

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 879/2017 (D.B.)**

Kiran S/o Dnyandeo Salve,  
aged about 50 years,  
Occ. Service, R/o Rajeshwar Nagar,  
Buldana.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Additional Chief Secretary,  
Home Department, Mantralaya, Mumbai-400 032.
- 2) Director General of Police,  
Having its Office, near Regal Theatre Colaba,  
Mumbai-400 001.

**Respondents.**

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

**Shri V.A. Kulkarni, learned P.O. for respondents.**

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**Coram :- Shri Shree Bhagwan,  
Vice-Chairman and  
Shri Anand Karanjkar, Member (J).**

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**Date of Reserving for Judgment : 23<sup>rd</sup> January, 2020.**

**Date of Pronouncement of Judgment : 11<sup>th</sup> March, 2020.**

**JUDGMENT**

**Per : Member (J).**

**(Delivered on this 11<sup>th</sup> day of March, 2020)**

Heard Shri S.P. Palshikar, learned counsel for the  
applicant and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. The applicant was appointed in service as Police Sub Inspector (PSI) on recommendation of M.P.S.C. in the year 2004. The applicant was promoted in the year 2011 as Assistant Police Inspector and he was posted at Yavatmal.

3. The applicant was due for next promotion. The respondent no.2 published a list of 1504 Police Officers who were in the zone of consideration for the next promotion as Police Inspector. In the list dated 30/1/2017 Annex-A-1 name of the applicant was at Sr.No.158. The respondent no.2 thereafter promoted 729 Assistant Police Inspectors to the post of Police Inspectors, but the applicant was not promoted, therefore, representation was made by the applicant on 18/8/2017 to the respondent no.2 to consider his name for the promotion. Thereafter, the respondent no.2 again published second list dated 5/10/2017, but the applicant was not considered for the promotion.

4. It is contention of the applicant that the respondent no.2 committed violation of the Circular dated 2/4/1976 issued by the Government of Maharashtra. It is submitted that the respondent no.2 did not examine the circumstances how the applicant was involved in a false criminal case. According to the applicant, in the year 2011 the applicant was posted at Police Station, Risod, District Washim. At that time, offence of custodial death was registered and in the FIR name of

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the applicant was not mentioned. Five years lateron, the offences under Sections 302,385 of IPC were registered and name of the applicant was incerted. It is submitted that at the time of offence the applicant was performing patrolling duty at Shirpur and Malegaon, he was not present at Risod, but disregarding this fact the applicant was not considered for the promotion. It is submitted as per the Circular dated 2/4/1976 it was necessary for the respondent no.2 to take conscious decision after considering the facts and circumstances of the criminal case in which the applicant was accuse and as without considering the same, the case of the applicant was not considered, therefore, there is miscarriage of justice. It is submitted that the respondents were bound to consider the case of the applicant for promotion and as it is not done, therefore, direction be given to the respondents to consider the applicant for promotion with further direction to promote the applicant with deemed date 28/7/2017.

5. The application is resisted by the respondent no.2 vide reply which is at page no.175. The learned P.O. has submitted that on the date of the DPC the applicant was involved in crime punishable under Sections 302,304,217,218 & 385 r/w 34 of the IPC and considering all these aspects the applicant was considered for promotion and the decision taken by the DPC regarding suitability of the applicant is kept in the sealed covered. According to the

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respondents, the case of the applicant is considered in view of the serious nature of the crime pending against the applicant and therefore, there is no violation of the Circular dated 2/4/1976. It is submitted by the respondent no.2 that as there is no illegality committed by the respondent no.2 in not granting promotion to the applicant, consequently, the application is liable to be dismissed.

6. We have heard the submissions of both sides, much emphasis is given by the applicant on the circular dated 2/4/1976. The para-2 of the Circular deals with a case of the Government servant facing investigation or departmental enquiry, it says that if on the basis of the record of such Government servant, he is found fit for promotion, his name should be included in the select list at the appropriate place, but his inclusion should be considered to be purely provisional to be reviewed after conclusion of the departmental inquiry or investigation, if on conclusion of the investigation, it is decided that a departmental inquiry is not necessary. This provision was applicable to all Government servants irrespective of whether they were under suspension or not. Similarly, in para-3 (b) it is mentioned that 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 levelled, whether the Government servant should be promoted without waiting for the

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conclusion of the inquiry. If it is decided that he should be promoted, then such promotion will be provisional and will be reviewed on the conclusion of the investigation or inquiry.

7. After reading the relevant provisions in this Circular we are of the view that discretion was confirmed on the Competent Authority to take conscious decision it includes consideration of the nature of the crime in which the applicant was involved and it's seriousness etc. When word discretion is used it implies that it should be exercised in a judicious manner in a reasonable way, it should not be arbitrary. In the present case it seems that the applicant is involved in Crime under Section 302 of the IPC, it is case of a custodial death and charge is also for destruction of the evidence. Under these circumstances, as the applicant is not promoted this cannot be a reason to say that the decision taken by the Competent Authority was arbitrary. There was some reasonable material available against the applicant which is supporting the view of the Authority that it was not suitable case to promote the applicant.

8. Now we would like to consider the material provisions of the G.R. dated 15/12/2017. After issuing this G.R., the Government of Maharashtra issued fresh guidelines as to what procedure to be followed while considering the case of a Government servant who is

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facing departmental inquiry or a criminal trial. In para 1 (6) and 1 (9) of the G.R., the following directions are issued -

“१ (६) विभागीय पदोन्नती समितीच्या बैठकीच्या दिनांकाच्या ६ महिन्यांनंतर मोहोरबंद पाकीटात ठेवलेले प्रकरण नियुक्ती प्राधिकारी यांनी पुनर्विलोकित करावे. पुनर्विलोकनाच्यावेळी निलंबित अधिका-यास पुनःस्थापित केले असल्याचे व त्यांचेविरुद्ध कोणतीही शिस्तभंगविषयक कार्यवाही सुरु झालेली नसल्याचे आढळून आल्यास, मोहोरबंद लिफाफा उघडून त्यातील निष्कर्षानुसार तो पदोन्नतीस पात्र असल्यास त्यास पदोन्नती देण्यात यावी. तसेच ज्या अधिकारी/ कर्मचा-यांविरुद्धची शिस्तभंगविषयक कार्यवाही संपुष्टात येवून शिक्षा दिली असल्यास, अशा अधिकारी/ कर्मचा-यांचे सीलबंद लिफाफे न उघडता त्यांची पदोन्नतीसाठीची पात्रता पुढील नियमित विभागीय पदोन्नती समितीच्या बैठकीमध्ये तपासण्यात यावी.

१ (९) विभागीय पदोन्नती समितीच्या मूळ बैठकीच्या दिनांकापासून दोन वर्षे झाल्यानंतरही मोहोरबंद पाकीटात निष्कर्ष ठेवलेल्या अधिकारी/ कर्मचा-यांच्या, शिस्तभंगविषयक / न्यायालयीन कार्यवाही प्रकरणी अंतिम निर्णय झालेला नसल्यास, अशा प्रकरणी नियुक्ती प्राधिकारी स्वविवेकानुसार संबंधित अधिकारी/ कर्मचा-याला तदर्थ पदोन्नती देण्याबाबत जाणीवपूर्वक निर्णय घेईल. असा निर्णय घेताना नियुक्ती प्राधिकारी, खालील मूददे विचारात घेईल.

- (अ) संबंधितांविरुद्धची शिस्तभंगविषयक / न्यायालयीन कार्यवाही बराच काळ प्रलंबित राहण्याची शक्यता,
- (ब) दोषारोपांचे गांभीर्य,
- (क) द्यावयाची पदोन्नती जनहिताच्या विरुद्ध जाईल का,
- (ड) शिस्तभंगविषयक / न्यायालयीन कार्यवाही लांबण्यास संबंधित अधिकारी / कर्मचारी जबाबदार आहे कां ?
- (इ) संबंधित अधिकारी/ कर्मचा-यास तदर्थ पदोन्नती दिल्यानंतर, पदोन्नतीच्या पदावर काम केल्यामुळे, संबंधित अधिकारी/कर्मचा-याच्या शिस्तभंगविषयक/ न्यायालयीन कार्यवाहीच्या प्रकरणांवर परिणाम होण्याची शक्यता आहे कां ? किंवा संबंधित अधिकारी/ कर्मचारी पदोन्नतीच्या पदाचा त्यासाठी दुरुपयोग करण्याची शक्यता आहे कां ?
- (फ) न्यायालयीन कार्यवाही याबाबतची सद्यस्थिती / अभियोगाबाबतचे किंती टप्पे पार पडले याबाबतची माहिती करून घ्यावी.”

9. After reading para 1(6) and 1(9) of the G.R., it was incumbent on the respondent no.2 to review the case of the applicant

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after interval of six months, but in case of the applicant it seems that this procedure was not followed as criminal case is pending till today. As per the Clause 1(9), it was obligatory on the respondent no.2 to review the case of the applicant after two years from the date of DPC, as the criminal case was not decided and as the criminal case was not decided, it was duty of the respondent no.2 to take conscious decision after considering the delay in disposal of the criminal trial, seriousness of the charges against the applicant, whether the promotion would be against the public interest, whether the applicant was liable for delaying the criminal trial and whether there was any possibility of interference of the applicant in the administration of justice. In the present matter, it seems that the directions given in paras-1(6) and 1(9) are not considered and suitable decision was not taken by the respondent no.2.

10. In view of above discussion, we are of the view that it is necessary to issue direction to the respondent no.2 to examine and consider the case of the applicant in view of the procedure laid down in para- 1(9) of the G.R. dated 15/12/2017 and to take conscious decision regarding promotion of the applicant. In the result, we pass the following order –



**ORDER**

The application is partly allowed. The respondent no.2 is directed to arrange the DPC for consideration of the case of the applicant in view of the directions issued in the G.R. dated 15/12/2017 in para- 1(6) & 1(9). The decision shall be taken by the respondent no.2 within a period of three months from the date of this order. No order as to costs.

**(Anand Karanjkar)**  
**Member(J).**

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

**Dated :- 11/03/2020.**

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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 V.C. and Member (J).

Judgment pronounced  
and signed on : 11/03/2020.

Uploaded on : 11/03/2020.