

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No.418 of 2022 (D.B.)**

Shri Sanjay S/o Bhagwan Rathod,
Aged about 37 years, Occ. Service,
R/o C/o Tahsil Office, Armori, Dist. Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra through its Secretary,
Department of Forest and Revenue,
Mantralaya, Mumbai-32.
- 2) The Additional Chief Secretary,
Department of Revenue, Maharashtra State,
Mantralaya, Mumbai.

Respondent.

**S/Shri G.G. Bade, P.P. Khaparde, Advocates for the applicant.
Shri S.A. Sainis, learned P.O. for respondent.**

**Coram :- Hon'ble Shri Justice M.G. Giratkar, Vice Chairman and
Hon'ble Shri Nitin Gadre, Member (A).**

Dated :- 22/08/2024.

J U D G M E N T

Heard Shri G.G. Bade, learned counsel for the applicant
and Shri S.A. Sainis, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was appointed on the post of Naib Tahsildar
on 24/09/2012. When the applicant was working on the post of Naib
Tahsildar, one FIR dated 21/02/2018 was registered against him for
the offence punishable under the Prevention of Corruption Act. The
charge sheet was filed in the Special Court on 09/05/2019. The

respondents have suspended the applicant. Thereafter, he was reinstated in service. The respondents have issued the charge sheet on 27/02/2019 and started departmental inquiry. Two charges were levelled against the applicant as follows –

- (i) The applicant has maligned the reputation of the department on account of arrest under the Prevention of Corruption Act.
- (ii) On the inspection of office of applicant, it seems that the applicant worked carelessly and not honestly.

3. In the departmental inquiry, both the charges are not proved. The applicant is exonerated in the departmental inquiry. The applicant was due for promotion, but because of pendency of criminal case before the Special Court in respect of the offence punishable under the Prevention of Corruption Act, he is not promoted. One of the Juniors Smt. More is promoted on the post of Tahsildar. Therefore, the applicant has approached to this Tribunal for the following reliefs –

“(9) (i) Direct the respondent department to promote the applicant to the post of Tahsildar in view of the G.R. dated 15/12/2017.

(10) The applicant is seeking direction to the respondent no.2 to decide the representation dated 21/02/2022 during the pendency of the present original applicant.”

4. The respondents have not filed reply though several chances were granted to the respondents. Therefore, the O.A. was admitted for final hearing on 25/04/2024. Thereafter, the O.A. was fixed on 14/06/2024. On that day also the reply was not filed by the

respondents. Today also the respondents have not filed reply. Hence, the matter is heard and decided finally.

5. There is no dispute about the contention of the applicant. During the course of submission, the learned counsel for applicant has pointed out the findings in the inquiry (P-32). Findings of Inquiry Officer and the Disciplinary Authority show that the charges levelled against the applicant are not proved in the departmental inquiry. For the same allegation, Criminal case for the offence punishable under the Prevention of Corruption Act is pending before the Special Court.

6. The learned counsel for applicant has pointed the decision of the Hon'ble Supreme Court in the case of the ***Union of India Vs. K.V.Jankiraman And Others reported in (1991) 4 SCC 109***, decided on 27.08.1991 and in the case of ***Union of India And Others Vs. Anil Kumar Sarkar (2013) 4 SCC 161***, decided on 15.03.2013. The learned counsel for applicant has also pointed out the Judgment of this Tribunal in O.A.115/2022, decided on 29/11/2023 and the Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in the case of ***Ashok M. Nand Vs. the State of Maharashtra and Others***, decided on 05/10/2023.

7. There is no dispute that the applicant is facing criminal case before the Special Court for the offence punishable under the Prevention of Corruption Act. The Government of Maharashtra has

issued the G.R. dated 15/12/2017 (P-56). The procedure of sealed cover is to be followed in the DPC meeting. If the departmental inquiry / criminal case is pending, then the result of DPC shall be kept in sealed cover and in the next DPC, it should be opened.

8. The name of the applicant was not considered because of the pendency of departmental inquiry and criminal case. Now the departmental inquiry is completed and the charges levelled against the applicant are not proved. Only the criminal case is pending. That case may not be decided for years together and on that ground the applicant cannot be deprived of legal right of promotion. The Hon'ble Supreme Court in the case of the ***Union of India Vs. K.V.Jankiraman And Others reported in (1991) 4 SCC 109*** and in the case of ***Union of India And Others Vs. Anil Kumar Sarkar (2013) 4 SCC 161*** has held that temporary promotion can be granted during the pendency of criminal case or departmental inquiry, subject to the decision of criminal case or departmental inquiry. The Hon'ble Bombay High Court, Bench at Aurangabad in the case of ***Ashok M. Nand Vs. the State of Maharashtra and Others*** has taken the same view. The Hon'ble Bombay High Court, Bench at Aurangabad in the case of ***Ashok M. Nand Vs. the State of Maharashtra and Others*** has held that the temporary promotion shall be given. However, back wages

shall not be given to the employee who is facing departmental inquiry.

Hence, we pass the following order -

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to issue an order of temporary promotion to the applicant to the post of Tahsildar w.e.f. from the date on which his junior is promoted. However, the applicant is not entitled to claim any arrears.

(iii) The respondents are directed to modify the seniority list by incorporating the name of applicant in it.

(iv) The respondents are directed to comply the order within a period of three months from the date of receipt of this order.

(v) No order as to costs.

(Nitin Gadre)
Member(A).

(Justice M.G.Giratkar)
Vice Chairman.

Dated :- 22/08/2024.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman and Member (A).

Judgment signed on : 22/08/2024.