

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 629 OF 2016

DISTRICT : NANDED

Shankar Sitaram Waghmare,)
Age : 57 years, Occu. : Deputy Education Officer,))
(Primary), Zilla Parishad, Nanded.))
R/o. Swastik Apartment No. 6, Manik Nagar,))
Nanded.))

.. **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through : the Principal Secretary,)
Primary Education and Sports,)
Mantralaya, Mumbai.)
2. **The Commissioner of Education,**)
Bal Bharati, Senapati Bapat Marg,)
Maharashtra State, Pune.)

.. **RESPONDENTS**

APPEARANCE : Shri A.D. Sugdare, Advocate for Applicant.

: Smt. S.K. Ghate-Deshmukh, P.O. for the
Respondents.

CORAM : **Shri V.D. Dongre, Member (J)**
and
Shri Bijay Kumar, Member (A)

Reserved on : **02.05.2023**

Pronounced on : **22.06.2023**

O R D E R
(Per : Shri V.D. Dongre, Member (J))

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original

Application is filed seeking direction to the respondent No. 1 i.e. the State of Maharashtra, through the Principal Secretary, Primary Education and Sports Department, Mumbai to issue promotion order in favour of the applicant for the post of Education Officer, Group-A pending department enquiry and with deemed date of 01.07.2016.

2. The facts in brief giving rise to this application can be stated as follows :-

(a) The applicant entered in the service as School Teacher in Private School on 16.06.1980. Thereafter he was selected by MPSC for the post of Deputy Education Officer, Group-B services on 16.08.1995. He worked as such on different places under Zilla Parishad from 16.08.1995 till date. As on the date of filing of the present Original Application, he was working on the post of Deputy Education Officer (Primary) under Zilla Parishad Nanded.

(b) The applicant has rendered more than 20 years' service on the post of Deputy Education Officer, Group-B. He was aspiring and due for promotion on the post of Education Officer Group-A services in the Education Department. The respondent No. 1 considered the case of

the applicant for grant of promotion in the DPC held on 17.03.2016 (wrongly mentioned as 16.03.2016), thereby the respondent No. 1 decided to consider the claim of the officers, who are likely to be retired in near future within three years from the date of selection. In view of that, preferences from such officers were called for as per the letter dated 29.04.2016 (Annexure A-1). The applicant was one of them. This would show that the applicant was duly selected and as he was due to retire on superannuation within short period; his preference for posting was sought by the respondents.

(c) Thereafter by G.R. dated 01.07.2016 (Annexure A-2) the respondent No. 1 issued Ad-hoc promotion order on the post of Group-A (Administration Branch) services on different posts such as Education Officer, Project Officer, Assistant Commissioner etc. In the said promotion order, 37 officers from Group-B were promoted. Though the applicant was selected for the said post and preference was called for posting, his name does not figure in the promotion order.

(d) Being aggrieved by the said G.R. dated 01.07.2016 (Annexure A-2) due to non consideration of his claim for

promotion on Group-A post, the applicant made representation dated 11.07.2016 (Annexure A-3) to the respondent No. 1.

(e) Latter on the applicant came to know that his claim for promotion was not considered because of pending Departmental Enquiry against him. Therefore, in representation dated 11.07.2016 (Annexure A-3) the applicant pointed out G.R. dated 22.04.1996 and Government Circular dated 02.04.1976 (copy of which is produced only at the stage of hearing), which provided issuance of promotion order while facing Departmental Enquiry. Moreover, there were several orders issued to the Government employees pending Departmental Enquiry such as Government orders dated 14.07.2016 and 03.08.2016 (part of Annexure A-4 collectively) and G.R. dated 28.07.2014 (Annexure A-6). Those promotion orders from different departments.

(f) Latter on, the respondent No. 2 i.e. the Commissioner of Education, Pune by communication dated 18.07.2016 (Annexure A-5) informed the applicant and four others that due to pending Departmental Enquiry involving serious

charges against them, promotion orders were not issued to them.

(g) It is further contended that though it is a fact that the Departmental Enquiry was pending against the applicant, the applicant was wrongly denied the promotion. However, the similarly situated employees from the same department were promoted as per the G.R. dated 28.07.2014 (Annexure A-6) issued by the respondent No. 1. Hence, thereby discriminatory treatment is given to the applicant on that count and denied promotion to the applicant wrongly in violation of G.R. dated 22.04.1996 and Government Circular dated 02.04.1976.

(h) The applicant was due to retire on superannuation on 30.08.2016. The applicant has been deprived of right of promotion. Before his retirement on superannuation on 08.08.2016, first date was given by the Enquiry Officer. It is not known as to how much time will take to conclude the Departmental Enquiry. Hence, the present Original Application.

3. (a) The present Original Application is resisted by filing affidavit in reply on behalf of respondent Nos. 1 and 2 by

one Dharmendra S/o Masurao Wadmare, working as Junior Administrative Officer, in the office of Deputy Director of Education, Aurangabad Region, Aurangabad, thereby he denied all the adverse contentions raised in the present Original Application. It is specifically stated that by letter dated 29.04.2016 (Annexure A-1) options were called from the applicant as a regular practice. Such options are called from all the officers coming in the zone of promotion on the basis of seniority. However, ultimately DPC is the competent authority to finalize the selection list.

(b) It is further submitted that G.R. dated 22.04.1996 (part of Annexure A-4 collectively provided by the applicant) vests the power in DPC to decide in individual case that whether in any particular case the benefit can be given to the employee considering promotion to be given to pending enquiry. That depends on the gravity of charges levelled against that particular employee. Moreover, vide Notification dated 05.07.2016 (Annexure R-I, page Nos. 49 to 55) the recruitment Rules for the post of Education Officer, Group-A are published with revised and reconstructed norms. As per the said Recruitment Rules, such posts are to be filled 50% by direct recruitment and

50% by promotion. Previously the recruitment Rules for the post of Education Officer, Group-A was published by Notification dated 29.06.2013 (those rules are not produced on record) provided filling of such posts by 50% of direct recruitment, 30% by promotion and 20% by Limited Departmental Examination. In DPC meeting dated 17.03.2016, Recruitment Rules of Notification dated 29.06.2013 were taken into consideration where 30:20:50 ratio was provided for category of promotion, Limited Departmental Examination and Direct Recruitment respectively.

(c) It is admitted that by communication dated 05.07.2016 (Annexure R-II), the applicant was informed that he is not being considered eligible for promotion due to pending enquiry against him and serious charges were imposed against the applicant.

(d) It is further submitted that criteria laid down in G.R. dated 22.04.1996 (part of Annexure A-4 collectively) relied upon by the applicant is not applicable. In terms of the said G.R., the DPC is the competent to decide individual case that whether in any particular case the benefit can be

given to the employee considering promotion to be given subject to pending enquiry. That depends on the gravity of charges leveled against that particular employee. In the present case, the DPC after considering the grave misconduct and irregularities made by the applicant denied the promotion to the applicant and it is duly communicated to all the concerned immediately as per the communication dated 05.07.2016 (Annexure R-II). It is further submitted that Corrigendum dated 01.01.2016 (Annexure R-III) would show that the enquiry against the applicant and others is initiated under Rule 8 and 12 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The said enquiry initiated against the applicant is in process. In the circumstances, there is no merit in the present Original Application and the same is liable to be dismissed.

4. We have heard the arguments advanced by Shri A.D. Sugdare, learned Advocate for the applicant on one hand and Smt. Sanjivani K. Deshmukh-Ghat, learned Presenting Officer for the respondents on the other hand.

5. After having considered the rival pleadings, documents and submissions on record, it is evident that the applicant was in the

zone of consideration for promotion to the post of Education Officer Group-A and options for posting were also called for. However, by communication dated 18.07.2016 (Annexure A-5), it was informed to the applicant and four others that they were found ineligible in the opinion of the DPC for promotion, as the Departmental Enquiry is going on them on serious charges. The said communication is specifically not challenged by the applicant in the present Original Application. The applicant, however, is claiming relief of direction to the respondent No. 1 to issue promotion order in favour of the applicant in Group-A post pending Departmental Enquiry and by giving deemed date of 01.07.2016, as per which G.R. dated 01.07.2016 (Annexure A-2) postings were given to other eligible officers from feeder cadre of Deputy Education Officer and similar such officers in Group-B under Maharashtra Education Services.

6. Learned Advocate for the applicant has placed reliance on Government Circular dated 02.04.1976 issued by General Administration Department (produced during hearing of the present O.A.), as well as, G.R. dated 22.04.1996 (part of Annexure A-4 collectively). The relevant portion of Government Circular dated 02.04.1976 is as under :-

“3. Interim promotion during the pendency of the proceedings:

If the person is found fit and his name is provisionally included

(a)

(b) In respect of a person who is not under suspension, the competent authority should take a conscious decision, after taking into consideration the nature of the charges leveled whether the person should be promoted without waiting for the conclusion of the enquiry. If it is decided that he should be promoted such promotion will be provisional and will be reviewed on the conclusion of the investigation or enquiry.”

Moreover relevant provision under G.R. dated 22.04.1996 (part of Annexure A-4 collectively) is in introductory section of this G.R., which is as follows :-

“ शासन निर्णय

विभागीय चौकशी प्रलंबित असलेल्या अधिकारी/कर्मचारी हयांच्या ऽदोत्रतीसाठी विचार करताना काय कार्यऽधदती अवलंबिली जावी, हया संबंथात सविस्तर सूचना ऽपरोलिखित ऽरिऽत्रकान्वये विहित करण्यात आल्या आहेत. त्यानुसार विभागीय चौकशी प्रलंबित असतानाही, ज्येष्ठताक्रमांकांनुसार विचारक्षेत्रात येणारे अधिकारी/ कर्मचारी ऽदोत्रतीस ऽत्र असल्याचे, निवडसमितीस आढळल्यास अशा अधिकारी / कर्मचारी हयांचा निवडसूचीत तात्पुरत्या स्वरूपात समावेश केला जातो व नंतर, ऽदोत्रती आदेशित करण्यास सक्षम असणा-या अधिका-याने अशा दोषारोऽांचे स्वरू लक्षात घेवून, त्यास चौकशीच्या निर्णयाची वाट न ऽहाता तात्पुरती ऽदोत्रती द्यावयाची काय हयाबाबत जाणीऽूर्वक निर्णय घ्यावयाचा असतो.”

Upon careful scrutiny of both these provisions / Circular & G.R. and more particularly of the provisions of G.R. dated 22.04.1996 (part of Annexure A-4 collectively), it is evident that

the Departmental Promotion Committee is the competent authority to take a decision as to whether to give temporary / ad-hoc promotion pending Departmental Enquiry by taking into consideration seriousness of charges. In view of that, as per the decision of DPC, the applicant and four others were communicated by letter dated 18.07.2016 (Annexure A-5) that they were found ineligible to give such ad-hoc promotion considering serious nature of charges.

7. It is true that the applicant has placed on record illustration of giving posting to some Government officers pending Departmental Enquiry by way of posting orders as per the Government orders dated 14.07.2016 and 03.08.2016 (part of Annexure A-4 collectively) and G.R. dated 28.07.2014 (Annexure A-6). Upon perusal of the above-said promotion orders, it does not reveal that though serious charges were alleged against those Government officers in Departmental Enquiry, still they were given promotion orders. In view of the same, in our considered opinion, those illustrations will not be helpful to the applicant in the present case. The applicant's case is based on different footing facing of serious charges in Departmental Enquiry. Hence, in our considered opinion, the adverse action taken against the applicant by the respondents for not giving ad-hoc

promotion pending Departmental Enquiry is in accordance with the concerned G.R. dated 22.04.1996 (part of Annexure A-4 collectively). In our considered opinion, no case of discrimination is made out by the applicant. In view of the same, the present Original Applicant is devoid of merits and the same is liable to be dismissed. Hence, we proceed to pass the following order :-

ORDER

The Original Application No. 629 of 2016 stands dismissed without any order as to costs.

MEMBER (A)

MEMBER (J)

Kpb/D.B. O.A. No. 629/2016 VDD & BK 2023 Promotion