

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.1297/2023(D.B.)

Satish Kondibarao Jampalkar,
aged about 50 years, Occ. Service,
R/o C/o Rupesh Janardhan Shende,
Near NIT Garden, Plot No. 440,
New Subhedar Layout, Nagpur- 440024.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Medical Education and Drugs,
Mantralaya, Mumbai-32.

- 2) The Director of Ayush,
Maharashtra State, Mumbai,
Having its Office 4th Floor,
Government Dental College and Hospital Building,
Saint George's Hospital Compound,
P' Demolo Road Fort, Mumbai-400001.

Respondents

Shri S.P.Palshikar, Ld. Counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents.

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

Dated:- 07th October, 2024.

JUDGMENT**Judgment is reserved on 25th September, 2024.****Judgment is pronounced on 07th October, 2024.****Per : Member (A).**

Heard Shri S.P.Palshikar, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the respondents.

2. In the application dated 08.12.2023, the Applicant has submitted following facts:

The Applicant joined the service as a Senior Clerk on 18.10.2000. In the year 2015, he was promoted as Office Superintendent. In 2017, a departmental enquiry was initiated against the applicant. After the departmental enquiry, punishment of stopping of two increments permanently was inflicted upon the applicant on 13.01.2023. The applicant filed appeal before the Appellate Authority which was dismissed. When the departmental enquiry was pending, the applicant was promoted as an Administrative Officer on 25.06.2021. But later on, this promotion was not continued. The applicant claims that his juniors have been promoted, but his claim has been ignored. The applicant claims that he is relying on the Judgement of the Principal Bench of this Tribunal in O.A.No.886/2017 decided on 30.04.2019. The applicant says that as per this Judgement, merely because the applicant has been

awarded punishment, his legitimate claim of promotion cannot be denied. Reliefs claimed by applicant are as follows:

i) direct the respondent No.1 to issue order of promotion in favour of the applicant as a Administrative Officer forthwith;

ii) further be pleased to direct the respondents to grant deemed date as a administrative officer in favour of the applicant as 12/07/2023 when his junior has taken the charge as Administrative Officer by granting him all consequential and monitory benefits arising there from;

iii) grant any other relief which deemed fit including that of the costs in the facts and circumstances of the present case.

3. The respondents have filed their Affidavit dated 27.05.2024. The material portion of the Affidavit is follows:

It is submitted that the applicant's original appointment on the post of Senior Clerk as on 18.10.2000, promotion on the post of Head Clerk as on 01.02.2008 and Office Superintendent as on 21.07.2015 are matter of fact. The Medical Education and Drugs Department as per Government order dated 25.06.2021 promoted the applicant as Administrative Officer on Ad-hoc basis for 11 months from 01.07.2021 in the Class-II post on Nomination Quota Post and he was posted at Government Ayurved College, Nanded from Government Ayurved Hospital, Nagpur. The Medical Education and Drugs Department as per Government Memo dated 08.04.2021 Government has given the Charge Sheet to the applicant in the Joint Departmental Enquiry.

The Medical Education and Drugs Department the Government after completing the all due procedure issued the punishment order as on 13.01.2023 and Government awarded the

punishment of stoppages of two increments permanently of the applicant as per the provisions of Rule 5 (4) of the M.C.S. (Discipline & Appeal) Rules, 1979.

The respondents have stated that the applicant had filed an appeal before the Hon'ble Governor of Maharashtra. The Hon'ble Governor, vide order dated 09.08.2023 has refused to interfere in the punishment given by Disciplinary Authority. The Respondents have further stated that:

It is settled law that it cannot be expected from any administration to reward an employee with promotion during his period of sentence. If such an employee is promoted, obviously it would be an award to an employee who is undergoing sentence imposed upon him in departmental enquiry. The punishment imposed upon the applicant of stoppage of two increments for two years permanently would come to an end in June, 2025 which is not far away. The applicant was not been debarred permanently from getting promotion. In view of the above the action taken by the respondents do not find any arbitrariness in the decision taken by the departmental promotion committee. The guidelines given in the G.R. dated 15.12.2017 and 30.08.2018 is not found contrary to the provisions of the Constitution of India or any other Statute. The policy decision taken by the State Government vides G.R. dated 15.12.2017 and 30.08.2018 is for public interests and keeping in mind difficulties faced by various employees in departments dealing with such cases. The G.R. dated 30.08.2018 issued by the G.A.D. is annexed as Annexure-R-IV is self explanatory and it is applicable to the applicant case.

4. The Government G.Rs. dated 15.12.2017 and 30.08.2018 explain the procedure to be adopted regarding promotion of employees who are facing departmental enquiry. The relevant portion of the G.R. dated 30.08.2018 is as follows:

१. दि. १५.१२.२०१७ च्या शासन निर्णयातील परिच्छेद १ (१) रद्द करून तो नव्याने पुढीलप्रमाणे समाविष्ट करण्यात येत आहे :-

१) विभागीय पदोन्नती समितीच्या बैठकीच्या दिनांकाला

अ) जे अधिकारी/कर्मचारी निलंबित आहेत.

ब) ज्या अधिकारी/कर्मचाऱ्यांच्याविरुद्ध शिस्तभंग विषयक कार्यवाहीच्या अनुषंगाने दोषारोप बजावून शिस्तभंग विषयक कार्यवाही सुरु झालेली आहे.

क) ज्या अधिकारी/कर्मचाऱ्यांच्याविरुद्ध फौजदारी आरोपाचे न्यायालयीन प्रकरण प्रलंबित आहे.

फौजदारी आरोपाचे न्यायालयीन प्रकरण प्रलंबित असल्याचे केव्हा समजण्यात येईल या साठी म.ना.से. (निवृत्तीवेतन) नियम, १९८२ मधील नियम २७ (६) (बी) (एक) मध्ये दिलेला खालील अर्थ विचारात घेण्यात येईल :-

(बी) न्यायिक कार्यवाही-

(एक) फौजदारी कार्यवाहीच्या बाबतीत. दंडाधिकारी जिची दखल घेतो अशी तक्रार किंवा प्रतिवेदन, पोलीस अधिकाऱ्याने ज्या तारखेस दाखल केले असेल त्या तारखेस सुरु केली असल्याचे मानण्यात येईल.

ड) विभागीय चौकशी पूर्ण होऊन जे अधिकारी / कर्मचारी शिक्षेच्या अंमलाखाली आहेत,

अशा अधिकारी/कर्मचाऱ्यांच्या पदोन्नतीच्या प्रकरणात विभागीय पदोन्नती समिती त्यांची गोपनीय अभिलेखाच्या व इतर सेवाप्रवेश नियमाच्या तरतुदीच्या अनुषंगाने पात्रता तपासेल. मात्र संबंधित अधिकारी/कर्मचाऱ्यांच्यासंदर्भात विभागीय पदोन्नती समितीने केलेले

मूल्यमापन (Assessment) आणि दिलेली प्रतवारी स्वतंत्र पाकीटात मोहोरबंद करून ठेवण्यात येईल. या पाकीटावर "श्री. ----- (सरकारी कर्मचाऱ्याचे नाव) यांच्याबाबतीत या पदावरून (निम्न पदाचे सध्याच्या पदाचे नाव) या पदावर (पदोन्नतीच्या पदाचे नाव) पदोन्नती देण्याकरिता आवश्यक योग्यतेबाबतचे निष्कर्ष श्री.----- यांच्याविरुद्धच्या शिस्तभंगाच्या प्रकरणाची / फौजदारी खटल्याची समाप्ती होईपर्यंत किंवा शिक्षेचा अंमल संपेपर्यंत हे पाकीट उघडण्यात येवू नये" असा मायना लिहिण्यात यावा.

The G.R. dated 15.12.2017, Clause (14) has also stated that an employee should be considered for promotion after the punishment period is over.

5. This issue had also been dealt in the judgement of Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Mohan S/o Vasantrao Sangvikar Vs. State of Maharashtra and Others 2020(5) Mh.L.J. 417 decided on 30.04.2020.** The relevant portion of the Judgement is as follows:

21. To qualify for promotion, least that is expected of an employee is to have an unblemished record. An employee found guilty of misconduct cannot be placed at par with other employees and his case has to be treated differently. There is, therefore, no discrimination found in the matter of promotion of the present petitioner. It cannot be expected from any administration to reward an employee with promotion during his period of sentence. If such an employee is promoted, obviously it would be an award to an employee who is undergoing sentence imposed upon him in departmental enquiry. The punishment imposed upon the petitioner of stoppage of one increment for two years would come to an end in June, 2020 which is not far away. He has not been debarred

permanently from getting promotion. As such, we do not find any arbitrariness in the decision taken by the departmental promotion committee. The guidelines given in the Government Resolution dated 15-12-2017 are not found contrary to the provisions of the Constitution of India or any other Statute. The policy decision taken by the State Government vide Government Resolution dated 15-12-2017 is for public interest and keeping in mind difficulties faced by various departments dealing with such cases.

6. Based on the above discussion, the facts of the matter are as follows:

The applicant was awarded punishment of stoppage of two increments permanently on 13.01.2023. After this order, his first increment would be stopped on 01.07.2023 and the second increment would be stopped on 01.07.2024. His increment will be released next year on 01.07.2025, after stoppage of these two increments in the earlier two years. This means that the effect of punishment imposed upon him will continue till 30.06.2025.

The learned Council for the applicant claimed that his punishment period was over as soon as his second increment is stopped, i.e. on 01.07.2024. But, this is not a correct interpretation of the scheme. The promotion is to be given not immediately after the punishment is imposed, but after the effect of punishment is over. It can be noted that the phrase used in the G.R. dated 30.08.2018 is

“ शिक्षेचा अंमल संपेपर्यंत ”. In this case, this effect of punishment will be over on 30.06.2025 and he will be considered for giving increment only on 01.07.2025. The respondents have already stated that the applicant will be considered for promotion after the punishment period is over. Hence, we do not find any reason to give any directions to the State at this stage.

ORDER

1. O.A. is dismissed.
2. No order as to costs.

(Nitin Gadre)
Member(A)

(Justice M.G.Giratkar)
Vice Chairman

Dated – 07/10/2024
rsm.

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

Name of Steno : Raksha Shashikant Mankawde.
Court Name : Court of Hon'ble Vice Chairman
& Hon'ble Member (A).
Judgment signed on : 07/10/2024.
and pronounced on