promotion to the post of Joint Secretary on the basis of seniority. However, Respondent No.1 – Additional Chief Secretary, GAD by order dated 12<sup>th</sup> September, 2016 promoted juniors to the Applicant on the post of Joint Secretary and denied promotion to the Applicant on the ground of pendency of departmental enquiry (DE). In DE, the Applicant came to be exonerated in view of negative report of Enquiry Officer and accordingly, Respondent No.2 passed order dated 30.01.2020 stating that DE initiated by Charge-sheet dated 27.02.2015 has been closed. In view of exoneration from DE, the Applicant made representation on 31.01.2020 for promotion to the post of Joint Secretary with pay and allowances of the promotional post. Initially, by order dated 22.06.2020, the Respondent No.1 issued order of temporary promotion to the post of Joint Secretary. Later, GAD by order dated 03.09.2020 issued of regular promotion to the Applicant to the post of Joint Secretary w.e.f. 01.04.2016. In pursuance of it, pay and allowances were also paid to the Applicant w.e.f.01.04.2016, as seen from Affidavit-in-reply filed by

Respondent No.2 (Page No.154 of P.B.). The arrears of Rs.11,37,260/- were paid to the Applicant as per Bill dated 09.09.2020.

4. Thus, admittedly, during the pendency of this O.A, regular promotion to the post of Joint Secretary has been granted to the Applicant as well as pay and allowances were also paid w.e.f.01.04.2016.

5. In view of aforesaid admitted facts, now grievance remains about declaration asked by the Applicant in terms of Prayer Clauses (i), (iv) and (v) since Prayer in Clause (ii) and (iii) is already granted.

6. Applicant in person submits that the Respondents have deliberately kept him away from the promotional post by misinterpreting G.R. dated 02.04.1976 and they failed to take conscious decision for not giving promotion as contemplated in G.R. dated 02.04.1976. He emphasized that Respondents ought to have perused the papers of DE to find out the seriousness of the charges or possibility of holding the Applicant guilty in DE on the basis of record of DE. According to him, no such conscious decision was taken by perusing the record but routinely he was denied promotion to the post of Joint Secretary and this act be declared illegal. He, therefore, submits that O.A. be allowed to the extent of his remaining prayers about declaration, interest and cost.

7. Per contra, Shri A.J. Chougule, learned P.O. has pointed out that since DE under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'D & A Rules of 1979' for brevity) was pending, the decision was taken in terms of G.R. dated 02.04.1976 not to promote Applicant to the post of Joint Secretary and after exoneration of the Applicant in DE, he was given regular promotion with deemed date of promotion from 01.04.2016 as well as arrears of pay and allowances were also paid and nothing survives in O.A.

8. Thus, admittedly, when the Applicant was due for promotion, the DE under Rule 8 of 'D & A Rules of 1979' was pending against him. That time, the report of Enquiry Officer was awaited.

9. The procedure to be followed where a Government servant is facing enquiry and due for promotion is regulated by Circular dated 2<sup>nd</sup> April, 1976 issued by GAD. Para Nos. 3 & 4 of Circular is relevant, which are as under :-

**“3. Interim promotion during the pendency of the proceedings**

If the person is found fit and his name is provisionally included in the select list;

(a) During the pendency of the proceedings, the question of promoting a person under suspension does not arise such a person shall not be promoted.

(b) In respect of a person who is not under suspension, the competent authority should take a conscious decision, after taking into consideration the nature of the charges levelled whether the person should be promoted without waiting for the conclusion of the enquiry. If it is decided that he should be so promoted such promotion will be provisional and will be received on the conclusion of the investigation or enquiry.

4. On conclusion of the investigations and/or departmental enquiry :

(a) If a person is completely exonerated the following consequences should follow :

(i) If he was provisionally promoted, his provisional promotion should be treated as regular.

(ii) If such a person had become due for promotion but was not promoted, he should be promoted at the first opportunity. He should retain the seniority of his position in the select list. His pay should also be fixed at a stage which he would have reached had he been actually promoted according to his rank in the select list, but he should not be entitled to any arrears of pay on this account.”

10. Thus, where DE is pending, the competent authority is required to take conscious decision about promotion of a Government servant. In the present case, admittedly, DE was pending, and therefore, promotion was denied to the Applicant as well as one Shri Gavade. That time, Note

was prepared by GAD for not promoting the Applicant till the final decision of DE and it was approved by Hon'ble Chief Minister, as seen from Page No.140 of P.B. As per Note, a conscious decision was taken not to promote Applicant in view of pendency of DE.

11. The submission advanced by the Applicant in person that Respondents failed to take conscious decision and the said act be declared illegal is misconceived and unacceptable. His contention that DPC ought to have examined the enquiry papers to arrive at conclusion is nothing but amount to consider a matter prematurely, since DE was already pending and even report of Enquiry Officer was not received. In other words, where DE was pending, there could be no occasions or propriety to examine the papers of DE to ascertaining the suitability of the Applicant for promotion, since it would amount to take any such decision premature which would affect finality of DE. Suffice to say, the submission advanced by the Applicant that Respondents ought to have examined papers of DE is totally misconceived and unacceptable.

12. As stated above, the Circular dated 02.04.1976 clearly spells that conscious decision is required to be taken. Needless to mention, a Government servant have no legally vested right to claim promotion. All that, he has right to be considered for promotional post. After exoneration in DE, the Applicant was given promotion to the post of Joint Secretary as well as pay and allowances were also granted w.e.f. 01.04.2016 though he did not work on promotional post. This being the position, it cannot be said that the decision taken by the Respondents not to promote Applicant till the decision of DE was malafide or arbitrary. Indeed, the Applicant is already compensated by grant of pay and allowances of the promotional post though he did not work on the said post. Therefore, the claim of Applicant for grant of interest and cost does not survive. The O.A. has become infructuous and deserves to be disposed of. Hence, the order.

**ORDER**

The Original Application is disposed of with no order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 18.01.2022

Dictation taken by :

S.K. Wamanse.

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