

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.54 OF 2025

**DISTRICT: Nashik
Subject : Promotion**

Shri Anil Keshav Jagtap,)
Age: 57 yrs, Retiring on 30.04.2025,)
Occ: API at Shivaji Nagar, Kalyan East.)
R/o. Jaidevi Row House, Room No.6,)
Champa Nagri, Cannel Road, Jail Road,)
Nashik Road, Nashik.).....**Applicant**

VERSUS

- 1] The State of Maharashtra, through the)
Secretary, Home Department, Mantralaya,)
Mumbai.)
- 2) The Director General of Police, Shahid)
Bhagat Singh Marg, Colaba, Mumbai.)..**RESPONDENTS**

Shri K. R. Jagdake, learned Advocate for the Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Vice-Chairman.
Hon'ble Shri A. M. Kulkarni, Member (A)

Reserved on : 09.04.2025

Pronounced on : 22.04.2025.

Per : Hon'ble Shri M. A. Lovekar, Vice-Chairman.

J U D G M E N T

Heard Shri K. R. Jagdake, learned Advocate for the Applicant
and Shri A. J. Chougule, learned Presenting Officer for the
Respondents.

2. The Applicant joined the Respondent department as 'PSI' on 31.03.1995. He was promoted as 'API' on 30.10.2008. On 19.03.2009 Crime No.22/2009 was registered against him under Sections 354 and 323 of IPC at Sakharkheda Police Station District Buldhana. On account of registration of this crime, he was placed under suspension on 23.03.2009. By Order dated 10.10.2009 suspension of the Applicant was revoked. On 09.12.2011 he was promoted as 'Police Inspector'. On 22.01.2020 Crime No.9/2020 was registered against him (and others) under Sections 306, 498 (A) read with 34, IPC. On account of registration of this Crime, he was placed under suspension by order dated 06.02.2020. By Order dated 30.03.2020 the Order of suspension dated 06.02.2020 was revoked. On 10.02.2020, preliminary enquiry was initiated against the Applicant. On 07.09.2020 order stopping said preliminary enquiry was passed. By Order dated 14.10.2020 period of suspension of the Applicant from 08.02.2020 to 30.03.2020 was directed to be treated as duty period. By judgement dated 29.09.2023 the Applicant was acquitted of charges under Sections 323, 354 and 353 of IPC. By Order dated 07.12.2023 show cause notice issued to the Applicant on 27.01.2010 was withdrawn. By separate order dated 07.12.2023 period of suspension of the Applicant from 23.03.2009 to 10.10.2009 was directed to be treated as duty period. Both the orders dated 07.12.2023 were passed pursuant to the above referred order of acquittal of the Applicant dated 29.09.2023. On 23.02.2024 the Applicant made a representation to Respondent No.2 to consider his case for promotion expeditiously in the light of G.R. dated 15.12.2017 as he was to retire on superannuation on 30.04.2025. The Applicant received no reply to this representation. Hence, this Original Application.

3. Stand of the Respondent is as follows. At the time of meeting of the DPC held on 06.12.2021 Criminal Case No.4474/2009 arising out of Crime No.22/2009 registered at Sakharkheda Police Station, Sindkhed Raja, District Buldhana was pending against the Applicant. At this point of time, preliminary enquiry was being conducted against the Applicant on account of registration of Crime No.9/2020 at Police Station, Sakherkheda under Sections 306 and 498 (A), IPC. Therefore, in this meeting case of the Applicant for promotion was kept in sealed envelope. When the next meeting of the DPC was held on 21.03.2023 there was no change in the circumstances i.e. Criminal Case as well as Preliminary Enquiry both were pending. Therefore, decision was taken by the DPC not to open sealed envelope. On 12.12.2024, the case of the Applicant for promotion was reviewed. Though, by this point of time the Applicant was acquitted of offences punishable under Sections 354 and 323, IPC, Preliminary Enquiry initiated on account of registration of Crime No.9/2020 at Saykheda Police Station under Sections 306, 498 (A), IPC was still pending. In the meeting of DPC held on 12.12.2024 decision was taken not to consider the case of the Applicant for promotion as per para 9 (g) of G.R. dated 15.12.2017 since he was to retire on 30.04.2025 i.e. in less than a year from the date of meeting of DPC.

4. The Respondents have placed on record Minutes of Meeting of DPC dated 21.03.2023 and 12.12.2024. These Minutes inter-alia state that promotion given to the Applicant to the post of 'Police Inspector' by order dated 09.12.2011 was cancelled by order dated 24.04.2012. This order of cancellation of promotion is at Exhibit 'E' (page 46). These Minutes further refer to the fact that on that day Criminal Case arising out of Crime No.22/2009 registered at Police

Station, Sindkhed Raja, District Buldhana was pending. It may be observed that the said case was decided by judgment dated 29.09.2023 and the Applicant came to be acquitted.

5. For these reasons, in the meeting of the DPC held on 21.03.2023 a decision was taken to keep the matter of promotion of the Applicant in sealed cover.

6. The Minutes of meeting of DPC held on 12.12.2024 inter-alia refer to pendency of Criminal Case arising out of Crime No.9/2020 registered at Saykheda Police Station under Sections 306 and 498 (A) of IPC, as well as pendency of Preliminary Enquiry. On account of pendency of these proceedings, the DPC took the decision again to keep the matter of promotion of the Applicant in sealed cover.

7. It is a matter of record that in Minutes dated 12.12.2024 there is no mention of guidelines contained in Para 9 (g) of G.R. dated 15.12.2017. It is a matter of record that the Applicant would be retiring on superannuation on 30.04.2025. His case for promotion was considered in the meeting of DPC on 12.12.2024. Because of pendency of criminal case and preliminary enquiry on this occasion also he was not considered for promotion.

8. It is not in dispute that in the meeting of DPC held on 06.12.2021 case of the Applicant for promotion was kept in sealed envelope for the first time. I have referred to the reasons why this procedure was adopted. It was argued by learned Advocate Shri K. R. Jagdale that considering this aspect, on expiry of two years from the date on which the matter of promotion of the Applicant was kept in sealed cover for the first time, a conscious decision ought to have been taken by DPC as per Para 9 of G.R. dated 15.12.2017. The said Para reads as under :-

“९) विभागीय पदोन्नती समितीच्या मूळ बैठकीच्या दिनांकापासून झाल्यानंतरही दोन वर्षे मोहोरबंद पाकीटात निष्कर्ष ठेवलेल्या अधिकारी/कर्मचाऱ्यांच्या, शिस्तभंगविषयक / न्यायालयीन कार्यवाही प्रकरणी अंतिम निर्णय झालेला नसल्यास, अशा प्रकरणी नियुक्ती प्राधिकारी स्वविवेकानुसार संबंधीत अधिकारी/कर्मचाऱ्याला 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) दोषारोपांचे गांभीर्य,

क) द्यावयाची पदोन्नती जनहिताच्या विरुद्ध जाईल का,

ड) शिस्तभंगविषयक/न्यायालयीन कार्यवाही लांबण्यास संबंधीत अधिकारी / कर्मचारी जबाबदार आहे का?

इ) संबंधित अधिकारी/कर्मचाऱ्यास तदर्थ पदोन्नती दिल्यानंतर, पदोन्नतीच्या पदावर काम केल्यामुळे, संबंधित अधिकारी/कर्मचाऱ्याच्या 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 याकरीता ही बाब तपासणे आवश्यक आहे.”

Period of two years from the date of meeting of DPC came to an end on 05.12.2023. According to learned Advocate Shri K.R. Jagdale at this point of time conscious decision in respect of promotion of the Applicant ought to have been taken. There is merit in this submission. We have quoted Para 9 of G.R. dated 15.12.2017. In judgment dated 11.07.2022 in **O.A.No.770/2021 (Dayanand Nivrutti Kiratkar V/s Director General and Inspector General of Police, MS, Mumbai & Anr.)**, this Tribunal held :-

“8. Thus, it means that if the case of the promotion of Government servants is kept pending for more than two years and there is no decision of the competent Court in respect of the pending cases against him/her, then the Committee must follow the procedure and directions mentioned in para 9 (a) to (g) of G.R dated 15.12.2017. The Committee is given power to go through certain aspects of the pending case and the case to be tested on those parameters. Thus the time required to decide the case, the seriousness of the charges, whether the promotion will go against the public interest, whether the applicant is responsible for causing the delay/protracting the trial, if promotion is given the Government servant is likely to be misused and so also if the Government servant is going to retire within a period of one year whether promotion is denied to the Government servant who is at the verge of his retirement, then the losses suffered by him if he is deprived of the promotion.

9. The application of mind by the Committee Members that they have considered the guidelines laid down in clause 9 (a) to (g) of G.R dated 15.12.2017, in respect of the Government servant should be manifested in the order. A detail note is never expected from the Members of the Committee, however, under which clause or at least for what reasons the case of the applicant is not considered for

promotion should be mentioned in the minutes of the meeting. The blanket denial on the ground of pendency of criminal case under the Prevention of Corruption Act, 1988, does not show that the Committee has applied its mind. The G.R dated 15.12.2017 is issued only for those Government servants whose promotion is denied on the ground of pendency of criminal case. Thus, mere mentioning does not suffice the object of the said G.R.

10. After going through the minutes of the D.P.C meeting placed before us, we are of the view that the D.P.C is required to review its decision, which it may or it may not be in favour of the applicant. However, the Respondent-State should hold a review D.P.C meeting and consider the case of the applicant for promotion to the post of P.S.I in view of the parameters mentioned in clause 9(a) to (g) of the G.R dated 15.12.2017.”

The Applicant has also relied on the judgment of the Hon’ble High Court dated 21.09.2023 in **W.P. No.1672/2022 (Ashok Madhukar Nand V/s State of Maharashtra & 2 others)**. In this case, it is observed:-

“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 adhoc promotion, notionally.”*

Aforequoted observations would show that by taking into account special features of the matter the High Court directed the Respondents to grant temporary promotion to the petitioner. It was observed that under normal circumstances, the Court would not have granted such a relief to an employee.

In the fact and circumstances of the case, the Respondents cannot be allowed to rely on Para 9 (g) of G.R. dated 15.12.2017 for the reason that had they taken a conscious decision on expiry of

two years from the date on which case of the Applicant for promotion was kept in sealed envelope, such eventuality would not have arisen.

9. For the reasons discussed hereinabove, we have come to the conclusion that the Original Application is required to be allowed, and the same is hereby allowed, in the following terms. Respondent No.2 is directed to constitute a Review DPC to consider case of the Applicant for promotion to the post of 'PI' on or before 25.04.2025. The Committee shall consider case of the Applicant in the light of G.R. dated 15.12.2017, and observations made hereinabove, and pass final orders on or before 29.04.2025 which shall be communicated to the Applicant forthwith. No order as to costs.

Sd/-
(A.M. Kulkarni)
Member (A)

Sd/-
(M. A. Lovekar)
Vice-Chairman

Place: Mumbai

Date : 22.04.2025.

Dictation taken by: V. S. Mane

D:\VSM\VSO\2025\Judgment 2025\Division Bench\O.A.54 of 2025 promotion.doc

