

Sanjay Namdeorao Mahagaonkar,
Aged about 50 years,
O/o at Panchayat Samiti, Malegaon,
Zilla Parishad, Washim.

Versus

- ## Respondents

- CORAM :** B. Majumdar : Vice Chairman
and

S.S. Hingne: Member (J)

DATE : 2nd February, 2016


ORDER**PER VICE-CHAIRMAN**

The applicant, a Block Development Officer, has filed this O.A. praying that he should be granted promotion to Group-A w.e.f. 18/4/2015.

2. The applicant was promoted as a Block Development Officer, Group-B on 8/10/2008. On 21/10/2009 he was placed under suspension. On 23/11/2010 a charge sheet containing 7 charges under Rule 8 of the Discipline and Appeal Rules was served on him. The charges mainly related to irregularities in the recruitments of 58 Shikshan Sewaks. Some time in 2011, a criminal case was also registered against him. The Enquiry Officer submitted his report on the D.E. on 24/7/2012. As per this report, charges 1, 3, 4, 5, 6 and 7 were not proved, and "no remarks" in respect of charge no. 2. It is not disputed that the respondents have not yet passed any order with regard to the above departmental enquiry. The Departmental Promotion Committee held its meeting on 4/3/2015. On 11/7/2014, 9/6/2015 and 7/2/2015 a

number of Group-B officers were promoted to Group-A. According to the applicant, some of these officers were promoted in spite of their facing DEs.

3. The applicant submits that as yet no final decision has been taken with regard to the findings in the D.E. that none of the charges is proved against him. The respondents did not respond to a number of his representations to close the enquiry. Several officers against whom D.Es were pending, were promoted during 2015. He then relies on the G.R. of 22/4/1996 in which the Govt. had laid down the policy that employees against whom D.Es are pending should be promoted after obtaining an undertaking from them that they are prepared to undergo punishment if any in the higher post. He submits that he had accordingly given such an undertaking but no action has been taken to grant him conditional promotion. According to him, in terms of the above G.R. as well as the GAD circular dtd. 2/4/1976, he has a clear case for being granted promotion as the E.O. has exonerated him in the enquiry.



4. The Respondent no. 2, Commissioner, Amravati in his reply submits that till date no order has been passed in the D.E. against the applicant. One criminal trial is pending against him and hence he has not been granted promotion to Group-A.

5. Respondent no. 1, the State in its reply submits as follows :-

" The name of the applicant was included in the select list of 2014-15. As per the Departmental Promotion Committee meeting held on 4/3/2015 (Annexure-1), the applicant was eligible for Ad-hoc promotion from M.D.S Group-B to M.D.S. Group -A subject to result of departmental enquiry pending against him. As per the provisions in Government Resolution dtd. 2/4/1976 and 22/4/1996, the promotion of the person against whom a departmental enquiry should be considered by taking conscious decision at the Competent Authority by examining charges placed against the employees. If the charges were not serious then Competent Authority refuses

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promotion until outcome of his departmental enquiry. In applicant's departmental enquiry case there was serious charges of recruitments of 58 teachers (Shikshan Sevak) without considering the proper procedure, hence the Government had taken conscious decision to not to promote the applicant."

6. Shri Alok Daga, the Id. Counsel for the applicant, mainly reiterated the submissions of the applicant. The applicant has been exonerated by the E.O. No steps have been taken to issue final orders in the DE so far. Thus, the respondents now cannot take a stand that charges being serious, the applicant is not entitled to conditional promotion in terms of the G.Rs. of 1976 and 1996. He however, on taking instructions from the applicant, who was present in the court today, further submitted that the present O.A. can be disposed of by directing the respondents to expeditiously pass an order with regard to the D.E. and decide the applicant's case for promotion.

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7. Shri M.I. Khan, the Id. P.O. for the respondents submitted that the main charge against the applicant in the D.E. was of serious irregularities in conducting the recruitment process of Shikshan Sewaks. As per the circular of 1976 and G.R. of 1996, the provisional promotion cannot be granted if the charges in the D.E. are serious.

8. We ~~further~~ find that the Respondent no. 1, who is the competent authority for granting promotion to the applicant to Group-A, in his reply has stated that the applicant could not be promoted because of pending D.E. which involved serious charges.

9. We further find that the E.O. had submitted his report in July, 2012 and for the last more than 3 years no action on the report has been taken by the respondents. We therefore direct that the respondents will take a final decision with regard to the D.E. within 6 months from the date of receipt of the order and immediately thereafter hold a DPC to decide the applicant's case for promotion to Group-A. We

make it clear that we are granting the period of 6 months in this regard by considering the fact that some time will be required by the R/1 to process the applicant's case for a final decision with regard to the D.E. and his promotion to Group-A in consultation with various departments of the Govt.

The O.A. stands disposed of in terms of the above directions with no order as to costs.

sd/-

(S.S. Hingne)
Member (J)

sd/-

(B. Majumdar)
Vice-Chairman.

Skt.