

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.943 OF 2017**

**DISTRICT : PUNE**

Shri Prakash Ratilal Shah, )  
Age 56 years, Police Inspector, Shivaji Nagar )  
(Court Security), Pune-5, )  
R/o 23/24 Ganesh Pooja Apt., Bibvewadi, Behind )  
Mahaveer Electronics, Pune -37 )..Applicant

Versus

1. The State of Maharashtra, )  
Through Principal Secretary, )  
Home Department, Mantralaya, Mumbai )
2. The Director General and Inspector General of )  
Police Old Council Hall, S.B. Marg, Mumbai-39 )..Respondents

Shri A.V. Bandiwadekar – Advocate for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Shri Justice A.H. Joshi, Chairman  
Shri P.N. Dixit, Member (A)  
RESERVED ON : 25<sup>th</sup> April, 2019  
PRONOUNCED ON : 8<sup>th</sup> May, 2019  
PER : Shri Justice A.H. Joshi, Chairman

### **J U D G M E N T**

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

**Facts of the case:**

2. The Applicant is working as Police Inspector. In view of minor penalties imposed on him, the Respondents considered his case in the meeting of the Departmental Promotion Committee (DPC), he was however, denied the promotion and his juniors were promoted. He has, therefore, prayed that the Respondents may be directed to reconsider his case for promotion to the rank of Deputy Superintendent of Police and grant him the deemed date w.e.f. 9.6.2015.

3. The Applicant is undergoing following punishments:

<b>Sr. No.</b>	<b>Duration of punishment</b>	<b>Punishment order date</b>	<b>Punishment start from</b>	<b>Completed on</b>
1	Stoppage of increment for a period of one year	3.11.2014	1.7.2015	30.6.2016
2	Stoppage of increment for a period of one year	2.6.2015	1.7.2016	30.6.2017
3	Reduction of pay by Rs.3000/- p.m. for one year	8.2.2018	1.3.2018	28.2.2019
4	Stoppage of increment till his retirement (i.e. 31.5.2019)	20.2.2018	1.7.2018	31.5.2019

4. According to the Applicant for the lapses committed by him in the year 2012-13 in Pune City, he was served with a show cause notice on 20.3.2014 and punishment imposed on 3.11.2014.

5. In the second Departmental Enquiry (DE) initiated on 26.11.2014 for his misconduct in the year 2012, the Applicant submitted his final written statement on 2.5.2016. In summary enquiry, the Commissioner of Police passed the order of punishment on 2.6.2015.

6. By order dated 9.6.2015, in which juniors to him were promoted, the Applicant was not granted promotion.

7. In the present OA Applicant attributes the denial to the two minor penalties and two DEs pending against him.

8. The Applicant has raised the issue namely, "whether the aforesaid circumstances were sufficient for the Respondents to deny him promotion despite giving undertaking on 3.7.2017 to undergo the punishment in the promotional post." (para 6.12 page 9 of OA).

9. The grounds raised by the Applicant in support of his claim are summarized as under:

- (i) *At the time of preparation of the select list for the year 2013-14 the Applicant was found eligible for promotion and the order of promotion was issued on 9.6.2015. Till then a minor penalty was not imposed on him and thus he was not undergoing any punishment on the date of promotion viz. 9.6.2015.*
- (ii) *As such denying him promotion was improper and illegal as per the GR dated 2.4.1976.*

- (iii) *The punishment inflicted on the Applicant came to an end on 30.6.2017 and thus he was eligible to be considered for promotion in the order issued on 27.7.2017. His omission in the said order is illegal.*
- (iv) *The DE against the Applicant was pending for more than two and half years. Pendency of the DE at the level of Respondents cannot be a ground to deny him promotion due to him.*
- (v) *In both the DEs the concerned authority did not obtain extension of time to complete the DE beyond the initial period mentioned in the DE charge sheet. In both the DEs against the Applicant the charges pertain to negligence/slack supervision. The Applicant is of the opinion that this could not be the reason not to promote him.*
- (vi) *By 30.6.2016 and 30.6.2017, the Applicant had undergone minor penalties and thus there was no impediment in promoting him.*
- (vii) *The Applicant mentions that there was discrimination against him as the Respondents promoted junior colleagues in the order on 1.10.2016 and 16.4.2017 when DEs were pending against them. The order while promoting them mentioned that subject to undertaking to be given by them to undergo the punishment in the promotional post, they should be relieved. The Applicant mentions that the action of the Respondents is malafide, illegal, arbitrary and issued with bias and prejudice.*

10. The Applicant has relied on following judgments:

*“6.26] That the aforesaid action of the Respondent No. 1 to deny promotion to the Petitioner is ex-facie, illegal and bad in law and as such contrary to the decision of the Hon’ble Apex Court rendered in Civil Appeal No. 6150 of 2013, decided on 30.7.2013 [EXHIBIT-Q], so also the decision dated 9.4.2013 rendered in Civil Appeal No. 2970-2975 of 2013 [EXHIBIT-R] and the decision of the Hon’ble Tribunal dated 8.9.2010 rendered in O.A. No. 689 of 2010 [EXHIBIT-S]. The decision of Hon’ble Gujarat High Court at Ahmadabad Bench in Special Civil Application No. 7315 of 2005 rendered on 01/03/2016. Also the decision of Hon’ble Central Administrative Tribunal, Delhi O.A. No. 4215/2014 rendered on 01/10/2015.*

- 6.27] *That the ratio of law laid down in the aforesaid Hon'ble Apex Court and the Hon'ble High Court decisions is to the effect that the imposition of a minor penalty cannot be a bar in granting promotion to the Government servant which is due to him in accordance with the Rules applicable to him. The Hon'ble Apex court in its decision dated 9.4.2013 also held in para 36 that "to debar a candidate, to be considered for promotion, on the basis of punishment or unsatisfactory record would require the necessary provisions in service Rules". There is no such statutory provision under the Maharashtra Police Act, 1951 and the Rules of 1956 framed there under.*
- 6.28] *That in the aforesaid decision in Civil Appeal No. 2970-2975 of 2013, the Hon'ble Apex Court has crystallized the ratio of law which is contained in para 40 thereof stating that in the absence of imposition of penalty upon the employee in the form of withholding of promotion or reduction in rank and where the employee is imposed with the punishment of withholding of increments, that such an employee cannot be debarred from being considered for promotion, otherwise it would tantamount to also inflicting upon such employee the punishment of withholding of promotion.*
- 6.29] *That according to the Petitioner, the aforesaid ratio of law laid down by the Hon'ble Apex Court is squarely applicable to his case and therefore, denial of promotion to him to the post of Deputy Superintendent of Police / Assistant Commissioner of Police to him would amount to double punishment, namely, [a] the aforesaid two minor penalties of withholding of next increment for the period of one year and [b] withholding of promotion for last 3 years. This is clearly contrary to Rule 3 the Maharashtra Police [Punishment and Appeals] Rules, 1956.*
- 6.30] *That stoppage of one increment for particular period debars / deprives the employee from financial benefit of said increment which is otherwise liable to be added in his pay scale on account of accrual of such increment. If two increments of an employee have been stopped, such employee will not get the financial benefits thereof which may be otherwise admissible to him in his pay scale.*
- 6.31] *Thus, the legal impact and effect of stoppage of 2 annual increments would be merely that the employee or officer would suffer loss in payment of his salary to the extent of denial of two increments which*

*would be otherwise admissible to him but for the said punishment he has been deprived of from the said benefit of service.*

6.32] *Thus, in the service jurisprudence, the employee who has been awarded the punishment of stoppage of two increments would not lose the other benefits of service except the aforesaid financial loss in payment of salary.*

6.33] *Thus, the stoppage of two increments of the Petitioners with cumulative effect cannot deprive him from the other benefits of service including his eligibility and entitlement for promotion to the next higher post if he is otherwise eligible and entitled for such promotion. This is the view taken by the Hon'ble Allahabad High Court in Ashok Kumar Nigam V/S. The State of Uttar Pradesh & Ors., decided on 16.6.2010 in Writ-A No. 34825 of 2010 [EXHIBIT-T].*

6.34] *That in any case pendency of the Departmental Enquiry against the Government servant for no fault of his, cannot disentitle him for promotion if he otherwise suitable. That such is the view taken by the Hon'ble Bombay High Court, Aurangabad Bench in the case reported in 2016[1] Mh.L.J. 827 [EXHIBIT-U].*

6.36] *That in fact by not granting such promotion to the Petitioner, the Respondent and the concerned Departmental Promotion Committee subjected to the Petitioner to hostile and invidious discrimination which is hit by the provisions of Articles 14 and 16 of the Constitution of India which is clear from what is stated above."*

*(Quoted from page 15-20 of OA)*

11. In the affidavit in reply filed by Respondents no.1 and 2 they have pleaded as under:

"6. With reference to para 5 of the OA, I say and submit that the Applicant has sought relief for deemed date from the year 2015 but the present OA is filed in the month of October, 2017. Therefore as per Section 21 of the Administrative Tribunals Act, the OA is barred by limitation. The Applicant has not filed any Miscellaneous Application for condonation of delay therefore OA may be dismissed.

7. *With reference to para 6.1 of the OA, I say that the Applicant is undergoing following punishments:*

<b>Sr. No.</b>	<b>Duration of punishment</b>	<b>Punishment order date</b>	<b>Punishment start from</b>	<b>Completed on</b>
1	Stoppage of increment for a period of one year	3.11.2014	1.7.2015	30.6.2016
2	Stoppage of increment for a period of one year	2.6.2015	1.7.2016	30.6.2017
3	Reduction of pay by Rs.3000/- p.m. for one year	8.2.2018	1.3.2018	28.2.2019
4	Stoppage of increment till his retirement (i.e. 31.5.2019)	20.2.2018	1.7.2018	31.5.2019

- 7(i) *It is submitted that the averments made in this para is not tenable. Applicant was considered for next promotion to the post of Deputy Superintendent of Police/Assistant Commissioner of Police (Unarmed) on the DPC for the year 2013-14. The DPC meeting for this year was held on 8.10.2014. He was found fit by the DPC on the basis of ACR. However, he was awarded with a punishment of stoppage of increment for a period of one year vide order dated 3.11.2014 and its effect was started from 1.7.2015 and was thus undergoing the punishment, therefore, deemed date of promotion or actual promotion, cannot be granted.*
9. *With reference to para 6.3 of the OA, it is submitted that the averment made in this para that the Applicant's name was included in the select list 2013-14 is true but he was awarded with a punishment of stoppage of increment for a period of one year vide order dated 3.11.2014 and its effect was started from 1.7.2015 and was thus undergoing the punishment, it will not be proper to grant him promotion or deemed date of promotion.*

10. *With reference to para 6.4 of the OA, it is submitted that the averments made in this para are denied. This is because as clarified hereinabove, a conscious decision was taken not to promote the Applicant because he was undergoing punishment. The officers who were found fit for promotion were included in the select list 2013-14 and accordingly promoted vide Government order dated 9.6.2015.*
14. *With referenced to para 6.11, it is submitted that the averments made in this para are denied. This is because the Applicant was denied promotion first time because he was undergoing punishment from 1.7.2015 to 30.6.2016 as effect of order dated 3.11.2014. But there was another punishment order dated 2.6.2015 with a punishment of stoppage of increment for a period of one year and its effect was started from 1.7.2016 to 30.6.2017. As Applicant was undergoing the punishment, it will not be proper to grant promotion.*
15. *With reference to para 6.12, it is submitted that as per the guidelines given by the Hon'ble Supreme Court of India in the judgment dated 27.8.1991, in case of Union of India etc. Vs. K.V. Jankiraman etc. when an employee is held guilty and penalized and is, therefore, not promoted at least till the date on which he is penalized, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. Since the Applicant was undergoing punishment, as per the guidelines given by the Hon'ble Supreme Court of India in the judgment dated 27.8.1991, it will not be appropriate to promote the Applicant at least till the date on which he is penalized. As Applicant was undergoing punishment from 1.7.2015 to 30.6.2016 as effect of order dated 3.11.2014 and from 1.7.2016 to 30.6.2017 as effect of order dated 2.6.2015, he was not promoted. Now another order of punishment was issued on 8.2.2018 a penalty of Rs.3000/- reduction from his salary for one year imposed on him and by order dated 20.2.2018 punishment of stoppage of increment till his retirement from service was given.*
18. *With reference to para 6.15 of the OA, it is submitted that as per the Government Circular dated 2.4.1976 the procedure of interim*

*promotion is laid down, to the Government servant whose conduct is under investigation or against whom a departmental enquiry is pending. But in this matter, Applicant was undergoing punishment from 1.7.2015 to 30.6.2016 as effect of order dated 3.11.2014 and there was another punishment order dated 2.6.2015 with a punishment of stoppage of increment for a period of one year and its effect was started from 1.7.2016 to 30.6.2017. So the Applicant's statement in this para that the punishment came to an end on 30.6.2016 is denied. Again two cases of DE were pending against Applicant and the charges leveled on him were serious. So the conscious decision was taken not to promote the Applicant.*

19. *With reference to para 6.16 of the OA, it is submitted that the Applicant was undergoing the punishment while the process of promotion is being done, so decision was taken that time not to promote the Applicant because he was not only undergoing punishment but also facing DE and the charges levelled on him were serious. So the conscious decision was taken not to promote the Applicant. Final decision were taken in these DEs and issued vide order dated 8.2.2018 and 20.2.2018. By order dated 8.2.2018 a penalty of Rs.3000/- reduction from his salary for one year imposed on him and by order dated 20.2.2018 punishment of stoppage of increment till his retirement from service.*
21. *With reference to para 6.23 of the OA, it is submitted that there was a punishment order dated 2.6.2015 with a punishment of stoppage of increment for a period of one year and its effect was started from 1.7.2016 to 30.6.2017 and two cases of DE were pending against Applicant and the charges leveled on him were serious. So the conscious decision was taken and communicated to Director General of Police, MS, Mumbai on 5.2.2018 not to promote the Applicant.*
- 21.1 *So the Applicant's statement in this para that, there was no legal and valid difficulty on the part of the Respondent to promote the Applicant is denied. As Applicant was undergoing the punishment, it will not be proper to grant promotion.*
22. *With reference to para 6.24 of the OA, it is submitted that as per the Government Circular dated 2.4.1976, the procedure of interim promotion is laid down to the Government servant whose conduct is under investigation or against whom a DE is pending. It is also submitted that as per the provisions of the GR dated 22.4.1996, the*

*Government servant who is temporary promoted after taking conscious decision during the pendency of DE and if he is saddled with minor punishment, he should not be reverted to the lower post to undergo the punishment. It is further submitted that as per the guidelines given by the Hon'ble Supreme Court of India in the judgment dated 27.8.1991, in case of Union of India etc. Vs. K.V. Jankiraman etc. when an employee is held guilty and penalized and is, therefore, not promoted at least till the date on which he is penalized, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. Since the Applicant was undergoing punishment, as per the guidelines given by the Hon'ble Supreme Court of India in the judgment dated 27.8.1991, it will not be appropriate to promote the Applicant at least till the date on which he is penalized.*

23. *With reference to para 6.25 of the OA, it is submitted that the averments made by the Applicant are not tenable. It is because promotions given to the juniors of the Applicant against whom a DE is pending by taking conscious decision as has been contained in para no.3(b) of the Government circular dated 2.4.1976. In this case Applicant was found fit by the DPC but he was undergoing the punishment and as stated in the above para it will not be proper to grant promotion to the Applicant. So the Applicant's statement in this para is denied.*
24. *With reference to para 6.26 of the OA, it is submitted that in a Civil Appeal No.6150 of 2013 (arising out of SLP(C) No.520 of 2013) filed by D.H.B.V.N.L. Vidyut Nagar, Hisar and Ors. Vs. Yashvir Singh Gulia judgment issued July 30, 2013 (By K.S. Radhakrishnan, J. and Pinaki Chanera Gose, J.) case, even if a major penalty has been proposed on getting the reply from the delinquent, if the competent authority feels that no major penalty proceedings need be initiated, it can always swith over to initiate proceedings for inflicting minor penalties. – Para No.11. As this was the main grievance before the Hon'ble Apex Court and not promotion. It is true that the Hon'ble Supreme Court has held in para no.15 that learned counsel for the Respondent submits that, by virtue of the punishment imposed, he*

*has not been given his due promotion. As per the guidelines given by the Hon'ble Supreme Court of India in the judgment dated 27.8.1991, it will not be appropriate to promote the Applicant at least till the date on which he is penalized. The issue for deciding the case of Rani Laxmibai Kshetriya Gramin Vs. Manoj Kumar Chak etc. on 9.4.2013 in Civil Appeal Nos.2970-2975 of 2013 was as such that as to whether the circulars dated 30.11.2009, 12.7.2010, in so far as they make a provision to exclude the employees from consideration, who are otherwise eligible to be considered for promotion and are within the zone of consideration, on the basis that they have either obtained the Drating in the annual performance report or have been penalized for misconduct in the preceding 5 years. The Hon'ble Supreme Court has held in para 31 (pg.167 of the OA) that:*

*“the order of the Hon'ble High Court was right, by which the aforesaid circular were quashed and set aside”.*

*But it is not the case that the Applicant was excluded from being considered for promotion, he was considered and he was found fit also, but he was not given promotion as he was undergoing two punishments of stoppage of increments. On going through the order and judgment of the Hon'ble M.A.T, Mumbai on 8.9.2010 issued in OA No.689 of 2010, the Hon'ble Tribunal has held in para nos.8 and 9 of its order that:*

*“especially in the light of GR dated 22.4.1996 wil have to be allowed to undergo aforesaid minor punishment in the promotional post since he has already given the requisite undertaking to undergo the same in the promotional post.”*

*However, the said ratio is also distinguishable, as in the present case in hand, the Applicant was already undergoing two punishments of stoppage of increments, Applicant was not promoted.*

25. *With reference to para 6.27 of the OA, it is submitted that the Applicant was undergoing punishment and as per the guidelines given by the Hon'ble Supreme Court of India in the judgment dated 27.8.1991, it will not be appropriate to promote the Applicant at least till the date on which he is penalized.*
26. *With reference to para 6.28 of the OA, it is submitted that the issue for deciding the case of Rani Laxmibai Kshetriya Gramin Vs. Manoj*

*Kumar Chak etc. on 9.4.2013 in Civil Appeal Nos.2970-2975 of 2013 was as such that as to whether the circulars dated 30.11.2009, 12.7.2010, in so far as they make a provision to exclude the employees from consideration, who are otherwise eligible to be considered for promotion and are within the zone of consideration, on the basis that they have either obtained the Drating in the annual performance report or have been penalized for misconduct in the preceding 5 years. The Hon'ble Supreme Court has held in para 31 (pg.167 of the OA) that:*

*“the order of the Hon'ble High Court was right, by which the aforesaid circular were quashed and set aside”.*

*But it is not the case that the Applicant was excluded from being considered for promotion, he was considered and he was found fit also, but he was not given promotion as he was undergoing two punishments of stoppage of increments.*

27. *With reference to para 6.29 of the OA, it is submitted that in the present case the Applicant was undergoing punishment and as per the guidelines given by the Hon'ble Supreme Court of India in the judgment dated 27.8.1991, it will not be appropriate to promote the Applicant at least till the date on which he is penalized.*
29. *With reference to para 6.33 of the OA, it is submitted that as per the guidelines given by the Hon'ble Supreme Court of India in the judgment dated 27.8.1991, in case of Union of India etc. Vs. K.V. Jankiraman etc. when an employee is held guilty and penalized and is, therefore, not promoted at least till the date on which he is penalized, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. Since the Applicant was undergoing punishment, as per the guidelines given by the Hon'ble Supreme Court of India in the judgment dated 27.8.1991, he was not promoted.*
30. *With reference to para 6.34 of the OA, it is submitted that the Applicant was denied promotion not because of his pendency of DE*

*but he was undergoing punishment from 1.7.2015 to 30.6.2016 as effect of order dated 3.11.2014 and there was another punishment order dated 2.6.2015 with a punishment of stoppage of increment for a period of one year and its effect was started from 1.7.2016 to 30.6.2017.*

32. *With reference to para 6.36 of the OA, it is submitted that the averment made in this para is not tenable. Applicant was considered for the next promotion to the post of Deputy Superintendent of Police/Assistant Commissioner of Police (Unarmed) on the DPC for the year 2013-14. The DPC meeting for this year was held on 8.10.2014. He was found fit by the DPC. However, he was awarded with a punishment of stoppage of increment, he was not promoted. Therefore, say of the Applicant in this para is denied.”*

*(Quoted from page 251-261 of OA)*

12. The Respondents have, therefore, stated that the OA is without any foundation and devoid of any merits.

13. The Ld. Advocate for the Applicant has filed affidavit-in-rejoinder to the affidavit-in-reply and states as under:

- “5. *With reference to para 7, I say that a reference is made therein to total 4 punishments, out of which 2 punishments have already been undergone by me as far as back on 30.6.2016 and 30.6.2017. That so far as third punishment is concerned, that the same is of the recent origin, namely, dated 8.2.2018 [EXHIBIT-A], which is in the form of reduction in pay of Rs.3,000/- per month for one year. I say that under protest and subject to right to challenge the said order, I am ready and willing to pay the said amount in lump sum without waiting to complete the said punishment on 28.2.2019. That so far as the fourth punishment dated 20.2.2018 [EXHIBIT-B] is concerned, that the same is in the form of increment till my retirement date, namely, 31.5.2019.*

8. *With reference to para 7[i], I say that it is stated therein that the Departmental Promotion Committee meeting was held on 8.10.2014, when for the first time I became eligible for promotion to the said post. I say that till then admittedly there was not a single punishment to*

*my discredit. I say that therefore, the subsequent minor punishment imposed upon me vide order dated 3.11.2014 regarding stoppage of increment for a period of one year without affecting the future increment cannot disentitle me the promotion. This is more so, when the said punishment was to come into force with effect from 1.7.2015.*

9. *I say that if the stand of the Respondent No. 1 to the effect that I was undergoing punishment from 1.7.2015, is accepted to be correct, then it would be unjust since such a stand has no legal basis. I therefore say that I should have been allowed to undergo the said punishment in the promotional post. I therefore say that I would be entitled for promotion along with the deemed date with effect from the date on which my juniors came to be promoted. I say that in the circumstances stated above, any subsequent disciplinary action taken against me followed by minor penalty being imposed upon me in that behalf, cannot in any way affect my promotion to the said post included the deemed date.*
11. *With reference to para 15, I say that the decision of the Hon'ble Apex Court in the matter of Mr. Janki Raman is totally misinterpreted by the Respondent No. 1. I say that admittedly there is no any such kind of punishment of denial of promotion or withholding of promotion of a Police personnel by reason of being undergoing the minor punishment. I therefore say that in such circumstances, it is not correct stand of the Respondent No. 1 when it is stated that the denial of minor is a necessary consequence of the conduct of the Government servant. I deny that for considering the case of the Government servant for promotion, that his entire service record is required to be taken into consideration. I say that this concept is not even applicable in the matter of pre-mature retirement of the Government servant in the public interest.*
12. *With reference to para 23, I say that a conscious decision is claimed to have been taken by the Departmental Promotion Committee and the Respondent No. 1 not to promote me, since the Departmental Enquiry was pending against me. I say that in this connection, no documentary evidence in the form of the Minutes of the Meeting of the Departmental Promotion Committee are annexed to the reply and therefore, the Respondent No. 1 is requested to furnish the said documents to me, otherwise his aforesaid stand may be rejected."*

(Quoted from page 268-273

14. The Respondents have filed sur-rejoinder. The same states as under:

*“2. With reference to para nos.1 and 2 of the rejoinder filed by the Applicant, I say as follows:*

- (1) The punishment imposed upon the Applicant vide office order dated 30.11.2017 of reduction in pay of Rs.3000/- per month for a period of one year.*
- (2) And in another matter also he has been imposed a punishment of stoppage of increment till the Applicant is superannuated (i.e. upto 1.6.2019) i.e. w.e.f. 1.7.2018 to 1.6.2019. Hence, the Applicant cannot or would not be promoted as per the recent GR issued by the Govt. in GAD on 15.12.2017.*

*5. With reference to para no.5 of the rejoinder, I say as follows:*

- (1) The punishment dated 8.2.2018, although has been imposed on 8.2.2018, but it cannot be said that it is of recent origin, as a regular departmental enquiry was ordered against the Applicant way back on 1.11.2014.*
- (2) The punishment dated 8.2.2018 has not been quashed and set aside in the statutory appeal or by the Hon'ble Tribunal as on today.*
- (3) It cannot be undergone by the Applicant by paying the said amount in lump sum as there are no such statutory rules available and it goes against the spirit of the punishment. The Applicant cannot claim paying this amount in lump sum as matter of enforceable right or in violation of any statutory rules or in absence of any statutory rules.*
- (4) The stoppage of increment punishment will also come in the way as per the standing orders issued by the State Government in A.D. vide GR dated 15.12.2017.*

6. *With reference to para no.6 and 7 of the rejoinder, I say as follows:*

- (1) *The averments raised by the Applicant are denied, being incorrect.*
- (2) *The enabling standing orders issued earlier by the State Government vide GR dated 22.4.1996 to allow the government employee to undergo the punishment of stoppage of increment on the higher/promotional post has been cancelled by the State Government and revised policy decision on the basis of the ratio laid down by the Hon'ble Supreme Court of India in the matter of U.O.I. and Anr. Vs. K.V. Jankiraman has been taken vide GR dated 15.12.2017. The same does not permit to allow undergoing a government employee the punishment of stoppage of increment.*

7. *With reference to para no.8 of the rejoinder, I say as follows:*

- (1) *I say and submit that the averments raised by the Applicant are not tenable and denied and run counter to the own admission made by the Applicant in para no.5 of the rejoinder. The details of various punishment the Applicant was undergoing from 1.7.2015 has already been clarified in para no.6.1 of the reply filed in this matter on behalf of the Respondent no.1.*
- (2) *The Applicant was facing two regular DEs- (i) one from 1.11.2014 for which he has been imposed with a penalty of reduction in pay vide order dated 8.2.2018, (ii) another DE was ordered against the Applicant by the Commissioner of Police, Nagpur on 21.6.2014, in which the order dated 1.3.2018 has been issued by imposing punishment of stoppage of increment w.e.f. 1.7.2018 till the date of superannuation of the Applicant.*
- (3) *The latest GR dated 15.12.2017 precludes to give promotion to the government employee, if he/she is undergoing punishment and hence on this count the averments raised by the Applicant are denied.*

9. *With reference to para no.11 of the rejoinder, I say as follows:*

(1) *The averments raised are denied on the basis of the following observations made by the Hon'ble Supreme Court of India in the matter of Janakiraman (supra) viz.*

(A) *The Hon'ble Supreme Court of India has held in the U.O.I. Vs. K.V. Jankiraman case as under:*

*"Promotion-Non-promotion of an employee till date on which he was held guilty and penalized – Held, would not amount to double penalty-Constitution of India, Article 20(2).*

*Promotion-Employee has right to be considered for promotion and not a right to promotion – Past record including penalty or penalties awarded to the employee can be taken into account while considering his promotion."*

10. *With reference to para no.12 of the rejoinder, I say that the averments raised by the Applicant are denied and the minutes of the DPC would be produced for the kind perusal of this Hon'ble Tribunal.*
11. *With reference to para no.13 of the rejoinder, I say that as clarified in para no.7 of the reply filed in this matter the DPC meeting for the year 2013-14 was held on 8.10.2014 and as clarified in para no.7 in the tabular form, the Applicant was although undergoing punishment of stoppage of increment but that was underway and that was issued on 3.11.2014 and was started on 1.7.2015.*
12. *With reference to para no.14 of the rejoinder, I say as follows. The averments raised by the Applicant that the reliance placed by the Respondent no.2 on the GR dated 15.12.2017 is totally misplaced are denied, being totally incorrect. It is true that the said GR's application is prospective but there is provision in paragraph 1.19 of this GR that this GR is applicable to those cases, which are pending to the date on which the GR was issued. Therefore, Applicant cannot be given promotion as he is undergoing punishment. So far as not giving promotion to the Applicant although he was found fit in the DPC held on 8.10.2014, the State Government has taken a conscious decision not to give him promotion as (1) he was facing disciplinary action and order of imposing punishment was issued on 3.11.2014 and thereafter as clarified in para no.7, in tabular form in the reply, the Applicant was issued four punishments which includes three different punishment of stoppage of increments and one punishment of reduction in pay and such decision is just, proper and legal in view*

*of para no.3(a) of the standing order by way of circular dated 2.4.1976 issued by the Govt. in GAD (which then applicable from 8.10.2014 to 14.12.2017). Hence, on the basis of these submissions the averments raised by the Applicant are denied.*

14. *With reference to para no.25 and 26 of the rejoinder, I say and submit that the Applicant cannot be given promotion on the basis of the recent policy decision taken by the Govt. in GAD vide GR dated 15.12.2017.”*

(Quoted from page 337-342)

15. Issue for consideration:

- (i) *Whether the denial of promotion to the Applicant by the Respondents is vitiated and illegal?*

16. Chronology of the facts needs reiteration. On 8.10.2014 the DPC meeting was held for considering eligible officers for the period 2013-14. DPC considered the ACRs for the period from 1.9.2013 to 31.8.2014.

17. During this meeting the DPC found that the Applicant was having an average of 'B+' and, therefore, fit for promotion. Accordingly, they recommended the Applicant for promotion. When these recommendations were forwarded on 29.5.2015, the same mentioned that the punishment of stoppage of increment has been inflicted on the Applicant and hence he was excluded in the promotional order. Subsequently, by another punishment imposed on the Applicant, stoppage of increment up to his retirement has been ordered.

18. According to the Applicant his ACRs till the year 2012, entitle him for being considered as fit for promotion. However, as revealed by affidavit filed by the Respondents, serious charges were leveled against the Applicant and DE had been initiated against him. The first punishment has been issued on 3.11.2014 and the punishment started from 1.7.2015 and completed on 30.6.2016.

19. It appears that on the basis of totality of facts the Respondents have taken a conscious decision that though the DPC has made recommendations finding the Applicant fit for promotion, his misbehavior has come to light in the intervening period for which action was initiated by DE and punishment was imposed. In addition, because of the serious lapses by the Applicant another punishment was inflicted on him on 2.6.2015 and the Government reached adverse conclusion on 30.6.2017.

20. The third punishment was inflicted on 8.2.2018 and completed on 28.2.2019. The fourth punishment was ordered on 20.12.2018 and would be concluded on 31.5.2019.

21. Examination of all these facts, referred hereinbefore underline that as mentioned by various judgments by the Hon'ble Supreme Court, the Respondents have considered the Applicant for promotion every time when the DPC was held.

22. In the first case though the DPC found him fit, before issuing the actual orders of promotion, DE was ordered and punishment inflicted on the Applicant. In the subsequent DPC meeting as well as DPD did not recommend the Applicant and he was superseded.

23. The Applicant has failed to demonstrate how denial of promotion to him is arbitrary, prejudicial and, therefore, illegal. In fact the record shows that the Applicant has failed in having proper supervision and invited charges of serious misconduct for which he has been punished repeatedly.

24. We find that the DPC has considered his case for promotion and in view of the punishments and misbehavior Respondent No.1 has found him

unsuitable for promotion. We, therefore, do not find any reason to interfere in the exclusion of the Applicant for being recommended or not including his name in the list of promoted officers.

25. Original Application is, therefore, devoid of any merits and thus dismissed without costs.

Sd/-

**(P.N. Dixit)**  
**Member (A)**  
**8.5.2019**

Sd/-

**(A.H. Joshi, J.)**  
**Chairman**  
**8.5.2019**

Dictation taken by: S.G. Jawalkar.