

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.157 OF 2019

DISTRICT : THANE

Shri Pandharinath B. Dandkar.)
Age : Adult, Working as Senior Clerk in the)
Office of belownamed Respondent No.2,)
R/o. Shahapur, District : Thane.) **...Applicant**

Versus

1. The Divisional Joint Registrar)
Co-op. Societies, Konkan Division,)
Navi Mumbai, having Office at)
Konkan Bhawan, Navi Mumbai - 14.)
2. The District Registrar.)
Co-operative Societies, Thane.)
3. The District Registrar.)
Co-op. Societies, Alibaug,)
District : Raigad.) **...Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 04.10.2019

11/10/19

JUDGMENT

1. Applicant has challenged the impugned communication dated 02.02.2019 whereby his representation for posting on promotion already granted to him has been rejected on the ground of pendency of subsequent criminal prosecution invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.
2. In nutshell, the facts giving rise to this application are as under:-

The Applicant has joined the service on the post of Junior Clerk on 07.01.2004. Later, he was promoted to the post of Senior Clerk on 18.11.2010. While he was serving as Senior Clerk in the office of District Deputy Registrar, Co-operative Societies, Thane, he was promoted to the post of Accountant and posted in the office of District Deputy Registrar, Co-operative Societies, Raigad by order dated 07.02.2014. In terms of promotion, he was to be relieved for joining the promotional post. Accordingly, he submitted letter on 10.02.2014 for issuing relieving order. However, he was not relieved and was continued on the same post. Later, crime under the provisions of Prevention of Corruption Act was registered against him on 03.06.2014 and consequent to it, by order dated 09.06.2014, he was placed under suspension. Later, by order dated 03.09.2016, his suspension was revoked and he was reinstated on the post of Senior Clerk in the Office of District Deputy Registrar, Co-operative Societies, Raigad. The Applicant then made various representations for giving him posting on promotion on the post of Accountant in terms of his promotion order dated 07.02.2014, but in vain. As such, his joining on the promotional post was kept in abeyance for a period of five years. Ultimately, the Respondent No.1 – Divisional Joint Registrar, Co-operative Societies, Konkan Division by his order dated 02.02.2019 informed to the Applicant that in view of registration of

crime and pendency of Criminal Case under the provisions of Prevention of Corruption Act against him, the decision to post him on promotional post is kept in sealed packet envelope in terms of G.Rs. dated 15.12.2017 and 30.08.2018. The Applicant has challenged this communication in the present O.A. contending that the same is unsustainable in law and facts and prayed for direction of posting on promotional post.

3. The Respondents resisted the application by filing Affidavit-in-reply *inter-alia* denying the entitlement of the Applicant to the posting on promotional post. It is not in dispute that, in terms of order dated 07.02.2014, the Applicant was promoted to the post of Accountant and was posted at Raigad. It is a matter of fact that despite order of promotion, he was not relieved and continued on the same post. It is also not in dispute that later, he was suspended in view of registration of crime against him under the provisions of Prevention of Corruption Act and later, the suspension was revoked and he was reinstated in service. The Respondents contend that in view of registration of crime and pendency of Criminal Case against him, the Departmental Promotion Committee (DPC) considered him ineligible for posting on the promotional post and the decision taken by DPC was kept in sealed envelope in terms of G.Rs. dated 15.12.2017 and 30.08.2018. The Respondents further contend that the Applicant has approached this Tribunal belatedly for seeking implementation of promotion order dated 07.02.2014. With this pleading, the Respondents prayed to dismiss the O.A.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant submits that once the Applicant was found suitable, eligible and promoted by issuing Office Order dated 07.02.2014, for no reason he was kept on the same post despite his representation to relieve him, so as to join promotional post of Accountant. As regard registration of crime and pendency of Criminal Case under the provisions of

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Prevention of Corruption Act, he submits that it is subsequent event and on that ground, the Applicant cannot be deprived of the benefits of promotion which is already given to him by order dated 07.02.2014. He, therefore, submits that this action of Respondents is totally unsustainable in law, as it amounts to inflicting punishment of reversion. On this line of submission, he prayed to set aside the impugned order and to issue direction to the Respondents to get him joined on promotional post.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer sought to contend that in view of registration of crime under the provisions of Prevention of Corruption Act and pendency of Criminal case, the Applicant was not given posting and DPC in its meeting decided to keep the matter pending till the decision of Criminal Case by adopting procedure of sealed envelope and prayed to dismiss the O.A.

6. In view of submissions advanced at the Bar, in the facts and circumstances of the case, short issue posed for consideration is whether the Applicant can be deprived of posting on promotion, which his already granted to him due to subsequent registration of crime under the Prevention of Corruption Act against him.

7. The following factors are undisputed :-

07.02.2014

Applicant was promoted from the post of Senior Clerk to the post of Accountant and was posted in the office of District Deputy Registrar, Co-operative Societies, Raigad (Page No.13).

10.02.2014

Applicant made an application to relieve him, so as to join the promotional post at Raigad (Page No.15).

- 09.06.2014 Applicant was suspended invoking Rule 4(1)(c) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 in view of registration of crime under the provisions of Prevention of Corruption Act (Page No.16).
- 03.09.2016 Applicant's suspension was revoked and he was reinstated in service and posted as Senior Clerk in the office of District Deputy Registrar, Co-operative Societies, Raigad (Page No.17).
- 27.02.2018 Applicant made representation for posting on promotional post on the ground that he is kept without posting for four years and there is no progress in Criminal Case (Page No.19).
- 14.01.2019 Applicant made representation for posting on promotional post on the ground that he is kept without posting for four years and there is no progress in Criminal Case (Page No.22).

8. Thus, the present case is arising from very peculiar circumstances, as even after promotion due to registration of crime, the Applicant was not given posting on promotional post and for the period of four years, no decision is taken to post him on promotional post. In so far as the stand taken by the Respondents that the DPC decided not to give him posting in view of registration of crime against him in terms of G.R. referred to above is concerned, it is not at all applicable to the present situation for the simple reason that, in 2014 itself, the DPC found Applicant fit and eligible for promotional post of Accountant. The procedure contemplated in G.R. dated 15.12.2017 and 30.08.2018 is required to be adopted where the Government servant is in the zone of consideration but facing the D.E. on criminal case or under suspension. It is in that situation, the DPC needs to adopt the procedure of sealed cover envelope. Whereas, in the present case, the Applicant was already promoted and what remains was the posting on promotional post. This being the factual position, the question of again assessing eligibility of the Applicant for promotional post does not survive. The Applicant had made representation to

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relieve him so as to join promotional post, but he was not relieved and thereafter crime under provisions of Prevention of Corruption Act was registered against him. As such, the registration of crime is subsequent event.

9. Thus, once the employee is found suitable and fit for promotion and the order of promotion is also issued, then his fate cannot be kept in abeyance for such long period of four years, which amounts to deprivation of benefits of promotional post.

10. When the Tribunal has raised specific query about the initiation of D.E. and Criminal Prosecution, the learned P.O. on instructions submits that the D.E. is already concluded, but Department has not taken final decision in D.E. because of pendency of Criminal Case. The Criminal Case may take its own time for decision on merit and in the present facts and situation, in my opinion, the Applicant cannot be deprived of posting on promotional post.

11. As stated above, it is because of non-relieving of the Applicant by the Department, he could not join the promotional post and subsequently offence under Prevention of Corruption Act was registered against him. Suppose, if the Applicant was relieved and had joined the promotional post and thereafter found involved in Criminal Case, in that situation, the Applicant at once would not have been held disentitled to continue on the promotional post and the Department was required to proceed in accordance to law by initiating D.E. and to take the matter to the logical conclusion. As such viewed from this analogy, the impugned action for not permitting the Applicant to join promotional post is unsustainable in law and facts. If the impugned action is considered acceptable, then in effect, it may amount to equivalent to the punishment of reversion from the post of Accountant to the post of Senior Clerk without passing final order in

D.E. Suffice to say, the course of action adopted by the Respondents is impermissible in law.

12. Shri A.V. Bandiwadekar, learned Advocate for the Applicant placed reliance on the Judgment of Hon'ble Bombay High Court in **2016(1) Mh.L.J. 827 (Prabhakar Rangari Vs. Hon'ble Minister of Industries)**, wherein the Hon'ble High Court held that the pendency of D.E. proceedings for years together amount to act of arbitrariness and denial of legitimate right of a person to seek promotion and action of Department to deny promotion only on the basis that the D.E. is pending against him is held unjust and directions were issued to promote the Petitioner therein subject to outcome of D.E. Indeed, in the present case, the Applicant is already promoted in 2014, but deprived of getting promotional posting due to registration of crime subsequent to the issuance of promotion order. As such, in the present case, the Applicant is rather on better footing and cannot be deprived of posting on promotion.

13. Having found that the Applicant cannot be deprived of posting on promotion, the learned P.O. was asked to take instruction from the Department about the vacancy position of the promotional post. The learned P.O. on instructions stated that there will be vacancy of promotional post by the end of October, 2019 and the Applicant can be posted against that vacancy if the Applicant is held entitled for posting by the Tribunal. As such, in view of statement made by the learned P.O, there is no need to disturb other promotions effected in between 2014 till date and in view of future vacancy, the Applicant can be posted on promotional post at the end of October, 2019.

14. For the aforesaid reasons, I have no hesitation to sum-up that the impugned action of not implementing promotion order of the Applicant is not sustainable in law and the Applicant is required to be given posting having cleared by DPC in 2014 itself. Subsequent

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registration of crime cannot be a ground to deprive him of the promotional post. Needless to mention that the Department is at liberty to conclude the D.E. and to take further action as permissible in law.

15. The totality of aforesaid discussion leads me to conclude that the impugned communication dated 02.02.2019 is unsustainable in law and facts. The Applicant is required to be posted on promotional post. However, the Respondents are at liberty to post him on suitable non-executive post, if so think appropriate. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned communication dated 02.02.2019 is hereby quashed and set aside.
- (C) The Respondents are directed to implement promotion order dated 07.02.2014 by giving suitable promotional posting to him.
- (D) The Respondents are at liberty to post him on suitable non-executive post, if so think appropriate within a month from today.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 04.10.2019
Dictation taken by :
S.K. Wamanse.