

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 565/2024 (D.B.)

Dipakkumar Marotrao Hedau,
Aged about 49 years, Occu.:Service,
R/o. Flat No.203, Somnath Palace-2,
Taywade Nagar-2, Near Balaji Lawn,
Beltarodi, Nagpur-440034.

Applicant.

Versus

1. State of Maharashtra,
through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.

Respondents.

Shri R.M.Fating, Ld. Counsel for the applicant.
Shri S.A.Deo, Ld. C.P.O. for the respondents.

Coram:-Hon'ble Shri Justice M.G.Giratkar, Vice Chairman &
Hon'ble Shri Nitin Gadre, Member (A).
Dated: - 12th November, 2024.

JUDGMENT

Heard Shri R.M.Fating, learned counsel for the applicant
and Shri S.A.Deo, learned C.P.O. for the Respondents.

2. The learned counsel for the applicant has filed letter dated 09.07.2024 issued by Government of Maharashtra. It is marked Exhibit – X for Identification.

3. The case of the applicant in short is as under-

The applicant was initially appointed on the post of Assistant Project Officer from open category in the respondent department. On 03.10.2016, the applicant was promoted on the post of Assistant Commissioner. On 20.08.2018, respondent has published the seniority list for the cadre of Assistant Commissioner as on 01.01.2018. The name of applicant is at Sr.No.29. He was also under the zone of consideration for further promotion. The respondent has published seniority list for the post of Assistant Commissioner on 01.01.2019 wherein the applicant has been shown at Sr.No.20. In the meeting of Departmental Promotion Committee (D.P.C.) of the year 2020, the applicant was not considered for promotion for the post of Deputy Commissioner because of the pendency of Crime (F.I.R.) against him and also departmental enquiry. The D.P.C. has kept the result of the applicant in sealed envelope.

4. The respondents have promoted junior of the applicant namely one Shri Dashrath Kulmethe on the post of Deputy Commissioner in Tribal Development Department.

5. During the course of submission, the learned counsel for the applicant has pointed out letter dated 09.07.2024 i.e. Exhibit-X. As per this letter, the respondents have now decided to promote other juniors of the applicant including Shri Dashrath Kulmethe.

6. It is submitted by the applicant that he is exonerated in the departmental enquiry. In respect of criminal case "C" summons was submitted by the Investigating Officer stating that no offence was committed by the applicant. Therefore, the applicant is entitled for promotion and also deemed date of promotion from the date on which his junior Shri Kulmehte was promoted. Hence, the applicant has filed the present O.A. for the following reliefs-

- i) *Hold and declare that the Applicant is entitled for promotion on the post of Dy. Commissioner/Dy. Director/Project Officer Class-I and also deemed date of promotion in view of provision in Clause-12(C) of the Govt. Resolution dated 15.12.2017;*
- ii) *Direct the Respondents to issue promotion order in favour of the Applicant on the post of Dy. Commissioner/Dy. Director/Project Officer Class-1 forthwith, in the interest of justice.*
- iii) *Direct the Respondents to grant deemed date of promotion w.e.f. 08.01.2021 from the date on which his junior Shri Dashrath Shriram Kulmethe and three other officers have been promoted, along with all consequential benefits and interest thereon;*
- iv) *Grant any other relief which this Hon'ble Tribunal deems fit just and proper in the facts and circumstances of the case.*

7. The respondents have filed reply. In the reply, the respondent has not disputed submission of the applicant. Para Nos. 4.5 and 4.16 are reproduced below-

4.5 I State and submit with reference to para 6.7 that the contentions therein are not completely accurate and hence are denied. That, after conducting a review of the sanctioned, occupied and vacant posts for the cadre of Dy. Commissioner/Dy. Director/Project Officer (Grade-I) a total of 9 posts (Vacant and possible vacancies) were available to be filled by promotion, out of which 8 posts were available for the open category.

4.16 I State and submit with reference to para 6.18 that as stated earlier, conscious decision with respect to the Applicant has been taken in compliance with the relevant legal provisions and that the Applicant will be considered for promotion in the subsequent Departmental Promotion Committee Meeting as per eligibility/Further, after granting promotion as per the conscious decision, the representation of the Applicant for deemed date will be considered in accordance with the requisite procedure mandated by the General Administration Department circular dated 06/06/2002.

8. The learned counsel for the applicant has pointed out material G.Rs. in respect of the procedure for promotion adopted by the D.P.C.. He has pointed out the meeting of D.P.C.. The name of the applicant was not considered in the D.P.C. because of the pendency of the Criminal Case and Departmental Enquiry. In the D.P.C. it was specifically stated that direction was sought by D.P.C. as to whether promotion was to be granted to Kendre, Funde, Thube,

Govekar, Wahane and Hedau. Thereafter, there was no D.P.C. in the year 01.09.2022.

9. On 13.02.2023, D.P.C. was held. In that meeting of D.P.C., name of applicant was not considered for promotion. In this D.P.C. the applicant was in zone of consideration for promotion, but the name of applicant was not considered.

10. The G.R. issued by Government of Maharashtra is very clear. The material portion of the G.R. is reproduced below-

१२) शिस्तभंगविषयक/न्यायालयीन कार्यवाही चालू असलेल्या प्रकरणी संबंधित अधिकारी/कर्मचारी दोषमुक्त ठरल्यास किंवा फौजदारी खटल्यात निर्दोष सुटल्यास, खालीलप्रमाणे कार्यवाही करावी :-

अ) तदर्थ पदोन्नती दिलेली नसल्यास त्याचे मोहोरबंद पाकीट उघडून त्यातील निष्कर्षानुसार तो पदोन्नतीसाठी पात्र ठरत असल्यास, त्याला नियमीत पदोन्नती द्यावी.

ब) अधिकारी/कर्मचार्यास तदर्थ पदोन्नती दिलेली असल्यास, दिलेली तदर्थ पदोन्नती नियमीत करण्यात यावी.

क) मोहोरबंद पाकीटातील शिफारशीनुसार तो पदोन्नतीसाठी पात्र असल्यास, संबंधित अधिकारी/कर्मचार्यास कनिष्ठ असलेल्या अधिकारी/कर्मचार्याला ज्या निवडसूचीत स्थान देण्यात येवून नियमीत पदोन्नती देण्यात आली असेल, अशा कनिष्ठ अधिकारी/कर्मचार्याच्या पदोन्नतीचा दिनांक हा त्यांना पदोन्नतीचा मानीव दिनांक देण्यात यावा.

11. The respondent has not followed the procedure as per G.R. dated 15.12.2017.

12. There is no dispute that the applicant has not committed any offence. Therefore, "C" summary was submitted by Investigating Officer to the Court. There is no dispute that applicant is exonerated in the departmental enquiry. The material portion in respect of enquiry is reproduced below-

५. त्याअर्थी आता, श्री.दिपककुमार मा. हेडाऊ, तत्कालीन प्रकल्प अधिकारी, एकात्मिक आदिवासी विकास प्रकल्प, धारणी यांच्याविरुद्ध सुरु करण्यात आलेल्या विभागीय चौकशी प्रकरणी त्यांच्यावर ठेवण्यात आलेले दोषारोप सिद्ध होत नसल्याचे चौकशी अधिकारी यांचे निष्कर्ष मान्य करुन, श्री. हेडाऊ यांना सदर विभागीय चौकशीमधून दोषमुक्त करण्यात यावे, या निष्कर्षाप्रत शिस्तभंगविषयक प्राधिकारी आले आहेत. सबब, श्री.दिपककुमार मा. हेडाऊ, तत्कालीन प्रकल्प अधिकारी, एकात्मिक आदिवासी विकास प्रकल्प, धारणी, जि.अमरावती यांच्याविरुद्ध सुरु करण्यात आलेल्या प्रस्तुत विभागीय चौकशीमधील दोषारोप सिद्ध होत नसल्याने, श्री. हेडाऊ यांना सदर विभागीय चौकशीमधून दोषमुक्त करण्यात येत आहे.

13. The respondent is not considering the name of applicant for promotion, even after he is exonerated in departmental enquiry and also he has not committed any offence (Exhibit – X) i.e.. Letter dated 09.07.2024 shows that other juniors of the applicant are likely to be considered for promotion. It appears that respondents are intentionally not considered the applicant for promotion for the post of Deputy Commissioner.

14. There is no dispute that Shri Dashrath Kulmethe was junior to the applicant now he is shown as senior to the applicant.

When Shri Dashrath Kulmethe was promoted that time itself applicant was eligible for promotion. Even during the pendency of departmental enquiry or Criminal case the respondents should have promoted him in view of the Judgment of the Hon'ble Supreme Court in the case of **the Union of India Vs. K.V.Jankiraman And Others reported in (1991) 4 SCC 109, decided on 27.08.1991.**

15. Now, there is no any Criminal case pending against the applicant. As per the report of Investigation officer, applicant has not committed any offence/crime. Therefore, the applicant was discharged by Judicial Magistrate First Class Court. In respect of departmental enquiry it is clear that no any charges are proved against the applicant. Therefore, the applicant is entitled for promotion from the date on which his junior Shri Dashrath Kulmethe was promoted. Hence, we pass the following order-

ORDER

1. The O.A. is allowed.
2. It is hereby held that applicant is entitled for promotion on the post of Deputy Commissioner /Deputy Director/Project Officer Class-I.
3. The respondent is directed to promote the applicant on the post of Deputy Commissioner /Deputy Director/Project Officer Class-I. The benefit of promotion

should be given to the applicant along with deemed date of promotion from the date on which his Junior i.e. Shri Dashrath Kulmethe was promoted, if he was/is eligible for the said post. Seniority list be corrected by giving effect of deemed date of promotion.

4. The respondents are directed to comply the order within a period of three months from the date of receipt of this order.

5. No order as to costs.

(Nitin Gadre)
Member(A)

(Justice M.G.Giratkar)
Vice Chairman

Dated – 12/11/2024.

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

Name of Steno : Raksha Shashikant Mankawde.
Court Name : Court of Hon'ble Vice Chairman
& Hon'ble Member (A).
Judgment signed on : 12/11/2024.
and pronounced on
