

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 1619 OF 2023

DISTRICT : THANE

Shri Rahul Sampatrao Takate,)
Food Safety Officer,)
R/at: 1104, Imperia Mahavir Millenium)
Vasant Vihaar, Thane [W] 400 610.)...**Applicant**

Versus

The State of Maharashtra)
Through the Secretary,)
Medical Education & Drugs Department,)
G.T Hospital Campus, Mantralaya,)
Mumbai 400 001.)...**Respondents**

Shri S.S Dere, learned advocate for the Applicant.

Smt K.S Gaikwad, learned Presenting Officer for the Respondent

Shri M.M Kale, learned counsel for the applicants-intervenors.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Mrs Medha Gadgil (Member) (A)

DATE : **29.07.2024**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. The applicant prays that the memorandum of charge sheet dated 10.6.2021 served on the applicant by letter dated 18.8.2021

issued by the Respondent be quashed and set aside on the basis of the judgment of the Hon'ble Supreme Court in the case of Prem Nath Bali Vs. Registrar, High Court of Delhi & Anr, (2015) 16 SCC 415. The applicant further prays that the Respondents be directed to consider the applicant for promotion to the post of Assistant Commissioner (Food)/Designated Officer, Group-A on the basis of G.R dated 15.12.2017, since the case of applicant has been kept in sealed cover from last two departmental promotion proceedings (DPC). The applicant also prays that he be granted all consequential service benefits on the post of Assistant Commissioner (Food)/Designated Officer, Group-A when juniors to the applicant has been promoted to the promotion post.

2. Learned counsel has submitted that the applicant was appointed as Food Inspector on 1.8.2007 and subsequently the nomenclature has been changed as Food Safety Officer, Group-B from 5.8.2011. Learned counsel has submitted that the Respondent prepared the gradation list on 10.6.2021 as on 1.1.2021 and the name of the applicant appeared in the said gradation list at Sr. N. 57.

3. Learned counsel has submitted that the applicant working on the post of Food Safety Officer, Group-B was eligible for promotion to the post of Assistant Commissioner (Food)/Designated Officer, Group-A. Learned counsel further submitted that the applicant has been deprived of promotion to the said post on the ground of pendency of departmental enquiry which was initiated against him on the basis of memorandum charge sheet dated 10.6.2021. Learned counsel further submitted that the applicant was entitled for promotion to the post of Assistant Commissioner (Food)/Designated Officer, Group-A, on the basis of G.R dated 15.12.2017. Learned counsel has further

submitted that the applicant was due for promotion as per the said select list. However, as the applicant was served with memorandum of charge sheet dated 10.6.2021 on 23.8.2021, he was not considered by the D.P.C. As per the Food Safety Standard Act, 2006 (FSSA) the applicant has followed the procedure specified in the Act. The copies of documents specified in Annexure-4 to the charge sheet were not supplied to the applicant along with memorandum of charge sheet. The applicant on the same date i.e., on 23.8.2021, requested the Commissioner, Food and Drugs Administration, M.S, Mumbai, to provide the necessary documents as mentioned in the Annexure-4 to the charge sheet. Learned counsel for the applicant has filed a short affidavit of the applicant enclosing the documents which the applicant received under R.T.I. Learned counsel further submitted that ultimately the applicant after six months submitted reply on 22.2.2022 to the charge sheet. Learned counsel has further submitted that on the basis of gradation list of 2021, for the period 1.9.2021 to 31.8.2022, the meeting of the Departmental Promotion Committee was constituted on 27.7.2022 and the name of the applicant was considered for promotion by the D.P.C. However, since the departmental enquiry initiated against the applicant, his case is kept in sealed cover. The Respondent thereafter conducted D.P.C meeting for the select list for the period 1.9.2022 to 31.8.2023 and the juniors to the applicant were considered for promotion to the post of Assistant Commissioner (Food)/Designated Officer, Group-A and they were promoted vide order dated 26.9.2023. Learned counsel has submitted that the juniors to the applicant have been superseded and in the first DPC of 2021-22 the applicant has not been given promotion though considered on the ground of pendency of departmental enquiry against him. The applicant has preferred representations dated 22.2.2022, 18.7.2023, 20.9.2023 and 9.12.2023 to consider him for promotion.

4. Learned counsel for the applicant in support of his contentions has relied on the judgment of the Hon'ble Supreme Court in the case of Prem Nath Bali Vs. Registrar, High Court of Delhi & Ors (2015) 16 SCC 415. Learned counsel for the applicant submitted that incidence is of 26.11.2016 for which the charge sheet dated 10.6.2021 was served on the applicant on 18.8.2021, however, the Enquiry Officer has not been appointed till date which itself shows that the charges levelled against the applicant are not of serious in nature.

5. Learned P.O relied on the affidavit in reply dated 23.7.2024 filed by Anil Kondaji Ahire, Deputy Secretary, Medical Education and Drugs Department, Mantralaya, Mumbai, wherein it is stated that due to the pendency of the departmental enquiry the D.P.C has taken decision that the promotion of the applicant be kept in sealed cover. The letter dated 18.7.2024 sent by the Medical Education and Drugs Department was received by the Commissioner, Food and Drugs wherein it was expressly mentioned that whether the Government wants to continue the departmental enquiry or drop the same and the opinion was sought from the Commissioner, Food and Drugs. It was mentioned in the letter further that on 29.4.2024 a meeting was held between the Commissioner and Secretary, Medical Education and Drugs Department. Mr Anil Patil, Managing Director, Haffkine Laboratory, is holding additional charge of the Commissioner, Food and Drugs, who is present informs that the departmental enquiry against the applicant should not be dropped and it should be continued. He submitted that he does not have any knowledge about the facts of the case and also the legal position.

6. We clarify that though this matter is kept again and again to get the collect information and get the assistance from the

Government, the concerned department is careless and not giving importance to this particular matter which is pending before the Tribunal. We have considered the grievance made by the applicant in the Original Application and also the affidavit in reply dated 23.7.2024 filed by Anil Ahire, Deputy Secretary, Medical Education and Drugs Department, Mantralaya, Mumbai. Though it is a joint enquiry it was not necessary and mandatory on the part of the Government to wait for such a long time to appoint the Enquiry Officer and till date Enquiry Officer is not appointed. We fail to understand if the Respondents wanted to go ahead with the departmental enquiry, why they did not start it earlier in the year 2017.

7. The ratio laid down in the case of **Prem Nath Bali (supra)** is applicable to the facts of the present case. The Hon'ble Supreme has Court observed as under:-

“28. Keeping these factors in mind, we are of the considered opinion that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year”.

Thus, it was necessary for the Respondent-Department to conduct the enquiry within six months from the date of issuance of the charge sheet and at the most on or before one year. We are of the view that delay in the departmental enquiry on account of unavoidable circumstances like Covid-19 Pandemic can be justified, but not in this case. This is a case where the incidence is

of the year 2016, for which charge sheet was issued on 10.6.2021. More than 2 ½ years have lapsed the Enquiry Officer is not appointed. In the affidavit in reply dated 23.7.2024 of Anil Ahire, Dy Secretary, Medical Education and Drugs Department, it was submitted as under:-

“In this Joint Departmental Enquiry only 3 officers out of 4 had submitted their explanation to the Government with respect to charge sheet dated 10.6.2021 served to them. Considering the explanation submitted by these 3 officers in this joint departmental enquiry, the proposal has been submitted for withdrawal of charge sheet against all 4 officers in this joint departmental enquiry vide the provisions in Rule 3.14 of Manual of Departmental Enquiry Rules, 1991 to the Disciplinary Authority. But it was decided to take Commissioner F.D.A’s opinion with respect to explanations submitted by the 3 officers in this joint departmental enquiry. As per the decision, the Commissioner, FDA have been informed by letter dated 29.4.2024. Another reminder are also sent on 18.6.2024 and 18.7.2024 to the office of the Commissioner, Food and Drugs Administration. However, yet no opinion has been received from that office.”

9. We would like to point out that in this case the applicant has lost his two chances of promotion as the D.P.C meeting was conducted first in July, 2022, when one junior to the applicant was promoted and second in July, 2023 when 12 juniors to the applicant were promoted. However, in both the D.P.C meetings the case of the applicant was considered for promotion and due to pendency of the departmental enquiry, his case was kept in sealed cover. It won't be out of place to point out that we have gone through the charges sheet and the charges levelled against the applicant and also the documents submitted by the applicant which he has acquired under the R.T.I. It reveals that the applicant has seized 22248.02 kgs of Gutka and he also drew the memorandum on the same day of the seizure of the Gutka from the Truck in the presence of Panchas. The said documents are taken on record and marked as Court Exh-I collectively. Thus, the

applicant himself has performed his duty promptly as Food Safety Officer when the said truck was raided and Gutka was seized. We are of the view that this is an example which shows absolute cavalier and insensitive approach of the administration towards their own employee.

11. In view of the above we pass the following order:-

ORDER

- (a) The Original Application is allowed.
- (b) The memorandum of charge sheet dated 10.6.2021 served on the applicant by letter dated 18.8.2021 issued by the Respondent is hereby quashed and set aside.
- (c) The case of the applicant is to be considered for promotion to the post of Assistant Commissioner (Food)/Designated Officer, Group-A on the basis of G.R dated 15.12.2017 as the case of the applicant was kept in sealed cover.
- (d) We further direct that if the applicant is found fit and eligible for promotion, he should be promoted to the post of Assistant Commissioner (Food)/Designated Officer, Group-A and the Competent Authority is further directed to consider the applicant's case for grant of deemed date when his first junior was so promoted.
- (e) The interim order dated 2.7.2024 of status quo stands vacated. As the order of status quo was in existence for 22 days and sometime was consumed, we direct the

Respondents to extend the period of the select list of the persons who are in the zone of consideration by 22 days.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 29.07.2024
Dictation taken by : A.K. Nair.