

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.893 OF 2016

DISTRICT : MUMBAI

Mr. Subhash M. Khade.)
Age : 59 Yrs, Occu.: Retired as ACP and)
R/at : B-805, Ravecha Heights, Plot No.25)
Sector 7, Kharghar, Navi Mumbai 410 210)...**Applicant**

Versus

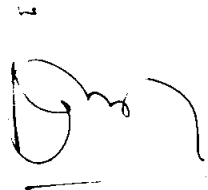
1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)
2. Director General of Police.)
Office at Shahid Bhagatsingh Marg,)
Colaba, Mumbai.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

Ms. S.T. Suryawanshi, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 18.08.2017



JUDGMENT

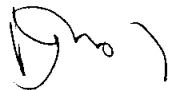
1. This Original Application (OA) is brought by a retired Assistant Commissioner of Police (ACP)/Dy. S.P. and it concerns the dispute with regard to the grant of deemed date for the post of DCP/S.P. from 28.8.2015 to 30.9.2015 and for the revision and re-fixing of pay and pension.

2. The Applicant was born on 2.9.1957 and has retired on superannuation as ACP/Dy. S.P. on 30.9.2015 while under suspension. On 21.12.2014, he was placed under suspension because the Anti-Corruption Bureau (ACB) had registered an offence against him on the allegations of he having been found in possession of assets disproportionate to his known sources of income. Various Sections of Prevention of Corruption Act, 1988 (A.C. Act) came to be invoked.

3. Upon submission of a report under Section 169 of the Code of Criminal Procedure (Cr. P.C.), the learned Special Judge, ACB, Kalyan by an order dated 11.9.2015 accepted it and the proceedings against the Applicant were closed and he was discharged. It is very clear, therefore, that it was found that there was no prosecutable material



against the Applicant and it was not even worth the case sending up for trial. Therefore, it must follow that, there was nothing adverse found against the Applicant. This aspect of the matter will have to be borne in mind. The Applicant made representations for revoking of his suspension presumably also because the date of retirement was fast approaching. He was discharged just a few days before he retired on 30.9.2015. In Para 18 of the Affidavit-in-reply (Page 68 of the Paper Book (PB)) which Affidavit is filed by Deputy Secretary Mr. Kailash A. Gaikwad, it is pleaded that the meeting of Departmental Promotion Committee (DPC) was convened on 28.8.2015 for the preparation of select list for 2014-15 for considering promotions to the post of S.P./Dy. S.P. The closure report was accepted by the Hon'ble Judge of the Special Court on 11.9.2015 which order was received by the Government on 22.9.2016 and the proposal for review of suspension of the Applicant was submitted to the competent authority where the file was received dot on 30.9.2015 late in the evening, on which date, the Applicant retired on superannuation while still under suspension. It is pleaded that, nobody junior to the Applicant was promoted by then, but that is an aspect of the matter which I shall presently turn to, to the extent warranted by the facts.

~


4. By an order dated 16th October, 2015, the Home Department regularized the period of suspension of the Applicant from 21.12.2014 to 30.9.2015 meaning thereby that, though made after retirement of the Applicant, the entire period of suspension was in the manner of speaking regularized and on that score as well, nothing adverse circumstance subsisted especially of such a nature as to be capable of visiting on the Applicant any adversity. It can safely be held, therefore, that even otherwise, the suspension of the Applicant would have been revoked, had his retirement not intervened.

5. At Exh. 'I' (Page 40 of the PB), there are minutes of the meeting of the DPC which are relevant herefor. In the ad-hoc list, admittedly, there were Officers junior to the Applicant who had been cleared. It is an indisputable factual position that the only reason why on that date, the Applicant was not promoted or found fit for being promoted was that, he was under suspension pending the criminal case against him. In Paras 12 and 13 of the Affidavit-in-reply (Pages 63 & 64 of the PB), it is clearly mentioned that the Department had taken a conscious decision not to hold departmental enquiry against the Applicant but it is further pleaded that the Applicant had not completed seven years of service on the post below for being

A handwritten signature in black ink, appearing to be 'B. M.', written over a horizontal line.

considered for the promotional post. At this stage itself, however, it may be clearly mentioned that there appears to be no substance in the case of the Respondents because for the same reasons, whatever treatment was given to those who were junior to the Applicant should have been given to the Applicant as well, and therefore, the Respondents cannot sail through with this kind of a justification.

6. It is, however, very clear that and it needs to be repeated that, in the first place, the Applicant was cleared from the criminal case right at the threshold without even so much as the requirement of his plea being recorded and no DE was ever initiated against him and that was a conscious decision taken by the Respondents. It is in this context of the factual scenario that the Applicant seeks the relief which is already summarized at the threshold.

7. I have perused the record and proceedings and heard Mr. K.R. Jagdale, the learned Advocate for the Applicant and Ms. S.T. Suryawanshi, the learned Presenting Officer (PO) for the Respondents.

8. The facts above discussed and the factual deductions made are quite clear and they need to be borne

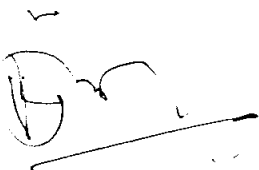
A handwritten signature in black ink, appearing to be 'Dno', is written over a horizontal line.

in mind. In my view, the DPC clearly erred in not at all considering the case of the Applicant for promotion when he was already along with his peers in the manner of speaking shortlisted. If the DPC thought that because of his suspension, he could not have been cleared for promotion, then for all one knows, they should have taken recourse to the sealed cover procedure. I must, however, hasten to add that as I shall be presently pointing out that in the set of these facts, perhaps the case of the Applicant was slightly better than the one that is kept in a sealed cover. But before that, I may usefully refer to **Lachhman Singh Vs. State of Punjab : 2000 (6) SCC 538 = 2000 (0) AIR SCW 3229**. That entire Judgment in fact needs to be fully reproduced.

“ORDER

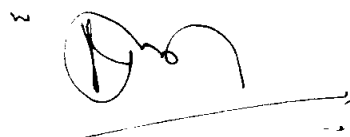
Leave granted.

2. The question is about the Appellant s promotion from the post of Asstt. Sub Inspector to the post of Sub Inspector. The Appellant was granted promotion with effect from 11.8.1992 but he claims promotion from 25.7.1990 the date when his juniors were promoted. Earlier the Departmental promotion Committee (DPC) met and the case of the Appellant was kept pending in view of the fact that a



criminal case was pending trial against the Appellant. Subsequently, the criminal case ended in his favour on 24.5.1991. Meanwhile, juniors to the Appellant were promoted on 25.7.1990. The Appellant then made a representation to the higher authorities but the same was rejected. But this rejection was by the DIG of Police vide order dated 15.6.1995 wherein he has stated that the adverse report for the period 1.4.1988 to 31.3.1989 would still come in the way of the Appellant. It may be noted that the Appellant's name was placed in E. List with effect from 1.4.1990. The question relating to the promotion of the Appellant with effect from the anterior date has again to be considered by the DPC after the order of acquittal was passed on 24.5.1991. It will be for the DPC again to find out if the adverse remarks for the period 1.4.1988 to 31.3.1989 would come in the way of the Appellant being given promotion with effect from 25.7.1990 the date on which his juniors were promoted. We, therefore, set aside the view expressed by the DIG in that behalf. The matter is remitted to the DPC for consideration whether the Appellant could be promoted from 25.7.1990. The appeal is disposed of accordingly."

9. Similarly, another Judgment in the matter of **Sulekh Chand and Salek Chand Vs. Commissioner of**



Police : (1994) Supp. 3 SCC 674 also needs to be fully reproduced.

1. "Leave granted.
2. These appeals rise from the order of the Central Administrative Tribunal in OA No.1218 of 1988 dated 12-12-1993. The appellant was promoted from the post of ASI to SI but he was confirmed w.e.f. 4-1-1989 though it was stated that his case for promotion has to be considered with effect from 1-10-1982. This claim was resisted by the respondents on the ground that in 1983, he was charged for an offence under Section 5(2) of the Prevention of Corruption Act and he was kept under suspension and he was also communicated of adverse remarks for the period from 7-6-1980 to 31-3-1981 and that he become eligible to be considered for promotion as SI w.e.f. 16-12-1985. Therefore, his case was considered and he was promoted in 1989. Counsel for the respondent was directed to produce the record relating to the DPC proceedings. We have perused the proceedings of DPC which would clearly shows that the reasons which prevailed with the DPC were the prosecution under Section 5(2) of Prevention of Corruption Act and the departmental enquiry, against the appellant. It is not in dispute



that the proposed departmental enquiry also is related to the selfsame offence under Section 5(2) of the Prevention of Corruption Act. The judgment acquitting the appellant of the charge under Section 5(2) become final and it clearly indicates that it was on merits. Therefore, once the acquittal was on merits the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the departmental enquiry is obviated. It is settled law that though the delinquent official may get an acquittal on technical grounds, the authorities are entitled to conduct departmental enquiry on the selfsame allegations and take appropriate disciplinary action. But, here, as stated earlier, the acquittal was on merits. The material on the basis of which his promotion was denied was the sole ground of the prosecution under Section 5(2) and that ground when did not subsist, the same would not furnish the basis for DPC to overlook his promotion. We are informed that the departmental enquiry itself was dropped by the respondents. Under these circumstances, the very foundation on which the DPC had proceeded is clearly illegal. The appellant is entitled to the promotion with effect from the date his immediate junior was promoted with all



consequential benefits. The appeals are allowed. No costs.”

10. Mr. Jagdale, the learned Advocate then relied upon **Union of India and Ors. Vs. Anil Kumar Sarkar : Civil Appeal No.2537/2013 arising out of SLP (c) No.1933/2011, dated 15.3.2013.** In fact, in that matter, the Hon'ble Supreme Court was pleased to hold that the sealed cover procedure was adopted when the employee was due for promotion and the hitch was the pending criminal proceedings and quite pertinently, the criminal proceedings would be deemed to have commenced with the framing of charge which in this matter had not been framed and even that stage had not reached, and therefore, in fact, on the ground of suspension which was referable to the criminal case, which case was found to be not worth trying also, it was not even necessary for adoption of sealed cover procedure and the case of the Applicant in fact could have been considered for promotion, may be leaving for the future for the course of action to be adopted as to what should be done, if he was found fit. Here, the Applicant was not even in the manner of speaking given primary clearance for promotion.

11. A very important Judgment in the field cited by Mr. Jagdale is **Union of India Vs. K.V. Jankiraman : AIR**

A handwritten signature in black ink, followed by a long arrow pointing to the right.

1991 SC 2010. In that matter, as well as in the matter of **Ramesh Kumar Vs. Union of India : AIR 2015 SC 2904**, the Hon'ble Supreme Court was pleased to hold that, even in such circumstances, in fact once it was found that the Applicant was either acquitted or exonerated, the further benefits like arrears, etc. could not be denied. But very clearly, it was held by the Hon'ble Supreme Court that the mere pendency of criminal proceedings by itself would not be sufficient to decline to take action on the issue of promotion. If he was found to be fit but was under cloud of either a prosecution or DE, then the further course of action would be a different matter altogether. Now, in the present OA, one finds that there is material to hold at Exh. 'A' collectively itself that, performance wise the Applicant was not found wanting. There are ACRs that bear testimony to that aspect of the matter. That being the state of affairs, in my opinion, in the meeting held on 28.8.2015, his case should have been considered and non-consideration thereof has resulted in failure of justice. The Applicant, is therefore, entitled to the relief sought.

12. Ms. S.T. Suryawanshi, the learned Presenting Officer contended that, no junior to the Applicant was promoted till his retirement and that he had also not completed the minimum period of seven years, etc. As to



this submission of the learned PO, I find that, I have already mentioned above that, if that was so, then the same treatment ought to have been meted out to the juniors of the Applicant because they must have put in either less or at the most equal number of years. Further, that was not a ground why the DPC declined to consider the case of the Applicant. The cause as already mentioned above was suspension. Ms. Suryawanshi told me that, that was a case of ad-hoc promotion. I would express no opinion thereabout except to say that, in that event, the Applicant could at least have been considered for that very conditional promotion. It is a clearly admitted position that the juniors of the Applicant came to be promoted by the order dated 13.1.2016. The Applicant was already in the zone of consideration and as per the RTI, enquiry response at Exh. 'J' (Page 50 of the PB), he was at Serial No.67 but, to repeat, he had not been considered at all.

13. For the foregoing, therefore, I hold that a case is made out for giving directions to the Respondents to consider the case of the Applicant for the promotion to the post of S.P./^{Dy.}~~S.P.~~ even though he may have retired now because in the event, he were to succeed, he would benefit in the matter of pay fixation and consequently, quantum of pension. Therefore, he has an enforceable right. The



Respondents are, therefore, directed to convene a special DPC to consider the case of the Applicant for promotion to the post of S.P./DCP on the date which his immediate junior was promoted on and if found fit, he be given the same date as 'deemed date' for promotion and his pay be reworked out and the consequent benefit *inter-alia* in the matter of pension, etc. be also conferred on him. Compliance within six weeks from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-
(R.B. Malik) | ~ 17
Member-J
18.08.2017

Mumbai

Date : 18.08.2017

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2017\8 August, 2017\O.A.893.16.w.8.2017Deemed Date of Promotion.doc