

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 683 of 2022 (D.B.)**

Rajendrakumar Kewalramji Darwade,  
Aged about 49 years, Occ. Assistant Engineer Grade-II,  
R/o 53/B, Giribalaji Nagar,  
Hudkeshwar Road, Nagpur-34.

**Applicant.**

**Versus**

The State of Maharashtra,  
through its Additional Chief Secretary,  
Public Works Department, Mantralaya,  
Mumbai-32.

**Respondent.**

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**Shri S.P. Palshikar, Advocate for applicant.**

**Shri M.I. Khan, learned P.O. for respondent.**

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

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**Date of Reserving for Judgment : 11<sup>th</sup> August,2022.**

**Date of Pronouncement of Judgment : 30<sup>th</sup> August,2022.**

**JUDGMENT**

**(Delivered on this 30<sup>th</sup> day of August, 2022)**

**Per : Vice-Chairman.**

Heard Shri S.P. Palshikar, learned counsel for applicant and  
Shri M.I. Khan, learned P.O. for the respondent.

2. The applicant entered into Government service on 09/07/1996  
as Assistant Engineer, Grade-II and the next promotion is that of Sub

Divisional Engineer. Promotion for the said post goes by Seniority-cum-Merit.

3. Seniority list of the said post was published on 18/02/2021 wherein the applicant's name is shown at Sr.No.74 and seniority No.286, but his claim was not considered. On 21/03/2003, the applicant got married and from said wedlock he is having two children. On 27/02/2018, the applicant's wife filed FIR No.151/2018 for offence punishable U/s 498-A, i.e., after a gap of about 15 years. The applicant has filed Criminal Application (APL) No.455/2021 before the Hon'ble High Court, Bench at Nagpur for quashing of F.I.R.

4. On 28/06/2021, the Hon'ble High Court was pleased to refer the matter to the mediator, but it appears that nothing fruitful had come out. On 04/02/2022, a seniority list of persons concerned who were in the zone of consideration was published. In the said list, the applicant's name is shown at Sr.No.7. On 14/2/2022 another list was issued with certain clarification. In that list also, the applicant's name is shown at Sr.No.7, but he apprehends that because of pendency of F.I.R. No.151/2018, his case may not be considered. Hence, the applicant has approached this Tribunal for following reliefs –

*“ That this Tribunal be pleased to call for the entire original record regarding communication dated 18/01/2022 from the respondent and after perusal of the same be pleased to –*

*(i) quash and set aside communication dated 18/01/2022 as illegal, bad in law;*

*(ii) further be pleased to direct the respondent to open sealed envelope and issue promotion order as a Sub Divisional Engineer ignoring F.I.R.No.151/2018;*

*(iii) Further be pleased to direct the respondent to grant deemed date of promotion as a Sub Divisional Engineer when his batchmates and juniors were promoted by granting him all consequential and monetary benefits arising therefrom;”*

5. There are various Judgments passed by the Hon'ble High Courts and Supreme Court which lay down the ratio that if criminal proceeding or vigilance inquiry or ACB inquiry is pending against the employee which is likely to take sufficient time, it should not come in the way of benefit of career progression scheme of the employee. The Hon'ble Supreme court in the case of **Union of India & Ors. Vs. Anil Kumar Sarkar**, in Civil Appeal No.2537/2013 (arising out SLP (C) No.1933/2011) has upheld the order passed by the Guwahati High Court in Writ Petition No.744/2010 on 27/04/2010.

The Hon'ble High Court by the order dated 27/04/2010 allowed the petition and set aside the order passed by the CAT and directed the appellant herein to issue appropriate order in favour of the respondents for promotion with consequential benefits. When the Union of India challenged this order before the Hon'ble Apex Court, the Hon'ble Apex Court upheld the Judgment of **Union of India & Ors. Vs. Anil Kumar Sarkar**, and dismissed the appeal filed by the Union of India.

In the above cited Judgment in Para 17 it is mentioned as follows—

*“17. 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**”.*

6. Recently in the case of **Dr. Sushma Barik Vs. State of Odisha & Ano.**, the Orissa High Court, Cuttak Bench in W.P. (C) No.21795/2021 has held –

*“ Fact involving the case reveals that there is no disciplinary proceeding pending against the petitioner except the vigilance proceeding pending in the court of Special Judge, Vigilance, Cuttack in T.R. Case No.36 of 2010 arising out of Cuttack Vigilance P.S. Case No.24 of 2006, Involving the allegations against the petitioner, if appears the Vigilance Proceeding initiated in the year 2006, but the charge sheet involving the Vigilance case was submitted in the year 2010. However, the said Vigilance case is yet to be disposed of. Pleading also further made clear that no Disciplinary Proceeding is pending against the petitioner. In this background of case an allegation is made that promotion of the petitioner taking effect in the year 2014 has been kept in sealed cover only on the premises that a vigilance proceeding involving the petitioner is pending since 2006. 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 Government of Odisha, General Administration and Public Grievances*

*Department, Bhubneshwar, O.P. No.1 and Principal Secretary, to Government, Revenue and Disaster Management Department, Odisha Secretariat, Bhubneshwar, 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.** Further it is also clarified that the promotions given to the petitioner to different ranks shall not confer equity in the event, she will ultimately lose the Vigilance Proceeding. Entire exercise shall be completed within four weeks from the date of communication of this direction. It is also clarified that upon promotions, petitioner shall also be entitled to all consequential benefits. ”*

7. In this O.A. the applicant's wife has filed FIR No.151/2018 for offence punishable U/s 498-A, i.e., after a gap of about 15 years. The applicant has filed Criminal Application (APL) No.455/2021 before the Hon'ble High Court, Bench at Nagpur for quashing of F.I.R.

8. In view of this situation, it appears that between husband and wife family dispute is going on. Normally family dispute should not be mixed up with the official performance / career.

9. In O.A. No.546/2015 the MAT, Principal Bench, Mumbai has in case of **Smt. Sushma Pandurang Paikerkari Vs. State of Maharashtra and Ors.**, directed respondents to take conscious decision when departmental inquiry was pending.

10. In the above Judgments it is held that any inquiry whether criminal or vigilance which is likely to take longer time, then the applicant should be promoted, if he /she is otherwise fit for promotion as per the C.Rs. However, since the promotion of the applicant is going to be given as per the direction of this Tribunal, it would be subject to the ultimate outcome of the criminal proceeding.

11. In view of above observations and cited judgments, we pass the following order –

**ORDER**

- (i) The O.A. is allowed.
- (ii) The respondents are directed to promote the applicant and grant all consequential benefits subject to outcome of the criminal proceeding.
- (iii) In case the criminal proceeding is decided against the applicant, the respondent department shall be at liberty to proceed according to law.
- (iv) No order as to costs.

**(M.A. Lovekar)**  
**Member (J)**

**(Shree Bhagwan)**  
**Vice- Chairman**

**Dated** :- 30/08/2022.

dnk.

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

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman and Member (J).

Judgment signed on : 30/08/2022.

Uploaded on : 30/08/2022.