

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

ORIGINAL APPLICATION NO.833 OF 2015

DISTRICT : THANE

Shri Pramod D. Yasatkar. )  
Working as Drugs Inspector, Zone 3, )  
Greater Mumbai and residing at 901, )  
Orion 'C', Cosmos Paradise, )  
Opp. Devdaya Nagar, Thane West. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Medical Education & Drugs Dept., )  
G.T. Hospital Complex, )  
Mumbai - 400 001. )
2. The Commissioner. )  
Food & Drugs Administration, )  
Survey No.341, Bandra Kurla )  
Complex, Bandra (E), Mumbai - 51. )...**Respondents**

**Ms. S.P. Manchekar, Advocate for Applicant.**

**Shri N.K. Rajpurohit, Chief Presenting Officer for Respondents.**

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)**

**R.B. MALIK (MEMBER-JUDICIAL)**



**DATE : 13.04.2016**

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

### **JUDGMENT**

1. This Original Application throws up for determination the issue of consideration for promotion of a Drug Inspector to the next higher post who faced prosecution under the Prevention of Corruption Act, 1988 and came to be acquitted though the criminal appeal against the said order of acquittal is pending and who also came to be exonerated from the departmental enquiry which was held on the same set of facts. The determination ultimately would depend upon the accurate implementation of a Circular dated 2<sup>nd</sup> April, 1976 issued by G.A.D, Government of Maharashtra and a G.R. of 22<sup>nd</sup> April, 1996.


2. The Applicant came to be appointed as Drugs Inspector through M.P.S.C. on 29.9.1997. He took up that job at Latur on 28.10.1997. On 2<sup>nd</sup> November, 2001, he got embroiled in a criminal case which is commonly called 'trap case' under the provisions of the Prevention of Corruption Act, 1988. He was placed under suspension w.e.f. that very date, though he was reinstated on 27.9.2002. A charge-sheet came to be issued to him on

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29.10.2002. In the meanwhile, the trap case ultimately led to registration of a prosecution against the Applicant in the form of **Special Case No.11/2002 (The State of Maharashtra through Anti Corruption Bureau, Latur Vs. Pramod D. Yasatwar)**. By judgment and order of 7<sup>th</sup> April, 2006, the Applicant being the accused in that matter came to be acquitted. The dissatisfied State of Maharashtra preferred an appeal thereagainst being **Criminal Appeal No.880/2006 (The State of Maharashtra Vs. Pramod D. Yasatwar)**. The appeal came to be admitted by the Aurangabad Bench of the Hon'ble Bombay High Court on 11.2.2009 and we were informed that the said criminal appeal was still pending.

3. In the meanwhile, the Applicant was made to face a departmental enquiry wherefrom he came to be exonerated by the disciplinary authority. The said order is at Exh. 'A-9' (Page 48 of the paper book) dated 22<sup>nd</sup> July, 2013. However, it is pertinent to note that the report of the Enquiry Officer on which this order of exoneration was based was dated 4.6.2013. In the order of the disciplinary authority, there were specific observations to show that there was no material on record to hold that the charge against the Applicant was proved.

  
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4. Thereafter, in fact, the State in Medical Education and Drugs Department by the communication of 5.7.2013 (Exh. 'A-3', Page 42 of the paper book) informed the Applicant that his name was proposed for promotion to the post of Assistant Commissioner (Drugs), Group 'A' and that he should give indication of his preference for the division. However, even thereafter not only was the Applicant not actually promoted, but going by the minutes of the meeting of the Departmental Promotion Committee (DPC) on 31.4.2013, which was before the date of Exh. 'A-3' and copy of which was secured by the Applicant in exercise of his rights under the Right to Information Act, he was held ineligible for being considered for promotional post. The contents in Marathi to the extent they are relevant hereto in fact need to be quoted.

“भटक्या जमाती (ब) - १ पद-

भटक्या जमाती (ब) या प्रवर्गातील जेष्ठतासूचीतील अ.क्र.९२ वरील श्री. प्र. दे. यासतवार, औषध निरीक्षक हे एकमेव औषध निरीक्षक कार्यरत आहेत. त्यांचे गोपनीय अहवालाच्या आधारे, समितीने त्यांची पात्रता आजमावली असता, ते पदोन्नतीस पात्र ठरतात. तथापि, शासनाने श्री. यासतवार यांच्याविरुद्ध ACB ने न्यायालयात खटला दाखल केला असून खटल्यातून त्यांना न्यायालयाने निर्दोष मुक्त केले आहे. तथापि, शासनने सदर आदेशाविरुद्ध अपील दाखल केलेले असून अद्यापर्यंत निर्णय प्रलंबित आहे. तसेच सदर प्रकरणी त्यांची म.ना.से. (शिस्त व अपील) नियम, १९७९ च्या नियम ८ खाली विभागीय चौकशी सुरु करण्यात आलेली आहे. त्यामुळे समितीने त्यांच्या पदोन्नतीसाठी विचार केलेला नाही.”

5. The issue therefore is as to whether this was a sufficient enough reason for denial to the Applicant his right to be considered for promotion. In that behalf, in the first place, it would be appropriate to reproduce the Circular of 1976 and the G.R. of 1996 which have been referred to in the inaugural Paragraph itself. They read as follows :


“GOVERNMENT OF MAHARASHTRA  
GOVERNMENT ADMINISTRATION DEPARTMENT,  
Circular No.SRV-1075/X,  
Sachivalaya, Bombay – 400 032,  
Dated the 2<sup>nd</sup> April, 1976

CIRCULAR OF GOVERNMENT

According to the existing practice, Government servants whose conduct is under investigation or against whom a departmental enquiry is pending, are ordinarily not considered for promotion. This practice is however, likely to cause hard-ship in the case of Government servants who are otherwise fit for promotion and the charges against whom may not be so serious as to disqualify them for provisional promotion during the pendency of the investigation or enquiry. The question has been examined. There are three stages at which action will have to be taken viz.

1. The stage of preparing the select list.
2. Interim promotion during the pendency of the proceedings, and

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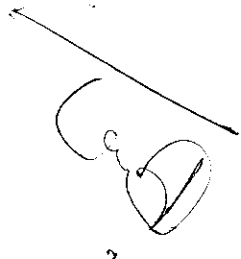
3. The final action to be taken after the conclusion of the investigations and the departmental enquiry if any.

Action as below should be taken in respect of these three stages.

2. The Stage of preparation of select list :

- (a) At the time of drawing up of the select list, the case of a person facing an investigation or departmental enquiry should be considered in the same manner in which the cases of other person are considered i.e. On the basis of his previous record of service. If on the basis of his record. He is found fit for promotion, his name should be included in the select list at the appropriate place; but this inclusion should be considered to be purely provisional to be reviewed after the conclusion of the departmental enquiry or investigation if on conclusion of the investigation it is decided that a departmental enquiry is not necessary. This position will apply to all persons irrespective of whether they are under suspension or not.

- (b) If the state of his record is such that because of his suspension, his record for the part 2/3 years is not available and so no decision either way can be taken then the Selection Committee should keep his case 'open' i.e. to be considered at the later date



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without prejudice to him because of the delay.

(c) If, on the basis of his record, he is not found fit for promotion, no further question arises.

3. Interim promotion during the pendency of the proceedings.

If the persons 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 arises such a person shall not be promotion.

(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 provisional and will be reviewed 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 follows:

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

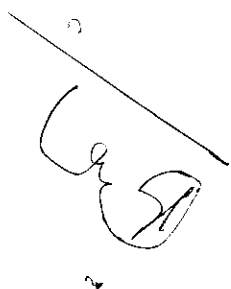
(ii) If such a person had become due for promotion but was not promoted, he should be promoted at the first opportunity. He should retain the seniority of his position in the select list. His pay should also be fixed at a stage which he would have reached had he been actually promoted according to his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

(b) If he is not completely exonerated, then his case should be re-examined and a fresh decision should be taken as to whether, in view of the result of the investigations of enquiry, he is fit to be promoted;

(i) If he is not found fit in such a re-examination and if he was provisionally promoted earlier the provisional promotion should come to an end. If he was not so promoted, no further question arises.

(ii) If he is found fit, the competent authority should indicate his revised place in the Select List. This revised place is expected to be lower than the original provisional place in most cases because of the interresulting from the proceedings. If such a person was already provisionally promoted earlier, he should be deemed to be promoted accordingly to his revised position in the select list and the period his earlier promotion should be treated as fortuitous.

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If such a person was not already promoted, he should be promoted according to his revised position in the select list and the same consequences as in clause (a) (ii) above should follow.

(c) Cases which are kept 'Open should be decided expeditiously.'

6. The G.R. of 22<sup>nd</sup> April, 1996 (in Marathi) reads as under :

“महाराष्ट्र शासन,  
सामान्य प्रशासन विभाग,  
शासन निर्णय, क.एसआरव्ही-१०९५/प्र.क.२९/९५/बारा,  
मंत्रालय, मुंबई- ४०० ०३२.  
दिनांक-२२ एप्रिल, १९९६.

वाचा:- शासन परिपत्रक, सामान्य प्रशासन विभाग, क्रमांक - एसआरव्ही-१०७५/१०,  
दिनांक २ एप्रिल, १९७६.

#### शासन निर्णय

विभागीय चौकशी प्रलंबिल असलेल्या अधिकारी/कर्मचारी हयांच्या पदोन्नतीसाठी विचार करताना काय कार्यपध्दती अवलंबिली जावी, हया संबंधात सविस्तर सूचना उपरोलिखित परिपत्रकान्वये विहित करण्यात आल्या आहेत. त्यानुसार विभागीय चौकशी प्रलंबित असतानाही, ज्येष्ठताक्रमानुसार विचारक्षेत्रात येणारे अधिकारी/कर्मचारी पदोन्नतीस पात्र असल्याचे, निवडसमितीस आढळल्यास अशा अधिकारी/कर्मचारी हयांचा निवडसूचीत तात्पुरत्या स्वरूपात समावेश केला जातो व नंतर, पदोन्नती आदेशित करण्यास सक्षम असणा-या अधिका-याने अशा दोषारोपांचे स्वरूप लक्षात घेवून, त्यास चौकशीच्या निर्णयाची वाट न पहाता तात्पुरती पदोन्नती द्यावयाची काय हयाबाबत जाणीपूर्वक निर्णय घ्यावयाचा असतो,

(ब) विभागीय चौकशी नंतर, अधिकारी/कर्मचारी हयास दोषमुक्त ठरविल्यास, ओघानेच त्याची तात्पुरती पदोन्नती नियमित केली जाते. परंतु, अधिकारी/ कर्मचारी हयांचे विरुद्धचे आरोप

सिध्द होऊन, त्यास काही शिक्षा झाली तर शिक्षेची अंमलबजावणी करण्यातकरिता त्याची तात्पुरती पदोन्नती संपुष्टात येते.

हयासंबंधात, शासनाच्या असे निदर्शनास आले की, दीर्घकाळ चाललेल्या चौकशीच्या प्रक्रियेनंतर, अपचारी अधिकारी / कर्मचारी हयांस वेतनवाढी/वाढी, रोखण्याची सौम्य शिक्षा झाल्यावर, ही शिक्षा भोगण्यासाठी अधिकारी/ कर्मचारी हयास, निम्न पदावर पदावत करणे जाचक ठरते, म्हणून हया सर्व बाबींचा काळजीपूर्वक विचार करून शासन असे आदेश देत आहे की,

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

(२) ज्या प्रकरणी पदोन्नती रोखण्याची शिक्षा देण्यात आली असेल, अशा अपचारी अधिकारी/कर्मचारी हयास ताबडतोब मूळ पदावर पदावत करण्यात यावे.

हे आदेश दिनांक १ जानेवारी, १९९७ पासून अंमलात येतील.  
महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

के.सी.श्रीवास्तव  
प्रधान सचिव (सेवा)''


7. As a matter of fact, the State Government itself has been adopting the course of action mandated by the above instrument which in fact they must. The Applicant has, to his Affidavit-in-rejoinder annexed an order in the form of a G.R. of 27<sup>th</sup> January, 2014 pertaining to some other Department and also another set of promotions given



by way of Exh. 'SR-2' (Pages 91 and 94 respectively). There also, in granting promotions to the concerned Officers, it was made clear that the promotions were given subject to the pending prosecutions. Therefore, even if it were to be held that pending criminal appeal, there is an impediment in the way of Applicant's promotion, the promotions subject to the same conditions as in case of above referred personnel can safely be granted. In the set of these circumstances, it is really not necessary to refer to a few judgments rendered by this very Tribunal in matters such as this one.

8. In the context of the facts, such as they are, in our opinion, as per the salutary principles of administrative law, relief in terms of Para 10 (b) of this OA will have to be granted. The things have not so far so much escalated as to grant relief under <sup>on</sup> Para 10(a) of the OA, although it may as well so happen, if the attitude of the Respondents were to remain recalcitrant.

9. The Respondents are directed to consider afresh the case of the Applicant for promotion to the post of Assistant Commissioner of Drugs either on temporary basis or otherwise subject to the outcome of the pending criminal appeal preferred by the State against the

<sup>v</sup>  


Applicant and if found fit, he may be promoted as an Assistant Commissioner of Drugs within a period of two months from today. The Original Application is allowed in this term with no order as to costs.

Sd/-  
**(R.B. Malik)**  
**Member-J**  
**13.04.2016**

Sd/-  
**(Rajiv Agarwal)**  
**Vice-Chairman**  
**13.04.2016**

Mumbai

Date : 13.04.2016

Dictation taken by :

S.K. Wamanse.

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