

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.837 OF 2018**

DISTRICT : PUNE

Shri Balu Balwant Ghodke,)
Age 35 years, occ. Service,)
R/o D.I.S. Government Quarter, Room No.10,)
Aundh, Pune 411067)..Applicant

Versus

1. The State of Maharashtra,)
Through its Secretary,)
Agriculture, Animal Husbandry, Dairy)
Development & Fisheries Department,)
Mantralaya, Mumbai 400032)
2. The Commissioner,)
Animal Husbandry, Opp. Spicer College,)
Aundh, Pune -7)
3. The Regional Manager,)
Frogen Seman Laboratory, Khadki, Pune-3)..Respondents

Shri S.B. Gaikwad – Advocate for the Applicant

Ms. Neelima Gohad – Presenting Officer for the Respondents

CORAM : Shri Justice A.H. Joshi, Chairman
Shri P.N. Dixit, Member (A)
RESERVED ON : 14th March, 2019
PRONOUNCED ON : 18th March, 2019
PER : Shri P.N. Dixit, Member (A)

J U D G M E N T

1. Heard Shri S.B. Gaikwad, learned Advocate for the Applicant and Ms. Neelima Gohad, learned Presenting Officer for the Respondents.

Brief facts:

2. The Applicant was working as Clerk-cum-Typist in the office of Commissioner, Animal Husbandry. While he was working at Sangola, District Solapur, a criminal complaint was lodged for making irregular payments without following the procedure. The Applicant was arrested and remained in police custody for more than forty-eight hours. Separately Departmental Enquiry (DE) was conducted which exonerated him. Following the same Respondent no.3, who had made the criminal complaint, approached Chief Judicial Magistrate, Solapur to remove his name as accused from the criminal case. Meanwhile the Applicant has passed the departmental examination and was found fit for promotion to the post of Senior Clerk. However, pending outcome of the deletion of his name in the criminal case he has not been promoted. The impugned order dated 5.10.2017 states as under:

“श्री. बी.बी. घोडके, लिपिक टंकलेखक यांना वरिष्ठ लिपिक पदावर पदोन्नती देणेबाबत, विभागीय पदोन्नती समितीने त्यांचे विरुद्ध सुरु असलेल्या न्यायालयीन प्रकरणाचे अधिन राहून पात्र ठरवून, त्यांचे न्यायालयीन प्रकरणी नांव वगळल्यानंतर, पदोन्नती आदेश निर्गमित करण्याबाबत समितीने निर्णय घेतला आहे.”

(Quoted from page 48 of OA)

3. The Applicant has therefore prayed as under:

“11(b) The Respondent no.2 may kindly be directed to give promotion to the Applicant on the post of Senior Clerk conditionally as it was given previously to one Mr. Pathak subject to the decision of court case.”

(Quoted from page 10 of OA)

4. The Applicant relies on the GR dated 15.12.2017 which provides details of the procedure while considering the promotion of Government servant against whom there is a pending criminal case or departmental enquiry.

5. The Respondents no.1 to 3 have filed their reply. The same reads as under:

“5. The FIR has been lodged against Applicant on 27.7.2013 in the police station at Sangola. Subsequently the charge sheet of criminal complaint against the Applicant has been submitted in the Court of JMFC, Sangola bearing Cr. No.188/2013. He is not completely exonerated from charges levied against him due to pendency of this criminal investigation.

7. A perusal of the order dated 13.5.2016 would reveal that the period of suspension of the Applicant from 28.7.2013 to 22.12.2015 is treated as duty period for all purpose subject to result of pending criminal case i.e. RCC 156/2013.

9. The Criminal Court case is still pending before Hon. Court for the decision. Since the charges filed against the Applicant are of serious nature, the Applicant is disqualified for promotion during the pendency of the investigation, as per the provisions laid down in Govt. circular No.SRV-1075/X dated 2.4.1976. Accordingly, the Applicant was conditionally selected for promotion subject to deletion of his name in the criminal court case, in the DPC held on 27.1.2017.

10. Generally Govt. servants whose conduct is under investigation and against whom a court case is pending are ordinarily not considered for promotion. The Applicant committed one offence while payment of Govt. money. The FIR has been lodged against Applicant on

27.7.2013 in the police station at Sangola. The provisions of Section 409, 419, 420 and 34 of the Indian Penal Code came to be invoked in the FIR. The charges leveled against the Applicant are of serious nature. Subsequently, Applicant was arrested and was in police custody for more than 48 hours. Thus he was placed under suspension for the period from 28.7.2013 to 22.12.2015.

10(i) Govt. Circular No.SRV-1075/X dated 2.4.1976 states that Govt. servants who are fit for promotion and charges against whom are not so serious may qualify them for interim promotion during the pendency of the investigation provided such decision is taken consciously as laid down in circular dated 2.4.1976. The benefits of this circular could not be granted to the Applicant due to serious criminal charges framed against him. The Applicant was conditionally selected for promotion of criminal court case in the DPC held on 27.1.2017. Therefore on deletion of his name from the charge sheet the order of promotion of the Applicant on the post of Senior Clerk would be issued.

15. The Applicant was considered for promotion, however, a decision is taken to differ issuance of order of his promotion till deletion of his name from the charge sheet as can be seen from perusal of the minutes of DPC held on 27.1.2017.”

(Quoted from page 52-56)

6. The Respondents have therefore mentioned that the OA is without any merits and should be dismissed.

Discussion and findings:

7. In the present case the department had initiated criminal proceedings against the Applicant on serious charges of cheating, fraud etc. Admittedly, so far no judicial order has been passed for deleting applicant's name from the array of accused persons facing charge in said criminal case. Meanwhile the department has considered his name for promotion, as he has passed the departmental examination and deferred the promotion till the judicial order in the matter is obtained. It is not

shown that impugned decision is illegal. Hence the impugned decision does not call for any interference by this Tribunal.

8. Original Application is devoid of any merit and therefore dismissed without costs.

Sd/-

(P.N. Dixit)
Member (A)
18.3.2019

Sd/-

(A.H. Joshi, J.)
Chairman
18.3.2019

Dictation taken by: S.G. Jawalkar.