

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 196 OF 2024

DISTRICT : THANE

Faijulali Maheebub Mulla)	
Occ-Service,)	
R/at: C/o: Best Quarters, 12B ,)	
Mhada Colony, Room No. 5,)	
Jogeshwari [E], Mumbai 400 060.)	...Applicant

Versus

1.	The State of Maharashtra)	
	Through its Principal Secretary,)	
	Industry, Energy and Labour Dept,)	
	Mantralaya, Mumbai 400 032.)	
2.	The Deputy Secretary,)	
	Industry, Energy and Labour Dept,)	
	Urja-1, 3 rd floor, Main Bldg,,)	
	Hutatma Rajguru Chowk,)	
	Madam Cama Road, Mantralaya,)	
	Mumbai 400 032.)	...Respondents

Shri R.G Panchal, learned counsel for the Applicant through Video Conference.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Shri Debashish Chakrabarty (Vice-Chairman)

DATE : 19.09.2024

J U D G M E N T

1. The Applicant prays that the Respondents be directed to promote him to post of Electrical Inspector (Group A Gazetted) from the post of Assistant Electrical Inspector (Group-A Gazetted).

2. Learned Counsel submitted that the Applicant working as Assistant Electrical Inspector (Group A - Gazetted) was due for promotion to the post of Electrical Inspector (Group-A Gazetted).

3. Learned Counsel submitted that the Applicant was considered for promotion and as he was found fit, Applicant was also recommended for promotion to the post of Electrical Inspector, (Group-A Gazetted) by Order dated 18.9.2020.

4. Learned counsel then stated that the Applicant came to be suspended by Order dated 20.5.2022 in view of the registration of Criminal Case against him under the 'Prevention of Corruption Act' on 19.4.2022.

5. Learned Counsel has further submitted that Departmental Enquiry was also initiated against the Applicant on 27.9.2022.

6. Learned Counsel drew attention to the fact that by Order dated 16.6.2022 all others who were Assistant Electrical Inspector (Group-A Gazetted) were recommended for promotion came to be promoted to the post of Electrical Inspector (Group-A Gazetted). However, in the said Order dated 16.6.2024 the name of the Applicant was not included on the ground that before issuance of the Order dated 16.6.2024, the Criminal Case under the

Prevention of Corruption Act was registered against the Applicant on 19.4.2022.

7. Learned Counsel submitted that both Criminal Case and Departmental Enquiry are now pending against the Applicant. The Applicant was reinstated in service vide Order dated 8.9.2023 by revoking the 'Suspension Order' dated 20.5.2022.

8. Learned Counsel thereupon submitted that the Applicant should now be granted ad hoc promotion in terms of 'Para 9' of the G.A.D G.R dated 15.12.2017.

9. Learned Counsel for the Applicant further submitted that the case of the Applicant is covered by the decision of this Tribunal dated 20.8.2024 in O.A 596/2024.

10. Learned C.P.O submitted that the case of the Applicant is somewhat different from the case of the Applicant in O.A 596/2024.

11. Learned C.P.O further submitted that the case of the Applicant was not kept in Sealed Cover when the D.P.C meeting was held on 18.9.2020 as the Applicant was found eligible to be promoted as Electrical Inspector (Group-A Gazetted).

12. Learned C.P.O further clarified that before issuance of the Order dated 16.6.2022, for promotion to post of Electrical Inspector, (Group-A Gazetted) the Applicant was prosecuted under the 'Prevention of Corruption Act' on 19.4.2022 and Departmental Enquiry was also initiated against the Applicant soon after on 27.9.2022. Hence, at that time case of Applicant was kept under

Sealed Cover as per provisions of 'Para 5' of the G.A.D G.R dated 15.12.2017.

13. Learned C.P.O submitted that thus the Two Years period cannot be counted from the date of meeting of the D.P.C dated 15.8.2020, but it has to be counted from when the Applicant was served with the Suspension Order on 20.5.2022.

14. Considered the submissions of both sides. The 'Criminal Case' and 'Departmental Enquiry' both are pending against the Applicant. The period of Two Years had passed after launching of the 'Criminal Case' and initiation of 'Departmental Enquiry'. The Applicant was served with Suspension Order on 20.5.2022 and Departmental Enquiry started from 27.9.2022. Therefore as more than Two Years have passed since such action was initiated against Applicant, therefore after the period of Two Years the Competent Authority has to take steps as per G.R dated 15.12.2017, wherein 'ad hoc promotion' can be given to the Government Servants whose case is kept under Sealed Cover on account of pending 'Criminal Case' and/or 'Departmental Enquiry'.

15. The relevant Paragraphs 5, 9 and 11 of G.A.D G.R dated 15.12.2017 are reproduced below:-

५. विभागीय पदोन्नती समितीच्या बैठकीच्या दिनांकाला जरी एखादा अधिकारी/ कर्मचारी निलंबित नसेल अथवा त्याच्याविरुद्ध शिस्तभंगविषयक/न्यायालयीन कार्यवाही सुरु झाली नसेल मात्र, संबंधीत अधिकारी/कर्मचा-याचे प्रत्यक्ष पदोन्नतीचे आदेश निर्गमित होण्यापूर्वी संबंधीत अधिकारी/ कर्मचारी निलंबित झाल्यास वा त्याच्याविरुद्ध शिस्तभंगविषयक/न्यायालयीन कार्यवाही सुरु झाल्यास, नियुक्ती प्राधिकारी संबंधीत अधिकारी / कर्मचा-याचे पदोन्नतीचे प्रकरण उपपरिच्छेद (१) मधील सूचनेनुसार मोहोरबंद पाकीटात ठेवेल.

“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 संबंधित 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)

११) विभागीय पदोन्नती समितीच्या पहिल्या बैठकीनंतर दोन वर्षांनी शिस्तभंगविषयक/न्यायालयीन कार्यवाहीच्या अंतिम निर्णयाच्या अधिन संबंधित अधिकारी/कर्मचाऱ्यास तदर्थ पदोन्नती देणे आवश्यक आहे, असे सक्षम प्राधिकाऱ्याचे मत झाल्यास मोहोरबंद पाकिट उघडण्यात येवू नये. विभागीय पदोन्नती समितीची बैठक बोलावून संबंधित अधिकारी / कर्मचाऱ्याची पात्रता/अपात्रता नव्याने तपासावी. पुन्हा नव्याने पात्रता तपासल्यानंतर संबंधित अधिकारी/कर्मचारी पदोन्नतीसाठी पात्र ठरल्यास, त्यांना ११ महिन्यांसाठी किंवा विभागीय चौकशी/न्यायालयीन कार्यवाही अंतिम होईल यापैकी जे अगोदर होईल तेवढ्या कालावधीसाठी खालील अटीच्या अधीन राहून निव्वळ तदर्थ पदोन्नती देण्यात यावी. खालील अटी व शर्ती तदर्थ पदोन्नतीच्या आदेशामध्ये सुस्पष्टपणे नमूद कराव्यात:-

i) शिस्तभंगविषयक/न्यायालयीन कार्यवाहीच्या अधिन दिली जाणारी तदर्थ पदोन्नती केवळ तात्पुरती असेल व या तदर्थ पदोन्नतीमुळे नियमितपणाचे व ज्येष्ठतेचे कोणतेही लाभ अशा अधिकारी/कर्मचाऱ्यांना मिळणार नाहीत

ii) ही तदर्थ पदोन्नती "पुढील आदेशापर्यंत असेल". तसेच कोणत्याही वेळी दिलेली तदर्थ पदोन्नती रद्द करून मूळ पदावर पदावनत करण्याचा हक्क शासन राखून ठेवीत आहे."

16. In view of the above, the Original Application is disposed of with directions to the Respondent, including Appointing Authority to consider the case of the Applicant for promotion to the post of Electrical Inspector (Group-A Gazetted) as per the conditions laid down in the Paras 5, 9 & 11 of G.A.D G.R dated 15.12.2017 and take appropriate decision within two months from the date of this order.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 19.09.2024
Dictation taken by : A.K. Nair.