

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 115 OF 2023**

DIST. : JALGAON

**Satish s/o Suresh Kulkarni,** )  
 Age. 45 years, Occu. Service as )  
 Senior Clerk (In charge )  
 Joint Sub-Registrar Class-II), )  
 R/o C/o Shri Rajendra Prasad Debey, )  
 S. No. 31 + 32/1, Block No. 5, )  
 Ramkruti Park. Nageshwar Colony, )  
 Jalgaon. . ) .. **APPLICANT**

**V E R S U S**

**1. The State of Maharashtra,** )  
 Through the Secretary, )  
 Revenue & Forest Department, )  
 Mantralaya, Mumbai 32. )

**2. The Inspector General of** )  
 Registration and Controller of )  
 Stamps, Maharashtra State, )  
 Pune, Ground Floor, )  
 New Administrative Building, )  
 Opp. Vidhan Bhavan )  
 Pune – 1. ).. **RESPONDENTS**

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APPEARANCE :- Shri S.D. Joshi, learned Advocate for the  
 applicant.

: Shri Mahesh B. Bharaswadkar, learned  
 Chief Presenting Officer for the  
 respondent authorities.

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**CORAM** : **Hon'ble Shri Justice P.R. Bora,**  
**Vice Chairman**  
**and**  
**Hon'ble Shri Vinay Kargaonkar,**  
**Member (A)**

**DATE** : **15.04.2024**

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**ORAL - ORDER**

*[Per :- Justice P.R. Bora, V.C.]*

1. Heard Shri S.D. Joshi, learned counsel for the applicants and Shri Mahesh B. Bharaswadkar, learned Chief Presenting Officer for respondent authorities.

2. The present applicant while working as Senior Clerk in the office of the District Sub-Registrar, Haveli No. 06 at Pune was placed under suspension in contemplation of the departmental enquiry against him. The applicant at the relevant time was in the zone of consideration for his further promotion as Joint Sub-Registrar, Grade-I. The matter of the applicant was considered in the D.P.C. meeting held on 12.5.2022. However, in view of pending D.E. against the applicant, his case was kept in sealed cover. It is the contention of the applicant that now the period of 02 years is about to elapse but the D.E. proceeding initiated against him is not concluded and is not likely to be concluded in near future. In the circumstances, it is prayed by him that as provided in the Government Resolution dated 15.12.2017 and more particularly clause 09 thereof the appointing authority is required to

consciously consider his case on the basis of the parameters laid down in the said G.R.

3. Learned counsel pointed out that non-compliance of the provisions under rule 44(1)(i) of the Registration Act while registering around 100 documents is the main charge against the applicant. The learned counsel further submitted that the aforesaid provision in the Registration Act is stayed by the Hon'ble High Court and as such charge against the applicant has become redundant. Learned counsel submitted that the contention of the applicant at present is that on that ground at least his promotion cannot be prolonged in view of the G.R. dated 15.12.2017. Learned counsel, in the circumstances, has prayed for directions against the respondents to open the sealed cover in respect of the applicant and consider his case for grant of promotion to the next higher post by observing the parameters laid down in clause 09 of the G.R. dated 15.12.2017.

4. Respondents by filing their affidavit in reply opposed for grant of any such relief. It is the contention of the respondents that unless the D.E. is concluded, the applicant cannot be considered for promotion. Learned Chief Presenting Officer appearing for the State authorities submitted that the

decision rendered by the Hon'ble High Court, whereby it has stayed provision under section 44(1)(i) of the Registration Act is under challenge before the Hon'ble Supreme Court and in the circumstances it would be unsafe to draw any conclusion on the basis of the judgment rendered by the Hon'ble High Court. Insofar as the sealed cover procedure is concerned, learned C.P.O. submitted that unless the applicant is fully exonerated from the D.E. proceedings, he may not be considered for grant of promotion by the respondents. Learned C.P.O. further submitted that violation of the provisions under section 44(1)(i) of the Registration Act is not the only allegation against the applicant, but there are certain other allegations also against him and having regard to the said allegations, it would be unsafe for the respondents to give promotion to the applicant to the higher post. Learned C.P.O., in the circumstances, has prayed for dismissal of the application.

5. We have carefully considered the submissions made on behalf of the applicant, as well as, the respondent authorities. We have also perused the documents produced on record by the parties. There seems no dispute about the facts contended in the O.A. that the case of the applicant was considered for promotion in the meeting of the D.P.C. held on

12.05.2022. The minutes of the said meeting are placed on record. Perusal of the minutes of the D.P.C. meeting reveal that the D.P.C. though has considered the case of the applicant, his case is kept in a sealed cover. There appears substance in the contention raised by the applicant that when the period of about 02 years is about to elapse as provided in clause 09 of G.R. dated 15.12.2017 the case of the applicant need to be reviewed. Clause 09 of the aforesaid G.R. dated 15.12.2017 reads thus:-

“ ९) विभागीय पदोन्नती समितीच्या मूळ बैठकीच्या दिनांकापासून दोन वर्षे झाल्यानंतरही मोहोरबंद पाकीटात निष्कर्ष ठेवलेल्या अधिकारी/कर्मचा-यांच्या, शिस्तभंगविषयक/न्यायालयीन कार्यवाही प्रकरणी अंतिम निर्णय झालेला नसल्यास, अशा प्रकरणी नियुक्ती प्राधिकारी स्वविवेकानुसार संबंधीत अधिकारी/ कर्मचा-याला तदर्थ पदोन्नती देण्याबाबत जाणीवपूर्वक निर्णय घेईल. असा निर्णय घेताना नियुक्ती प्राधिकारी, खालील मुद्दे विचारात घेईल.

- अ) संबंधितांविरुद्धची शिस्तभंगविषयक /न्यायालयीन कार्यवाही बराच काळ प्रलंबित राहण्याची शक्यता,
- ब) दोषारोपाचे गांभीर्य,
- क) द्यावयाची पदोन्नती जनहिताच्या विरुद्ध जाईल का,
- ड) शिस्तभंगविषयक/न्यायालयीन कार्यवाही लांबण्यास संबंधीत अधिकारी / कर्मचारी जबाबदार आहे का?
- इ) संबंधित अधिकारी/कर्मचा-यास तदर्थ पदोन्नती दिल्यानंतर, पदोन्नतीच्या पदावर काम केल्यामुळे, संबंधित अधिकारी/कर्मचा-याच्या शिस्तभंगविषयक /न्यायालयीन कार्यवाहीच्या प्रकरणांवर परिणाम होण्याची शक्यता आहे का? किंवा संबंधीत अधिकारी/कर्मचारी पदोन्नतीच्या पदाचा त्यासाठी दुरुपयोग करण्याची शक्यता आहे का?
- फ) न्यायालयीन कार्यवाही बाबतची सद्यस्थिती/अभियोगाबाबतचे किती टप्पे पार पडले याबाबतची माहिती करून घ्यावी.

ग) सेवानिवृत्तीस १ वर्ष शिल्लक असेल तर पदोन्नती न देण्याच्या अनुषंगाने सेवानिवृत्तीचा कालावधी विचारात घेणे (तदर्थ पदोन्नती दिल्यास वरिष्ठ वेतनश्रेणी प्राप्त झाल्यामुळे सेवानिवृत्तीनंतर मिळणारे सेवानिवृत्ती वेतनाचा ज्यादा लाभ प्राप्त होणार असल्यामुळे सेवानिवृत्तीस एक वर्ष शिल्लक असलेल्यांना तदर्थ पदोन्नती देण्यात येऊ नये याकरिता ही बाब तपासणे आवश्यक आहे.)”

6. Having regard to the provisions under the G.R. dated 15.12.2017, it appears to us that the applicant has certainly made out a case for issuance of directions against the respondents to review the case of the applicant having regard to the fact that period of 02 years is about to elapse. It is submitted that the enquiry initiated against the applicant is still at a preliminary stage and is not likely to be completed in near future. Learned counsel has, therefore, prayed for directions against the respondents to open the sealed cover in the case of the applicant.

7. Though submission has been made as about the petition pending before the Hon'ble Supreme Court against the order whereby the Hon'ble Bombay High Court has read down rule 44(1)(i) of the Registration Act, according to us, it is not that material in the context of the present matter. In the present matter the fact is that prior to 02 years the case of the present applicant was considered for his promotion and only because the D.E. was pending against him his case was directed to be kept in sealed cover. Period of 02 years therefrom is about

to elapse and in the circumstances as provided in clause 09 of the G.R. dated 15.12.2017, the applicant has certainly made out a case for accepting his request. The respondents cannot be for indefinite period keep the applicant out of consideration, if he would be otherwise entitled for the promotion except for the reason that D.E. is pending against him. For the reasons stated above the Original Application deserves to be allowed. Hence, we pass the following order:-

**ORDER**

- (i) Subject to the outcome of the Departmental Enquiry initiated against the applicant, the respondents shall open the sealed cover containing the decision in regard to the promotion of the applicant to the post of Joint Sub-Registrar, Grade-I taken in the D.P.C. meeting held on 12.05.2022 and depending upon the said report shall take a conscious decision as about the promotion to be given to the applicant having regard to the parameters laid down for grant of such promotion under clause 09 of G.R. dated 15.12.2017.
- (ii) The aforesaid exercise is to be carried out within 06 weeks from the date of this order.
- (iii) The Original Application stands allowed in the aforesaid term, however, without any order as to costs.

**MEMBER (A)**

**VICE CHAIRMAN**

**Place : Aurangabad**

**Date : 15.04.2024**

ARJ O.A. NO. 115 OF 2023 (PROMOTION)