

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.916 OF 2023**

**DISTRICT : Navi Mumbai  
SUBJECT : Promotion**

Shri Rajiv Shankarrao Bubane, )  
Aged: 57 years, Occ Sectional Engineer (Desing Division) )  
R/at 401, Priyanka Tulip, opp. D'Mart, Sector 14, )  
Kalamboli, Navi Mumbai 410218. )... **Applicant**

**Versus**

The State of Maharashtra, )  
Through the Secretary, Water Resources Dept. )  
Hutatma Rajguru Chowk, Madam Cama Road, )  
Mantralaya, Mumbai 32. )... **Respondent**

**Shri Kishor R. Jagdale, learned Advocate for the Applicant.**

**Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents.**

**CORAM : Justice Mridula Bhatkar, (Chairperson)  
Shri Debashish Chakarbarty, Member (A)**

**DATE : 19.10.2023**

**PER : Justice Mridula Bhatkar, (Chairperson)**

**JUDGMENT**

1. The Applicant Sectional Engineer prays that the Respondent be directed to promote the Applicant to the post of Sub- Divisional Officer (Civil) and grant him deemed date of promotion, since his juniors are promoted from 31.03.2022 with all consequential service benefits.

2. The Applicant is working as Sectional Engineer (Design Division Kokan Bhavan) has filed this O.A. No.916/2013 on 26.07.2023. In his prayer, he submits that he was due for promotion to the post of Sub Divisional Officer (Civil) since August, 2021. He submits that his name

was not considered in the Departmental Promotion Committee of 01.08.2021. The Applicant submits that he should have been considered in the DPC which was held in August, 2021. The Applicant submits that he was prosecuted and facing Criminal Case No.87/2017 before JMFC Tuljapur for the offence punishable under Section 420, 406, 166, 167 and 177 of IPC. Learned Advocate for the Applicant submits that Applicant made discharge application on 31.05.2018 requesting to discharge him from Criminal Case vide FIR No.87/2017. Learned Advocate for the Applicant submits that though Applicant was due for promotion and his juniors were promoted in 2022, his case was not considered for promotion.

3. Learned Advocate for the Applicant submits that the case of the Applicant is squarely covered under Clause 9 of G.R. dated 15.12.2017. Learned Advocate for the Applicant further relies on the judgment of the Tribunal in **O.A.No.770/2021 (Dayanand N. Kiratkar V/s Director General & Inspector General of Police & Anr.), dated 11.07.2022.** Learned Counsel submits that he seeks similar direction that case of the Applicant is to be reviewed and again it is to be considered for promotion. He further raised the issue of parity *inter-alia* contending that in case of co-accused Shri Santosh Tengale in C.R.No.87/2017, FIR was registered at Tuljapur Police Station was given promotion on 18.06.2021. Learned Advocate for the Applicant submits that Applicant seeks parity on the same line and he is also entitled for promotion.

4. Learned CPO while opposing the O.A. relied on the Affidavit-in-Reply filed by Smt. Priyadarshani Vijay Sonar, Executive Engineer dated 08.09.2023. Learned CPO on the ground of parity submits that other co-accused is from Urban Development Department and present Applicant is working under Water Resources Department and these are two different Administrative Departments. She further submits that no juniors of Applicant were promoted in 2022. She points out that in Seniority List, the Applicant is at Serial No.2549-A. Further she submits that Applicant became eligible for promotion in August 2021 and

thereafter his name was considered in the next DPC meeting held on 30.08.2022. The Applicant is facing criminal prosecution for offence under Section 406, 420, 166, 167 and 177 of IPC, and therefore, his case was kept in Sealed Cover Envelope. The Sealed Cover Envelope will be opened two years after the date of DPC and review will be taken thereafter. Learned CPO submits that since two years are not completed, the Sealed Cover Envelope cannot be opened. She relied on the Clause No.9 of G.R. dated 15.12.2017 for promotion and she submits that this goes against the Applicant.

5. The issue is whether the case of the Applicant is covered under Clause 9(g) of G.R. dated 15.12.2017. The date of 1<sup>st</sup> DPC is important which is regarding the benefit of review to Civil Government Servants whose names are kept in Sealed Cover Envelop and who are due for promotion. In the present case, the DPC was held on 30.08.2022 and thus two years as per the provision of Clause 9 of G.R. dated 15.12.2017 are not completed. After two years, the said Sealed Cover Envelop can be opened for the purpose of review. At the time of review, the concerned Competent Authority has to go into number of factors as mentioned in the Clause 9 of G.R. dated 15.12.2017 including gravity of offence and thereafter the case of such Government Servant can be considered for promotion. Thus, Clause 9 facilitates the promotion of a Government Servants whose Criminal Cases are pending for years together and DE is also not decided for many years. However, the provisions of review as mentioned in Clause 9 of the said G.R., the period of two years after 1<sup>st</sup> DPC is not satisfied in the case of Applicant. The period of two years is yet to complete and will be completed in August 2024. Thus, the Applicant's case falls out under Clause 9 of G.R. dated 15.12.2017.

6. The second point contended by Learned Advocate for the Applicant is about date of retirement of the Applicant. The Applicant is retiring on 31.10.2023 and hence, his case is to be considered. There is no such

provision in law that if person is going to retire in near future and if at all facing DE, he is to be promoted. It is not a matter of any sympathy and humanitarian ground. It is not permissible under the law and G.R.

7. The case of the Applicant thus cannot be considered under the G.R. dated 15.12.2017. therefore, we cannot give any direction to the Respondents to open Sealed Cover Envelope and review the case of the Applicant.

8. Another point contended by the learned Advocate that the parity as co-accused Shri Santosh Tengale was promoted in 2021. It is pointed out by learned CPO that Shri Santosh Tengale belongs to Urban Development Department and Applicant is working in Water Resources Department. Though they are working under the State Government, the situations and findings of promotion are to be differed. If promotion is given to co-accused is not as per G.R. dated 15.12.2017, the same benefit cannot be given to the Applicant. If any wrong decision is taken, that is not contemplated parity.

9. Hence, Original Application is dismissed with no order as to costs.

Sd/-

**(Debashish Chakrabarty)**  
**Member (A)**

Sd/-

**(Mridula Bhatkar, J.)**  
**Chairperson**

Place: Mumbai

Date: 19.10.2023

Dictation taken by: V.S. Mane

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