

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 630 OF 2015

DISTRICT : SOLAPUR

Shri Maruti Baburao Khedkar,)
Shree Bungla. Plot No. 110,)
Rajashri Shahu Nagar, Bijapur Road,)
Solapur 413 004.)...**Applicant**

Versus

1. The District Superintendent of,)
Land Records (DSLRL), Solapur)
2. The Dy. Director of Land Records,)
Pune Region, Pune.)
3. The Settlement Commissioner and)
Director of Land Records [M.S],)
Pune.)
4. The State of Maharashtra,)
Through CPO, M.A.T, Mumbai.)...**Respondents**

Ms Samina Mirza, learned advocate for the Applicant.

Shri A.J Chugule, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

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

DATE : 02.05.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Ms Samina Mirza, learned advocate for the Applicant and Shri A.J Chugule, learned Presenting Officer for the Respondents.

2. The Applicant in this Original Application is seeking promotion to the post of Deputy Superintendent, Land Records with effect from September, 2013 in terms of G.R dated 22.4.1996.

3. Learned Counsel for the Applicant argued that the Applicant was considered for promotion to the post of Deputy Superintendent of Land Records in the meeting of the Departmental Promotion Committee (D.P.C) held on 20.2.2013. The Respondent no. 3 submitted a report to the Respondent no. 1 in June 2013 (Exhibit 'G') stating that the Applicant was not considered for promotion, as a Departmental Enquiry (D.E) was pending against him time Applicant's case was kept in 'sealed cover'. Learned Counsel for the Applicant stated that 3 D.Es were started

against the Applicant in the years 2011 to 2013. The Applicant was not promoted as he was punished in a D.E by order dated 1.6.2012. In this D.E., punishment of stoppage of one increment for two years with cumulative effect was imposed. The Applicant could have been promoted in September 2013, along with his colleagues in the light of G.R dated 22.4.1996, which permits promotion pending D.E. Learned Counsel for the Applicant argued that now by order dated 6.11.2015, in Revision Application the Applicant has been exonerated and order dated 1.6.2012 imposing penalty and order in appeal dated 1.9.2014 have been quashed. Learned Counsel for the Applicant stated that in second D.E started on 4.2.2013, punishment of stoppage of one increment for six months was imposed. It has been reduced in appeal to 'censure' by order dated 11.11.2014. In yet another D.E started on 19.1.2013, punishment of stoppage of one increment for one year with cumulative effect was imposed by order dated 5.2.2015. In appeal the punishment is reduced to stoppage of one increment for one year without cumulative effect by order dated 8.9.2015. As of now, no D.E is pending against the Applicant. The Applicant was not promoted in September, 2013, in view of the D.E started on 19.4.2012. However, in that D.E., the Applicant has been exonerated and the sealed cover should be opened and the Applicant should be promoted.

4. Learned Presenting Officer (P.O) argued on behalf of the Applicant argued that the Applicant was considered for promotion in the meeting of D.P.C held on 20.2.2013. At that time, the Applicant was punished in D.E started on 19.4.2012 by order dated 1.6.2012 (stoppage of one increment for two years with cumulative effect). His case was, therefore, kept in sealed cover. It is true that by order dated 6.11.2015 in Revision, the Applicant has been exonerated in that D.E. However, that is subsequent to the meeting of D.P.C which was held on 20.2.2013. Learned Presenting Officer argued that two more D.Es were started against the Applicant on 19.1.2013 and 4.2.2013. In the D.E started by memorandum dated 4.2.2013, the punishment imposed by the Appellate Authority by order dated 11.11.2014 is 'censure'. In the D.E started on 19.1.2013, the Appellate Authority has reduced his punishment to stoppage of one increment for one year without cumulative effect by order dated 8.9.2015. The Applicant is undergoing that punishment and will be considered for promotion after the period of punishment is over.

5. We find that the Applicant was considered for promotion to the post of Deputy Superintendent of Land Records in the D.P.C meeting held on 20.2.2013. However, as by order dated 1.6.2012, he was undergoing punishment of stoppage of one increment for two years with cumulative effect his case was kept in sealed cover.

In para 9 of the affidavit in sur-rejoinder of the Respondents no 1 to 4 dated 27.1.2016, it is stated as follows:-

“9. With reference to para 11 of rejoinder, I say that departmental promotion committee has considered name of applicant for promotion in Group-B cadre, in the meeting held on 20.2.2013 according to his seniority in combine State Seniority List. Departmental Promotion Committee has examined the case of applicant for promotion and his name was recommended for promotion based on confidential reports and seniority. The name of applicant is included in select list at Sr. No. 24.

The applicant was undergoing the punishment by stoppage of one increments for two years with having effect on the future increments vide order of District Superintendent of Land Records, Solapur dated 1.6.2012. Consequently effect of this punishment vide order dated 1.6.2012 was to start from 1.7.2012, hence the Applicant was undergoing the punishment on the date of meeting of Departmental Promotion Committee (D.P.C) i.e. 20.2.2013. Due to this, Departmental Promotion Committee has recommended to keep applicant's name in sealed cover (मोहरबंद). Hence applicant was not promoted to Group-B cadre.”

It is a clear admission on the part of the Respondents that the only reason as to why the Applicant was not promoted based on the recommendation of D.P.C held on 20.2.2013 was that he was undergoing punishment which was imposed on by order dated 1.6.2012. This punishment was modified by the appellate authority to stoppage of one increment with cumulative effect by order dated 1.9.2014. The order was to take effect from 1.7.2012. The Applicant must have fully undergone that punishment by 30.6.2013. This order dated 1.9.2014 and order dated 1.6.2012 were quashed by order dated 6.11.2015 in Revision. The net effect is that the reason for keeping the case of Applicant in sealed cover no longer exist. The other D.Es were admittedly started on 19.1.2013 and 4.2.2013, but the reason for keeping the Applicant's case in sealed cover was punishment dated 1.6.2012, which stands quashed. The D.E started on 4.2.2013 has resulted in 'Censure' and in the D.E started on 19.1.2013, punishment of stoppage of one increment with cumulative effect was imposed by order dated 5.2.2015, which must have been implemented from 1.7.2015. The period of punishment would be over on 30.6.2016. Considering all these facts, we are of the opinion that subsequent D.Es should not have been considered for denying promotion to the Applicant once the punishment dated 1.6.2012 was quashed by order dated 6.11.2015. Now the Applicant is facing practically no D.E (punishment in last D.E will be over on

30.6.2016). The sealed cover should now be opened and the Applicant should be given promotion, if he is found fit. The Applicant, can apply to the competent authority for deemed date of promotion, if he is promoted on opening of sealed cover.

6. Having regard to the aforesaid facts and circumstances of the case, the Respondents are directed to take decision regarding promotion of the Applicant to the post of Deputy Superintendent, Land Records by opening the sealed cover, within a period of three months from the date of this order. The Original Application is disposed accordingly with no order as to costs.

Sd/-
(R.B. Malik)
Member (J)

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 02.05.2016
Dictation taken by : A.K. Nair.