

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 830 OF 2017

DISTRICT : MUMBAI

Shri Santosh Dnyaneshwar Bhandare,)
Occ – Serving as Sr P.I, Bangurnagar)
Police Station, Mumbai.)
R/at : 4/9, Dadar Police Quarters,)
Dadar [W], Mumbai 400 028.)**...Applicant**

Versus

1. The State of Maharashtra)
 Through the Addl. Chief Secretary,)
 Home Department, Mantralaya,)
 Mumbai 400 032.)
2. The Director General of Police,)
 State of Maharashtra,)
 Having office at Old Council Hall,)
 Maharashtra State Police Head)
 Quarters, S.B.S Marg, Colaba,)
 Mumbai.)
3. The Commissioner of Police,)
 C.P Office, Crawford Market,)
 Mumbai.)**...Respondents**

Shri Kailash Jadhav, learned advocate for the Applicant.

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

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

DATE : 19.04.2024

JUDGMENT

1. Applicant prays that this Tribunal be pleased to direct the Respondents to consider and promote the applicant in accordance with his seniority in view of the policy of the Respondents vide Circular dated 2nd April, 1976 and G.R dated 22nd April, 1996 as the applicant has already given an undertaking in accordance therewith.

2. Learned Counsel has submitted that Applicant belongs to Special Backward Class. He relied on paragraph 10 of the affidavit-in-reply dated 27.02.2018 filed on behalf of Respondent no.1. Pursuant to query made by the Tribunal as to why Applicant was not given promotion, Respondent-State filed affidavit-in-reply dated 05.04.2024 through Mr. Swapnil Bodse, Under Secretary, Home Department. As per affidavit, Respondent did not consider the case of the Applicant in D.P.C. held on 29.05.2017 of the year 2016-2017 for the reason that Applicant was undergoing punishment. Learned Counsel has submitted that Applicant was never asked Caste Validity Certificate.

3. By Circular dated 02.04.1976 policy of promotion of Government Servants facing D.E. was considered. Relevant portion is quoted below

“4. On conclusion of the investigation and/or departmental enquiry:-

(a) *If a person is completely exonerated the following consequences should follow :*

(i) *If he was previously promoted, his provisional promotion should be treated as regular.*

(ii) *If such a person had become due for promotion but was not promoted, he should be promoted at the first opportunity. He should retain the seniority of his position in the select list. His pay should also be fixed at a stage which he would have reached had he been actually promoted according to his rank in the select list, but he should not be entitled to any arrears of pay on this account.*

(b) *If he is not completely exonerated, then his case should be re-examine and a fresh decision should be taken as to whether, in view of the result of the investigations of enquiry, he is fit to be promoted.*

(i) *If he is not found fit in such a re-examination and if he was provisionally promoted earlier the provisional promotion should come to an end. If he was not so promoted, on further question arises.*

(ii) *If he is found fit, the competent authority should indicate his revised place in the Select List. This revised place is expected to be lower than the original provisional place in most cases because of the interest resulting from the proceedings. If such a person was already provisionally promoted earlier, he should be deemed to be promoted accordingly to his revised position in the select list and the period his earlier promotion should be treated as fortuitous. If such a person was not already promoted, he should be promoted according to his revised position in the select list and the same consequence as in clause (a) (ii) above should follow."*

4. The Applicant was working as Sr. PI when he faced three Departmental Enquiries. Respondents gave the Applicant three times the punishment of stoppage of one increment for one year. Learned Counsel has submitted that by order dated 13.04.2014 the Applicant was given penalty for misconduct, stoppage of

increment. By order dated 01.07.2015 the Applicant was given penalty of stoppage of one increment for one year which got over on 30.06.2017. Thereafter by order dated 27.10.2016, the Applicant was given same penalty of stoppage of increment which got over on 30.08.2018.

5. Learned Counsel has submitted that before filing O.A. the Applicant had already undergone the punishment which was imposed by order dated 13.04.2014. Respondent published seniority list on 04.07.2017 wherein Applicant was shown in the zone of consideration at Sr. No.8 for the promotion to the post of Assistant Commissioner of Police. Applicant was called to furnish certain information which was required for the further promotion to the post of Assistant Commissioner of Police and he has executed requisite bond for the same. On 29.07.2017 the promotion order for the post of Assistant Commissioner of Police was issued whereby 155 Police Officers were promoted. However, the name of the Applicant did not appear. In the promotion order at paragraph 2 it is stated that:-

“२. उपरोक्त अधिका-यांना विभागीय पदोन्नती समितीच्या बैठकीनंतर जर त्यांच्याविरुद्धच्या प्रलंबित / प्रस्तावित, विभागीय / संक्षिप्त / प्राथमिक चौकाशी/ न्यायालयीन कार्यवाहीच्या अनुषंगाने शिक्षा झाल्यास, सामान्य प्रशासन विभागाच्या दि.२ एप्रिल, १९७६ च्या परिपत्रकामधील तरतुदीनुसार, संबंधीत अधिकारी सदर शिक्षा पदोन्नतीच्या पदावर भोगण्यास तयार असल्याचे हमीपत्र त्यांच्याकडून घेऊनच त्यांना पदोन्नती देण्यात यावी.”

Learned Counsel has submitted that accordingly the Applicant has given undertaking that if at all the applicant is promoted to the post of Assistant Commissioner of Police, he is ready and willing to undergo punishment on the promoted post. Despite this undertaking and the executive bond given by the applicant, he was not promoted. The Applicant retired on 31.10.2018. Learned Counsel has submitted that subsequently,

the Government issued G.R. dated 15.12.2017, cancelling the Circular dated 02.04.1976. Learned Counsel has submitted that pursuant to the order dated 12.06.2018, the affidavit-in-reply dated 13.07.2018 filed on behalf of Respondent No.1, Mr. Sunil Jagannathdas Porwal, Additional Chief Secretary, Home Department was filed. In the said affidavit the learned Counsel pointed out G.R. dated 15.12.2017. Learned Counsel has submitted that the Applicant should have been promoted and given the benefit of that Circular dated 02.04.1976 as the G.R. dated 15.12.2017 was not issued on 19.07.2017 when the promotion orders were issued.

6. Learned counsel for the applicant relied on the judgment of this Tribunal dated 30th April, 2019 in O.A 886/2017, Shri Suresh H. Sakharwade Vs. The State of Maharashtra. In the said case applicant was given punishment of stoppage of one increment for four years. In the said case the judgment of Rani Laxmibai Kshetriya Gramin Bank & Ors Vs. Manoj Kumar Chak, Civil Appeal No 2970-2975 of 2013 decided by Hon'ble Supreme Court on 9.4.2013, is referred wherein it was held that:-

“2. The persons who have been awarded censure entry or other minor punishments cannot be excluded from the zone of consideration for promotion”.

Learned counsel further relied on A. Raja Rathinam Vs. The Principal Chief Conservator of Forest, W.P (MD) No. 10856 of 2009 decided by Hon'ble Madras High Court on 17.11.2009. Relevant portion of the said judgment reads as under:-

“8.....

When the employee is imposed upon a punishment of stoppage of increment for two years without cumulative effect which could be construed only as a minor

punishment, he could not be denied further promotion solely based on the same, if he is otherwise fit for promotion.”

7. Learned Presenting Officer while opposing the Original Application has submitted that the case of the Applicant was considered as per the order of promotion dated 19.07.2017. Further it was found that the applicant was undergoing punishment which was imposed by stoppage of increment on 27.10.2016 and one increment was stopped on 30.07.2018. Learned P.O. has further submitted that nowhere in the minutes of the DPC meeting held on 22.03.2018 for giving promotion to the post of ACP of the year 2017-2018, the name of the Applicant was mentioned as he was not in the zone of consideration. However, it was found that he has earlier taken the benefit of reservation and he was earlier promoted and therefore as per G.R. dated 19.12.2017 the applicant was not entitled to be promoted and therefore he was not promoted and the Applicant stood retired on 31.10.2018. Learned P.O. has submitted that the Applicant was given punishment of stoppage of increment for one year in three Departmental Enquiries each consecutively and not concurrently.

8. Learned P.O. has submitted that Applicant was undergoing punishment till 30.06.2018. Applicant retired on 31.10.2018 from the post of Sr. PI. Therefore, on query learned P.O. replied whether any DPC was conducted during the period from 30.06.2018 to 31.10.2018, she replied that no DPC was conducted between that period. Learned P.O. has further submitted that Applicant has not submitted Caste Validity Certificate and therefore he was not considered for promotion.

9. Nowhere the applicant has made averments that he has produced the Caste Validity Certificate as the objection about it was taken in the D.P.C meeting. It was necessary on the part of

the applicant to make a specific averment on this point. The submissions are word against word, then who asserts positive fact have to prove its existence. Regarding Caste Validity Certificate and unless it is shown that it was produced, we cannot accept the submissions of the learned counsel for the applicant. Further, this Court while exploring the powers under judicial review cannot go investigating all the facts about the benefits of the Caste. If at all it is recorded in the D.P.C meeting and unless it is rebutted by producing some documents, we accept statement in the noting mentioned in the D.P.C meeting about the applicant taking benefits of the Caste. To be considered for promotion is a right of the Government servant. However, to get promotion is not his fundamental right. It depends on number of factors and using reservation for appointment or promotion in a particular caste is taken into account and production of Caste Validity Certificate is also to be considered as one of the factors to decide whether the person is fit for promotion.

10. In view of the above, we find no merit in the Original Application and the same stands dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 19.04.2024
Dictation taken by : A.K. Nair.