

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 909 of 2022 (D.B.)**

Ashok S/o Kacharuji Raut,
Aged 56 years, Occ. Service,
R/o 38/B, Shaktimata Nagar,
Near Water Tank, Wathoda, Nagpur.

Applicant.

Versus

1) The State of Maharashtra,
through its Additional Chief Secretary,
Public Works Department,
Mantralaya, Mumbai - 32.

2) The Chief Engineer,
Public Works Department,
Having its Office Civil Lines, Nagpur.

Respondents.

**S/Shri S.P.Palshikar, Adv. for the applicant.
Shri A.P. Potnis, learned P.O. for respondents.**

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 04/01/2024.

JUDGMENT

Heard Shri S.P.Palshikar, learned counsel for the applicant and Shri A.P. Potnis, learned P.O. for the respondents.

2. The regular Division Bench is not available. The Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai issued Circular No.MAT/MUM/JUD/469/2023, dated 24/04/2023. As per the direction of Hon'ble Chairperson, if both the parties have consented for final

disposal, then regular matter pending before the Division Bench can be disposed off finally.

3. As per the M.A.T., Principal Bench, Mumbai office order / letter No.MAT/MUM/JUD/1350/2023, dated 21/11/2023, the Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai has given direction to this Tribunal to decide the Division Bench matters if the matter is covered by the Judgments of Hon'ble Supreme Court, Hon'ble High Court and the Benches of the M.A.T. etc.

4. The matter is heard and decided finally with the consent of learned counsel for both the parties.

5. The case of the applicant in short is as under –

6. The applicant was initially appointed as a Junior Engineer on 20/08/1997. He was posted in Gadchiroli. He was promoted as a Sectional Engineer in the year 2003. He is working as a Sectional Engineer at Nagpur. The next promotion is that of Deputy Engineer and promotion is to be given as per the seniority-cum-merit.

7. While the applicant was working in Gondia District it is alleged that he has demanded bribe. The Crime No.248/2017 was registered for the offence punishable under Section 7 of the Prevention of Corruption Act. The applicant was arrested on 03/10/2017. The applicant was put under suspension as per order

dated 30/10/2017 w.e.f. 04/10/2017. The respondents have revoked the suspension in the year 2019. The applicant was posted at Daryapur, District Amravati. On 17/12/2018 the charge sheet was served to the applicant for the purpose of departmental enquiry. The said departmental enquiry is still pending. The applicant is not promoted because of pendency of departmental enquiry and criminal case pending against him. Juniors of the applicant are promoted on 03/12/2021. Therefore, the applicant approached to this Tribunal for the following reliefs –

“(8) Relief sought :-

That this Hon'ble Tribunal be pleased to call for the entire record from the office of respondent No.2 and after perusal of the same further be pleased to:

(i) issue necessary directions to respondent No.1 to consider the case of the applicant for promotion as a Deputy Engineer in accordance with law ignoring the pendency of Departmental Enquiry and Criminal Case;

(ii) further be pleased to issue directions to respondent No.1 to issue order of promotion in favour of applicant as a Deputy Engineer forthwith;

(iii) further be pleased to direct the respondent No.1 to grant deemed date of promotion as a Deputy Engineer as of December, 2021 when his batch mate and juniors are promoted by granting him all consequential and monetary benefits arising therefrom, in the interest of justice;

(iv) grant any other relief which deemed fit including that of the costs in the facts and circumstances of the present case.”

8. The O.A. is strongly opposed by respondent nos.1 and 2 by filing affidavit-in-reply. It is submitted that because of pendency of

criminal case and departmental enquiry, the applicant is not promoted. There is no illegality. Hence, the O.A. is liable to be dismissed.

9. During the course of submission the learned counsel for applicant has pointed out the Judgments of the Hon'ble Supreme court in the case of the ***Union of India and Others versus K.V. Jankiraman & Ors.(1991) 4 SCC,109*** and ***Union of India & Ors. Vs. Anil Kumar Sarkar (2013) 4 SCC,161***. The said Judgments were considered by this Tribunal in O.A.No.427/2023. Para-7 to 9 of the Judgment in O.A.427/2023 are reproduced below –

“(7) During the course of submission, the learned counsel for the applicant has pointed out the Judgment of the Hon'ble Supreme Court in the case of ***Union of India Vs. K.V.Jankiraman And Others reported in (1991) 4 SCC 109 decided on 27.08.1991***. He has also pointed out the Judgment of the Hon'ble Supreme Court in the case of ***Union of India And Others Vs. Anil Kumar Sarkar(2013) 4 SCC 161 decided on 15.03.2013***.

8. The learned counsel for the applicant has pointed out the Judgment of Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.1672/2022 decided on 05.10.2023. The learned counsel for the applicant has submitted that the applicant can be promoted subject to the outcome of the pending criminal case and departmental enquiry.

9. As per the contention of the applicant, departmental enquiry is completed, but it is kept on dormant file because of the pendency of criminal case before the Sessions Court. The batchmates of the applicant are promoted. The Hon'ble Supreme Court in the case of ***Union of India Vs. K.V.Jankiraman And Others reported in (1991) 4 SCC 109 decided on 27.08.1991*** has held as under-

***Service Law - Promotion - Sealed cover procedure -
Sealed cover to be opened in case of complete exoneration of***

the employee from all charges and notional promotion to be given from the date his juniors promoted - Arrears of salary may be granted from the date of notional promotion having regard to the circumstances of the case - Where proceedings delayed at the instance of the employee himself or the employee acquitted on benefit of doubt or owing to non-availability of evidence because of employee's acts, the concerned authority must decide his entitlement to back pay and extent thereof.

9. Sealed cover procedure - Sealed cover to be opened in case of complete exoneration of the employee from all charges and notional promotion to be given from the date his juniors promoted - Arrears of salary may be granted from the date of notional promotion having regard to the circumstances of the case. "If employee is visited with any penalty in disciplinary proceedings or found to be guilty by Criminal Court, the sealed cover shall not acted upon and his case for promotion may be considered in usual manner by next DPC." It is held that if the disciplinary proceedings are pending in the criminal case, employee be promoted on ad-hoc basis subject to outcome of the departmental enquiry or in pending criminal case. In Writ Petition No.1672/2022, the Hon'ble Bombay High Court, Bench at Aurangabad in para 24 onwards has held that the employee/who is facing criminal case and departmental enquiry, he can be promoted temporarily subject to the outcome of the decision. The material portion of the Judgment in Writ Petition No.1672/2022 is reproduced below-

24. Learned counsel for the respondent has invited our attention to the prohibition of two years in considering the claim of any employee like petitioner whose eligibility is closed in the sealed cover. The procedure as contemplated by clause 9 of G.R. dated 15.12.2017 is pressed into service. It is informed that in a next meeting which is to be convened in December 2023 or January 2024, the claim of the petitioner would be reconsidered. The respondents have not placed on record the objective satisfaction for holding the petitioner ineligible. We find that the petitioner is illegally deprived of the promotion. Therefore, the respondents cannot keep the

petitioner waiting for two years. The submission of learned counsel relying upon clause 9 cannot be approved.”

10. The learned counsel for applicant has pointed out the Judgment of Hon’ble Bombay High Court Bench at Aurangabad in Writ Petition No.1672/2022, decided on 05/10/2023.

11. In the cited Judgment, the meeting of DPC was held. Nothing was produced before the Hon’ble High Court in respect of outcome of the meeting. In the present matter, nothing is on record to show that whether the applicant was called for interview in the DPC meeting and the sealed cover procedure as per the G.R. dated 15/12/2017 was followed or not.

12. In view of the Judgments of the Hon’ble Supreme court in the case of the ***Union of India & Ors. Vs. Anil Kumar Sarkar (2013) 4 SCC,161*** and ***Union of India and Others versus K.V. Jankiraman & Ors.(1991) 4 SCC,109*** pendency of criminal case / departmental enquiry is not a ground to withhold the promotion. As per the Judgment of the Hon’ble Supreme Court, ad-hoc promotion can be given subject to the decision of the departmental enquiry and outcome of criminal case pending against the employee. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to call the applicant / record of applicant in the DPC meeting by following the procedure as per the G.R. dated 15/12/2017 and promote the applicant if he is eligible for the same by giving deemed date of promotion on the date on which his juniors are promoted subject to the decision of criminal case and departmental enquiry pending against the applicant.

(iii) The respondent no.1 is directed to consider the applicant for promotion as a Deputy Engineer in accordance with law, subject to the decision of criminal case and departmental enquiry.

(iv) The respondents are directed to comply the above directions in the forthcoming DPC meeting.

(v) No order as to costs.

Dated :- 04/01/2024.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 04/01/2024.