

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 1244 OF 2022

DISTRICT : THANE

Shri Sunil Gendalal Kochure)
Accounts Officer, Group-B Gazetted)
R/at: Vindhyachal, Building C/5,)
7th floor, 701, Lokdhara CHS,)
Kalyan [E], Dist-Thane.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Finance Department,)
Mantralaya, Mumbai.)
2. The Director Accounts &)
Treasury, Ground floor,)
Kasturi Building,)
Opp. Petroleum House,)
J. Tata Road, Churchgate,)
Mumbai 400 020.)...**Respondents**

Shri K.R Jagdale, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)**

DATE : 06.12.2023

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicant prays that the Respondents be directed to consider the candidature of the applicant for promotion to the post of Assistant Director Group-A (Junior) in the cadre of Maharashtra Finance and Accounts services and further the Respondents be directed to treat the suspension period from 22.8.2005 to 24.2.2012 as duty period for all purpose with all consequential service benefits.

2. Learned counsel for the applicant submitted that two Criminal Cases were registered against the applicant, and first is C.R No. 84/2005 for offence punishable under Sections 409, 420, 465, 466, 467, 468, 471, 120B of IPC. The applicant is acquitted in the C.R No. 84/2005 by the Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai, by judgment and order dated 29.9.2016. Learned counsel submitted that the applicant was also prosecuted in another case, i.e., C.R No. 93/2005 for offence punishable under Sections 409, 420, 465, 466, 467, 468, 471, 120B of IPC, and Criminal Case No. 373/2007 is still pending in the Court of Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai. Learned counsel has further submitted that the applicant was suspended in contemplation of departmental enquiry by order dated 22.8.2005 and charge sheet dated 27.10.2010 was served on the applicant for misappropriation of funds. By order dated 15.7.2017, the applicant was imposed with a punishment of stoppage of increment for two

years without cumulative effect. The said punishment order came to an end on 30.6.2020.

3. Learned counsel for the applicant has submitted that D.P.C meeting for promotion to the post of Assistant Director for the year 2020-21 was held on 27.7.2021 and the applicant was found eligible and his name was in the select list. The Respondents called for choice options for posting him in Division on 29.10.2021 and accordingly the applicant has given his option for posting on promotion on 1.11.2021. Learned counsel has further submitted that in the revised select list which was published on 2.11.2021, the name of the applicant was dropped without any reason and by order dated 17.11.2021, total 28 officers were promoted. The total number of applicants in the select list was 163. However, the juniors to the applicant at Sr. Nos 165, 166, 167 and 434 was promoted. Learned counsel has further submitted that applicant is retiring on 28.2.2024.

4. Learned counsel has further submitted none of the factors mentioned in sub-clause 9(g) of Clause 1 is considered by the Respondents. Learned counsel has submitted that if at all Respondent-State has taken conscious decision not to promote the applicant under of sub-clause 9(g) of Clause 1 of G.R dated 15.12.2017, then it was binding on the Respondents to discuss and give reasons as to why the applicant should not be promoted when there is less than one year for his retirement and it should reflect application of mind.

5. Learned counsel for the applicant has relied on the decision of the **Hon'ble Bombay High Court, Aurangabad Bench dated 5.10.2023, in Ashok M. Nand Vs. The State of Maharashtra & Ors, W.P 1672/2022.**

6. Learned C.P.O relied on the affidavit in reply dated 23.2.2023 filed by Smita M. Kulkarni, Joint Director in the office of Director, Directorate of Accounts and Treasuries, Mumbai, wherein it is stated that second Criminal Complaint C.R No. 83/2005 in connection with the Akarshak Pushkaraj Lottery Draw dated 13.1.2005 in which the applicant was charged for cheating the Maharashtra Government for Rs. 14,00,000/- and on 19.8.2005 the FIR registered against the applicant under Sections 409, 465, 466, 467, 468, 471, 420 and 120B of IPC at Shivadi Police Station, Mumbai and the said Criminal case is still pending before the Hon'ble Court for decision. The said criminal proceedings against the applicant is on serious charges of cheating and fraud etc. Learned C.P.O has submitted that D.P.C meeting was held on 27.6.2022 for the year 2020-21 and at that time the administration was not aware about the pending criminal case against the applicant. These facts were brought to the notice of the Respondents and in view of the pending Criminal Case, the D.P.C. has decided to keep the applicant's case in the sealed envelope as per G.R dated 1.8.2019. Learned C.P.O also relied on the affidavit in reply dated 25.10.2023 filed by Vidya N. Pondkule, Assistant Director in the office of Director, Accounts & Treasuries, Mumbai in compliance of the order dated 10.10.2023, giving reasons as to why the applicant was not considered for promotion. Learned C.P.O submitted that in the D.P.C meeting held on 17.8.2023, the case of the applicant was considered for the third time for promotion to the post of Assistant Director. As per provisions in para 9 of G.A.D's G.R dated 15.12.2017, the promotion matters of the officers and employees whose decision regarding promotion is kept in sealed cover due to pending court proceedings or departmental enquiry even after two years from the date of first meeting of the D.P.C and if the final decision has not been taken in the pending court proceedings or departmental enquiry, in such a

case the appointing authority may at its discretion take a conscious decision to give ad hoc promotion to the concerned officer or employee after taking into consideration the points (A to G) of provision no. 9 of the said G.R. Further as per Point No. G of the said G.R, if there is one year left for retirement, then the period of retirement should be taken into consideration for not giving promotion (ad hoc) promotion is required to be examined to ensure that those with one year left for retirement should not be given ad hoc promotions as they will get more benefit from retirement due to getting senior pay scale. Therefore, the D.P.C consciously decided not to give ad hoc promotion to the applicant as per points A to G stated in provision No. 9 of the G.R dated 15.12.2017. She further relied on the affidavit in sur-rejoinder dated 1.11.2023 filed by Tanaji R. Pawar, Under Secretary in the office of Additional Chief Secretary, Finance Department, Mantralaya, Mumbai, wherein the contentions raised by the applicant are denied.

7. In the case of **Ashok M. Nand (supra)**, the Petitioner was charged under the Prevention of Corruption Act. We have gone through the judgment. In this matter, Respondent Nos 2 & 3 were directed to issue the order of temporary promotion to the petitioner to the post of Supervisory Clerk as his case was kept in sealed cover. In the said case, the High Court has discussed clause 9 of the G.R dated 15.12.2017. Further in the said case it is held that there is discrimination and illegal deprivation of promotion to the Petitioner as other two persons similarly placed were promoted.

8. In the present case, we find the sealed cover was opened in the D.P.C meeting conducted in the year 2023 and he is not given promotion because there was less than one year left for his retirement from the date of the meeting of the D.P.C and that is a valid ground under sub-clause 9(g) of Clause 1 of G.R dated

15.12.2017. Thus, the reason given by the Respondents in not giving promotion to the applicant is just and correct. We, therefore, find that no indulgence is required by this Tribunal.

9. In view of the above, we find no merit in the Original Application and the same stands dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 06.12.2023
Dictation taken by : A.K. Nair.