

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.957 OF 2017

DISTRICT : RATNAGIRI

Mr. Ayyubkhan Mubarak Khan)
Working as Police Inspector,)
Residing at Karwanshiwadi, C-2,)
Police Officers Quarter,)
Ratnagiri 415 612)

....APPLICANT

VERSUS

1. State of Maharashtra,)
Through Chief Secretary,)
Mantralaya, Mumbai 400 032)
2. Addl. Chief Secretary,)
Home Department,)
Mantralaya, Mumbai 400 032)
3. The Director General of Police,)
Maharashtra State, Shahid)
Bhagatsing Marg, Colaba,)
Mumbai 411 001)

...RESPONDENTS.

Ms. Punam Mahajan, learned Counsel for the Applicant.

Ms. Archana B.K., learned Presenting Officer for the Respondents

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

DATE : **11.03.2024.**

J U D G M E N T

1. Applicant prays that he is to be given promotion to the post of Deputy Superintendent of Police along with deemed date of 29.07.2017, with all consequential pecuniary benefits.

2. Learned Counsel for the Applicant has submitted that the Applicant was due for promotion in the year 2017. She has submitted that the meeting of Departmental Promotion Committee (D.P.C.) was held on 29.05.2017 and the Department withdrew the Departmental Enquiry on 28.06.2017. Learned Counsel has submitted that when the promotion order dated 29.07.2017 was issued to the post of Assistant Commissioner of Police (A.C.P.) from the cadre of Police Inspector (P.I.) the Applicant was not facing the enquiry. Learned Counsel has submitted that the applicant should have been promoted to the post of A.C.P. on that day itself. However, as now the applicant retired on 30.10.2020, the deemed date of promotion to the post of A.C.P. w.e.f. 29.07.2017 is to be given to the Applicant. Learned Counsel has submitted that there is a legal fiction. Learned Counsel has submitted that the Appellate Authority has cancelled the punishment of withdrawing one increment for one year and therefore the applicant is entitled to get promotion and deemed date. Learned Counsel has argued that the case of the Applicant is covered by the Circular dated 02.04.1976 (Exhibit-R3).

3. Learned P.O. for the Respondents has submitted that the enquiry was withdrawn on technical ground of competency of the authority on 27.10.2015. The second leg of arguments is in the Appeal preferred by the Applicant was decided on 06.03.2019, the applicant was held guilty.

4. In view of the points raised by the learned Counsel for the Applicant the chronology in respect of issuance of charge-sheet and Departmental Enquiry (D.E.) is very material. On the date of meeting of the Departmental Promotion Committee (D.P.C.), if the D.E. was not pending then the submission of learned Counsel for the Applicant could have been accepted. The chronology is as follows :

On 27.10.2015 Departmental Enquiry was initiated and charge-sheet was issued. Applicant had given reply to the charge-sheet on 31.12.2015. On 16.01.2016 Enquiry Officer in Departmental Enquiry was appointed. On 05.12.2016, objection was raised by the Applicant about competency of the authority who initiated the Departmental Enquiry. In view of his post as Police Inspector (P.I.) one step-up promotion granted earlier to the Applicant came to an end. On 28.06.2017 the Government found that D.E. issued is defective so far as competency of the authority is concerned and therefore on 26.10.2017 the Director General of Police being competent authority reissued charge-sheet for D.E. On 24.04.2018, the Enquiry Officer gave him punishment of stoppage of increment for one year and on 06.10.2019 in appeal punishment of stoppage of increment was reduced to giving warning to

the Applicant. On 29.06.2019 he was given promotion from the post of Police Inspector to the post of Assistant Commissioner of Police, Nagpur. However on 18.03.2020 the Applicant rejected the said promotion and so promotion given to him was cancelled. The D.E. was withdrawn on 28.06.2017. Thus, at the time of D.P.C. the D.E. was in existence against the Applicant. Therefore the submissions of learned Counsel that subsequently as the enquiry was withdrawn on 28.06.2017 and charge-sheet was given on 26.06.2017, the interregnum period when the Applicant was not facing any D.E. and therefore he should have been promoted are not factually correct and do not hold any substance. It is true that the period when the D.E. was withdrawn and the 2nd D.E. was not initiated there was no D.E. against the Applicant, however the withdrawal was for correcting the error regarding competency of the authority to initiate the D.E. It is to be noted that the enquiry was not dropped against him. Thus the applicant cannot be allowed to capitalize that short period by holding that the applicant was entitled to be promoted during that period. This will amount to misreading the time taken for curative action and will amount to providing undue advantage to the Delinquent Officer. Further the Appellate Authority the Hon'ble State Minister by order dated 08.03.2019 has reduced the punishment of one increment of one year to warning. Thus disciplinary Authority has not exonerated the Applicant. In fact it is specifically mentioned that strict warning is given to the Applicant by way of punishment. Applicant retired on 30.10.2020.

5. In view of the above, we do not find any substance in O.A. and hence stands dismissed.

SD/-

(Medha Gadgil)
Member(A)

SD/-

(Mridula Bhatkar, J.)
Chairperson

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