

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.613 OF 2019

Shri Subhash Shankar Chavan)	
Working as Police Sub Inspector,)	
Court Company, Shivajinagar, Pune)	
and Attached to the office of Central)	
Bureau of Investigation, S.C.B. C.B.D.,)	
Belapur, Dist. Mumbai. Residing at Flat)	
No.B-101, Atmanand Park, Vimannagar,)	
Pune 411 014)APPLICANT

VERSUS

1) The State of Maharashtra,)	
Through its Principal Secretary,)	
Home Department, Mantralaya,)	
Mumbai 400 032)	
1A) Director General of Police,)	
M.S., Colaba, Mumbai 400 001)	
2) The Additional Director General of)	
Police, (Establishment), Shahid)	
Bhagatsingh Marg, Colaba,)	
Mumbai 400 001)	
3) The Commissioner of Police,)	
Pune City, Dist. Pune.)	
4) The Deputy Commissioner of Police,)	
Head Quarter-II, Office of the)	
Commissioner of Police, Pune.)	...RESPONDENTS.

Ms. Punam Mahajan, learned Counsel for the Applicant.

Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Ms. Medha Gadgil, Member (A)

RESERVED ON : **24.06.2024**

PRONOUNCED ON : **01.07.2024**

J U D G M E N T

1. Applicant working as Police Sub Inspector seeks promotion to the post of Assistant Police Inspector with deemed date. Applicant was promoted by order dated 07.01.2017 to the post of Assistant Police Inspector. However, he was not relieved pursuant to this order and Department held Review D.P.C. on 04.05.2018. The Department by holding Departmental Promotion Committee (D.P.C.) meeting informed him by order dated 10.05.2018 that request for relieving him to join on the promotional post as Assistant Police Inspector was rejected. Hence, that order of refusal is challenged in this O.A. on the ground that under what legal provision the Government did not relieve the Applicant once he is promoted.

2. Learned Counsel for the Applicant Ms. Mahajan has submitted that the Departmental Enquiry was initiated against the Applicant and when the first D.P.C. meeting for the year 2015-16 was conducted on 14.07.2016 and 15.07.2016 though the Departmental Enquiry (D.E.) was pending, considering the charges in the Departmental Enquiry a conscious decision was taken by the Respondent to promote the Applicant to the post of Assistant Police Inspector. However, the Applicant was not relieved and not relieving him was illegal. Learned Counsel has submitted that the Government Resolution (G.R.) dated 17.12.2018 is based on the decision of the Hon'ble Supreme Court laid

down in the case of **Union of India & Ors. Versus K.V. Jankiraman and Ors. reported in (1991) 4 SCC 109**. The provision in the said G.R. to keep the case of the Applicant in sealed cover if the Departmental Enquiry is pending, cannot be made applicable as the D.P.C. meeting was conducted on 14.07.2016 and 15.07.2016 i.e., two and half year before the said G.R. was issued. Learned Counsel has argued that once conscious decision was taken to give promotion to the Applicant to the post of Assistant Police Inspector then he should not have been stopped by the Government from enjoying the fruits of his promotion, especially, for the reasons mentioned in impugned order i.e. 10.05.2018.

3. Learned Counsel elaborated her submissions that in the said order the Respondent had informed that he cannot be relieved and cannot be appointed on the promotional post of Assistant Police Inspector because he was facing Criminal Case at C.R.No.92/2015 u/s. 143, 147, 148, 323, 330, 342, 385, 506 and 201 of I.P.C. She has submitted that as per the ratio laid in the case of **Jankiraman (supra)** unless the chargesheet is filed in the Criminal case and cognizance is taken by the concerned Judge no Criminal Case is treated as pending. Mere lodging of the FIR is not sufficient to hold pendency of the prosecution. Learned Counsel has argued that in the present matter though the Criminal case was registered in the year 2015, the chargesheet was filed against the Applicant on 16.11.2017 and thus at that time when the D.P.C. meeting was held on 14.07.2016 and 15.07.2016 no Criminal Case was pending against the Applicant and only the D.E. was pending then the Government had rightly issued the order. Thus the case of the Applicant was required to be considered as

per the Government Circular dated 02.04.1976. In the said Circular it is mentioned that the promotion of a person against whom D.E. or investigation is pending, should be considered in the same manner as the cases of other persons are considered. She has submitted that it is for the competent authority to take conscious decision after considering the nature of the charges levelled against the person whether the person should be promoted without waiting for the conclusion of the Departmental enquiry. She has further relied on G.R. dated 22.04.1996, wherein it is mentioned that if any punishment is imposed during the pendency of D.E. that person should not be demoted but they can undergo punishment on the promotional post only.

4. Learned Chief Presenting Officer has pointed out that in the Circular dated 02.07.1976 neither the word 'chargesheet' nor 'F.I.R.' is mentioned. It is mentioned that the name of the candidate facing D.E. is to be considered on purely provisional basis and to be reviewed after the conclusion of the D.E. or investigation. The word 'investigation' is used and the word 'chargesheet' is not mentioned. She has pointed out that the Department has informed the applicant that the D.P.C. meeting was held on 14th and 15th July, 2016 and the fact of the pendency of the Criminal case against the Applicant was not at all placed before the Committee. No record of the Criminal case was produced before the D.P.C. meeting therefore the order of the promotion was issued in favour of the Applicant. Learned C.P.O. has submitted that had the fact of lodging of the FIR would have been brought to the notice of the members of D.P.C. meeting, then the decision in respect of promotion must have been different.

5. The date of the pendency of the Criminal Case as per the ratio laid down in the case of **Jankiraman (supra)** fixed is not the date of filing of an FIR, but the date of filing of the chargesheet. The decision of the Hon'ble Supreme Court was given in the year 1991. However, the State of Maharashtra neither issued the G.R. nor amended Maharashtra Civil Services Rules in respect of fixing the date of the pendency of Criminal prosecution when the D.P.C. meeting considers the case for the promotion.

Sub Rule b(i) of 6 of Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982 is required to be reproduced :

*“27(6)(b) judicial proceedings shall be deemed to be instituted –
(i) in the case of criminal proceedings, on the date of which the complaint or report of a police officer of which the Magistrate take cognizance is made, and”*

In these Rules the pendency of the Criminal prosecution is not fixed as per the date of the filing the chargesheet. We do accept that the case of the Applicant, in the D.P.C. meeting which was conducted on 14th and 15th July, 2016, cannot be considered under G.R. dated 15.12.2017 and therefore it is to be decided on the basis of Circular dated 02.04.1976. We would like to point out the relevant portion of Government Circular dated 02.04.1976 which is quoted below :

“2(a) At the time of drawing up of the select list, the case of a person facing an investigation or departmental enquiry should be considered in the same manner in which the cases of other person are considered i.e. On the basis of his previous record of service. If on the basis of his record. He is found fit for promotion, his name should be included in the select list at the appropriate place.”
(emphasis placed)

Thus, it was necessary for the Department to place the entire service record of the Applicant thereby disclosing the fact that the FIR is lodged against the Applicant on 30.04.2015 and investigation was

going on. Thus, conscious decision which was taken by the D.P.C. meeting held on 14th and 15th July, 2016, as emphasized by the learned Counsel, cannot be treated as conscious decision, in true sense, but it was the decision, which was taken when material facts were suppressed. The conscious decision can be taken after considering the entire service record of the candidate as contemplated under Circular dated 02.07.1976. Therefore the action of the Respondent to take the Review D.P.C. on 04.05.2018 and thereafter to reject his prayer to release him to join on the promotional post at the relevant time is legal and justified.

6. Another prayer of granting adhoc promotion not of the year 2024, but of the year 2022 is pressed by the learned Counsel for the Applicant. She has submitted that the D.P.C. meeting was held in the year 2022, but in the year 2022 his candidature was rejected in the said D.P.C. meeting on the ground that he did not place the MS-CIT passing certificate. Learned Counsel has relied on the Annexures of the short affidavit dated 21.11.2023 on behalf of Respondent No.3, Mr. Harshavardhan V. Gade, Police Inspector in the office of Commissioner of Police, Pune City, Pune. She has pointed out that in the Annexure 'R-3' which is extract of the Service Book of the Applicant. In this service record there are two entries made by the authority on 07.07.2011. The entries were regarding educational qualification wherein it is mentioned in the said Annexure 'R-3' that Applicant has passed BA in the year 2008 and has passed MS-CIT in April, 2004. Thus, learned Counsel has pointed out that this service record was available and the Applicant was illegally not considered for promotion in the year 2022.

7. On query made to learned C.P.O., she had admitted that these entries are genuine. We therefore find substance in the submissions of learned Counsel that the Applicant was eligible to be considered for promotion to the post of Assistant Police Inspector as per G.R. dated 15.12.2017 in the D.P.C. meeting of the year 2021 and the Applicant should have been given promotion in the year 2022. In the Annexure 'R-3' relied by learned Counsel it is mentioned as below :

“शौक्षणीक प्रात्रता नोंद
 (1) बी.ए. उत्तीर्ण मे/२००८
 (यशवंतराव चव्हाण महाराष्ट्र मुक्त विधपीठ, नाशिक)
 (2) एम.एस.सी.आय.टी उत्तीर्ण
 एप्रिल/२००४
 नोंद आदेश अ.सी.बी, औ.बाद
 आस्था/पो.अ/शे पात्रता नोंद
 दि ७/७/२०११”

8. In view of above, we direct that the promotion order dated 28.02.2024 to the post of Assistant Police Inspector issued by the Government is to be issued back-dated of the year 2022 in respect of the Applicant similar to the order issued in respect of other persons as per the DPC of the year 2022. We pass the following order :

ORDER

- (a) O.A. stands disposed of as partly allowed.
- (b) Respondent to issue back-dated order of promotion w.e.f. 22.03.2022 with consequential service benefits i.e., pay fixation.

Sd/-
(Medha Gadgil)
Member (A)

prk

Sd/-
(Mridula Bhatkar, J.)
Chairperson