

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 44 OF 2016

DISTRICT : AURANGABAD

Shri Toliram Phulaji Rathod)
Working as Deputy Engineer, Road)
Project Sub Division, Pusad,)
Dist-Yeotmal, R/o: N4-F-115, CIDCO,)
Aurangabad.)...**Applicant**

Versus

The State of Maharashtra)
Through Principal Secretary,)
Public Works Department,)
Mantralaya, Mumbai 400 032.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

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

DATE : 09.08.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant claiming that he is eligible for promotion to the post of Executive Engineer, P.W.D from the post of Sub-Divisional Officer, (Civil) from 28.9.2915 when his 7 colleagues were so promoted on the basis of recommendations of D.P.C on the basis of Select List dated 1.9.2014.

3. Learned Counsel for the Applicant argued that the Applicant belongs to VJ-A category. His case for promotion to the post of Executive Engineer was considered in the meeting of the Departmental Promotion Committee (D.P.C) on the basis of select list of 1.9.2014. He was found unfit for promotion, on the ground that he was undergoing punishment in a D.E. Learned Counsel

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for the Applicant argued that the Applicant had joined service on the strength of Caste Certificate showing him to belong to S.T category. The said Certificate was invalidated by the Scrutiny Committee in 1988. The Applicant then obtained a Caste Certificate of VJ-A category. Learned Counsel for the Applicant argued that in 2014, the Respondent registered a criminal complaint against him for obtaining job on the basis of a false Caste Certificate. This was done to ensure that the Applicant does not get promotion to the post of Executive Engineer. In fact, in a D.E, minor punishment was imposed on the Applicant and he has filed an appeal against the said order, which is still pending. However, the Applicant has already undergone punishment. That D.E could not have come in the way of the Applicant's promotion as the punishment order was passed on 30.4.2015, while the select list was prepared on 1. 9.2014. As regards, criminal complaint on the ground of furnishing a false Caste Certificate, learned Counsel for the Applicant stated that there was no finding in the order of the Scrutiny Committee that S.T certificate was obtained by the Applicant by fraud. The Applicant's S.T certificate was invalidated in 1998 and he was reverted from the post of Deputy Engineer to that of Junior Engineer on 16.3.1998. He was again promoted as Deputy Engineer on 1.1.2000 on the basis of VJ-A caste. In the C.R.No.1-373/2014, registered against the Applicant, no progress has been made. No charge-sheet has been filed against



the Applicant. Mere registration of a criminal complaint cannot be a ground to deny promotion to the Applicant.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent that the Applicant was considered for promotion in the D.P.C. meeting held on 24.6.2015. Select list dated 1.9.2014 was considered in that meeting. The Committee had before it the order dated 30.4.2015 imposing penalty of bringing down the pay by 6 stages permanently in a D.E against the Applicant. It is, therefore, clear that the Applicant was undergoing punishment and his case for promotion could not be considered. Learned P.O. argued that an F.I.R. under section 420, 468 and 471 of I.P.C. has been lodged against the Applicant vide C.R.No.373 of 2014 on 5.8.2014 for submitting a false S.T. certificate. Considering these facts, he was found unfit for promotion.

5. The Departmental Promotion Committee had met on 24.06.2015 (para 6 of the affidavit in reply dated 22.2.2016). The Applicant was punished in a Departmental Enquiry (D.E.) by order dated 30.4.2015. D.P.C. has considered that order and held that the Applicant was undergoing punishment and this was one of the grounds for holding him unfit for promotion. The following punishment was imposed upon the Applicant.

“ त्याअर्थी श्री. टी.पी. राठोड, उप अभियंता यांचे समयश्रेणीतील वेतन सहा टप्प्यांनी सेवानिवृत्तीवेतनावर परिणाम करून कायमस्वरूपी खाली आणण्यात यावे तसेच आर्थिक नुकसानीची रक्कम रु. 9३,३२६/- त्यांच्या मासिक वेतनातून एकरकमी वसूल करण्यात यावी.”

In para 6(i) of the Affidavit in reply, the Respondent has stated:-

“ i) According to the orders dated 30.4.2015 in the departmental enquiry held under Maharashtra Civil Services (D & A) Rule 1979, Section 8 and 12 against applicant and others, the punishment of bringing down the pay scale by 6 stages permanently by effecting the pensionary benefits was given to the applicant. Copy of order dated 30.4.2015 is annexed hereto and marked as EXHIBIT “R-1”. The action of bringing down the pay scale permanently effecting pensionary benefits clearly indicates that the applicant is undergoing punishment currently.

Under Rule 5(1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, various minor penalties have been prescribed. There is penalty of ‘withholding of promotion’, which is not imposed on the Applicant. It can, therefore, be surmised that he can be considered for promotion. At Rule 5(1)(iii) is the penalty of recovery of loss caused to the Government, which has

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been imposed on the Applicant and Rs. 13,326/- is ordered to be recovered from his pay in one lump sum. Rule 5(1)(ii) is regarding reduction to a lower time scale of Pay. However, the punishment imposed on the Applicant is not bringing his pay in a lower time scale of pay. He continues to draw pay in the same pay scale, and his pay has been reduced by six steps (meaning six increments) permanently. Evidently, such reduction in pay is a one time measure and the claim of the Respondent that he is currently undergoing punishment cannot be held to be correct. Once his pay is brought down by six steps, the punishment is over. That should have been done from the pay of May, 2015. When the D.P.C met on 24.6.2015, the Applicant cannot be said to be undergoing any punishment. The Respondent claims that other ground of denying promotion to the Applicant is registration of CR no. 373/2014 on 5.8.2014 for submitting a false Caste Certificate for S.T category. The Applicant has produced a copy of G.R dated 16.3.1998 (Exhibit 'I' page 44 of the Paper Book). It reads:-

“ उपरोक्त दिनांक ९ जुन १९९७ च्या शासन निर्णयान्वये श्री. टी.पी.राठोड यांना त्यांच्या जाती प्रमाणपत्र वैधतेच्या अधिन राहुन तात्पुरत्या स्वरूपातील तीन महिन्यांच्या कालावधीसाठी पदोन्नती देण्यात आली होती. आता श्री. राठोड यांचे जाती प्रमाणपत्राची तपासणी जाती/ जमाती तपासणी समिती नाशिक यांनी करून त्यांचे दिनांक ७/५/१९९७ च्या आदेशान्वये श्री. राठोड यांचे जाती प्रमाणपत्र अवैध ठरविले आहे. त्यामुळे श्री. राठोड यांना त्यांच्या जाती प्रमाणपत्राच्या वैधतेच्या अधिन राहुन देण्यात आलेली तात्पुरती पदोन्नती

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रदद करून त्यांना कनिष्ठ अभियंता हया पदावर पदवत करण्याचा निर्णय शासनाने घेतला आहे.”

It appears that the S.T Certificate was invalidated by Scrutiny Committee by order dated 7.5.1997. The Applicant has claimed in para 6.3 of the Original Application that he was promoted as Deputy Engineer in January 2000 in the vacancy meant for VJ-A reserved category. In the affidavit in reply, the Respondent has stated that:-

“Further in the scrutiny the S.T Certificate of Naikada Tribe of Shri T.P Rathod was held invalid by the Caste Scrutiny Committee. Therefore, Shri Rathod was reverted to the post of Junior Engineer by order dated 16th March, 1998. After that Shri Rathod represented for his promotion under VJ-NT category. His claim of VJ-NT category was considered and he was promoted to the post of S.D.O by order dated 14.1.2000.”

The Respondent has clearly admitted that the Applicant was promoted as S.D.O (Deputy Engineer) from VJ-NT category by order dated 14.1.2000. The S.T Certificate of the Applicant was invalidated in the year 1997. The Applicant's claim that he belongs to VJ-A category was accepted by the Respondent and he was promoted as S.D.O on 14.1.2000 on the basis of VJ-A category. It is

intriguing to note that after 17 years after the Applicant's Caste Certificate of S.T category was held invalid, the Respondent decided to register C.R no 373/2014 on 5.8.2014. The fact that he had allegedly submitted a false S.T Certificate was ignored while granting him promotion as S.D.O in 2000 and the issue is suddenly revived after 17 years. The contention of the Applicant that it has been done to deprive him of promotion to the post of Executive Engineer, appears to be correct. The Applicant has raised various issues claiming that his S.T Certificate was not held to be false by the Scrutiny Committee and no criminal case is made out against him. We are expressing no opinion about that. However, having accepted / ignored this fact for 17 years, the Applicant cannot be deprived of promotion on this ground. It is seen that many Deputy Engineers have been promoted subject to the outcome of the Departmental Enquiry against them in the D.P.C., where the case of the Applicant was considered from the Select List of 1.9.2014. These are S/Shri Panchbhai, Raut and Akhade. There is no reason as to why the Applicant should not be considered for promotion, subject to criminal complaint pending against him.

6. The Respondents are directed to convene the Review D.P.C to consider the Applicant for promotion to the post of Executive Engineer, based on select list of 1.9.2014, in the light of observations made by us in the



preceding paragraphs. This should be done within a period of one month from the date of this order. There will be no order as to costs.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 09.08.2016
Dictation taken by : A.K. Nair.