

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.788/2023

DISTRICT:- BEED

Vishal Shrirang Bhosale,
Age : 33 years, Occ. Service,
As a Chief Officer, Nagar Parishad,
Georai, Tq. Georai, Dist. Beed.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Urban Development Department (UD-2),
Mantralaya, Mumbai-400 032.

2. The Commissioner/Director,
Directorate Municipal Administration,
Belapur Bhavan, 7th Floor, CBD Belapur,
Mumbai-400614.

...RESPONDENTS

APPEARANCE : Shri A.S.Deshmukh, Counsel
holding for Shri H.P.Jadhav, Counsel
for the Applicant.
: Shri V.R.Bhumkar, Presenting
Officer for the respondents.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

Decided on: 06-05-2024

O R A L O R D E R

1. Heard Shri A.S.Deshmukh, learned Counsel
holding for Shri H.P.Jadhav, learned Counsel for the
Applicant and Shri V.R.Bhumkar, learned Presenting
Officer for the respondent authorities.

2. Applicant is presently working in the cadre of Chief Officer Group-B and according to him, he is entitled for promotion to the post of Chief Officer Group-A. It is the grievance of the applicant that he has not been considered for the said promotion and officers junior to him in the cadre are given ad-hoc promotions to the post of Chief Officer Group-A, on the ground that the criminal prosecution is pending against him and that there are serious complaints against him. Departmental Promotion Committee's (DPC) meeting was held on 09-02-2023. As contended in the application name of the applicant was also considered in the said DPC meeting and this fact has not been disputed by the respondents, however, his name was not included in the list of officers to be promoted.

3. Learned Counsel for the applicant submitted that in the criminal case which was stated to be pending against the applicant, while filing the chargesheet in the said criminal case, name of the applicant has not been included as an accused person. Learned Counsel pointed out that on the date of DPC meeting also there was only FIR against the applicant and chargesheet was not filed in the said matter. Learned Counsel further pointed out that

departmental enquiry was also not initiated till 09-02-2023. Learned Counsel further submitted that as is revealing from the affidavit in reply filed on behalf of respondents till date statement of charge has not been issued against the applicant in the said enquiry.

4. Learned Counsel referring to the provisions under the G.R. dated 15-12-2017 read with G.R. dated 01-08-2019, more particularly, referring to clause 6, 9, 11 etc. thereof submitted that the applicant has been wrongly deprived from the promotion to the post of Chief Officer Group-A. Learned Counsel also referred to the judgment of the Hon'ble Supreme Court in the case of **Union of India V/s. K.V.Jankiraman & Ors. [AIR 1991 SC 2010]** to buttress his contention that unless the chargesheet is filed criminal case cannot be said to be pending against the Government employee and similarly unless the statement of charge is served upon the applicant, departmental enquiry cannot be said to be initiated or pending against the employee.

5. Learned Counsel submitted that on 09-02-2023 neither criminal case nor departmental enquiry was pending against the applicant. Learned Counsel further

submitted that in the circumstances the case of the applicant must have been considered in the DPC meeting held on 09-02-2023 and there was no propriety in adopting the sealed cover procedure in case of the applicant. Learned Counsel in the circumstances prayed for reliefs as under:

“B. The respondent authorities may kindly be directed to consider the request of applicant and give promotion and deem date of promotion to applicant from Chief Officer, Group-B to Chief Officer Group-A in accordance with law within stipulated period.

C. That, the respondents may kindly be directed to give promotion to applicant from Group -B to Group-A as per the provisions of law and deem date of promotion and quashed and set aside or modify the impugned order 25th July, 2023 by directing the respondents to grant promotion to applicant as per his seniority and as per provisions of law.”

6. Learned P.O. referred to the affidavit in reply filed on behalf of respondent no.1 wherein the stand of the Government has been stated. Learned P.O. submitted that in view of the fact that there were serious complaints against the applicant and the decision was taken to initiate the departmental enquiry against him, DPC has rightly not considered the case of the applicant for promotion and the

recommendations are kept in sealed cover. Learned P.O. further pointed out that on the date of DPC meeting, name of the applicant was very well existed in the FIR which was lodged arising out of one incidence wherein death of 6 years' old girl had happened. Learned P.O. submitted that having regard to the facts as aforesaid, Government has rightly deferred promotion to the applicant in meeting held on 09-02-2023. Learned P.O. for the aforesaid reasons prayed for dismissal of O.A.

7. We have duly considered the submissions made on behalf of the applicant as well as the State authorities. It is well settled that the Government employees against whom the criminal prosecution or departmental enquiry is pending, are not liable to be considered for their promotion unless they are acquitted from the criminal case or exonerated from the charges leveled in the departmental enquiry. In such circumstances, the methodology which is to be adopted is detailed in G.R. dated 15-12-2017.

8. In the present matter, however, the question is whether on the date of DPC meeting the criminal prosecution can be said to be pending against the applicant and whether the departmental enquiry was initiated and

pending against the applicant so as to keep his assessment report in sealed cover.

9. Learned Counsel has relied upon judgment of the Hon'ble Supreme Court in the case of **Union of India V/s. K.V.Jankiraman** (cited supra) wherein this issue has been dealt with. As held by the Hon'ble Apex Court in the said matter, criminal case can be said to be pending against the Government employee if the chargesheet is filed against him in the competent criminal court. In the present matter, as is revealing from the documents on record, name of the present applicant was there in the F.I.R. and after having investigated the matter, the investigating officer did not find any material against the present applicant. In the circumstances, his name has been ultimately deleted from the array of accused and ultimately, no chargesheet has been filed against him though the chargesheet has been filed against other employees involved in the said incidence.

10. It is thus evident that, on the date of DPC i.e. on 09-02-2023 no criminal case was pending against the applicant. As is held in the case of **Jankiraman** (cited supra) mere filing of F.I.R. is not enough. Further it has to

be seen whether the chargesheet is filed against the said employee or not. Similarly, in the matter of departmental enquiry proceedings, mere contemplation of departmental enquiry will not suffice. What is required is service of statement of charges upon the Government employee.

11. In the present matter, from the affidavit submitted on behalf of the respondents, it is explicitly clear that even till date the statement of charge has not been served upon the applicant. Though learned P.O. sought to contend that there are serious complaints against the applicant and as such DPC did not consider his case for promotion, it has to be stated that when such serious complaints were there, Government was under an obligation to explain why till date the statement of charge is not served upon the applicant. The fact remains that on 09-02-2023 there was no departmental enquiry pending against the applicant.

12. After having considered the facts and circumstances involved in the present matter, it is evident that on the date of DPC meeting i.e. on 09-02-2023 neither criminal prosecution nor departmental enquiry was pending against him. The respondents without any

justifiable cause and by misconstruing the relevant provisions unnecessarily adopted the sealed cover procedure in respect of the applicant. Suitability of the applicant must have been considered and the appropriate decision should have been taken by the DPC in the meeting held on 09-02-2023 itself.

13. For all aforesaid reasons we are inclined to allow the present application and pass the following order:

ORDER

[i] Respondents are directed to consider the case of the applicant for his promotion to the post of Chief Officer Group-A in accordance with the provisions in act, rules and regulations applicable in such matters.

[ii] In the event applicant is found fit and eligible for to be promoted by the DPC, his promotion shall be deemed to be from the date his juniors are promoted on the said post.

[iii] Aforesaid exercise be carried out within 8 weeks from the date of this order.

[iv] The Original Application stands allowed in the aforesaid terms, however, without any order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 06-05-2024.