

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 596 OF 2024**

DISTRICT : THANE

Maheendra Nath Nerlekar)	
Sr. Inspector of Police, Thane,)	
Control Room, Thane.)	
R/o: Harjma C.H.S, 2 nd floor,)	
Sector-III, Panvel.)	...Applicant

Versus

1.	The Government of Maharashtra)	
	Through Addl. Chief Secretary,)	
	Home Department, Mantralaya,)	
	Mumbai 400 032.)	
2.	The Director General of Police,)	
	Having office at Old Council Hall,)	
	Colaba, Mumbai 400 001.)	
3.	The Govt. of Maharashtra,)	
	Through the Principal Secretary,)	
	(Services), G.A.D,)	
	Mantralaya, Mumbai 400 032.)	...Respondents

Shri M.D Lonkar, learned advocate for the Applicant.

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

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Shri Debashish Chakrabarty (Member) (A)

DATE : 20.08.2024

JUDGMENT

1. The Applicant prays to hold and declare that denial of promotion to the cadre of Deputy Superintendent of Police/Assistant Commissioner of Police is unconstitutional, illegal and bad in law and appropriate directions be given to the Respondents to open the Sealed Cover and grant him all consequential service benefits including promotion.

2. Learned Counsel for the Applicant has submitted that the Applicant is facing prosecution in C.R No. 56/2014 for the offences punishable under Section 7, 13(1)(d), 13(2) of the Prevention of Corruption Act read with Section 384, 166, 201, 506 and 34 of IPC. The Special Case No. 3/2017 is still pending before the Special Judge, Greater Mumbai.

3. Learned Counsel submitted that the Departmental Enquiry which was initiated against the Applicant earlier was dropped by the Respondents and by Order dated 25.3.2022, and the Suspension Period from 6.8.2014 to 18.7.2017 was also regularized and treated as duty period for all purposes.

4. Learned Counsel has submitted that the Applicant became due for promotion and entered into the zone of consideration in the D.P.C meeting for the year 2020-21, which was held on 3.8.2021 and on account of pendency of the Criminal Case against him, his case was kept in Sealed Cover in view of the provisions of G.R dated 15.12.2017, which is based on the ratio laid down by the Hon'ble Supreme Court in Union of India & Ors Vs. K.V Jankiraman & Ors, AIR 1991 SC 2010.

5. Learned Counsel further submitted that thereafter by circulation DPC meeting for the year 2021-22, Part-I was conducted in May 2022 and Part-II was conducted on 19.8.2022. The case of Applicant was again kept in Sealed Cover and it was to be opened only after two years after the date of the meeting of D.P.C, when his case was kept in Sealed Cover.

6. Learned Counsel emphasized that the case of the Applicant was thus required to be reviewed after two years from the date when his case was first kept in Sealed Cover on 3.8.2021. So the case of the Applicant for promotion to the post of Deputy Superintendent of Police/Assistant Commissioner of Police was required to be considered after 3.8.2023. Learned counsel for the Applicant has pointed out and relied on Clauses 9, 10 and 11 of the G.R dated 15.12.2017.

7. Learned Counsel has further submitted that the Respondents did not act immediately and efficiently when the Applicant's case was due for review on 3.8.2023.

8. Learned Counsel has further submitted that as per Clause 9 of the said G.R, the Respondent, i.e., the Competent Authority is required to consider the points mentioned at Sub Clause (a) to (g) of Clause 9.

9. Learned C.P.O while opposing the Original Application has submitted that after the D.P.C meeting held in May, 2022, the case of the Applicant was reviewed by the Competent Authority only in June, 2024 and the Competent Authority took conscious decision not to promote the Applicant for the reason that hardly less than One Year time was available to the Applicant till his retirement due

on 31.8.2024, and therefore, his case falls under Sub-Clause (g) of Clause 9 of the G.R dated 15.12.2017.

10. Learned C.P.O further submitted that Sub-Clause (g) of Clause 9 of the G.R dated 15.12.2017 place bar to consider the case of those Government Servants or who are otherwise eligible for promotion, but they have less than one year to retire after getting promotion.

11. Learned C.P.O placed on record copy of the 'Note' dated 24.6.2024 of Respondents submitted to the Competent Authority for reviewing the case of the Applicant in June, 2024 and showing why and how the Competent Authority has refused or denied promotion to the Applicant.

12. The crucial point in this Original Application is that the Applicant is going to retire on superannuation on 31.8.2024 and therefore, the learned counsel for the Applicant has prayed for its expeditious hearing. Admittedly, the case of the Applicant was ready for review on 3.8.2023 as per Clause 9 of G.R dated 15.12.2017. The Applicant is due for retirement on superannuation on 31.8.2024 and therefore when his case was due for review on 3.8.2023, there were nearly more than 3 weeks available to the Respondents to expeditiously consider the case of the Applicant for promotion by precluding Clause (g) and deciding on merit as per other Sub Clauses (a) to (f) which all relate to the nature and status of Criminal Case and Departmental Enquiry. In such cases, where there is a Criminal Case pending against any Government Servant for a long time and ultimately that result in acquittal, then the concerned Government Servant suffers irreparable loss and therefore in the landmark judgment in the case of K.V Jankiraman (supra), the Hon'ble Supreme Court has

given certain guidelines. The Government of Maharashtra has rightly by adopted the same by issuing G.R dated 15.12.2017. In case of such Government Servants who are due for promotion the discretion is given to the Competent Authority under Clause 9 to consider the points mentioned in Sub Clauses (a) to (g) of the said G.R dated 15.12.2017. The Competent Authority had to expeditiously consider the case of the Applicant by applying the yardsticks of Sub-Clause (a) to (g) of Clause 9 of the said G.R dated 15.12.2017 and take conscious decision whether the Applicant is entitled to get 'ad hoc' promotion to cadre of Deputy Superintendent of Police/Assistant Commissioner of Police.

13. We reproduce Clause 9, 10 and 11 of the G.R dated 15.12.2017.

“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 संबंधीत 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)

१०) एकाच शिस्तभंगविषयक कार्यवाहीत गट अ, ब आणि क या निरनिराळ्या गटातील अधिकारी व कर्मचारी गुंतलेले असल्यास, अशा शिस्तभंगविषयक प्रकरणात जो सर्वोच्च अधिकारी असेल

त्यांना तदर्थ पदोन्नती देण्यास जो सक्षम प्राधिकारी असेल तोच प्राधिकारी अशा प्रकरणातील इतर कर्मचाऱ्यांच्या बाबतीतही निर्णय घेण्यास सक्षम प्राधिकारी असेल.

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."

14. We also reproduce the observations of the 'D.P.C' held from 2020-21 to 2023-24 in respect of the cases of Applicant as under:-

2020-21	03.08.2021	"सोबतच्या मोहोरबंद पाकीटात"	श्री. महेंद्र नाथा नेर्लेकर यांचेविरुद्ध लाचलुचपत प्रतिबंधक विभाग, बृहन्मुंबई येथे गुरनं.५६/२०१४ भ्रष्टाचार प्रतिबंधक अधिनियम १९८८ चे कलम ७,१३(१) (ड) सह १३(२) सह भारतीय दंड विधान कलम ३८४, १६६, २०१, ५०६, ३४ अन्वये गुन्हा दाखल करण्यात आला आहे. उक्त गुन्हाच्या अनुषंगाने पोलीस निरीक्षक नेर्लेकर यांचेविरुद्ध विशेष सत्र न्यायालय, मुंबई येथे दि.२०.०१.२०१७ रोजी दोषारोपपत्र सादर करण्यात आले आहे. उक्त विशेष खटला क्र.०३/२०१७ न्यायाप्रविष्ट आहे. पोलीस आयुक्त, मुंबई यांचे आदेश दिनांक १५.०७.२०१७ अन्वये श्री. नेर्लेकर यांना पुनःस्थापित करण्यात आले आहे. सदर गुन्हाच्या न्यायनिर्णयाच्या अधिन राहून सदर प्रकरणाची विभागीय चौकशी बंद करण्यात आली आहे.
2021-22, PART-1	By Circulation (May, 2022)	"सोबतच्या मोहोरबंद पाकीटात"	
2021-22, PART-2	19.08.2022	"सोबतच्या मोहोरबंद पाकीटात"	
Review of Sealed cover cases in Select List 2020-21	21.02.2023	निरंक	
2022-23, PART-1	By Circulation (June, 2023)	"सोबतच्या मोहोरबंद पाकीटात"	
2023-24	31.05.2024	"सोबतच्या मोहोरबंद पाकीटात"	

15. After going through the Note dated 24.6.2024 of Respondents with regard to the reviewing the case of the Applicant for promotion, it

appears that the Competent Authority found that the case of the Applicant cannot be considered only for one reason, i.e., Clause 9(g) of the G.R dated 15.12.2017, that less than One Year period is left over for the retirement of the Applicant if at all Applicant is given promotion to the post of Deputy Superintendent of Police/Assistant Commissioner of Police. Thus, we understand that while taking conscious decision on 24.6.2024, the Competent Authority has found that Sub Clause (a) to (f) are not applicable in the case of the Applicant otherwise the Competent Authority would have definitely quoted the reasoning as the G.R dated 15.12.2017 is explicitly clear. If other grounds in Sub Clauses (a) to (f) would have been mentioned in this Note dated 24.6.2024 which was approved by the Competent Authority on 24.6.2024 for denying 'ad hoc' promotion to the Applicant, then we would have considered the case of the Applicant in a different manner. However, as the only ground considered is Sub Clause 9(g) of the G.R dated 15.12.2017, we are of the opinion that when the case of the Applicant was due for expeditious review, on 3.8.2023, and sufficient time of more than three weeks was then available to the Competent Authority to take comprehensive review based on Sub Clauses (a) to (f) which all relate to the nature and status of Criminal Case and Departmental Enquiry, the Competent Authority ought to have considered the case of the Applicant at that time only. There is unexplainable delay on the part of the Respondents. No specific reason is given as to why the case of Applicant was not considered expeditiously for promotion to the cadre of Deputy Superintendent of Police/Assistant Commissioner of Police during the period 3.8.2023 to 31.8.2023. We find that this omission is completely arbitrary and lethargic on part of Respondents. Therefore, we are of the view that as the Competent Authority has already reviewed and made up the mind under the said Sub Clause (g) of G.R dated 15.12.2017, it is not tenable in view of the unexplained delay caused by the Respondents. Further, in view of the limited time

available to the Applicant as he is retiring on 31.8.2024, we pass the following order.

ORDER

8. We allow the Original Application with following directions:-

(a) The Respondents are directed to conduct the D.P.C meeting as per Clause 11 of the G.R dated 15.12.2017 and consider the case of the Applicant for promotion to the post of Deputy Superintendent of Police/Assistant Commissioner of Police on or before 26.8.2024.

(b) If the applicant is found eligible, then necessary promotion orders of Applicant to the post of Deputy Superintendent of Police/Assistant Commissioner of Police be issued on or before 28.8.2024.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 20.08.2024
Dictation taken by : A.K. Nair.