

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No.532 of 2024 (D.B.)

Pratik Diwakar Channawar,
Aged 33 years, Occ. Service,
R/o 701, Gangai Hights-1, Manish Nagar, Nagpur-15.

Applicant.

Versus

The State of Maharashtra,
through its Secretary,
Rural Development Department,
25, Bandhkam Bhavan, Marzban Road, Fort, Mumbai.

Respondent.

Shri D.M. Kakani, Advocate for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondent.

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

Dated :- 20/08/2024.

J U D G M E N T

Heard Shri D.M. Kakani, learned counsel for the applicant
and Shri V.A. Kulkarni, learned P.O. for the respondent.

2. As per the submission of learned counsel for the applicant,
issue in this O.A. is covered by the Judgment of the Hon'ble Supreme
Court and the Judgment of the M.A.T., Principal Bench, Mumbai in
O.A.752/2022, decided on 29/09/2022 and the Judgment of this
Tribunal in O.A.No.115/2022, decided on 29/11/2023.

3. As the O.A. is covered by the above mentioned
Judgments and the material documents are placed on record, hence
decided finally.

4. Heard learned P.O. He has strongly objected the O.A. on the ground that FIR is registered against the applicant after the DPC meeting.

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

The applicant was appointed on the post of Assistant Block Development Officer on 02/05/2015. He was posted at Wani. The applicant has completed probation on 30/05/2018. The confirmation order was issued by the GAD on 26/04/2023.

6. On 11/03/2022, the applicant was due for promotion like his juniors from Group-B to Group-A service i.e. from the post of Assistant Block Development Officer to the post of Block Development Officer. In the meeting of Departmental Promotion Committee (DPC), the name of applicant has been considered, but it is mentioned in the remark column by the DPC that his probation period is not completed. The DPC meeting was conducted on 27/04/2023. The name of applicant has been considered in this meeting and he has been shown as eligible for promotion. On the basis of outcome of DPC meeting dated 30/05/2022 initially many juniors i.e. near about 22 have been given promotion to the higher post by order dated 30/05/2022. The applicant is not given promotion on the ground that he has not completed probation and FIR is pending against the applicant.

7. Hence, the applicant has approached to this Tribunal for direction to the respondent to promote him on the post of Block Development Officer with deemed date of promotion on which his juniors were promoted.

8. During the course of submission, the learned counsel for applicant Shri D.M. Kakani has pointed out the office order of Government of Maharashtra dated 26/04/2023. This order shows that the applicant has completed probation period on 30/05/2018.

9. The learned counsel for applicant has pointed out the Minutes of meeting of DPC dated 11/03/2022 (P-20) which shows that the applicant was not eligible because his probation is not completed, whereas, the order dated 26/04/2023 shows that the applicant has completed probation period on 30/05/2018. In the 2nd DPC meeting dated 27/04/2023, the applicant was held eligible. His name is at Sr.No.20. No any reason is given by the respondent as to why the applicant is not promoted.

10. As per the submission of the learned counsel for applicant, one FIR is registered against the applicant after the 2nd DPC dated 27/04/2023. Even on that ground promotion cannot be refused. The learned counsel for applicant has pointed out the Judgments 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. In both the cited Judgments, the Hon'ble Supreme Court has held that the pendency of criminal case or departmental inquiry cannot be a ground to deny the promotion. At the most, temporary promotion can be granted subject to the decision of criminal case / departmental inquiry.

11. The learned counsel for applicant has pointed out the Judgment of this Tribunal in O.A.No.115/2022, decided on 29/11/2023. In that O.A., it is held by this Tribunal that pendency of criminal case or departmental inquiry shall not be a ground to deny the promotion. The M.A.T., Principal Bench, Mumbai in O.A.No.752/2022 has held that pendency of criminal case cannot be a ground to deny the promotion.

12. The applicant has completed probation on 30/05/2018 as per order dated 26/04/2023. The name of applicant was considered in the 1st DPC, but wrongly it was shown that he has not completed probation therefore he was not entitled for promotion. In the 2nd DPC dated 27/04/2023, the DPC has held that the applicant is eligible for promotion. His name is at Sr.No.20. But thereafter also the respondent has not promoted the applicant. The reason may be of pendency of criminal case against the applicant. In view of the Judgment 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, promotion cannot be denied on the ground of pendency of criminal case or departmental inquiry. The Hon'ble Supreme Court has held that temporary promotion can be granted subject to the decision of departmental inquiry or criminal case. Hence, we pass the following order –

ORDER

- (i) The O.A. is allowed.
- (ii) The respondent / state is directed to promote the applicant temporarily on the post of Block Development Officer subject to the decision of criminal case pending against him.
- (iii) The respondent / state is directed to give deemed date of promotion to the applicant from the date on which his juniors are promoted.
- (iv) No order as to costs.

(Nitin Gadre)
Member(A).

(Justice M.G.Giratkar)
Vice Chairman.

Dated :- 20/08/2024.

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 : 20/08/2024.