

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.1051 OF 2017

DISTRICT : NAGPUR

Shri Rajendra Dashrath Chopkar,)
Age 56 years, Assistant Conservator of Forest,)
E.G.S. and Wild Life, Bhandara Division,)
R/o Kamgar Nagar, Takli, Nagpur)..Applicant

Versus

The State of Maharashtra,)
Through the Secretary (Forest),)
Revenue & Forest Department,)
Mantralaya, Mumbai)..Respondent

Shri A.V. Bandiwadekar – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer holding for

Miss S.P. Manchekar – Chief Presenting Officer for the Respondent

CORAM : Shri Justice A.H. Joshi, Chairman

Shri P.N. Dixit, Member (A)

RESERVED ON : 13th December, 2018

PRONOUNCED ON : 19th December, 2018

PER : Shri P.N. Dixit, Member (A)

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer holding for Miss S.P.

Manchekar, learned Chief Presenting Officer for the Respondent. Shri Anil Nivrutti Dhas, Section Officer, Revenue & Forest Department, Mantralaya, Mumbai was present in the Court at the time of final hearing.

Admitted facts of the case:

2. The applicant is working as Assistant Conservator of Forest. On 23.11.2016 meeting of Departmental Promotion Committee (DPC) was held for considering the promotions (Exhibit C page 40 of OA). The name of the applicant is at Sr. No.31 and in view of his ACRs he has been mentioned as fit for promotion (page 48 of OA). In pursuance of the recommendations of the DPC the promotion order was issued on 11.8.2017. The same did not contain the name of the applicant. Aggrieved by the same, the applicant has made the following prayers:

“9(a) By a suitable order/direction, this Hon’ble Tribunal may be pleased to direct the respondent to incorporate the name of the petitioner at Sr. No. (blank) of the order dated 11.8.2017 and promote him with the deemed date to the post of the Divisional Forest Officer and accordingly the petitioner be granted all the consequential service benefits.”

(Quoted from page 22-23 of OA)

3. Meanwhile on 2.8.2017 the respondent served charge sheet against the applicant under Section 10 of the MCS (Discipline & Appeal) Rules, 1979 (Exhibit K page 84 of OA). On 11.8.2017 the respondent issued a memo to the applicant. The relevant portion of the same reads as under:

“२.०० संदर्भिय क्रमांक -२ चे शासन पत्रान्वये कळविल्यानुसार सदर प्रकरणी श्री.आर.डी.चोपकर, तत्का. वनपरिक्षेत्र अधिकारी खापा, नागपूर वन विभाग नागपूर सध्या सहायक वनसंरक्षक, भंडारा वन विभाग, भंडारा यांच्या विरुद्ध महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम-१९७९ च्या नियम -१० अन्वये बजावण्यात आलेले दोषारोपपत्रातील आरोपाचे गांभिर्य लक्षात घेता त्यांना सदर प्रकरणी त्या नियमांचे नियम-१० ऐवजी नियम-८

अंतर्गत कारवाई करण्यास मा.मंत्री वने यांनी मान्यता दिली असल्यानं संदर्भिय क्रमांक-१ चे झापना अन्वये बजावण्यात आलेले दोषारोपपत्र तात्काळ रद्द करण्यास कळविले आहे. सदर शासन निर्देशानुसार संदर्भ क्रमांक-१ चे झापनान्वये श्री.आर.डी.चोपकर, तत्का.वनपरिक्षेत्र अधिकारी खापा, नागपूर वन विभाग सध्या सहायक वनसंरक्षक, भंडारा वन विभाग, भंडारा यांच्याविरुद्ध महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम -१९७९ च्या नियम-१० अन्वये बजावण्यात आलेले दोषारोपपत्र याद्वारे रद्द करण्यांत येत आहे.”

(Quoted from page 104 of OA)

4. On 16.8.2017 the respondent issued fresh charge sheet under Section 8 of MCS (Discipline & Appeal) Rules, 1979 (Exhibit O page 107 of OA). The applicant has, therefore, made the prayer in para 9(c) as under:

“9(c) By a suitable order/direction, this Hon’ble Tribunal may be pleased to hold and declare that at the time of consideration of the case of the petitioner for promotion to the post of Divisional Forest Officer in the meeting of the Establishment Board held on 23.11.2016, that there was no initiation of the Departmental Enquiry by the respondent either under Rule 10 or under Rule 8 of the MCS (Discipline & Appeal) Rules, 1979, against the petitioner for any alleged misconduct and therefore, the petitioner was was/is being entitled for being promoted to the said post in view of he being found fit for promotion to the said post and accordingly the petitioner be granted all the consequential service benefits.”

(Quoted from page 23-24 of OA)

5. The Ld. Advocate for the applicant contended that no Departmental Enquiry was under consideration against him on the date of issue of the promotion order viz. 11.8.2017.

6. The Ld. Advocate for the applicant has cited following judgments in support of his contention that when there is no Departmental Enquiry or Criminal Proceedings pending against the employee he should not be deprived of his promotion:

- (i) Union of India & Ors. Vs. K.V. Jankiraman & Ors. AIR 1991 SC 2010.
- (ii) Bank of India & Anr. Vs. Degala Suryanarayana, AIR 1999 SC 2407.
- (iii) Union of India & Ors. Vs. Anil Kumar Sarkar (2013) 2 SCC (L&S) 220 : (2013) 4 SCC 161.

7. The respondent has rebutted the contention of the applicant. The Ld. PO pointed out that the judgments cited are not relevant as the facts are different since subsequent developments after completing the DPC have resulted in initiation of DE against the applicant. In view of the gravity of the charges against the applicant the proposal for initiating the DE under Section 10 of the MCS (Discipline & Appeal) Rules, 1979 mentioning 'minor punishment' has been modified as DE under Section 8 which states 'major punishment'. He, therefore, pointed out that the existence of misconduct necessitating the DE prevents promotion of the applicant. He has relied on the circular issued by the Government dated 2.4.1976 (Exhibit R-3 page 215), GR dated 22.4.1996 issued by the GAD (Exhibit R-4 page 217) and GR dated 15.12.2017 issued by the GAD (Exhibit R-5 page 218 of OA). The relevant portion of GR dated 15.12.2017 reads as under:

“५. विभागीय पदोन्नती समितीच्या बैठकीच्या दिनांकाला जरी एखादा अधिकारी / कर्मचारी निलंबित नसेल अथवा त्याच्याविरुद्ध शिस्तभंगविषयक / न्यायालयीन कार्यवाही सुरु झाली नसेल मात्र, संबंधित अधिकारी / कर्मचा-याचे प्रत्यक्ष पदोन्नतीचे आदेश निर्गमित होण्यापुर्वी संबंधित अधिकारी / कर्मचारी निलंबित झाल्यास वा त्याच्याविरुद्ध शिस्तभंगविषयक / न्यायालयीन कार्यवाही सुरु झाल्यास, नियुक्ती प्राधिकारी संबंधित अधिकारी / कर्मचा-याचे पदोन्नतीचे प्रकरण उपपरिच्छेद (१) मधील सूचनेनुसार मोहोरबंद पाकीटात ठेवेल.”

(Quoted from page 220-221 of OA)

8. The issue to be considered by this Tribunal is as to whether:

“Is it legitimate for the Government to consider material which has reached at the hands of the Government or was brought to the notice of the Government after decision to promote the applicant was taken?”

9. Though the facts have been referred hereinbefore it would be useful to advert to those once again as follows:

Date	Events
23.11.2016	Date of DPC meeting.
2.8.2017	Charge sheet for action under Rule 10 was issued.
11.8.2017	Charge sheet under Rule 10 was withdrawn in contemplation of enquiry under Rule 8 for the same matter which was considered serious.
16.8.2017	Charge sheet has been issued.
15.12.2017	The decision of DPC is taken.

10. In the aforesaid situation this Tribunal considers that it would be open for the Government to consider any material against any candidate such as a fact that a DE is in contemplation towards a charge which if proved may eventually attract major penalty, and the Government shall be entitled to take conscious decision as to whether candidate concerned is fit to be promoted in view of such DE in contemplation.

11. The Original Application is, therefore, dismissed without costs.

Sd/-
(P.N. Dixit)
Member (A)
19.12.2018

Sd/-
(A.H. Joshi, J.)
Chairman
19.12.2018

Dictation taken by: S.G. Jawalkar.