

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH AT NAGPUR.
ORIGINAL APPLICATION NO. 536 of 2007

Jagannath Sitaram Thamake,
Aged about 54 Yrs.,
Occ. : Agriculture Officer,
Panchayat Samiti, Ghatanji,
Tah. Ghatanji, Distt. Yavatmal.

----- **APPLICANT**

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Rural Development and Water
Conservation Department ,
Mantralaya, Mumbai-32.
2. The Chief Secretary, General Admn. Deptt.,
State of Maharashtra, Mantralaya,
Mumbai.
3. Commissioner , Amravati Division,
Amravati.
4. Chief Executive Officer,
Zilla Parishad, Yeotmal.
5. Shri S.P. Thorat,
Integrated Child Development
Project Officer, Akola,
Distt. Akola.
6. Shri D.N.Mankar, Integrated Child Development
Project Officer, Ralegaon, Distt. Yavatmal. **RESPONDENTS**

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1. Shri N N. Thengre, Counsel for Applicants
 2. Shri M.I. Khan, Id. P.O. for Respondents no. 1 to 4.
 3. None for R/5 and 6.

CORAM: B. Majumdar: Vice Chairman

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S.S. Hingne : Member (J)

DATE : 11th March, 2016

ORDERPER VICE-CHAIRMAN

The applicant is an Agricultural Officer . He belongs to SC . He has filed this O.A. as he is aggrieved that he has not been promoted as an Extension Officer, Group-B, whereas his juniors have been promoted.

2. The facts of the case are as follow :-

The applicant was promoted as an Agricultural Officer on 2/12/1986. Following an enquiry into allegations of irregularities in purchase and distribution of cement he was placed under suspension on 25/11/2005. A charge sheet was served on him on 31/8/2006. The sum and substance of the charges ^{are} summarized as follows :-

a) As officiating BDO, Umarkhed from 3/12/2003 to 28/12/2003, 28/5/2004 to 28/7/2004 and 1/8/2004 to 25/10/2005 he purchased and distributed excess cement in unplanned and uncontrolled manner which resulted into

misuse of the empty bags on a large scale and thereby he committed irregularities .

3. The applicant was reinstated on 26/10/2006. In the select list prepared and published on 6/3/2007 containing names of employees from the Backward Classes for promotion to the Maharashtra Development Service, Class-II, the applicant is placed at Sr. No. 1 and R/5, i.e., Shri S.P. Thorat is placed at Sr. No. 3 . The name of R/6, i.e. Shri D.M. Mankar is not in the list. However, there is no dispute that R/5 and R/6 are junior to the applicant . On 10/8/2007, R/5 and 6 were promoted as Extension Officer, Group-B. The applicant has challenged this order in the O.A.

4. The applicant relies on the circular of GAD dtd. 2/4/1976 which states the Govt.'s policy with regard to promotion of employees against whom ~~#~~ DE is pending. As per this circular, the respondents are required to take a conscious decision whether to promote him while the DE is pending after taking into consideration the gravity of

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charges. It also provides that the concerned Govt. servant can be conditionally promoted subject to undergoing the punishment in the promotional post once the DE is decided. The applicant's caste was validated on 29/3/2008. The enquiry officer submitted his report on 29/7/2009. As per this report the charges no. 1 and 2 are not proved and the charge no. 3 is partly proved. On 30/4/2010 an order of recovery of Rs.6,440/- and withholding his one increment permanently and treating the period of suspension as suspension was issued against the applicant. The applicant retired on 31/10/2011. He submits that the charges in the DE are not of serious nature. Thus, the substance of the charges of illegality in procuring and distribution of cement had been proved to be false in the enquiry. It is for this reason that the respondents had given a minor punishment of recovery and stoppage of one increment. In this background denial of promotion to him is contrary to the provisions of the above circular.



5. The Respondent no. 3, Commissioner, Amravati in his affidavit dtd. 29/1/2008 submits that the applicant has not filed his caste validity certificate which is required for promotion and since the charges against him are serious and a DE has been initiated against him, his case does not fit within the provisions of the circular dtd. 22/4/1976. It is also so stated by the R/5 and 6 in their reply.
6. We have heard Shri N.N. Thengre, the Id. Counsel for the applicant and Shri M.I. Khan, the Id. P.O. for Respondent nos. 1 to 4. None appeared on behalf of R/5 and 6. We have also gone through the documents placed before us.
7. The Id. Counsel for the applicant mainly reiterated what the applicant has submitted in his O.A. He drew our attention to the contents of the charge sheet of 3 charges leveled against the applicant and the fact that out of these only the 3rd charge, i.e., he did not follow proper procedure in distributing the cement, has been partly proved. Thus, the



enquiry officer has practically exonerated the applicant and the respondents have also accepted the same. Thus, in terms of the circular of 1976, the respondents should have promoted the applicant and allowed him to undergo minor punishment after his promotion.

8. The Id. P.O. submitted that the charges of serious irregularities in the distribution of large quantity of cement have been proved against the applicant, though on a partial basis. He has not been exonerated in the DE which resulted in the inflicting of punishment vide order dtd. 30/4/2010. Under these circumstances, he was not eligible for provisional promotion in terms of the circular of 1976.

9. We find that the applicant has relied on the circular of 1976. The circular contains guidelines for deciding whether to promote an officer against whom a DE is pending or whose conduct is under investigation. For purpose of granting interim promotion during pendency of

proceedings in a case where the concerned govt. servant is not under suspension, Para 3 (b) states as follows :-

Para 3 (b): *“In respect of a person who is not under suspension, the competent authority should take a conscious decision, after taking into consideration the nature of the charges leveled whether the persons should be promoted without waiting for the conclusion of the enquiry. If it is decided that he would be so promoted, such promotion will be provisional and will be reviewed on the conclusion of the investigation or enquiry.”*

10. It is not disputed that the applicant was reinstated after suspension on 26/10/2006 and R/5 and 6 were promoted on 10/8/2007. Hence, the applicant was not under suspension when his juniors were promoted. In terms of para 3 (b) the respondents are required to examine after taking into consideration the nature and gravity of the charges levelled against the applicant in the D.E., whether it was a fit case to

promote him without waiting for the conclusion of the enquiry. We have already stated the contents of the charges against the applicant in the DE. The Enquiry Officer had concluded that the charges no. 1 and 2 are not proved and only the charge no. 3 is proved partly. We therefore, reproduce the charge no. 3 as per the charge sheet :-

Para 3 : “सिमेंटची उचल केल्यानंतर संबंधीतांना सिमेंटचा पुरवठा करतेवेळी संबंधीतांकडून लेखी स्वरूपात मागणीची सत्यता पडताळून सिमेंटचे वितरण करणे आवश्यक होते. परंतू तसे न केल्यामुळे कोणत्या कामासाठी किती सिमेंटचा वापर झाला हे नेमके कळण्यास वाव राहिला नाही, यावरून सिमेंटचे वाटपात अनियमितता करून नियमांची पायमल्ली केलेली आहे, ”

11. Thus, the charge is that the applicant had distributed cement without first properly verifying the requirement as per the written requisition and thus had committed irregularities by violating the rules related to distribution of cement. We cannot help concluding that it is not a serious charge that has been proved against the applicant in the O.A. We therefore are of the view that this

consideration should have weighed with the respondents for deciding his case for promotion in terms of the guidelines as contained in the Circular of 1976. This clearly does not appear to have been done and the averment of R/2 in his reply that the applicant has been denied promotion in view of serious charges levelled and proved against him, in our view, is without any substance. We therefore find merit in the present O.A. and we direct that the respondents will grant notional promotion to the applicant to the Maharashtra Education Service, Group-B with effect from the same date of promotion as that of the R/ 5 and 6, i.e., 10/8/2007. As it is a notional promotion, the applicant's pay in the promotional post will be fixed ^{only} for purpose of pensionary benefits and he will not be entitled to any arrears of salary and allowances on this count. The O.A. is disposed of in terms of the above directions with no order as to costs.

sd/-

(S.S. Hingne)
Member (J)
Skt.

sd/-

(B. Majumdar)
Vice-Chairman.