

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.469 OF 2014

DISTRICT : PUNE

Shri Rajnish Cyril Nirmal.)
105, Tulsidas Apartments, 826/B,)
Dastur Meher Road, Pune 411 001.)...**Applicant**

Versus

1. The Secretary.)
Home Department,)
Mantralaya, Mumbai - 400 032.)
2. The Director General of Police.)
M.S, Shahid Bhagatsingh Marg,)
Mumbai.)
3. Additional Director General of)
Police, Anti Terrorist Squad,)
M.S, Mumbai.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicant.

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

CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)

R.B. MALIK (MEMBER-JUDICIAL)

DATE : 07.01.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)



JUDGMENT

1. This Original Application (OA) is made *inter-alia* seeking an order for considering the case of the Applicant for promotion to the post of Police Inspector with consequential benefits along with deemed date, arrears of pay, etc.

2. The Applicant was born on 3rd May, 1966. He belongs to Open category. He joined the service as Police Sub Inspector (PSI) in August, 1992. He was promoted as Assistant Police Inspector (API) in the year 2006. In the meanwhile and it is common ground, that the Applicant tendered his resignation on 8.8.2008. It was in fact accepted also w.e.f. 31.10.2008. But ultimately, the same was allowed to be withdrawn and an order of reinstatement was made on 22nd December, 2008 to the post of API.

3. The grievance of the Applicant is that in the year 2011, even as his juniors came to be promoted, he has been left languishing and is still waiting for the promotion. We may have to make some elaboration presently, but it appears that the Applicant's undoing is in the form of two departmental enquiries in one of which, he has been punished with stoppage of increment for one year and in another one, the same punishment was for two years

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which was reduced to one year. Further, for quite some time now, the Applicant was facing what is known as open enquiry presumably to make sure that he did not possess the assets disproportionate to his known source of income. This is a broad parameter which one has to work within in so far as this OA is concerned. We shall presently have an occasion to refer to the averments of the Respondents in the reply Affidavits.

4. We have perused the record and proceedings and heard Smt. Punam Mahajan, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

5. In so far as one of the two DEs is concerned, we have on record the report of the Enquiring Officer (EO) dated 16.6.2013 made by the Divisional Enquiry Officer and Assistant Police Commissioner, Anti-terrorist Squad, Aurangabad Camp at Pune. That report was submitted to the Additional Director General of Police, Anti-terrorist Squad. The allegations *inter-alia* were that the Applicant got a property therein mentioned transferred to him by way of a Gift Deed. His wife was also a co-donee. This was allegedly done without the requisite permission in accordance with the relevant Conduct Rules. It was then alleged that thereon unlawful construction was made and



a business was being carried out there illegally. That business was given for conducting to the persons named there. It may also be noted at this stage that there is material on record to show that there was a police action under the provisions of Bombay Police Act, 1951 and Bombay Prohibition Act, 1949. A raid was conducted because young people were in the manner of speaking, "enjoying life" in that particular hotel with hard drink, etc. The alleged conductors were caught by the Police and the wife of the Applicant was apparently also an accused. The Applicant was not an accused there but the charge mentions that he had committed breach of the Conduct Rules as already indicated above.

6. In the DE, no official witnesses (सरकारी साक्षीदार) were examined, but four other persons being a Talathi, Village Development Officer, PSI and PI were apparently examined. The EO had recorded the gist of their evidence and has concluded inter-alia by holding that the allegations against the Applicant were not proved and the construction made on the said land was in the construction zone for which the Applicant was paying the regular cess.

7. The above report was submitted to the higher authority, but in the meanwhile, the Applicant had been transferred in Buldhana District and as already mentioned



above, the DSP Buldhana has made an order of minor punishment to the Applicant. The Applicant's appeal thereagainst was pending at least when the matter was argued before us. The order of DSP Buldhana dated 14.9.2015 in this behalf would show that his next annual increment was stopped for one year without cumulative effect.

8. As far as the 2nd DE was concerned, it apparently arose out of an incident wherein the Applicant allegedly assaulted the activists of a particular political party. In that DE also, his next annual increment was stopped by S.P, Buldhana for one year.

9. Reiterating that the administrative appeals were pending, we proceed further. Without even considering the averments of the Applicant, if we straightaway read the Affidavits-in-reply presented on behalf of the Respondent No.2 with particular reference to Pages 56 and 59 Paras 3.2 and 3.5, it is clear that the matter of the Applicant was considered by the DPC on the dates therein mentioned, but in view of the pending DEs, sealed Cover Procedure was adopted. A Review DPC was also convened.

10. In deference to the directions given by the 1st Bench on 15.7.2014, another Affidavit-in-reply was filed by another Desk Officer wherein it is not disputed that the

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Officers junior to the Applicant in fact were promoted over his head for the reasons already mentioned.

11. In Para 5 of a yet another Affidavit-in-reply submitted on 16.6.2015, the Respondents have inter-alia pleaded that in order to determine the eligibility and fitness of the Applicant for promotion, the information from all concerned Unit Commandants was already called and his case will be placed before the DPC for an appropriate decision taken in that behalf.

12. The above discussion would, therefore, make a few factual deductions inescapable. In the first place, it is very clear that at the end of the day, the Applicant has been meted out minor punishment and that too, is under appellate scrutiny. We express no opinion thereabout. Secondly, on Respondents' own showing, the case of the Applicant was considered and Sealed Cover process was adopted, which would mean at least prima-facie that there may not be any dispute about the merit in the matter of promotion though again we give no directions thereabout and make a simple note thereof. Therefore, that aspect of the matter is also under consideration. Thirdly, in so far as the so called open enquiry is concerned, one is not too sure about the exact fate thereof, but then granting all latitude to the Respondents, if some events were to take



place thereabout, even otherwise they would not be helpless. It is not as if, this is a case of the proof of any major delinquency. In our opinion and it must be clearly understood that, even as a public servant under the cloud of DE or even punishment can be considered for promotion which aspect will be presently amplified, but then this cannot an unbridled rule of absolute application. The most significant aspect of the matter would be the nature and gravity of the allegations forming the charge. If the allegations are very serious or even serious, then of course, it would not be possible to consider the case of such a delinquent public servant for promotion pending prosecution or DE. If, however, it is of minor nature as has been the case in this OA, then of course, the said public servant will be entitled to the benediction of the G.R. of 2nd April, 1976 (1st G.R.) and 22nd April, 1996 (2nd G.R.). The entitlement and the right to be considered for promotion by the public servant, is therefore, fact specific and it can never be considered in a straight jacketed formula dehors the gravity and seriousness of the nature of the delinquency.

13. The first G.R. *inter-alia* lays down that simply because of pendency of proceedings if the promotion is not even considered, the public servant would be hit hard.

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Then there is a reference to the 3 stages of which action would have to be taken, viz. stage of preparing the select list, interim promotion during the pendency of the proceedings and the final action to be taken after conclusion of the investigation and the DE, if any. It further lays down in the case of the 1st stage on the basis of the previous record of the concerned employee, his name could be included in the select list at an appropriate place in a purely provisional manner for being reviewed after the DE was concluded. As far as the 2nd stage is concerned, if he was under suspension, his record pre-suspension could be examined and as far as the 3rd stage is concerned, if he was not found fit, no question would remain for being considered. The crux of the matter is that the first G.R. provides quite clearly that the pendency of the DE is not per-se and ipso-facto a ground to negate to the concerned employee a right for being considered for promotion. The whole thing would be governed thereby.

14. The 2nd G.R. refers to the 1st G.R. and provides that in a given set of circumstances, if the concerned employee who has been handed out minor punishment (सौम्य शिक्षा), if he was willing to suffer the punishment on the higher post, then it was not necessary that he should be reverted as of necessity.



15. Having said so, we may now refer to some earlier decisions of this Tribunal. They are **OA 689/2010 (Shri Namdev R. Khandekar Vs. Director General and IGP and one another, dated 8.9.2010) which was confirmed by the Hon'ble High Court in Writ Petition No.9130/2011 (DG and IGP Vs. Namdev R. Khandekar, dated 19.1.2012 (D.B).** In that matter as well, the Applicant suffered two minor penalties. This Tribunal relying upon **OA 1262/2009 (Shri Shankar R. Dodke Vs. DG and IGP and one another, dated 29.1.2010)** held that the benefit of the G.Rs above referred to could be extended to those Applicants.

16. In R.A.No.20/2011 in O.A.1303/2010 (Shri Bharat A. Suryawanshi Vs. State of Maharashtra, dated 22.7.2011), the Bench of this Tribunal had earlier ruled against the Applicant, but upon review, the said decision was overturned and relief was granted.

17. We are, therefore, quite clearly of the view that the above referred legal position such as it emanates from the above discussed case law, the same relief that was extended to those Applicants will also have to be given to the present Applicant.



18. For the foregoing, we direct that the Respondents should consider the case of the Applicant for promotion in the light of the above discussion. The Respondents should do so provided the Applicant was willing to undergo the minor punishments on the higher post, if those orders became final. This compliance be made by the Respondents within a period of two months from the date on which the Applicant conveys his willingness as just referred. Thereafter, if the Applicant moves the Respondents for deemed date, then that aspect of the matter should also be disposed of as expeditiously as possible and preferably within three months from the date of the application. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
07.01.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
07.01.2016

Mumbai

Date : 07.01.2016

Dictation taken by :

S.K. Wamanse.

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