

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 1128/2022 (D.B.)

Rajesh S/o Gajanan Sonkusare,
aged 44 years, Occ. Service,
R/o Plot No.941, Nagsenvan,
Wanjari Layout, Behind Water Tank,
Nagpur - 440017.

Applicant.

Versus

- 1) The State of Maharashtra,
Through Its Principal Secretary,
Public Works Department,
Mantralaya, Mumbai-32.

- 2) The Superintendent Engineer (Electrical),
Having its office at PWD Campus,
Opp. Ladies Club, Civil Lines,
Nagpur - 440001.

Respondents

Shri S.P.Palshikar, Id. Advocate for the applicant.

Shri S.A.Sainis, Id. P.O. for the Respondents.

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

Dated :- 15.12.2023.

JUDGEMENT

Heard Shri S.P.Palshikar, Id. counsel for the applicant and Shri S.A.Sainis, Id. 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 O.A. is covered by 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** and the recent Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Ashok Madhukar Nand Vs. the State of Maharashtra and Others in Writ Petition No.1672/2022 decided on 05.10.2023**. Hence,

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

5. The applicant is working as a Junior Engineer (Electrical). He was posted at Amravati. Thereafter, he was promoted as Sectional Engineer (Electrical). The applicant appeared in the departmental examination conducted by M.P.S.C. for the post of Assistant Engineer, Grade-II (Electrical) and he was declared successful and from 12.03.2012 he is working on the post of Assistant Engineer, Grade-II (Electrical). From 12.01.2019 he is working in the Public Works Department (Electrical Division), Amravati and the next promotion is on the post of Deputy Engineer (Electrical). The said promotion is to be given as per seniority-cum-merit.

6. The respondents have issued charge sheet to the applicant dated 17.05.2019. Because of the pendency of the departmental enquiry the applicant is not promoted on the post of Deputy Engineer, Grade-II(Electrical). Therefore, the applicant approached to this Tribunal for the following reliefs-

i) issue necessary direction to respondent No.1 to consider and promote the applicant as a Deputy Engineer (Electrical) within 30 days from the date of decision of this Original Application;

ii) further be pleased to direct the respondents to grant deemed date of promotion of Deputy Engineer (Electrical) as

of 13/10/2021 when his junior at Sr. No.12 in that list was promoted by granting all consequential and monetary benefits arising therefrom;

7. The respondents have strongly opposed the O.A.. It is submitted that the departmental enquiry is not completed and as per the Government G.R., the applicant cannot be promoted during the pendency of the enquiry. Hence, the O.A. is liable to be dismissed.

8. As per the submission of learned counsel for the applicant, the promotion cannot be withheld because of the pendency of the departmental enquiry. In support of his submission pointed out the decision 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** and Judgment in the case of **Union of India And Others Vs. Anil Kumar Sarkar(2013) 4 SCC 161 decided on 15.03.2013** and latest Judgment of the Hon'ble Bombay High Court in the case of **Ashok Madhukar Nand Vs. the State of Maharashtra and Others in Writ Petition No.1672/2022 decided on 05.10.2023**. As per the submission of learned counsel for the applicant, departmental enquiry is completed before 7-8 months, but final result is not declared.

9. The learned P.O. has submitted that the case of the applicant was kept before the DPC on 19.07.2021 & 02.02.2022. His result is kept in the sealed envelope. Sealed envelope is not opened because of the pendency of the departmental enquiry.

10. There is no dispute that the applicant was called for interview and the result is kept in the sealed envelope. As per 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** and **Union of India Vs. K.V.Jankiraman And Others reported in (1991) 4 SCC 109 decided on 27.08.1991**, it is clear that the promotion cannot be withheld because of the pendency criminal case or departmental enquiry. Temporary promotion can be given during the pendency of those proceedings. In the recent Judgment, the Hon'ble Bombay High Court in the case of **Ashok Madhukar Nand Vs. the State of Maharashtra and Others in Writ Petition No.1672/2022 decided on 05.10.2023** has held that during the pendency of the departmental enquiry, temporary promotion shall be granted if the employee is otherwise eligible. Hence, the following order.

ORDER

1. The O.A. is allowed.
2. The respondents are directed to open the sealed envelope and promote the applicant temporarily on the post of Deputy Engineer (Electrical), if he is otherwise eligible. But the applicant is not entitled to get any arrears as per the Judgment of the Hon'ble Bombay High Court.

3. The respondents are directed to grant deemed date of promotion on which his juniors are promoted.
4. The respondents shall accordingly modify the seniority list by incorporating the name of applicant in it.
5. No order as to costs.

(Shri Justice M.G.Giratkar)
Vice Chairman

Dated :- 15/12/2023.
rsm.

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

Name of Steno : Raksha Shashikant Mankawde.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 15/12/2023.
and pronounced on