

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.384/2023

DISTRICT:- JALGAON

Vijaysing s/o. Murlidhar Gavali,
Age : 52 years, Occ. Service as Assistant
Registrar, Co-op. Societies (Group-B)
Under District Sub-Registrar, Co-operative
Societies, Jalgaon, Tq. & Dist. Jalgaon.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through: The Secretary,
Co-operation, Marketing and Textile Department,
14th Floor, New Administrative Building,
Mantralaya, Mumbai-400 032.
2. The Secretary,
General Administration Department,
Room No.553, 5th Floor,
Extension Building, Madam Kama Road,
Hutatma Chowk, Mumbai-400 032.
3. The Additional Registrar,
Co-operative Societies (Administration),
Maharashtra State, Pune,
5, B.J.Road, New Central Building,
Pune-411 001.
4. The District Deputy Registrar,
Co-operative Societies, Jalgaon,
Dist.-Jalgaon.

...RESPONDENTS

APPEARANCE : Shri S. D. Joshi, Counsel for the
Applicant.
: Shri S.K.Shirse, Presenting Officer
for the respondents.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

Decided on: 26-10-2023

ORAL ORDER

1. Heard Shri S.D.Joshi, learned Counsel for the Applicant and Shri S.K.Shirse, learned Presenting Officer for the respondents.

2. It is the grievance of the present applicant that though his case for promotion was considered in the meeting of Departmental Promotion Committee (DPC) held prior to 2 years i.e. on 16-03-2021 and the decision was kept in sealed cover even in the meeting held two years thereafter i.e. on 23-03-2023, no conscious decision has been taken by the respondents. The applicant is relying on the G.R. dated 15.12.2017 and more particularly clause 9 thereof. It is the grievance of the applicant that contrary to the guidelines laid down under clause 9 of the said G.R. even in the meeting of DPC held on 23-03-2023 case of the applicant for promotion has not been considered and the sealed cover is not directed to be opened on the ground that neither the criminal case nor the departmental enquiry proceeding against the applicant are finally decided.

3. Shri S.D. Joshi, learned counsel submitted that the G.R. dated 15.12.2017 and more particularly clause 9 thereof specifically takes care of the situation if the person

eligible to be promoted and due for such promotion if not promoted on the ground of pendency of criminal case or departmental enquiry against him, the procedure to be adopted if such proceedings continued for more than 2 years is prescribed in the said clause. Learned counsel submitted that in the instant matter the aforesaid guidelines are completely ignored by the respondents. Learned counsel placing reliance on the judgment delivered by the Principal Seat of this Tribunal at Mumbai in O.A.No.770/2021 submitted that, the facts involved in the present matter are identical with the facts which existed in the said matter and hence, prayed for passing similar order in the present case also.

4. Learned P.O. reiterating the contentions raised in the affidavit in reply filed on behalf of the respondents submitted that the respondents have rightly refused to consider the case of the present applicant in view of the fact that criminal prosecution against the applicant for the offences punishable under Prevention of Corruption Act is pending against the applicant and also the departmental enquiry initiated against the applicant is not concluded. Learned P.O. submitted that the offence under the Prevention of Corruption Act is a serious offence insofar as

the Government employees are concerned. In the circumstances though there may not be any specific discussion made in the meeting of DPC that may not affect the ultimate decision taken by the committee not to promote the present applicant. He, therefore, prayed for dismissal of the O.A.

5. We have duly considered the submissions made on behalf of the applicant as well as the respondents. The factual matrix is not in dispute. It is not in dispute that the applicant who is presently working on the post of Assistant Registrar, Co-operative Societies (Group-B) is due for promotion to the post of District Deputy Registrar, Co-operative Societies (Group-A). It is also not in dispute that criminal prosecution is pending against the applicant for the offences punishable under the Prevention of Corruption Act, so also the departmental enquiry is pending against the applicant arising out of the same offence. In the meeting of the DPC held on 16-03-2021 the case of the applicant was considered and the decision was kept in sealed cover on the ground that the applicant is facing criminal prosecution as well as the departmental enquiry.

6. Learned Counsel for the applicant today has tendered minutes of the meeting of the DPC held on 23-03-2023 i.e. after 2 years of earlier meeting of DPC held in 2021. In the DPC meeting held on the aforesaid date, case of the applicant was considered and its decision has been kept in the sealed cover on the ground that criminal case and the departmental enquiry against the applicant have not been finally concluded. It is the grievance of the applicant that the decision so taken in the DPC is against the guidelines laid down in the G.R. dated 15.12.2017.

7. We have carefully gone through the provisions under the said G.R. As has been argued by the learned counsel for the applicant clause 9 of the said G.R. is relevant so far as the present matter is concerned, we deem it appropriate to reproduce the same hereinbelow as it is in vernacular which reads thus: -

९) विभागीय पदोन्नती समितीच्या मूळ बैठकाच्या दिनांकापासून दोन वर्षे झाल्यानंतरही मोहोरबंद पाकाटात निष्कष ठेवलेल्या अधिकारी/ कर्मचाऱ्यांच्या, शिस्तभंगाविषयक / न्यायालयीन कायवाही प्रकरणी अंतिम निणय झालेला नसल्यास, अशा प्रकरणी नियुक्ती प्राधिकारी स्वविवेकानुसार संबंधीत अधिकारी/कर्मचाऱ्याला तदथ पदोन्नती देण्याबाबत जाणीवपूर्वक निणय घेईल. असा निणय घेताना नियुक्ती प्राधिकारी, खालील मुद्दे विचारात घेईल.

अ) संबंधितांविरुद्धची शिस्तभंगाविषयक/न्यायालयीन कायवाहो बराच काळ प्रलंबित राहण्याची शक्यता,

ब) दोषारोपांचे गांभीर्य,

क) दयावयाची पदोन्नती जनहिताच्या विरुद्ध जाईल का,

ड) शिस्तभंगाविषयक/न्यायालयीन कायवाहो लांबण्यास संबंधीत अधिकारी / कमचारो जबाबदार आहे का?

इ) संबंधित अधिकारी/कमचार्यास तदथ पदोन्नती दिल्यानंतर, पदोन्नतीच्या पदावर काम केल्यामुळे, संबंधित अधिकारी/कमचार्याच्या शिस्तभंगाविषयक / न्यायालयीन कायवाहोच्या प्रकरणांवर परिणाम होण्याची शक्यता आहे का? किंवा संबंधित अधिकारी/कमचारो पदोन्नतीच्या पदाचा त्यासाठी दुरुपयोग करण्याची शक्यता आहे का?

फ) न्यायालयीन कायवाहो बाबतची सद्यस्थिती/अभियोगाबाबतचे किती टप्पे पार पडले याबाबतची माहिती करून घ्यावी.

ग) सेवानिवृत्तीस १ वर्ष शिल्लक असेल तर पदोन्नती न देण्याच्या अनुषंगाने सेवानिवृत्तीचा कालावधी विचारात घेणे (तदथ पदोन्नती दिल्यास वरिष्ठ वेतनश्रेणी प्राप्त झाल्यामुळे सेवानिवृत्तीनंतर मिळणारे सेवानिवृत्ती वेतनाचा ज्यादा लाभ प्राप्त होणार असल्यामुळे सेवानिवृत्तीस एक वर्ष शिल्लक असलेल्यांना तदथ पदोन्नती देण्यात येऊ नये याकरीता हा बाब तपासणे आवश्यक आहे.)

The reading of the aforesaid clause reveals that, the appointing authority has to take a conscious decision if the departmental proceedings or criminal prosecution against the delinquent employee are not finally concluded after lapse of 2 years of the earlier DPC meeting wherein case of the employee concerned was considered for promotion and

its decision was kept in sealed cover. The decision has to be taken by considering the contingencies indicated in clause 9 of the said G.R.

8. In O.A. No. 770/2021 similar issue was raised before the Principal Seat of this Tribunal at Mumbai and the Tribunal has given certain directions in view of the aforesaid G.R. dated 15.12.2017. Paragraphs 8 & 9 of the said judgment are relevant so far as the present context is concerned, which read thus:

8. Thus, it means that if the case of the promotion of Government servants are kept pending for more than two years and there is no decision of the competent Court in respect of the pending cases against him/her, then the Committee must follow the procedure and directions mentioned in para 9 (a) to (g) of G.R dated 15.12.2017. The Committee is given power to go through certain aspects of the pending case and the case to be tested on those parameters. Thus the time required to decide the case, the seriousness of the charges, whether the promotion will go against the public interest, whether the applicant is responsible for causing the delay/protracting the trial, if promotion is given the Government servant is likely to be misused and so also if the Government servant is going to retire within a period of one year whether

promotion is denied to the Government servant who is at the verge of his retirement, then the losses suffered by him if he is deprived of the promotion.

9. The application of mind by the Committee Members that they have considered the guidelines laid down in clause 9 (a) to (g) of G.R dated 15.12.2017, in respect of the Government servant should be manifested in the order. A detail note is never expected from the Members of the Committee, however, under which clause or at least for what reasons the case of the applicant is not considered for promotion should be mentioned in the minutes of the meeting. The blanket denial on the ground of pendency of criminal case under the Prevention of Corruption Act, 1988, does not show that the Committee has applied its mind. The G.R dated 15.12.2017 is issued only for those Government servants whose promotion is denied on the ground of pendency of criminal case. Thus mere mentioning does not suffice the object of the said G.R.

Following order is passed by the Division Bench of the Tribunal at Mumbai in the aforesaid matter:

“(a) The Respondent no.1, Director General & Inspector General of Police is directed to constitute a review D.P.C. in respect of the applicant and

consider his case for promotion to the post of P.S.I. on or before 27.7.2022.

(b) The Committee should consider the case of the applicant for promotion to the post of P.S.I. after going through the order of this Tribunal and also on the basis of the G.R. dated 15.12.2017 issued by G.A.D. and pass final orders on or before 19.8.2022 and communicate the same to the applicant.”

9. After having considered the provisions under G.R. dated 15.12.2017 and the decision rendered by the Tribunal in O.A.No.770/2021, we do not have any hesitation in stating that in case of the applicant, DPC is required to review its decision in light of the observations made in the judgment in O.A.No.770/2021, which may be or may not be in favour of the applicant.

10. For the reasons stated above, the O.A. is disposed of with the following directions: -

[i] Respondent no.1 is directed to constitute a review DPC in respect of the applicant and consider his case for promotion on the post of District Deputy Registrar, Co-operative Societies (Group-A).

[ii] The DPC should consider the case of the applicant for promotion to the post of District Deputy Registrar, Co-operative Societies (Group-A) having regard to the provisions made under G.R. dated 15-12-2017 issued by General Administration Department and considering the discussion made by this Tribunal in the body of the present judgment and pass the final order on merit within 4 weeks from the date of this order and communicate the same to the applicant.

[iii] O.A. stands disposed of in the aforesaid terms, however, without any order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 26-10-2023.