

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 927 / 2019 (S.B.)

Smt. Archana Madhukar Parlewar,
Aged about 48 years, Occ. Service,
R/o Permanent address of Nagpur.
102, B, Swami Sadan Apartment, Plot No. 596,
Chitnavis Layout, Byramji Town, Sadar, Nagpur 440013.
P.S.I. Colony, Arjun Nagar, Amravati,
Tah. & Dist. Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Principal Secretary,
Department of Urban Development,
Mantralaya, Mumbai-32.
- 2) Director of Town Planning,
Maharashtra State, Central Building,
Pune-1.
- 3) Deputy Secretary,
General Administration Department,
Mantralaya, Mumbai-32.

Respondents

Shri N.R.Saboo, Id. Advocate for the applicant.

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

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 08th Jan., 2024.

Judgment is pronounced on 11th Jan., 2024.

Heard Shri N.R.Saboo, Id. counsel for the applicant and Shri S.A.Sainis, Id. P.O. for the Respondents.

2. Facts necessary to decide this O.A. may be chronologically stated thus:-

A. By order dated 05.12.2007 (A-1) when the applicant was working as Town Planner, Nagpur and holding additional charge of Additional Director, Town Planning she was placed under suspension.

B. By order dated 27.06.2008 (A-3) she was served with a chargesheet and departmental enquiry was initiated.

C. By order dated 16.09.2008 (A-2) her suspension was revoked and she was reinstated.

D. On 19.11.2009 she was served with another chargesheet (A-4).

E. The Enquiry Officer submitted his report dated 21.01.2010 (A-5) holding all the charges, except charges 1 (13), 1 (16), 2 (42), 3 (7), 3 (10) and 5 (1), to be proved.

F. In meetings of D.P.C. of 2016, 2018, 2019 and 2020 her claim for promotion was unjustly not considered, and persons junior to her were promoted [Annexures- 7 (f), 7 (g)] [para 4.22 of O.A..]

G. Order dated 03.02.2022 [A-7 (b)] at P. 145 (j) gives following chronology regarding punishment imposed on the applicant:-

वाचा-

१) नगर विकास विभाग, शासन आदेश क्र. विचौप्र-२८१५/११०४/प्र.क्र.१८३/नवि-२७, दि. ०१.०७.२०१९.

२) मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, खंडपीठ नागपूर यांचे मूळ अर्ज क्र. ६९८/२०१९ मधील पुनर्विलोकन अर्ज क्र.१३/२०२० मध्ये दि.०१.०२.२०२१ रोजी दिलेले आदेश.

आदेश

शासनाच्या संदर्भीय क्र.१ येथील दि. ०१.०७.२०१९ रोजीच्या आदेशान्वये श्रीमती अर्चना मधुकर पार्लेवार, नगर रचनाकार यांच्याविरुद्धचे विभागीय चौकशी अधिकारी यांनी शासनास सादर केलेल्या चौकशी अहवाल क्र.१ मधील ७ ही दोषारोप सिध्द होत आहेत. चौकशी अहवाल क्र.२ मधील दोषारोप क्र.१(१३) व १(१६), २(४२), ३(७) व ३(१०) तसेच ५(१) वगळता अन्य दोषारोप सिध्द होत असल्याचा चौकशी

अधिकारी यांनी काढलेला निष्कर्ष शासनाने स्विकारून वरील दोन्ही विभागीय चौकश्यांच्या अनुषंगाने महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ च्या नियम ५ मध्ये नमूद खालीलप्रमाणे शिक्षा श्रीमती पार्लेवार, नगर रचनाकार यांच्यावर बजावण्यात आली आहे.

अ. श्रीमती अर्चना मधुकर पार्लेवार, नगर रचनाकार (गट-अ / राजपत्रित) यांचे सध्याचे वेतन, पुढील तीन वर्षांच्या कालावधीसाठी वेतन समयक्षणीत (वेतनबँड रु.१५६००-३९१००+ ग्रेड पे रु.५४००) दि.०१.०१.२००६ रोजी घेत असलेल्या टप्प्यावर खाली आणण्यात यावे.

ब. उक्त ०३ वर्षांच्या कालावधीत त्यांना वेतनवाढ अनुज्ञेय होणार नाहीत आणि असा शिक्षेचा कालावधी समाप्त झाल्यानंतर या परिणामी त्यांच्या भावी वेतनवाढी पुढे ढकलल्या जातील.

२. आता, संदर्भीय क्र. २ येथील मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, खंडपीठ नागपूर यांनी दिलेले आदेश विचारात घेता, सक्षम प्राधिका-यांच्या मान्यतेने श्रीमती पार्लेवार यांना संदर्भीय क्र.१ येथील दि.०१.०७.२०१९ रोजीच्या आदेशान्वये बजावण्यात आलेल्या शिक्षेमध्ये सुधारणा करून महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ च्या नियम ५ मधील नमूद खालीलप्रमाणे शिक्षा या आदेशान्वये श्रीमती अर्चना मधुकर पार्लेवार, नगर रचनाकार यांना देण्यात येत आहे.

"श्रीमती अर्चना मधुकर पार्लेवार, नगर रचनाकार यांची पुढील वेतनवाढ त्यापुढील वेतनवाढीवर परिणाम न करता दोन वर्षासाठी रोखण्यात यावी."

३. उक्त शिक्षा संदर्भीय क्र. १ येथील दि.०१.०७.२०१९ च्या आदेशाच्या दिनांकापासून पूर्वलक्षी प्रभावाने लागू राहिल.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने.

3. It is the contention of the applicant that in view of G.Rs. dated 22.04.1996 (A-6) and 08.03.2017 (A-7) she could not have been

deprived of promotion and hence she would be entitled to get deemed date of promotion/s from the date her juniors were promoted.

4. Respondents 1 to 3 have resisted the O.A. by pleading *inter alia* as under:-

It is submitted that, the circular dated 08.03.2017 and the Government Resolution dated 15/12/2017 issued by General Administration Department of Government of Maharashtra give the guidelines for giving promotions to Government Servants against whom departmental enquiry is pending. The earlier G.Rs. dated 02.04.1976 and 22.04.1996 were cancelled vide this G.R. The case of the applicant was scrutinized in light of the provisions of this G.R. dated 15.12.2017. Since, the decision of imposing penalty on the applicant was under consideration at the time of the meeting of Departmental Promotion Committee and the charges framed against the applicant were serious in nature and the enquiry was initiated under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 which is a procedure for imposing major penalties, a decision not to promote the applicant was taken consciously as per the recommendation of the DPC. Hence the averments made by the applicant are baseless and therefore, denied. A copy of the said Government Resolution dated 15.12.2017 is annexed herewith as Annexure-R-2.

It is submitted that, the circular dated 08.03.2017 and the Government Resolution dated 15/12/2017 issued by General Administration Department of Government of Maharashtra give the guidelines for giving promotions to Government Servants against whom departmental enquiry is pending. It is also submitted that Rule No. 3. 19 (2) of the Manual of Departmental Enquiries (Fourth Edition), 1991 provides that in some cases it may not be possible to complete the departmental inquiry within a specified time period of six months for a reasonable and sufficient reason. Therefore, the Government has decided that the concerned Administrative Department may, in consultation with the General Administration Department, extend the time limit for more than one year to complete the departmental inquiry from the date of approval. Within the limits of the above said provision, the Respondent No. 1 has completed departmental enquiry against the applicant.

5. In para 6 of her rejoinder filed on 03.02.2020 the applicant has averred as follows:-

Applicant submits with due respect that as on today no disciplinary proceeding is pending against her and she has been given minor punishment and she has not been disqualified for promotion. Therefore, she is entitled for promotion. Not only this, the applicant has established that the non-applicants have committed grave illegality in prolonging the disciplinary proceedings for 10 to 11 years without giving any explanation, moreover the non-applicants have taken huge period for taking decision after submission of the inquiry report and the reply to the show cause. Not only this the applicant has also appointed out for the identical charge, charge sheeted Assistant Town Planner though not found to be guilty by the respective inquiry officer, the non-applicants without assigning any reason deferred with the finding given by the respective inquiry officer and imposed minor punishment of censure. Copies of Orders of punishment to Assistant Town Planners are annexed herewith and marked as ANNEXURE-A-9. The Hon'ble Supreme Court in Judgment dated 16.12.2015 in Civil Appeal No. 958/2010 Premnath Bali Vs. Registrar, High Court Delhi and another has viewed the delay in handling of the disciplinary cases adversely. On the basis of the findings given by the Hon'ble Supreme Court in the aforesaid case, the Central Vigilance Commission issued a Circular No.2/1/2016 dated 18.01.2016 wherein it is provided that the suggested time limit for conducting departmental inquiries prescribed by the Commission for various stages is Annexed for ready reference and further directed that disciplinary authorities in each Ministry / Department /Organization may regularly monitor the progress of inquiry on regular basis and ensure that Inquiry/Departmental the Proceedings are completed within the time limit of prescribed as laid down by the Hon'ble Supreme Court in the case of Premnath Bali Vs. Registrar, High Court Delhi and another. A Copy of Circular No.2/1/2016 dated 18.01.2016 of Central Vigilance Commission is annexed herewith and marked as ANNEXURE A-10.

The applicant submits with due respect that she has been informed that Post of Joint Director, Town Planning at NMRDA at Nagpur is vacant. Hence she can be considered for the promotion on the said post.

6. Thereafter, by order dated 01.02.2021 [A-7 (a)] this Tribunal directed respondents as follows:-

(1) *The impugned order dated 1/7/2019 (A-1, P-42 to 50) (both inclusive) awarding punishment to the applicant is remanded back to the respondents for re-consideration according to law of parity and settled legal judgments within 90 days from the date of this order.*

(2) *The Review Application stands disposed of with above directions.*

(3) No order as to costs.

This was followed by order dated 03.02.2022 which imposed following (revised) punishment on the applicant:-

"श्रीमती अर्चना मधुकर पार्लेवार, नगर रचनाकार यांची पुढील वेतनवाढ त्यापुढील वेतनवाढीवर परिणाम न करता दोन वर्षासाठी रोखण्यात यावी."

7. It is a matter of record that after imposition of revised punishment by order dated 03.02.2022, the applicant was promoted as Assistant Director, Town Planning, by order dated 28.09.2022 [A-7 (c)] at P. 145 (k).

8. The applicant has relied on following portion of G.R. dated 30.08.2018 (at P. 383):-

२. दि. १५.१२.२०१७ च्या शासन निर्णयातील परिच्छेद १ (४) रद्द करून तो नव्याने पुढीलप्रमाणे समाविष्ट करण्यात येत आहे :-

४) अ) विभागीय चौकशीच्या कार्यवाहीस खूप विलंब लागू नये यासाठी विभागीय पदोन्नती समितीच्या बैठकीच्या दिनांकानंतर सहा महिन्यांनी नियुक्ती प्राधिकारी यांनी मोहोरबंद पाकीटात ठेवलेल्या पदोन्नती प्रकरणाचे पुनर्विलोकन करावे. या अनुषंगाने नियुक्ती प्राधिकारी संबंधित अधिकारी /कर्मचार्याची शिस्तभंगविषयक /न्यायालयीन कार्यवाहीची सद्यःस्थिती जाणून घेईल.

ब) विभागीय पदोन्नती समितीच्या दिनांकाला ज्या अधिकारी / कर्मचार्यांची प्रकरणे शिक्केच्या अंमलाखाली असल्यामुळे परिच्छेद १ (१) (ड) नुसार मोहोरबंद

पाकीटामध्ये ठेवण्यात आली आहेत अशा अधिकारी/कर्मचाऱ्यांची शिक्षा निवडसूची वर्षातच संपुष्टात येत असल्यास निवडसूचीमध्ये त्यांच्याकरीता एक पद राखून ठेवून शिक्षा संपल्यानंतर व अन्य विभागीय चौकशी प्रलंबित नसल्यास, त्यांचे मोहोरबंद पाकीट उघडून ते पदोन्नतीस पात्र ठरत असल्यास त्यांना पदोन्नती देण्यात यावी.

क) विभागीय पदोन्नती समितीच्या दिनांकाला ज्या अधिकारी / कर्मचाऱ्यांची प्रकरणे शिक्षेच्या अंमलाखाली असल्यामुळे परिच्छेद १ (१) (ड) नुसार मोहोरबंद पाकीटामध्ये ठेवण्यात आली आहेत अशा अधिकारी/कर्मचाऱ्यांच्या शिक्षेचा अंमल निवडसूची वर्ष संपल्यानंतरच्या वर्षात संपुष्टात येत असल्यास त्यांच्या प्रकरणी शासन निर्णयातील परिच्छेद १ (१४) (ब), (क) व (ड) मधील तरतूदीनुसार पदोन्नती देण्याची कार्यवाही करावी.

9. The applicant has further relied on following observations in **Prem Nath Bali Vs. Registrar, Delhi High Court & Another - AIR 2016 SC 101 :-**

“30. We are constrained to observe as to why the departmental proceeding, which involved only one charge and that too uncomplicated, have taken more than 9 years to conclude the departmental inquiry. No justification was forthcoming from the respondents' side to explain the undue delay in completion of the departmental inquiry except to throw blame on the appellant's conduct which we feel, was not fully justified.

31. Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded

in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.

32. *As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in Court to ventilate his grievance, which again consumes time for its final conclusion.*

33. *Keeping these factors in mind, we are of the considered opinion that every employer (whether state or private) must take sincere endeavour to conclude the Departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year."*

However, in a subsequent judgment of **State of Madhya**

Pradesh & Another Vs. Akhilesh Jha & Another LL 2021 SC 436 it is

held :-

Every delay in conducting a disciplinary enquiry does not, *ipso facto*, lead to the enquiry being vitiated. Whether prejudice is caused to the officer who is being enquired into is a matter which has to be decided on the basis of the circumstances of each case. Prejudice must be demonstrated to have been caused and cannot be a matter of surmise.

10. The applicant further seeks to rely on **Union of India Vs.**

K.V.Jankiraman AIR 1991 SCC 2010. Here she is claiming deemed date

of promotion. She was placed under suspension on 05.12.2007. Order of her suspension was revoked on 16.09.2008. In between, on 27.06.2008 she was served with a chargesheet. On 19.11.2009 she was served with another chargesheet. On 21.01.2010 the Enquiry Officer submitted his report. Initially punishment was imposed on her on 01.07.2019. She then approached this Tribunal. As per order of this Tribunal quantum of punishment was reconsidered and on reconsideration revised/ lesser punishment was imposed by order dated 03.02.2022. So long as departmental enquiry was not taken to its logical conclusion by imposing punishment, her case was not considered for promotion. Following observations in K.V.Jankiraman (supra) show that this course adopted by the department was proper:-

An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee

into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion.

This being the factual and legal position, the **O.A. is dismissed with no order as to costs.**

Member (J)

Dated :- 11/01/2024
aps

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 Member (J).

Judgment signed on : 11/01/2024
and pronounced on

Uploaded on : 12/01/2024