

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 427/2023 (D.B.)

Sandip S/o Prabhakar Chavan,
Aged 42 years, Occ. Service,
R/o 803, Dreams Signature Apartment,
Congress Nagar, Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai - 32.
- 2) The Director General of Police,
Having its Office Near Regal Theater,
Kolaba, Mumbai.

Respondents

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

Shri A.P.Potnis, Id. P.O. for the Respondents.

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

Dated :- 07.12.2023.

JUDGEMENT

Heard Shri S.P.Palshikar, Id. counsel for the applicant and
Shri A.P.Potnis, 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 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. Case of the applicant in short is as under-

The applicant is working as a Police Inspector. He was promoted as Assistant Police Inspector on 08.08.2013. Thereafter, the applicant was arrested in Crime No.13/2019 for the Offence Punishable under the Prevention of Corruption Act, 1988 on 05.01.2019. The applicant was put under suspension, but the same was revoked in the

year 2019 and later on continued on the post of Assistant Police Inspector. Departmental enquiry has been completed, but it has been kept in dormant file because of the pendency of criminal case. The charge sheet has been filed before the Sessions Court, but charges are not framed. The batchmates of the applicant are promoted as a Police Inspector ignoring the claim of applicant. The applicant has made a representation to respondent no.2 on 02.03.2023 and the same was forwarded on 10.03.2023 by the Superintendent of Police, Amravati Rural to respondent no.2, but the same has not been yet decided. The meeting of Departmental Promotion Committee (D.P.C.) was held on 21.03.2023 for promotion of persons concerned as a Police Inspector, but the applicant was not considered for the promotion on the post of Police Inspector. Therefore, he approached to this Tribunal for the following reliefs-

- i) direct the respondent No.2 to consider and issue order of promotion in favour of the applicant as a Police Inspector forthwith;*
- ii) further be pleased to direct the respondent No.2 to grant deemed date of promotion in favour of applicant as of 23/02/2021 when the batchmate and juniors of the applicant were promoted by granting him all consequential and monetary benefits arising there from;*

6. The O.A. is strongly opposed by the respondents. It is submitted that the departmental enquiry and criminal case are pending against the applicant. The applicant was arrested for the offence punishable under the Prevention of Corruption Act, 1988. Therefore, he is not entitled for the promotion.

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 applicant is facing criminal case as well as departmental enquiry. As per the submission of learned counsel for the applicant, departmental enquiry is completed, but because of the pendency of criminal case final order is not passed.

11. In view of the Judgments cited by side of the applicant, applicant is entitled for temporary promotion subject to the decision of criminal case and also the decision in the departmental enquiry. Hence, the following order.

ORDER

1. The O.A. is allowed.
2. The respondents are directed to promote the applicant on temporary basis on the post of Police

Inspector in coming D.P.C. with a deemed date of promotion as on 23.02.2021, however the applicant is not entitled to claim any arrears.

3. The respondents shall accordingly modify seniority list by incorporating the name of petitioner in it.

4. No order as to costs.

(Shri Justice M.G.Giratkar)
Vice Chairman

Dated :- 07/12/2023.
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 : 07/12/2023.

and pronounced on

Uploaded on : 11/12/2023.