

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No.1292 of 2023 (D.B.)

Manohar Manikrao Anchule,
aged about 52 years,
Occupation: Service (Superintendent- Excise),
R/o Bamleshwari Apartment, Flat No. 101, Near RTO Office,
Gondia.

Applicant.

Versus

- 1) The State of Maharashtra,
through it's Additional Chief Secretary,
Department of State Excise, Mantralaya, Mumbai-32.
- 2) The Commissioner of State Excise,
Old Custom House, Shahid Bhagatsing Marg,
Fort, Mumbai- 23.

Respondents.

Shri S.N. Gaikwad, Advocate for the applicant.

Shri S.A. Sainis, learned P.O. for the respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 16/04/2024.

JUDGMENT

Heard Shri S.N. Gaikwad, learned counsel for the applicant and Shri S.A. Sainis, learned P.O. for the respondents.

2. The regular Division Bench is not available. The Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai issued Circular No.MAT/MUM/JUD/469/2023, dated 24/04/2023. As per the direction of Hon'ble Chairperson, if both the parties have consented for final

disposal, then regular matter pending before the Division Bench can be disposed off finally.

3. As per the M.A.T., Principal Bench, Mumbai office order / letter No.MAT/MUM/JUD/1350/2023, dated 21/11/2023, the Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai has given direction to this Tribunal to decide the Division Bench matters if the matter is covered by the Judgments of Hon'ble Supreme Court, Hon'ble High Court and the Benches of the M.A.T. etc. Hence, the matter is heard and decided finally with the consent of learned counsel for both the parties.

4. The case of the applicant in short is as under –

The applicant was appointed on the post of Deputy Superintendent of State Excise through M.P.S.C. The applicant joined on the said post on 01/11/2000. Thereafter, the applicant was promoted and posted as Superintendent on 14/09/2004. He was posted at Nanded. Since then the applicant performed his duty with utmost satisfactorily. Now the applicant is posted at Gondia as Superintendent of State Excise. As per the seniority published by respondent no.1, dated 07/04/2022, the name of applicant is at Sr.No.10 and he is the senior-most person in the Superintendent (Group-A) Cadre. The respondent no.1 has started the process for

granting promotion from the cadre of Superintendent to the post of Divisional Deputy Commissioner of State Excise.

5. The applicant has made representation, but it is not considered by the respondents. Hence, the applicant approached to this Tribunal for direction to the respondents to promote him as per the seniority.

6. The O.A. is strongly opposed by the respondents by filing reply. In the reply, it is submitted that the applicant was arrested for the offence punishable under the Prevention of Corruption Act. The applicant is also facing departmental enquiry, therefore, the applicant is not promoted. The name of applicant is considered in the departmental enquiry and result is kept in sealed envelope. Hence, the O.A. is liable to be dismissed.

7. During the course of submission the learned counsel for the applicant has submitted that this O.A. is covered by the Judgments of the Hon'ble Supreme Court in the case of ***Union of India Vs. K.V.Jankiraman and Others reported in (1991) 4 SCC 109***, decided on 27.08.1991 and in the case of ***Union of India And Others Vs. Anil Kumar Sarkar (2013) 4 SCC 161***, decided on 15.03.2013. He has also pointed out the Judgment of this Tribunal in O.A.No.1126/2022 and submitted that this O.A. is covered by the Judgments.

8. The learned counsel for the applicant has submitted that the applicant is entitled for promotion subject to the result of the departmental enquiry / criminal case. Hence, prayed to allow the O.A.

9. Heard learned P.O. As per his submission the applicant is facing criminal trial for the offence punishable under the Prevention of Corruption Act. The applicant is also facing the departmental enquiry and therefore he is not promoted.

10. There is no dispute that the applicant was / is due for promotion. His name was considered in the DPC meeting dated 29/08/2023, but the applicant is not promoted on the ground that he is facing criminal trial and departmental enquiry.

11. The Hon'ble Supreme Court in the case of the **Union of India Vs. K.V.Jankiraman and Others** (*cited supra*) and in the case of the **Union of India And Others Vs. Anil Kumar Sarkar** (*cited supra*) has held that the promotion cannot be denied on the ground of pendency of criminal case or departmental enquiry. The promotion can be granted subject to the decision of the departmental enquiry or criminal case. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to promote the applicant on temporary basis subject to outcome of the pending departmental

enquiry and criminal case, if the applicant is eligible / entitled for promotion.

(iii) The respondents are directed to give deemed date of promotion to the applicant on which his juniors are promoted.

(iv) No order as to costs.

Dated :- 16/04/2024.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 16/04/2024.