

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.1219 OF 2022

DISTRICT : SANGLI

Shri Shankar Bhujanga Vadar,)
Age 56 years, Clerk in the office of District Collector,)
Vijaynagar, Sangli)
R/at Datta Colony (W), Indira Nagar Corner,)
Malgaon Road, Miraj District Sangli)..Applicant

Versus

The District Collector, Sangli)..Respondent

Shri B.A. Bandiwadekar – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondent

CORAM : Smt. Justice Mridula Bhatkar, Chairperson

Smt. Medha Gadgil, Member (A)

RESERVED ON : 8th March, 2023

PRONOUNCED ON: 15th March, 2023

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. The applicant prays that this Tribunal be pleased to quash and set aside the impugned order dated 17.3.2022 to the extent on the part of the Respondents to include the name of the applicant in the order of promotion along with his juniors and the applicant be granted all

consequential service benefits including deemed date of promotion w.e.f. 17.3.2022.

2. The applicant is working as Clerk in the office of District Collector, Sangli. Learned Advocate for the applicant submitted that FIR came to be lodged and Special Case No.3/2001 was filed against him under Section 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. Thereafter, D.E. was initiated against him by charge sheet dated 30.7.2007 on the ground of the alleged misconduct of the A.C.B. case.

3. Learned Advocate for the applicant submitted that despite acquittal of the applicant in the criminal case by order dated 31.8.2004, the Respondents did not reinstate him in service. However, he was reinstated in service on 5.2.2009. Learned Advocate for the applicant submitted that the Respondents have preferred appeal before the Hon'ble Bombay High Court in Criminal Appeal No.1406/2004, and the same is still pending. The last date was shown as 2.5.2022. Learned Advocate for the applicant has further submitted that the applicant was granted exemption from passing the departmental examination on the ground of completion of 45 years of age. Learned Advocate for the applicant has further submitted that by order dated 19.4.2012, the District Collector, Sangli has closed the departmental enquiry initiated against the applicant, as he was acquitted in the criminal case. Ld. Advocate for the applicant further pointed out that respondents convened the DPC on 11.3.2022 for promotion to the post of Awal Karkun for which name of the applicant was also considered. However, the respondents adopted the sealed cover procedure and kept the decision in sealed cover, which is subject to the outcome of criminal appeal filed by the respondents before the Hon'ble Bombay High Court. He further pointed out that he was entitled to be considered for promotion in view of the fact that he had been acquitted in criminal case on 31.8.2004 and DE was also dropped in view of the acquittal vide order

dated 19.4.2012. He also made representation-cum-undertaking to the respondents to consider him for promotion to the post of Awal Karkun subject to outcome of pending criminal case before the Hon'ble High Court in Criminal W.P. No.1406/2004.

4. Learned Advocate for the applicant relied on clause 12(c) of the G.R dated 15.12.2017, which reads as under:

“१२. शिस्तभंगविषयक/न्यायालयीन कार्यवाही चालू असलेल्या प्रकरणी संबंधित अधिकारी/कर्मचारी दोषमुक्त ठरल्यास किंवा फौजदारी खटल्यात निर्दोष सुटल्यास, खालीलप्रमाणे कार्यवाही करावी:-

अ) तदर्थ पदोन्नती दिलेली नसल्यास त्याचे मोहोरबंद पाकीट उघडून त्यातील निष्कर्षानुसार तो पदोन्नतीसाठी पात्र ठरत असल्यास, त्याला नियमित पदोन्नती द्यावी.

ब) अधिकारी/कर्मचा-यास तदर्थ पदोन्नती दिलेली असल्यास, दिलेली तदर्थ पदोन्नती करण्यात यावी.

क) मोहोरबंद पाकीटातील शिफारशीनुसार तो पदोन्नतीसाठी पात्र असल्यास, संबंधित अधिकारी/कर्मचा-यास कनिष्ठ असलेल्या अधिकारी/कर्मचा-याला ज्या निवडसूचीत स्थान देण्यात येवून निधीमत पदोन्नती देण्यात आली असेल, अशा कनिष्ठ अधिकारी/कर्मचा-याच्या पदोन्नतीचा दिनांक हा त्यांना पदोन्नतीचा मानीव दिनांक देण्यात यावा.”

5. Per contra, Ld. PO relied on the affidavit in reply dated 6.1.2023 filed by Anant Devanna Gurav, Tahsildar (Revenue), office of Collector, Sangli. He stated that the applicant has not availed remedy of appeal provided under Rule 17(4)(b) of MCS (Discipline & Appeal) Rules, 1979 against the order of District Collector. He states that as Criminal Appeal No.1406/2004 against acquittal of the applicant in Special Case No.3/2001 is still pending in the Hon'ble High Court. As the appeal is pending against the applicant he is not eligible for promotion. Ld. PO therefore prays that OA may be dismissed.

6. We have considered facts of the case. It is a fact that FIR was lodged against the applicant and Special Case No.3/2001 was filed against

him under Section 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and D.E. was initiated against him by charge sheet dated 30.7.2007 on the ground of the alleged misconduct of the A.C.B. case. Ld. Special Judge, Sangli acquitted the applicant for the offences punishable under Section 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 vide judgment and order dated 31.8.2004 in Special Case No.3 of 2001. Furthermore, the District Collector vide order dated 19.4.2012 issued order of closure of DE in view of clause 4.2 of the DE Manual, 1991.

7. In the DPC held on 11.3.2022 although name of the applicant was considered for promotion to the post of Awal Karkun, the District Collector adopted the 'Sealed Cover Procedure' which is subject to the outcome of criminal appeal filed by the respondents before the Hon'ble High Court. There is no strait jacket formula in the cases of DE as per the manual and the judgment of the Hon'ble Supreme Court in **Union of India & Ors. Vs. K.V. Jankiraman & Ors. 1991 AIR 2020:1991 SCR (3) 790.**

8. Keeping the ratio in *K.V. Jankiraman* (supra), each case is to be considered as per its facts and circumstances. In this case it is seen that the applicant was exonerated from criminal case by order dated 31.8.2004. Although appeal has been filed against the said exoneration, the matter is still pending before the Hon'ble High Court in Criminal W.P. No.1406/2004. The District Collector relied on GR dated 15.12.2017 and adopted the procedure of sealed cover in view of pendency of Criminal W.P. in the Hon'ble High Court. It is seen that District Collector vide order dated 19.4.2012 issued closure order of the DE.

9. In view of acquittal of the applicant from criminal case and closure of the DE, we direct that the sealed cover is to be opened by the respondents for considering him for promotion and pendency of appeal in

the criminal case should not come in way of his being considered for promotion. Needless to say, if he is promoted, it would be subject to outcome of decision in criminal writ petition.

10. Original Application is allowed. The Respondents are directed to consider the case of the applicant for promotion to the post of Awal Karkun and deemed date with consequential service benefits, subject to the outcome of the criminal case. No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
15.3.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
15.3.2023

Dictation taken by: S.G. Jawalkar.