

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.472 OF 2016

DIST. :AURANGABAD

Syed FahimoddinMoiuddin,
Age. 51 years, Occu. Service,
Presently working as Head Clerk,
In the office of Joint Director
Of Education, Mumbai and promoted
As Hostel Superintendent,
Government Arts and Science College,
Aurangabad, permanent resident of
Aurangabad, District Aurangabad.--

APPLICANT

V E R S U S

- (1) The State of Maharashtra,
Through itsSecretary,
Higher and Technical Education
Department,Mantralaya,
Mumbai.
- (2) The Director of Education,
Maharashtra State, Pune.
- (3) The Joint Director of Higher
Education, Aurangabad Division,
Aurangabad.
- (4) Dr. Shaikh Imran ShaikhUsman,
Age. 40 years, Occu. Service,
Presently working as Reader
In Moulana Azad Marathwada College of
Education, Aurangabad.
- (5) The Principal,
Government Arts and Science College,
Aurangabad.

RESPONDENTS

APPEARANCE : Syed FahimoddinMoiuddin – Applicant
inperson.

: Shri M.P. Gude, learned Presenting
Officer for the Respondents.

**CORAM : HON'BLE SHRI RAJIV AGARWAL,
VICE CHAIRMAN**

AND
: **HON'BLE SHRI J. D. KULKARNI,
MEMBER (J)**

**PER : HON'BLE SHRI RAJIV AGARWAL,
VICE CHAIRMAN**

J U D G M E N T

(Delivered on this 16th day of December, 2016)

1. Heard the Applicant in person and learned Presenting Officer (P.O.) Shri M.P. Gude, for the Respondents.
2. The Applicant has filed this Original Application challenging the order dated 10.05.2016 passed by the Respondent No. 2 cancelling the promotion of the Applicant to the post of Superintendent (Group 'C') which was given by order dated 7.5.2016.
3. The Applicant argued that he was working as Head Clerk in the office of the Divisional Joint Director of Higher

Education, Mumbai when he was promoted to the post of Superintendent (Group 'C') by order dated 7.5.2016. He was posted in the Government College of Arts & Science, Aurangabad on promotion. The Applicant was relieved on 9.5.2016 from the office of the Joint Director of Higher Education, Mumbai. The Applicant reported to the Respondent No. 5 on 10.05.2016. However, he was not allowed to join. On the same day the Respondent No. 2 passed the impugned order, cancelling the promotion order qua the Applicant and he was asked to report to Joint Director of Higher Education, Mumbai. The Applicant contended that he was promoted on the basis of his seniority and as he was found fit for promotion. The order cancelling his promotion as a Departmental Enquiry is due to some complaints against him, is bad in law.

4. Learned Presenting Officer argued on behalf of the Respondents that the Applicant was transferred from Aurangabad to Mumbai in 2015 based on the complaints received against the Applicant. The Departmental Promotion Committee met on 7.5.2016 to consider

promotion of Head Clerks to the post of Hostel Superintendent and the Applicant was also promoted and posted to the Government Arts and Science College, Aurangabad. However, the promotion order dated 7.5.2016 qua the Applicant was cancelled by the Respondent no. 2 by order dated 10.05.2016 and the Respondent no. 3 has been directed to hold a Departmental Enquiry (D.E.) against the Applicant. Learned Presenting Officer (P.O.) contended that a Departmental Enquiry Committee has been constituted to enquire into the complaints against the Applicant on 23.09.2016 and an Enquiry Officer has also been appointed. In the Circumstances, the Respondent No. 3 decided to cancel the promotion order of the Applicant. Learned Presenting Officer (P.O.) argued that there is no merit in this O.A. and it may be dismissed.

5. We find from the affidavit in reply dated 18.11.2016 filed on behalf of the Respondent Nos. 1 to 3 in para 7, it is mentioned that the meeting of the Departmental Promotion Committee was held on 7.5.2016 and the Applicant was found fit for promotion to the post of Hostel

Superintendent. The seniority list of the Head Clerks is at Exhibit 'A-23' (Page 88 of the Paper Book). The Applicant from Open category is at Sr. No. 3, while one Shri I.P. Bhoyar from O.B.C. category at Sr. No. 4. Admittedly, the Applicant is senior to ShriBhoyar, who is also promoted as Hostel Superintendent by order dated 7.5.2016. As there is no reservation in promotion for O.B.C. category, ShriBhoyar is promoted to an Open post. Cancellation of promotion of the Applicant would amount to his supersession. It appears that an Enquiry Committee has been appointed on 23.09.2016 to conduct enquiry against the Applicant. It is not clear whether this is a Departmental Enquiry under the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Even if, it is a D.E. under the aforesaid rules, it has admittedly started after the Applicant was promoted. On the date when his promotion was cancelled on 10.05.2016, no D.E. was pending against the Applicant. G.R. dated 22.4.1996, prescribes the methodology of promotion, when a D.E. is pending against a Government servant. It is seen that a Government Servant can be promoted subject to the outcome of D.E. against him. This G.R. or Government

Circular dated 2.4.1976 does not have any provision to deny promotion to a Government servant merely on the basis of the complaints against him or in contemplation of a D.E. against him. The Respondents have not been able to point out any provision, which will enable the authorities to deny promotion to an eligible Government servants merely on the basis of complaints or in contemplation of a D.E. We have no hesitation in holding that the impugned order dated 10.05.2016 issued by the Respondent No. 2 cancelling the promotion of the Applicant to the post of Hostel Superintendent is unsustainable in law.

6. It appears that the post in which the Applicant was posted at Government College of Arts and Science is not available. There are two other posts available at Aurangabad. The Applicant may be posted to any vacant post in Aurangabad or elsewhere as deemed fit by the Respondent no. 2. This should be done within a period of four weeks from the date of this order. This O.A. is allowed in these terms with no order as to costs.

MEMBER (J)

VICE CHAIRMAN