

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH, NAGPUR
ORIGINAL APPLICATION NO. 1011/2018 (D.B.)

Dayanand Rajaram Sorate,
Aged about 36 years, Occ. Govt. Servant,
R/o Officers Quarters, Akola District Prison,
Akola.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Home & Prison,
Mantralaya, Mumbai-32.
- 2) Additional Director General of Police &
Inspector General of Prisons,
Central Building,
Pune-1.
- 3) Shri Chintamani A. Indurkar,
Aged about 48 years, Occ. Service,
R/o Central Prison,
Yerwada, Pune.
- 4) Suhas Ramchandra Pawar,
Aged about 50 years, Occ. Service,
R/o District Prison, Wardha.

Respondents.

Shri R.V. Shiralkar, Id. Advocate for the applicant.
Shri S.A. Sainis, Id. P.O. for the respondent nos. 1 & 2.
Shri B. Kulkarni, Id. Counsel for the respondent nos. 3 & 4.

**Coram :- Shri Shree Bhagwan, Vice-Chairman and
Shri M.A. Lovekar, Member (J).**

Dated :- 27/09/2022.

JUDGMENT**Per :Vice Chairman.**

Heard Shri R.V.Shiralkar, Id. Counsel for the applicant, Shri S.A.Sainis, Id. P.O. for the respondent nos. 1 & 2 and Shri B.Kulkarni, Id. Counsel for the Respondent nos. 3 & 4.

2. The applicant belongs to Open Category being Maratha by Caste. The applicant came to be appointed on the post of Jailor – II by respondent no. 2 i.e. Additional Director, General of Police & Inspector General of Prisons on 11.02.2005. The appointment letter of applicant as Jailor, Group-II dated 11.02.2005 is at A-1, Pg. No. 15-A typed copy. The seniority list of Jailor, Group-II was not maintained properly as admitted by reply of respondent nos. 1 & 2 on page no. 97, para no. 4 at page nos. 97 & 98 which is reproduced below:-

“The applicant has been appointed as Jailor, Group-II on 11.02.2005. As per the provisions of the Maharashtra Prison Department, Post Recruitment Examination (Executive Officers Post Recruitment Examination) Rules, 1977. (Page No. 1009) Rule 3 sub rule (1) (2) the examination must be cleared according to these rules within a period of two years from the date of recruitment and within three chance. A candidate from S.C., S.T. and Denotified Tribes and N.T. shall be given one more chance and one more year to pass the examination, but

he could not pass the said examination. He was, therefore discharged from service under Rule 3 (4) (b) of the said Rules."

3. It is further mentioned in para nos. 9 & 10 which are reproduced below:-

"9. At present some of these Officers have retired and those Senior Officers who are working but who have not passed the Qualifying Examination have lost their Seniority. The applicant is an Open Category candidate and 38 officers are senior in the seniority and they are Jailor Gr.I besides this, the Qualification Examination of the said officer has been passed between January 1994 to 2007 and some of them are from the backward class. Therefore it is not possible to give promotion to the applicant for the post of Dy. Superintendent, Central Prison/ Superintendent, District Prison, Cl. II/ Superintendent, District Prison, Cl. I or deemed date.

10. It is further submitted that the Mr. Suhas Pawar belongs to S.C. category and has been appointed as Jailor Gr. II on 17/02/1992 and he has been promoted as Jailor Gr.I on 14/03/2006 and he has been promoted as Dy. Superintendent, Central Prison/ Superintendent, District promoted Prison, Cl.II on 16/07/2013. During the promotion Mr. Pawar and other

officers the provisions mentioned in paragraph No. 4.5 were not noticed by the Administration.”

4. It is clear that department has not properly maintained seniority list of Jailor, Group-I. They had promoted some who had not passed the departmental examination as per admission in para no. 9. Hence, it was the fault of the department in not maintaining the seniority list properly and in the process some officers were given promotion as Dy. Superintendent of Police Prison/ Superintendent of District Prison, Class-II without passing the examination. Aggrieved with the promotion to Jailor (Group-I) applicant had filed O.A. 387/2015 in Aurangabad Bench and matter was decided on 09.03.2016. Operative part is on page no. 30 which is reproduced below:-

“(a) O.A. is partly allowed.

(b) The respondents are directed to reconsider the applicant’s seniority as per revised (corrected) list of 25.09.2015 and decide his eligibility for promotion as per DPC of 20.12.2012 and the circular dated 22.04.1996.

(c) If the applicant is found ‘fit’ for promotion he will be granted promotion to Jailor Group-I with the deemed date of

his immediate Junior as per the seniority of 25.09.2015 who is promoted as Jailor Group-I.

(d) The respondents will take action as per above within a period of 10 weeks from receipt of this order.

There shall be no order as to costs.”

5. As per this order, the applicant was given promotion of Jailor, Group-I vide order dated 11.04.2016 by Additional Director General of Police/ Inspector General of Prisons, Pune i.e. respondent no. 2 and in the second para respondent no. 2 has mentioned that as per M.A.T. order his deemed date is given as 05.12.2015. Again respondent no. 2 issued another letter on 29.09.2017 (page no. 34). Perusal of this order shows that the applicant had approached Hon'ble High Court Bombay, Bench at Aurangabad and after the said Judgment by Hon'ble High Court, respondent no. 2 further issued letter dated 29.10.2017 and granted applicant deemed date of promotion as 20.12.2012.

6. Respondents 1 & 2 have filed reply. They have submitted that the applicant has passed the departmental qualifying examination on 13.04.2010. As per Apex Court Judgment in **Union of India and Ors. Vs. Anil Kumar Sarkar in Civil Appeal No. 2537 of 2013 (Arising out of S.L.P. (C) No. 1933 of 2011) delivered on 15.03.2013 (Page No.**

312) if any departmental inquiry or criminal case or vigilance inquiry is pending against an employee that should not come in the way of promotion to higher scale provided promotion will be given on the condition that if he is indicted in the case he will undergo punishment on higher post.

7. The ld. counsel for the applicant has also filed promotion orders of Superintendent, District Jail, Class-II/ Deputy Superintendent, Central Jail, Group-B (Gazetted) issued by the respondents dated 15.12.2016, 30.01.2017, 22.12.2020, 07.01.2021 & 24.06.2022. In all these orders applicant's name is not seen.

8. Ld. counsel for the applicant has relied on the Judgment in **Union of India and Ors. Vs. Anil Kumar Sarkar in Civil Appeal No. 2537 of 2013**. Hon'ble Apex Court in para no. 17 has held:-

"The conclusion no. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/ criminal proceedings are pending against the employee."

Again in the case of **Dr. Sushama Barik Vs. State of Odisha & Another in W.P. (C) No. 21795 of 2021, High Court Orissa, Bench at Cuttack** delivered on 03.08.2021 has held as follows:-

“For the settled position of law, this Court in disposal of the writ petition observes, petitioner cannot suffer for the long pendency of the vigilance proceeding. It is also not known when the Vigilance Proceeding initiated in the year 2006 will come to end. It is keeping in this view, this Court in disposal of the writ petition directs the Principal Secretary to Govt. of Odisha, General Administration and Public Grievances Department, Bhubaneswar-O.P. No.1 and Principal Secretary to Government, Revenue & Disaster Management Department, Odisha Secretariat, Bhubaneswar, opposite party no.2 to give promotions to the petitioner to the rank of OAS-I (SB) from 30.10.2014, OAS (Supertime Scale) from 30.12.2007 and OAS (SAG) from 25.06.2021), from the date of her juniors and batchmates got such promotions. However the promotions of the petitioner as per direction of this Court shall be subject to the ultimate outcome in the Vigilance Proceeding.”

9. As per O.A. relief clause page no. 10, para no. 7 (a) the applicant had passed qualifying examination on 13.04.2010. As per Division Bench order of M.A.T., Aurangabad in O.A. No. 387/2015 delivered on 09.03.2016 para ‘C’ of operative part is reproduced below:-

“(c) If the applicant is found ‘fit’ for promotion he will be granted promotion to Jailor Group-I with the deemed date of his immediate Junior as per the seniority of 25.09.2015 who is promoted as Jailor Group-I.”

Consequent to this order of the M.A.T. dated 09.03.2016 in O.A. No. 387/2015; applicant was promoted as Jailor, Group-I (Non gazetted, Group-B) and posted to vacant post at Akola District Jail vide order dated 11.04.2016. In the promotion order applicant has been given deemed date of promotion from 05.12.2015. Subsequently, respondent no. 2 has passed order dated 29.09.2017 and in second para mentioned that as per G.A.D., Circular dated S.R.V-2002/C.R.2/2002/12 dated 06.06.2002 deemed date of applicant as Jailor, Group-I is sanctioned from 20.12.2012 and asked the office to fix his salary according to that. Now since the applicant was notionally promoted to the post of Jailor, Group-I on 20.12.2012 so, as per G.A.D., G.R. dated 25.02.2005 (A-R-1, Pg. No. 108) filed along with reply of R-1 & 2 the condition stipulated to complete three years on feeder post before promotion, the applicant will complete three years on 20.12.2015. As per reply filed by R-1 & 2 on page no. 99 para no. 7 it is submitted that the applicant was under punishment of stoppage of one increment under the order dated

10.07.2015 from Superintendent, Yeravada Central Prison and the period was from 01.07.2016 to 30.06.2017.

10. Now, when D.P.C. took place in the year 2015 that time the applicant was not under any punishment. In view of this, applicant should have been considered to higher post in D.P.C. of 2015. As document filed by Id. Counsel for the applicant after D.P.C. of 2015 promotion order to the rank of Superintendent District Jailor- Group-II/ Deputy Superintendent Central Jail, Group-B (Gazetted) was issued on 15.02.2016 (pg. no. 319). The applicant was not considered. However, at clause no. 'E' following condition is mentioned which is reproduced below:-

“निवडसूचीतील ज्या अधिका-यांविरुद्ध विभागीय चौकशी/ फौजदारी खटला सुरु असेल, त्यांना सा.प्र.वि. परिपत्रक दिनांक ०२.०४.१९७६ नुसार विभागीय चौकशीच्या अधीन राहुन पदोन्नती देण्यात येत आहे.”

11. Now, it is crystal clear that when D.P.C took place in 2015 for the post of Deputy Superintendent, Central Jail, Group-B/ Superintendent of District Prison, Class-II (Gazetted) the applicant was fulfilling following all three criteria for promotion:-

A. Three years of service in Jailor, Group-A as per G.A.D., G.R. dated 25.02.2005 taking deemed date of promotion as 20.12.2012.

B. There was no D.E. pending against the applicant till 30.06.2016.

12. In view of above discussion, there seems to be no impediment except gradation of C.Rs. of the applicant to be considered for promotion. Hence, the applicant is entitled for promotion if C.Rs. are upto the mark from the D.P.C. of 2015 w.e.f. 15.02.2016.

13. Hence, following order:-

O R D E R

O.A. is allowed in the following terms:-

The applicant is entitled to deemed date of promotion i.e. 15.02.2016 for the post of Dy. Superintendent of Police/Superintendent of District Prison, Class-II. However, he will be entitled to get pay of the promotional post from the date of actual joining to the promotional post.

No order as to costs.

(M.A.Lovekar)
Member(J).
Dated :-27/09/2022.
*aps.

(Shree Bhagwan)
Vice-Chairman.

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

Name of Steno : Akhilesh Parasnath Srivastava

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 27/09/2022.

Uploaded on : 28/09/2022.