

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION NO. 489/2015**

Shailendra Dinkar Gosavi,  
Aged about 54 years,  
Occupation: Chief Accounts Officer,  
Amravati Municipal Corporation,  
R/o Amravati.

-----**Applicant.**

**Versus**

1. The State of Maharashtra,  
Through its Secretary,  
Deptt. Of Finance,  
Mantralaya, Mumbai.
2. The Dy. Secretary, Finance Deptt.,  
Mantralaya, Mumbai.
3. The Director , Directorate of Accounts  
and Finance ,  
Mumbai.

----- **Respondents.**

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1. Shri R.N. Ghuge, Advocate for the applicant.
  2. Shri M.I. Khan, Presenting Officer for the Respondents.
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**CORAM : B. Majumdar : Vice Chairman**

**and**


**S.S. Hingne : Member ( J )**

**DATE : 13<sup>th</sup> April, 2016**

**ORDER****PER VICE-CHAIRMAN**

The applicant is an Accounts Officer, Group-B in the Collectorate, Nandurbar. He is aggrieved that after being promoted to Group-A ( Junior ), he was reverted due to the reason that a departmental enquiry ( DE ) was proposed against him.

2. The applicant was holding the additional charge of Accounts Officer, Sardar Sarovar Project, Nandurbar during 2006 to 2010. Sometime in 2011, an FIR was lodged against him under Sections 120-B, 409, 420 and 471 r/w 34 of the IPC. The Departmental Promotion Committee (DPC) met on 31/3/2012 and recommended the applicant for promotion to Group-A(Jr. ) from the category of NT-B. The applicant was promoted to Group-A (Jr.) on 9/8/2012 along with 10 other officers. The order of appointment, *inter alia*, states as follows :-




“ सदरच्या पदोन्नत्या तदर्थ पदोन्नत्या असून आदेश निर्गमित केले त्यापासून ११ महिने अथवा महाराष्ट्र लोकसेवा आयोगाकडून नामनिर्देशनाच्या कोट्यातील उमेदवार उपलब्ध होईल वा सेवानिवृत्ती यापैकी आधी घडेल तो पर्यंतच देण्यात आलेल्या आहेत. ”

3. On 25/2/2014 the Govt. issued an order for initiating a DE against the applicant and 2 other employees under Rules 8 and 9 of the Discipline and Appeal Rules, 1979. On 1/4/2015 DPC was held . It considered the case of the applicant and after taking a note of the fact that criminal charges have been registered against the applicant for serious financial irregularities it decided to cancel the applicant's fortuitous promotion of 2012 and revert him to his original post. On 18/6/2015 the Govt. issued a G.R. cancelling the fortuitous promotion of the applicant and posting him as Accounts Officer, Group-B ( Gazetted ). The applicant has challenged the legality of this order in the O.A.

4. The applicant submits that he was granted ad hoc promotion earlier only after verifying his credentials and after

finding him fit for granting ad hoc promotion. Since then he has been successfully discharging his duties and functions in accordance with law and there has not been a single allegation of any nature against him. The respondents should have continued him on the promotional post till the enquiry was completed. The respondents have blindly relied on the circular dtd. 2/4/1976 by ignoring that as per Clause 3 of the circular once provisional/ad hoc promotion is granted, it can be reviewed only after conclusion of the enquiry. So far as the criminal case against him is concerned, the applicant submits that there has been no progress and probably no steps have been taken by the investigating agency in that regard.

5. The respondents in their reply submit that the applicant could not be continued on the promotional post as a criminal case has been registered against him. His promotion of 2012 was fortuitous as it was from the nomination quota and it was a stop-gap arrangement. The DPC which was held on 1/4/2015 for deciding the cases of regular



promotion found him unfit to continue in the promotional post as serious criminal charges were pending against him. Further as per the provisions of the Circular of 1976 the applicant was not fit to be promoted.

6. Shri R.N. Ghuge, the Id. Counsel for the applicant mainly reiterated the submissions of the applicant in the O.A.

7. Shri M.I. Khan, the Id. P.O. for the respondents relied on the minutes of the DPC dtd. 1/4/2015. The DPC had taken a detailed note of the serious criminal charges and allegations of large scale financial irregularities against the applicant. Hence as per the Circular of 2/4/1976 as also the G.R. of 1996, the question of granting him promotion and further continuing him on the promotional post did not arise.

8. Having heard the arguments on both the sides and after going through the documents on record, I find that the DPC in its meeting dtd.31/3/2012 had granted fortuitous promotion to the applicant without considering that the criminal case was registered against him in 2011. The DPC in






its meeting held on 1/4/2015 considered the applicant's case for regular promotion. While reviewing his case it examined the serious charges of financial irregularities allegedly committed by the applicant which led to registration of a criminal case against him and initiation of DE under Rule 8 of the Discipline & Appeals Rules, 1979. It decided to cancel the applicant's fortuitous promotion and to revert him as Accounts Officer, Group-B. Consequently, the DPC did not also find him fit for regular promotion.

9. The Circular dtd. 2/4/1976 and the G.R. of 22/4/1996 lay down the policy for considering the promotion of employees against whom DE or criminal investigation is pending. Para 3 ( B ) of the Circular of 1976 states as follows :-

**Para 3 ( b ): "In respect of a person who is not under suspension, the competent authority should taken a conscious decision, after taking into consideration the nature of the charges leveled 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 reviewed on the conclusion of the investigation or enquiry."*

10. Clause 1 of the G.R. dtd. 22/4/1996 states as follows :-

“ (9) विभागीय चौकशी प्रलंबित असतानाही, जाणीवपूर्वक निर्णय घेऊन तात्पुरते पदोन्नत करण्यात आलेल्या अधिकारी कर्मचारी ह्यास चौकशीनंतरच्या निर्णयानुसार वेतनवाढ/वाढी राखण्याची सौम्य शिक्षा झाल्यास, शिक्षा भोगण्यासाठी, त्यास निम्न पदावर, पदानवत करण्याची आवश्यकता नाही. वेतनवाढ/वाढी रोखण्याची शिक्षेची अंमलबजावणी पदोन्नतीच्या उच्च पदावरच करण्यात यावी. मात्र त्यासाठी त्याची, त्याची उच्च पदावर शिक्षा भोगण्यास तयारी असल्याची लेखी पूर्वसंमती घेण्यात यावी. जर त्याने लेखी संमती देण्याचे नाकारल्यास, त्यास निम्न पदावर पदानवत करून त्या पदावर शिक्षेची अंमलबजावणी केली जावी व शिक्षेचा कालावधी पूर्ण होईपर्यंत त्यास पदोन्नती दिली जाऊ नये.”

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11. As the criminal charges against the applicant i.e., criminal breach of trust, cheating and using various documents by fraud for increasing price of the land, undisputedly were grave, involving financial irregularities of huge amount of Govt. money, and a D.E. has also been initiated against the applicant. The respondents in the light of the above circular and G.R. have rightly decided not to continue further his fortuitous promotion and also to disqualify him for regular promotion. The applicant's earlier promotion was purely on an ad-hoc basis which did not vest any right on him either to continue in the post or for grant of regular promotion. Hence there is no merit in the applicant's claim that he was found fit for promotion earlier. We would however also like to place on record that we find it rather strange that the DPC in 2012 found the applicant fit for promotion, even though on a fortuitous/ad-hoc basis, when a criminal case was already registered against him involving serious charges. The minutes of the above meeting do not make any mention of the applicant's criminal case.





12. Hence in the light of the above observations we find that the respondents have committed no illegality in reverting the applicant as Accounts Officer, Group-B. Hence, the O.A. being devoid of any merit stands rejected with no order as to costs.

sd/-

( S.S. Hingne )  
Member ( J )

Skt.

sd/-

(B.Majumdar)  
Vice-Chairman.