

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 947/2022(D.B.)**

Ajay S/o LaldasWahane,  
Aged about 55 years,  
Occupation- Service, R/o Flat No.302,  
Aman Symphony, Firdos Colony,  
Behind Shyam Lawn,  
Katol Road, Nagpur.

**Applicant.**

**Versus**

1. State of Maharashtra,  
Through Secretary,  
Co-Operative Marketing & Textile Department,  
Mantralaya, Mumbai-32.
2. Commissioner for Co-Operation  
& Registrar of Co-Operative Societies,  
Pune.
3. Divisional Joint Registrar,  
Co-Operative Societies,  
Dhanwate Chambers, Sitabuldi, Nagpur.

**Respondents**

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Shri G.K.Bhusari, Ld. Counsel for the applicant.  
Shri M.I.Khan, Ld. P.O. for the respondents.

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**Coram:-Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.**  
**Dated: - 29<sup>th</sup> January, 2024.**

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### **JUDGMENT**

Heard Shri G.K.Bhusari, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the Respondents. The learned counsel for both the parties have consented for final disposal and argued the matter finally.

2. The regular Division Bench is not available. The Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai issued Circular No.MAT/MUM/JUD/469/2023, dated 24/04/2023. As per the direction of Hon'ble Chairperson, if both the parties have consented for final disposal and if the O.A. is covered by the Judgment of the Hon'ble High Court and another Court, then regular matter pending before the Division Bench can be disposed off finally. Hence, the O.A. is heard and decided finally with the consent of learned counsel for both the parties.

3. Case of the applicant in short is as under-

The applicant is serving as Co-operative Officer Grade-1. The applicant is charge-sheeted for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988. The Charge-sheet is filed before the Sessions Court, Nagpur. The said criminal

case is pending from the year 2014. The said criminal case is not yet decided. On that ground the applicant is not promoted on the post of Assistant Registrar Co-operative Society.

4. It is submitted by the applicant that juniors namely Atul Tambhe and others who are at Sr.Nos.5 to 15 in the seniority list are promoted. The name of applicant is at Sr.No.3 he is senior to them but juniors are promoted as per order dated 30.12.2021 (P.21). Their names of Atul Tambe and others are at Sr.Nos.28 to 38 in the promotion order.

5. The applicant made representation on 06.08.2014, but the said representation is not considered by the respondents. Hence, the applicant approached to this Tribunal for the following reliefs-

*A) issue an appropriate order or directions to the respondent authorities to hold and declare that the applicant is entitled for promotion from the cadre of Co-Operative Officer, Grade-I to the cadre of Assistant Registrar, Cooperative Societies, Group-B, in the interest of justice;*

*B) issue an appropriate order or directions to promote the applicant from the cadre of Co-Operative Officer, Grade-I to the cadre of Assistant Registrar, Cooperative Societies, Group-B, w.e.f. 30/12/2021 on which the junior employees were promoted, in the interest of justice;*

*C) issue an appropriate order or directions to respondent authorities to grant all consequential benefits to the applicant, in the interest of justice;*

*D) Saddle the costs of the proceedings upon the respondents;*

*E) Grant any other relief in favour of the applicant which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.*

6. The learned counsel for the applicant has pointed out Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.1672/2022 decided on 05.10.2023, the Judgment of Hon'ble Supreme Court in the case of **Union of India Vs. K.V.Jankiraman** and **Union of India Vs. Anil Kumar Sarkar**. He has pointed out the Judgments of this Tribunal in O.A.No.115/2022 and O.A.No.1128/2022. In the cited Judgment decided by this Tribunal, this Tribunal relying on the Judgments of Hon'ble Supreme Court in the case of **Union of India Vs. K.V.Jankiraman** and **Union of India Vs. Anil Kumar Sarkar** come to the conclusion that pendency of criminal case cannot be a ground to deny the promotion. Temporary promotion can be granted subject to the decision of the criminal case. The Hon'ble Bombay High Court, Bench at Aurangabad has held in Writ Petition No.1672/2023 as under-

*24. Learned counsel for the respondent has invited our attention to the prohibition of two years in considering the claim of any employee like petitioner whose eligibility is closed in the sealed cover. The procedure as contemplated by clause 9 of G.R. dated 15.12.2017 is pressed into service. It is informed that in a next meeting which is to be convened in December 2023 or January 2024, the claim of the petitioner would be reconsidered. The respondents have not placed on record the objective satisfaction for holding the petitioner ineligible. We find that the petitioner is illegally deprived of the promotion. Therefore, the respondents cannot keep the petitioner waiting for two years. The submission of learned counsel relying upon clause 9 cannot be approved.*

*25. Its a matter of record that the disciplinary action and the prosecution have not been progressed substantially. The respondents/ authorities have not adhered to the procedure contemplated by Government Resolution dated 15.12.2017. The petitioner is entitled to be considered for promotion along with similarly placed employees. The petitioner has only right to be considered for the promotion and in a strict sense the direction to promote him cannot be issued. Having made out a case of discrimination and illegal deprivation to the promotional post we are of the considered view that there is no point in relegating the petitioner to the Committee to reconsider his claim for promotion. The bar of two years*

*engrafted in clause 9 is a legal impediment to such a type of direction.*

*26. Under these special features of the matter, we deem it appropriate to direct the respondents to grant temporary promotion to the petitioner though under normal circumstances we would not have granted such a relief to an employee. We are fortified in issuing such a direction by the fact that from the minutes of the meeting dated 24.12.2021, two promotional posts of Supervisory Clerk appear to be vacant. It is possible to accommodate the petitioner against one of those posts. However, he is not entitled to any other consequential benefits except an ad-hoc promotion, notionally.*

*27. We have already recorded the finding of discrimination and illegal deprivation of promotion in favour of the petitioner. Simultaneously we find that it is a dereliction of the duties of the respondent nos. 2 and 3. They failed to adhere to the procedure contemplated by G.R. dated 15.12.2017 and 01.08.2019. The learned counsel for the respondents has faintly mentioned that the decision or the reasons recorded to deprive the petitioner of temporary promotion has been arrived at and record to that effect is maintained by Committee which is not before Court.*

*28. We are not prepared to accept the justification. The Committee is part and parcel of the respondent no. 2. The plea of non-joinder of necessary party has not been taken by the*

*respondents. Therefore, the respondent nos. 2 and 3 cannot disown the action/omission of the Committee. They are liable to respond to the Court in that regard. We find that the petition succeeds and the following order is passed:*

**ORDER**

*i. The respondent nos. 2 and 3 shall issue an order of temporary promotion to the petitioner to the post of Supervisory Clerk with effect from 15.06.2021 within a period of two weeks from the date of this order. However, the petitioner shall not be entitled to claim any arrears.*

*ii. The respondents shall accordingly, modify the seniority list by incorporating the name of the petitioner in it.*

*iii. Rule is made absolute in the above terms.*

7. In the present case, the applicant is facing criminal case before the Sessions Court, Nagpur. The said case is pending since 2014 till date it is not decided by the Court. As per the above cited Judgment pendency of criminal case cannot be a ground to deny promotion. The promotion can be granted subject to the decision of criminal case. Hence, the following order-

**ORDER**

1. The O.A. is allowed.

2. The respondents are directed to promote the applicant on the post of Assistant Registrar, if the post is available/vacant.
3. The respondents are directed to promote the applicant subject to the decision of criminal case from the date on which his juniors are promoted i.e. from 30.12.2021. However, the applicant shall not be entitled to claim any arrears.
4. The respondents are directed to incorporate the name of applicant in the seniority list after his promotion.
5. Respondents are directed to comply this order within a period of two months from the date of receipt of receipt of this order.
6. No order as to costs.

**(Justice M.G.Giratkar)**  
**Vice Chairman**

**Dated - 29/01/2024**  
**rsm.**



I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde  
Court Name : Court of Hon'ble Vice Chairman.  
Judgment signed on : 29/01/2024.  
Uploaded on : 07/02/2024.

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