

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

ORIGINAL APPLICATION NO. 958 OF 2023

DIST. : BEED

Afroj Tainurkhan Pathan,)
Age 40 years, Occu. Service as)
Police Sub-Inspector, Vishram Bagh Police)
Station, Sangli, Tq. & Dist. Sangli,)
R/o Pathan Nagar, Arvi, Tq. and Dist. Latur.).. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through the Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 32.)
- 2) **The Director General of Police,**)
M.S., Shahid Bhagatsing Marg,)
Culaba, Mumbai – 01.)
- 3) **Special Inspector General of Police,**)
Aurangabad Region, Station Road,)
Near Youth Hostel, Padampura Road,)
Vishrambagh, Aurangabad.)
4. **The Superintendent of Police,**)
Beed.).. **RESPONDENTS**

APPEARANCE :- Shri Kakasaheb B. Jadhav, learned
Advocate for the applicant.

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

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

RESERVED ON : **13.09.2024**
PRONOUNCED ON : **07.10.2024**

ORDER

[Per :- Vinay Kargaonkar, Member (A)]

1. Heard Shri Kakasaheb B. Jadhav, learned counsel for the applicant and Shri Mahesh B. Bharaswadkar, learned Chief Presenting Officer for respondent authorities.

2. By filing the present Original Application the applicant is seeking directions to the respondents to promote him to the post of Assistant Police Inspector (Unarmed).

3. **Submissions and pleadings by the Applicant:-**

(i) The applicant was initially appointed as a Police Constable at Latur District by order dated 29.07.2006. The applicant was Promoted to the post of Police Sub-Inspector (for short P.S.I.) by order dated 15.10.2013 after due selection by the Maharashtra Public Service Commission.

(ii) While working on the post of P.S.I. at Patoda Police Station, Dist. Beed, the applicant was considered for promotion to the post of Assistant Police Inspector (for short API) (Unarmed) by respondent no. 02 and the options for Revenue Division were also called for. The applicant has given option of Pune Revenue Division for his promotion to the post of API and accordingly respondent no. 02 allotted him Pune Revenue Division by order dated 09.03.2022.

(iii) One F.I.R. was registered against the applicant on 11.03.2022 at Patoda Police Station, Dist. Beed U/s 7 of the Prevention of Corruption Act, 1988.

(iv) On 22.03.2022 respondent no. 02 issued promotion order for the post of A.P.I., but the name of the present applicant is not included in that order on the ground of registration of crime against the applicant. The applicant submitted an application on 31.10.2022 to the respondent no. 02 and submitted that he was eligible for promotion to the post of A.P.I. in the select list of the year 2020-2021. Revenue Division was also allotted to him, but his name is not included in the order dated 22.03.2022 on the ground of registration of crime against him. The applicant submitted that crime is registered against him due to personal grudge and there is no substance in the said crime.

(v) On 08.12.2022 the applicant submitted another application to respondent no. 02 and requested to consider him for promotion in view of various judgments delivered by the Hon'ble Bombay High Court and this Tribunal. The applicant quoted following judgments delivered by this Tribunal :-

- (1) Original Application No. 318/2021 by Nagpur Bench of this Tribunal.
- (2) Original Application No. 330/2021 by Nagpur Bench of this Tribunal.
- (3) Original Application No. 789/2019 by Principal Seat of this Tribunal at Mumbai.

(vi) The applicant submitted another application to respondent no. 02 on 31.01.2023 and requested to consider him for promotion to the post of A.P.I. in view of the judgments delivered by the Hon'ble High Court and this Tribunal.

(vii) Meanwhile respondent no. 04 conducted preliminary enquiry against the applicant in view of registration of crime. The respondent no. 04 imposed punishment on 09.12.2022 of withholding of 01 increment for 01 year without cumulative effect. The applicant has preferred departmental appeal before respondent no. 03 and challenged punishment order dated 09.12.2022. Respondent no. 03 rejected the said departmental appeal of the applicant and confirmed the punishment order dated 09.12.2022 issued by respondent no. 04. The applicant filed revision application before respondent no. 02 on 03.07.2023.

(viii) The applicant submits that the State Government has issued Government Resolution dated 15.12.2017 prescribing the procedure to be followed where the criminal case and departmental enquiry is pending against the employee. Clause 09 of the said G.R. states that if the criminal case and departmental enquiry is pending against any employee after 02 years from the date of first D.P.C. meeting, then the appointing authority will take conscious decision of granting ad-hoc promotion to such employee. The respondent no. 02 is not following the procedure mentioned in the G.R. dated 15.12.2017 and

not promoting the applicant on ad-hoc basis. Respondent no. 02 is also not taking review of the case of the applicant.

(ix) There is no departmental enquiry pending against the applicant as on today and only criminal case is pending against him. Therefore the case of the applicant needs to be considered for ad-hoc promotion as per the procedure mentioned in G.R. dated 15.12.2017.

(x) The applicant also relied on the judgment delivered by the Hon'ble Supreme Court in the case of **Union of India Vs. K.V. Jankiraman** reported in **1991 (4) SCC 109**. Hon'ble Supreme Court has observed in para 17 as under:-

".....The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee."

4. **Submissions and pleadings by the Respondents:-**

(i) The office of respondent no. 02 invited preferences for Revenue Division for the promotion of Police Sub-Inspector to Assistant Police Inspector by letter dated 11.02.2022.

(ii) Subsequently F.I.R. was registered against the applicant at Police Station, Patoda, Dist. Beed U/s 7 of the Prevention of Corruption Act, 1988. The applicant was suspended from service from the date of arrest i.e. from

11.03.2022 by then Superintendent of Police, Beed by order dated 14.03.2022. Therefore, the promotion of the applicant as per rule 5 of the G.R. dated 15.12.2017 has been kept in a sealed cover envelope and the applicant is not promoted to the post of A.S.I.

(iii) The applicant submitted various applications through the Superintendent of Police, Beed to the office of respondent no. 02 requesting his promotion to the post of A.P.I. Respondent no. 02 rejected the request made by the applicant vide letter dated 15.12.2023.

(iv) Rule 9 of the Government Resolution dated 15.12.2017 states that if no final decision has been made in respect of disciplinary/judicial proceedings for 02 years from the date of first meeting of the D.P.C. then in such case the appointing authority will take decision to give ad-hoc promotion to the concerned employee at their discretion. In the meeting held on 10.08.2023 the D.P.C. reviewed the sealed envelope of the applicant and found that the case has been registered against the applicant U/s 7 of the Prevention of Corruption Act, 1988 and the investigation is still going on. In connection with the above mentioned case, a preliminary enquiry was conducted against the applicant by order dated 16.11.2022. After the said enquiry the Superintendent of Police, Beed imposed the punishment of stoppage of 01 increment for 01 year to the applicant by order dated 09.12.2022. The punishment took effect on 01.07.2023 and the D.P.C. had decided not to open the sealed envelope of the applicant.

(v) The Original Application filed by the applicant is devoid of any merit and needs to be dismissed.

5. Reasoning and Conclusions:

(i) The case concerns a Police Sub Inspector (PSI) who was caught by the Anti-Corruption Bureau (ACB) in a trap case on 11.3.2022, arrested, suspended and subsequently faced a preliminary enquiry. Following the preliminary enquiry, the Applicant was punished with the stoppage of increment for one year, commencing from 1st July 2023. While this punishment has now concluded, the criminal case related to the Anti-Corruption Bureau trap is still pending. The Applicant is seeking ad hoc promotion, arguing that more than two years have passed since his case for promotion was kept in a sealed envelope. The primary issue is whether the Applicant can be considered for ad hoc promotion, despite the pending criminal case, and how the provisions of the GR dated 15/12/2017, and how the principles from the Union of India vs. K.V. Jankiraman (1991) judgment apply in this scenario.

(ii) Learned counsel for the applicant has argued that clause 9 of the Government Resolution dated 15.12.2017 is applicable

to the applicant. The clause 9 of the GR dated 15.12.2017 is reproduced below:

९) विभागीय पदोन्नती समितीच्या मूळ बैठकीच्या दिनांकापासून दोन वर्षे झाल्यानंतरही 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 प्रकरणावर 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.)

(iii) Clause 9 of the Government Resolution (GR) dated 15.12.2017 provides that if a criminal case or Departmental Enquiry against an employee remains pending for more than

two years from the date their case was first placed in a sealed cover, the competent authority may take a conscience decision to grant ad hoc promotion. In the present case, the applicant has claimed that his case has been placed in a sealed cover by the Departmental Promotion Committee (DPC), and more than two years have passed since then. However, the applicant has not produced the minutes of the DPC meeting to confirm the date when his case was first kept in a sealed cover. Similarly, the respondents have also not provided any record of the DPC meeting to verify this date. As the exact date of the DPC's decision to place the case in a sealed cover is unavailable, it is not possible to determine whether the two-year period has indeed elapsed, and therefore, whether the provisions of Clause 9 of the GR dated 15.12.2017 are applicable in this case.

(iv) In *Union of India vs. K.V. Jankiraman* (1991) 4 SCC 109, the Supreme Court has laid down the key principles regarding promotions when disciplinary or criminal proceedings are pending:

Here are some verbatim quotes from the judgment **Jankiraman Vs Union of India** regarding promotion when a criminal case or departmental enquiry is pending:

- "Sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. It is only when a charge-memo/charge-sheet has been issued to the employee that it can be said that the departmental proceedings are initiated against him."
- "Thus, the sealed cover procedure permits withholding of promotions only when a departmental enquiry or criminal case is pending against the employee, provided that the charge-sheet or prosecution sanction has been issued. Where no charge-sheet has been issued, the employee's case cannot be kept in a sealed cover, and he should be considered for promotion without any hindrance."
- "If ultimately the employee is exonerated of the charges, he would be entitled to all the benefits of the promotion retrospectively from the date on which his immediate junior was promoted. This means that the delay in promotion due to pending criminal or departmental inquiry does not permanently affect the employee's career progression if he is found innocent."

(v) In the present case, the Applicant, a Police Sub Inspector, was apprehended by the Anti-Corruption Bureau in a trap case. Following a preliminary inquiry, he was subjected to the penalty of stoppage of increment, effective from 1st July 2023. This punishment period has now concluded. However, the mere

completion of this minor penalty does not confer an automatic right to promotion, as the criminal case against him is still pending.

Relying on the principles laid down in **Union of India vs. K.V. Jankiraman**, it is clear that while the penalty has run its course, the pendency of criminal proceedings casts a shadow over the applicant's eligibility for career advancement. The outcome of the criminal trial will ultimately guide the decision regarding his promotion. That said, the prolonged delay in concluding the criminal proceedings creates a situation where the applicant's career progression is left in limbo. In light of this, the respondents have the discretion to assess the situation and, if deemed appropriate, consider the applicant's request for ad-hoc promotion based on merit and the specific facts of the pending criminal case. The applicant has argued that more than two years have elapsed since his promotion case was placed in a sealed cover. While the delay in resolving his promotion status is notable, this Tribunal is constrained from issuing a directive for ad hoc promotion, as the pendency of the criminal case continues to impede a clear resolution of his service matters. The discretion to promote or not rests solely with the

respondents, keeping in view the seriousness of the charges and the principles of fair administrative action.

6. Hence following order:

ORDER

(i) The Respondents (concerned authority) shall consider all relevant facts and circumstances of the pending criminal case before making an informed decision on the applicant's request. The authority must provide a clear and reasoned explanation for either granting or denying the ad hoc promotion.

(ii) The Original Application is disposed of in accordance with these directions, with no order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 07.10.2024

ARJ O.A. NO. 958 OF 2023 PROMOTION