

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 8047 OF 2013

Prabhakar s/o Jagguji Rangari
Age : 57 Years, Occ: Service,
Presently working as Additional
Chief Engineer, M.I.D.C.
Nanded Division, Nanded

... Petitioner

V/s.

1. The Hon'ble Minister of Industries
and Chairman, Maharashtra Industrial
Development Corporation, Mantralaya,
Mumbai 32.

2. Maharashtra Industrial Development
Corporation, Andheri (E),
Mumbai
Through its Chief Executive Officer.

3. Shri. R. V. Sonje,
Age : 51 years, Occu: Service,
Presently working as Chief Engineer,
M.I.D.C. Headquarter Mumbai.

4. Shri. S. B. Patil,
Age : 53 years, Occu: Service,
Presently working as Chief Engineer,
M.I.D.C. Headquarter Pune.

... Respondents.

Mr. S. R. Barlinge & P. V. Suryavanshi Advocate for Petitioner
Mr. P. M. Shah Senior Counsel i/b Mr. S. S. Dande Advocate for
Respondent nos. 1 & 2
Mr. S. D. Joshi for Respondent nos. 3 & 4

**CORAM : S. V. GANGAPURWALA &
V. L. ACHLIYA, JJ.**

JUDGMENT RESERVED ON : 13/03/2015

JUDGMENT PRONOUNCED ON : 08/05/2015

JUDGMENT: (PER: V. L. ACHLIYA, J.)

Rule. Rule returnable forthwith. By consent of parties taken up for final disposal at the stage of admission.

2) Petitioner has approached with a case that in the year 1978, he joined service with respondent no. 2 as a Overseer. Subsequently he was promoted as Deputy Engineer, Executive Engineer, Superintending Engineer as well as Additional Chief Engineer. He joined the service from Civil Engineering cadre. Whereas the respondent nos. 3 & 4 joined service with respondent no. 2 in the year 1998 from Environmental Engineering cadre.

3) According to petitioner, throughout his service tenure he was victimized by superiors and all the while he was required to knock the doors of the Court to be promoted on promotional post. In the year 1998, although he was eligible for the post of Superintending Engineer and senior most candidate in the zone of consideration from the reserved category and Selection Committee selected him, still the promotion order was not issued in his favour. He was therefore, required to approach the High Court. He filed Writ Petition no. 2415 of 1998 in which vide order dated 25/02/2000, passed by Hon'ble High Court of Bombay, Bench at

Nagpur respondent no. 2 was directed to consider his case for promotion as per recommendation of the Selection Committee before 31/03/2000 and further grant him deem date of seniority. It is the say of the petitioner that after the order passed by Hon'ble High Court, he was given promotion as Superintending Engineer. Again in the year 2007, though he was eligible for promotion for the post of Additional Chief Engineer, he was denied promotion on the pretext of departmental enquiry pending against him. Therefore he was required to file Writ Petition No. 4188 of 2007 challenging the departmental enquiry initiated against him as well as order of promotion issued in favour of Shri. N. D. Gade, Respondent no. 3 in said petition. By the Judgment and Order dated 30/06/2009 passed in said petition, the Division Bench of this Court (Coram: Bilal Nazki and Smt. V. K. Tahilramani, JJ), quashed and set aside the order of promotion dated 25/05/2007 given to respondent no. 3 by upholding the contention of petitioner that process of selection was vitiated as in spite of respondent no. 3 was in the zone of consideration, he appointed as one of the member of Selection Committee constituted for promotion to the post of Additional Chief Engineer, Pune. So also Hon'ble High Court quashed the departmental enquiry proceeding initiated against the petitioner. During the pendency of the said petition, the petitioner was promoted to the post of Additional Chief Engineer. It is the say of petitioner that in the year 2013, he was senior most and eligible person for the post of Chief Engineer and respondent nos. 3 & 4 were junior to him. In accordance with the recruitment Rules governing the appointment, promotion of the employees and officers of respondent no. 2 Corporation, promotions are to be made for the post of Chief Engineer on the basis of "Seniority-Cum-

Merit.” It is the say of the petitioner that in the year 2013, he was fulfilling the requisite bench mark fixed for the selection for post of chief engineer and senior most candidate, entitled to be promoted as Chief Engineer. As per his confidential reports of previous five years, he was throughout rated as “Very good” and there was nothing adverse against him to deny promotion to the post of Chief Engineer. However, the Selection Committee in its meeting held on 01/04/2013 though found him eligible for promotion, based upon seniority-cum-merit, but not recommended his name, solely on the ground of pendency of department enquiry proceeding against him. Selection Committee recommended the names of respondent nos. 3 & 4 who were juniors to him to be promoted as Chief Engineer, Mumbai and Pune respectively. Recommendation made by the Selection Committee were accepted by respondent no. 2. The respondent no. 2 issued order of appointment them as Chief Engineers w.e.f 13/05/2013. Being aggrieved by said decision of respondent no. 2 to deny him promotion, the petitioner has preferred this writ petition.

4) In nutshell, it is the contention of the petitioner that he is the victim of victimization at the hands of respondent no. 2. Throughout his service career he was required to knock the doors of the Court to get his grievance redressed. The Act of respondent no. 2 to deny him promotion is in breach of service Rule. It is further say of the petitioner that the entire process of promotion of respondent no. 3 & 4 was vitiated in law for the sole reason that respondent no. 3 was one of the member of Selection Committee, which considered the claim of the petitioner and respondent nos. 3 & 4 for promotion. According to petitioner, the respondent no. 3 as a member of Selection Committee caused prejudice in the minds of other members of

Selection Committee as against petitioner. It is the say of petitioner that alleged departmental enquiry proceeding initiated against the petitioner was quashed by order dated 30/06/2009 passed in Writ Petition No. 4188 of 2007. In spite of quashing of departmental enquiry proceeding in the year 2009, on same allegations, a fresh departmental enquiry proceeding was initiated against him. It is the contention of the petitioner that he served as Executive Engineer at Yavatmal during the period 01/07/1993 to 20/09/1994. He never worked as Executive Engineer at Yavatmal during the period 28/10/1997 to 21/12/1997, still the respondent no. 2 has issued notice in respect of same charge and decided to conduct enquiry against him by issuing memo alleging therein that during his tenure as Executive Engineer at Yavatmal from 28/10/1997 to 21/12/1997, he has committed certain lapses which resulted into causing monetary loss to respondent no. 2. He denied those allegations and filed reply pointing out that he was not posted at Yavatmal during the alleged period and has further pointed that as per MPWA manual after the transfer of the Executive Engineer he can be held responsible for the transactions only within six months from the date of transfer. After his transfer, within six months nothing was communicated to him in respect of alleged misconduct. The respondents are trying to re-initiate enquiry against him on same charge after more than 18 years just to deny him promotion under the guise of such enquiry. Petitioner has approached with a prayer to set aside the promotion of respondent nos. 3 & 4 and direct respondent no. 2 to promote the petitioner with deemed date of promotion w.e.f. 13/05/2013. He has also claimed relief to quash the departmental enquiry proceeding against him.

5) On the other hand, in its affidavit in reply, the respondent no. 2 has denied the allegations that petitioner has been unnecessarily harassed and denied promotion. According to respondent no. 2 the promotion was denied to petitioner due to departmental enquiry proceeding pending against him in relation to causing huge loss to respondent no. 2 on account of lapses committed on his part during his tenure as Executive Engineer at Yavatmal. It is further say of respondent no. 2 that considering the higher responsibility of the post of Chief Engineer and departmental enquiry proceeding, the Selection Committee has found him not fit to be promoted to the post of Chief Engineer. So far as the initiation of fresh departmental enquiry is concerned, it is the say of respondent no. 2 that earlier charge-sheet issued to the petitioner was quashed and set aside by the Division Bench of this Court as same was issued by Authority not empowered to issue charge-sheet to the petitioner. According to respondent no. 2, the Hon'ble High Court while setting aside the order initiating enquiry, has specifically observed that order passed in the mater will not act as an impediment for the respondents to start an inquiry afresh against petitioner, if they so desire. Therefore, there was no illegality committed on its part in issuing fresh charge-sheet to petitioner.

6) On the same line, the respondent nos. 3 & 4 have opposed the petition filed by the petitioner and supported their respective promotion. Respondent no. 3 has denied the case put forth by the petitioner that process of Selection of respondent no. 3 was vitiated as respondent no. 3 was one of the member of Selection Committee constituted by respondent no. 2. It is the say of respondent no. 3 that he was not present in the meeting dated 01/04/2013, when the Selection Committee carried out

exercise to consider the name of petitioner and respondent no. 3 & 4 for promotion to the post of Chief Engineer. It is the say of respondent no. 3 that constitution of the Selection Committee was made way back in the year 2010 and that too in accordance with the Rules applicable in the mater. As per the Selection Committee constituted in the year 2010, the name of Chief Engineer at the Headquarter of respondent no. 2 has been shown as Ex-officio member of the Selection Committee. It is the say of respondent no. 3 that as he was holding Additional Charge of Chief Engineer, (Head Office), he was attending the meetings of Selection Committee for the post other than Chief Engineer. He has not attended the meeting dated 01/04/2013 which considered the case of petitioner as well as respondent nos. 3 & 4 for selection as Chief Engineer. According to respondent nos. 3 & 4, they were considered for the post, based upon their excellent service record as well as seniority in the gradation list. According to respondent nos. 3 & 4 they were at serial nos. 2 & 3 in the seniority list. Since the petitioner was not found suitable to be recommended for promotion, their names were considered by the Committee, since they were in the zone of consideration and found suitable for the post based upon their seniority-cum-merit by Selection Committee and recommended their names for promotion. Accordingly the respondent no. 2 accepted the recommendation of selection committee and appointed them as Chief Engineer, Mumbai and Pune respectively.

7) We have heard the submissions advanced by Mr. S. R. Barlinge, the learned counsel appearing for petitioner. Mr. P. M. Shah, the learned Senior Counsel along with Shri. Dande, the learned Advocate appearing for respondent no. 1 & 2 and Mr. S. D. Joshi, the learned counsel representing

respondent nos. 3 & 4 and further perused the record pertaining to meeting of Selection Committee held on 01/04/2013.

8) Mr. Barlinge, learned counsel for the petitioner assailed the decision of respondent no. 2 to promote respondent nos. 3 & 4 and deny promotion to petitioner with contention that entire process of selection is vitiated for the sole reason that respondent no. 3 was one of the member of Selection Committee constituted by respondent no. 2. It is submitted that though respondent no. 3 was shown to be not present when the subject regarding promotion of petitioner and respondent nos. 3 & 4 discussed and decision taken by the Selection Committee, still the decision is vitiated in law for the reason that possibility of respondent no. 3 having influenced the members of the Committee and created bias as against the petitioner cannot be ruled out under the facts and circumstances of the case. He has submitted that in the earlier petition filed by petitioner, based on similar facts, the Division Bench of this court in Writ Petition No. 4188 of 2007 decided on 30/06/2009 held that even the absence of a person in the meeting of Selection Committee in which claim of such person to be considered by the Committee vitiates the entire process of selection. In this context, the learned counsel has placed reliance on the decision of Hon'ble Apex Court in the case of **A. K. Kraipak & others Vs. Union of India and others (1969 (2) S.C.C. 262)**.

9) On the other hand Mr. P. M. Shah, the learned Senior Counsel appearing for respondent nos. 1 & 2 and Mr. Joshi, the learned counsel representing respondent nos. 3 & 4 countered the submissions advanced and pointed out that the Selection Committee which carried out the exercise of making recommendation for the post of Chief Engineer was in

fact constituted in the year 2010 and not in the year 2013. It is further pointed out that as per Selection Committee notified by respondent no. 2, the name of Chief Engineer (Head Office) is shown as Ex-officio member of the Committee. By referring the office order dated 01/11/2010 it is pointed out that member of Selection Committee are not nominated by their individual names, but the nomination is by virtue of their designation. They have submitted that in the year 2013, respondent no. 3 was serving as Additional Chief Engineer and holding the additional charge of vacant post of Chief Engineer (Head Office) of respondent no. 2 Corporation. Still in the meeting dated 01/04/2013, respondent no. 3 was not present. By referring the record pertaining to Selection Committee, it is pointed that claim of the petitioner was duly considered by the Committee along with claims of respondent nos. 3 & 4. After considering the service record of petitioner, Committee has found the petitioner not fit to be promoted as Chief Engineer considering the higher responsibility of the post of Chief Engineer and pending departmental enquiry against the petitioner. Since the names of respondent nos. 3 & 4 were standing next to petitioner and senior most in the seniority list of the cadre of Additional Chief Engineer and found to be fulfilling all the requisite criteria for the promotional post, Committee has considered their claims and recommended their names for promotional post. It is therefore, contended that there is absolutely no scope to draw inference of creating bias in the minds of members of the Selection Committee which was headed by Chief Executive Officer who is a high ranking officer from I.A.S. Cadre. It is further pointed out that there were 3 vacancies to be filled in by promotion from the cadre of Chief Engineer. One of which to be filled

in from scheduled caste category and two from open category. There were only three candidates in zone of consideration for three posts. Respondent nos. 3 & 4 were considered for promotion for two posts available for candidates from open category.

10) We have considered the rival submissions in the light of record and proceeding of departmental promotion committee. We are of the view that process of Selection Committee to make recommendation for the posts of Chief Engineer cannot be said to be vitiated in law, as the respondent no. 3 was not the member of Selection Committee constituted for the post of Chief Engineer. Vide office order dated 1/11/2010, respondent corporation has notified the Selection Committee for the purpose of direct recruitment as well as for promotion of its employees and officers. The Committee constituted was not constituted for selection of officers from the cadre of Chief Engineer or Additional Chief Engineer, but it was constituted for appointment and promotion from all cadres. Perusal of the office order dated 01/11/2010 reflects that 5 permanent members of the Selection Committee were notified by virtue of their office as Ex-officio members and the Chief Engineer (Head Office) was shown as one of the Ex-officio member of the Committee. Beside five permanent members, four members notified as special invitees of Selection Committee which includes officer from Social Justice Department, Adiwas Development Department and one officer from Scheduled Caste/Scheduled Tribe and one woman officer from M.I.D.C. i.e. respondent no. 2 Corporation. At the time of the selection process, respondent no. 3 was working as Additional Chief Engineer (Head Office). Therefore, at no point of time, respondent no. 3 can be said to be appointed as a member of Selection Committee.

Proceeding of meeting dated 01/04/2013 reveal that respondent no. 3 was not present in the meeting convened for considering the names of candidates by way of promotion for three posts in the cadre of Chief Engineer. Out of three posts, one post was reserved for candidate from Scheduled Caste category and two posts were available for candidates from open category. It is apparent from record that petitioner was only candidate in the zone of consideration whose name was considered by the Committee from the category of Scheduled Castes. Respondent nos. 3 & 4 are from open category. Their claim for the promotion was also considered from open category along with petitioner. Committee has duly considered the claim of petitioner. It is apparent from record of Selection Committee that Committee has not recommended the name of petitioner, though he was found to be fulfilling all requisite bench mark provided for promotion for the post of Chief Engineer, only for the reason that departmental enquiry proceeding pending against him as well as nature of allegations. On the basis of the record and proceeding of the Selection Committee, there is nothing to suggest or to infer that respondent no. 3 had influenced the members of the committee to deny promotion to petitioner. Since the petitioner was senior to respondent nos. 3 & 4 and sole candidate belonging to scheduled caste category and fulfilling the bench mark for promotion for the post of Chief Engineer, the promotion of petitioner was not coming in their way to get them promoted. Respondent nos. 3 & 4 are from to open category and two posts of Chief Engineers from open category were available for consideration of their claim by Selection Committee. Therefore, it cannot be said that process of selection was influenced by respondent no. 3 or respondent no. 3 was in a position to

influence the decision making process of Selection Committee.

11) Perusal of the record reveals that Selection Committee was headed by high ranking officer i.e. Chief Executive Officer from I.A.S. cadre. Therefore, it is difficult to accept the contention of the learned counsel for petitioner that respondent no. 3 might have influenced the members of Selection Committee to deny promotion to petitioner and process of selection is vitiated in law. Earlier decision of this Court in the case of the petitioner in Writ Petition No. 4188 of 2007 have no bearing upon the decision in present cast. Meeting dated 01/04/2013 was neither attended by respondent no. 3 in his individual capacity nor in the capacity as in-charge Chief Engineer (Head Office). Record and proceeding of the meeting nowhere leads us to draw inference of reasonable likelihood of bias in the matter of promotion. Since the Committee was headed by Chief Executive Officer who is high ranking officer from the cadre of I.A.S. Officer, it is difficult to believe that respondent no. 3 had influenced the process of Selection Committee or created bias against petitioner in the minds of members of the Committee. Learned Senior Counsel, for respondent no. 2, in support of his contention placed reliance upon the Judgment of Hon'ble Apex court in the case of **Jaswant Singh Nerwal Vs. State of Punjab and others (1991 Supp (1) Supreme Court Cases 313)** wherein Apex Court has considered the decision in **A. K. Kraipak & others Vs. Union of India and others** relied by learned counsel for petitioner. In the case cited the Apex Court has held that in absence of malafides shown against the members of Selection Committee wherein father was member of committee not participated in viva-voce test of his son, the selection is not vitiated on analogy of reasonable likelihood of bias. In para 6 of said

Judgment, the Apex Court has observed as under :

It was the admitted case before the High Court that Bansal's father did participate in the deliberations of the Commission when the viva voce test of other candidates appearing before the Commission had been taken and he had accordingly awarded marks to the candidates otherwise competing with his own son. The High Court has still deduced that in spite of the afore-suggested bias the candidates who got selected against the posts (except his son) got their due un-biased and therefore their selection cannot be questioned. Taking this deduction to be correct, the High Court before issuing the direction under challenge, had further to find that there was bias in excluding the unsuccessful candidates. We do not find this to have engaged the attention of the High Court. It is noticeable that besides Bansal's father there were four other members of the Public Service Commission and who had functioned as a Commission. As is evident there was a long list of as many 540 candidates to be interviewed and the interviews went on from 24-9-1973 uptill 30-10-1973. In the nature of things, there was no material before the High Court, and none has been pointed to us, from which it could be concluded that the members of the commission could keep track of the comparatives of each of those 540 candidates so as to manipulate a favourable result to Bansal. We have not been shown any material to entertain the doubt that Bansal's father being a member of the Public Service Commission, per-se had the effect of other members keeping track of comparatives in order to single out Bansal's as a successful candidate. And lastly there is not a word of mala fide suggested against the other members of the Public Service Commission, of having shared the supposed animus of Bansal's father. Thus, in the facts and circumstances of this case, we do not find any reason to sustain the judgment of the High Court on this aspect of the case. Bansal's father did what was expected of him, in having declined to participate in the deliberations of the commission when Bansal went for the viva voce test.”

12) In the instant case, the facts involved are more or less identical as to the facts of the case referred above. Respondent no. 3 who was holding additional charge as a Chief Engineer (Head Office) as an Ex-officio

member of Selection committee did not attend the meeting held on 01/04/2013. The entire selection was based upon consideration of service record of candidates who were in zone of consideration. There was no much scope for exercising the discretion to the members of Committee as recommendation for promotion to be made on the basis of seniority-cum-merit of candidates, on due consideration of seniority and fulfillment of bench mark by candidates in zone of consideration. Therefore, there is no scope to draw inference and to attribute malafides against the member of Committee. In view of this, we are not inclined to accept the contention of learned counsel for the petitioner that process of promotion of respondent nos. 3 & 4 was vitiated in law and therefore, their promotion is liable to be quashed and set aside.

13) The next question which poses for our consideration is whether denial of promotion to petitioner, solely on the ground of pendency of departmental enquiry proceeding pending against him was justified under the facts and circumstances of the case. The fact is not in dispute that except the circumstance of pendency of departmental enquiry proceeding, there was no other circumstance relied by Selection Committee to found him unfit for promotion. There is no dispute as to the fact that on 01/04/2013, when the Committee carried out the exercise to select suitable candidates for three vacant posts of Chief Engineer, the petitioner was senior most candidate in the zone of consideration and only candidate belonging to scheduled caste amongst the candidates in zone of consideration. Similarly, the fact is not in dispute that respondent nos. 3 & 4 were junior to petitioner. Admittedly as per the recruitment Rules applicable in the matter of recruitment and promotion of officers working

on the establishment of respondent no. 2, promotion for the post of Chief Engineer was to be made on the basis of “**Seniority-Cum-Merit**” There is no dispute as to the fact that bench mark fixed for the purpose of selection of Chief Engineer i.e. officer from Group (A), was fixed as average rating of Grade-'A' in preceeding last 5 years confidential reports of candidates. The fact is also not in dispute that petitioner was possessing average rating as Grade-'A' as per assessment made on the basis of last 5 years confidential reports and he was fulfilling the bench mark provided for promotional post of Chief Engineer. The process for promotion for Chief Engineer was undertaken to fill in 3 vacant posts by way of promotion to promote 3 candidates from the cadre of Chief Engineer from the feeder cadre of Additional Chief Engineer. Out of three posts, one post was reserved for candidate belonging to scheduled caste and two posts to be filled in from open category. There is no dispute as to the fact that the petitioner was the only candidate falling within the zone of consideration belonging to scheduled caste category for which one post was reserved for promotion in the cadre of Chief Engineer. The fact is also not in dispute that except the pendency of departmental enquiry, there was no other adverse material available before the Committee so as to deny the claim of the petitioner for the promotional post. Thus it can safely stated that except the pendency of departmental enquiry proceeding against the petitioner, there was no other adverse circumstance operating against the petitioner to deny him promotion for the post of Chief Engineer. It is, therefore necessary for us to confine our scope of examination of rival contention to see as to whether decision of respondent no. 2 to deny promotion to the petitioner is sustainable in law.

14) Mr. Barlinge, the learned counsel for the petitioner by referring the provisions of Maharashtra Industrial Development Corporation Officers/Employees (Classification, Recruitment and Promotion) Regulations, 2012, (Hereinafter referred as 'said Rule') strenuously contended that as provided under Rule 20, all appointments by promotion of the employees of respondent no. 2 are to be made on the basis of seniority-cum-merit. Learned counsel has invited out attention to Annexure 1 of the said regulation which provides for the procedure to be followed for filling in the post by way of promotion. Learned counsel has submitted that since promotion of petitioner was to be made on consideration of Seniority-Cum-Merit and the petitioner was fulfilling all the requisite norms for promotion as senior most candidate from the cadre of Additional Chief Engineer, the petitioner ought to have been promoted to the post of Chief Engineer. Learned counsel has submitted that petitioner was victimized and deliberately denied promotion by respondent no.2 at the instance of respondent nos. 3 & 4. Learned counsel has contended that alleged departmental enquiry proceeding against the petitioner is based upon false accusation and initiated just to defeat the legitimate claim of the petitioner for the promotional post. Learned counsel has further submitted that petitioner was required to knock the door of the Court of Law at each stage of promotion. Learned counsel has pointed that departmental enquiry proceeding initiated against the petitioner was earlier quashed by the Division Bench of this Court vide Judgment and Order dated 30/06/2009 passed in Writ Petition No. 4188 of 2007. After quashing of order to initiate departmental proceeding against the petitioner, the Respondent no. 2 has again initiated proceeding

to conduct departmental enquiry based on same allegations, which according to learned counsel is not permissible in law. The Learned counsel has submitted that petitioner had served as an Executive Engineer at Yavatmal only during the period 01/07/1993 to 20/09/1994. Whereas, as per the memo issued in the year 2010, the alleged misconduct on the part of the petitioner is attributed to the petitioner alleging his posting as Executive Engineer at Yavatmal during the period 28/10/1997 to 21/12/1997 i.e. the period during which petitioner has never worked at Yavatmal. It is submitted that petitioner has agitated his grievances against said false and frivolous departmental enquiry proceeding against him. However, respondent no. 2 Corporation and its officers have deliberately kept the proceeding pending for years together without any progress in the enquiry just to defeat the legitimate claim of the petitioner for promotion. Learned counsel has further submitted that promotion for the post of Chief Engineer was denied to the petitioner on the pretext of departmental enquiry wherein the act attributed to the petitioner is that he has committed certain lapses about 18 years back which has resulted into causing financial loss to respondent no. 2. He has submitted that act of respondent no. 2 to deny promotion to petitioner under the pretext of pending departmental enquiry proceeding of alleged lapses committed 18 years back and for which no proper enquiry conducted and misconduct proved against petitioner, denial of promotion to the petitioner is most unjust, improper and arbitrary act on the part of respondent no. 2 and same also amounts to gross abuse of process of law which has resulted into gross violation of fundamental rights of petitioner guaranteed under Article 14, 16 & 21 of Constitution of India. In support of the submissions

advanced, Mr. Barlinge, learned counsel for the petitioner has referred and relied upon various decisions of the Hon'ble Apex Court. He has relied upon the decision of the Apex Court in the case of **Rajendra Kumar Srivastava and Ors V/s Samyut Kshetriya Gramin Bank Ors. (AIR 2010 SUPREME COURT 699)**, **Rani Laxmibai Kshetriya GraminBank and Ors. V/s Paramjeet Singh and Ors (AIR 2013 SUPREME COURT 2473)**, **Harigovind Yadav V/s Rewa Sidhi Gramin Bank & Ors (2006 (6) SUPREME COURT CASES 145)**.

15) Learned counsel for the petitioner also contended that inordinate delay in conduct of departmental inquiry proceeding itself vitiates the proceeding and such proceeding is liable to be quashed and set aside. In support of this contention, the Learned counsel has placed reliance on the decision of the Apex Court in the case of **The State of Madhya Pradesh V/s Bani Singh and another (AIR 1990 Supreme Court Cases 1308)**, **State of Punjab V/s Chamanlal Goyal (1995 (2) SCC 570)** and **State of A. P. V/s N. Radhakrishnan (AIR 1998 SUPREME COURT 1833 (1))**.

16) Per contra, Mr. P. M. Shah, the learned Senior Counsel representing for respondent nos. 1 & 2 supported the decision of Selection Committee and consequent decision of respondent no. 2 to deny promotion to petitioner. He has submitted that only for the reason that recruitment rule provides for promotion to be made on Seniority-Cum-Merit basis, the petitioner cannot claim as of right to have been promoted to the post of Chief Engineer. He has contended that even while making promotion on the basis of Seniority-Cum-Merit, the seniority is one of the criteria, but it is not the sole deciding factor to promote person to higher cadre. According to him, promotion on seniority-cum-merit recognizes within its

scope, even the person who is lower in seniority can be promoted, if such senior person failed to achieve the requisite merit for the promotion. It is contended that because of lapses on the part of petitioner, the department was required to suffer loss of about 27 crores. He has submitted that looking into charges against the petitioner in departmental enquiry proceeding and the responsibility of the post of Chief Engineer, the Selection Committee has found him unfit for promotion as Chief Engineer and considered the claims of the respondent nos. 3 & 4 who were next to petitioner in the gradation list. It is therefore, contended that decision of the committee and consequent decision of the respondent no. 2 cannot said to be suffering from any vice of arbitrariness nor any malafides can be attributed to the members of the Selection Committee as well as officials of respondent no. 2 in denying promotion to petitioner. In support of the submissions advanced, has relied upon the decisions of the Apex Court in the case of **Balbir Singh Bedi V/s State of Punjab and others 2013 (11) Supreme Court Cases 746, Rajendra Kumar Srivastava and others V/s Samyut Kshetriya Gramin Bank and others 2010 (1) Supreme Court Cases 335.**

17) Mr. S. D. Joshi, the learned counsel for respondent nos. 3 & 4 adopted the argument of learned counsel for respondent nos. 1 & 2 and submitted that promotion of respondent nos. 3 & 4 are made in accordance with the Rules applicable in the matter. Learned counsel has submitted that respondent nos. 3 & 4 had excellent service record. During 5 years' period of assessment considered for the promotional post, they were rated as excellent officer with "Grade A+" In the gradation list, they were next to petitioner. They were selected from open category. There

were three posts available to be filled in by promotion. One of the post out of 3 posts was reserved for candidate belongs to scheduled caste. Petitioner was only candidate in the zone of consideration from the category of scheduled caste. It is therefore contended that challenge of petitioner to the promotion of respondent nos. 3 & 4 is without any basis and denial of promotion to the petitioner by respondent no. 2 has nothing to do with the promotion of respondent nos. 3 & 4. Mr. S. D. Joshi for respondent nos. 3 & 4 has also referred and relied upon the following decisions of the Hon'ble Apex Court.

- 1) Dr. M. C. Gupta V/s Arunkumar Gupta and others reported in (1997) 2 SCC 339**
- (2) Maharashtra State Board of Secondary & Higher Secondary Education and another V/s Paritosh Bhupesh Sheth and others reported in (1984) 4 SCC 27**
- (3) Dalpat Abasaheb Solunke and others V/s Dr. B. S. Mahajan and others reported in (1990) 1 SCC 305**
- (4) J & K State Board of Education V/s Feyaz Ahmed Maliq and others reported in (2000) 3 SCC 69**
- (5) Union of India V/s K. V. Jankiram reported in AIR 1991 SC 2010**
- (6) State of M. P V/s J. S Bansal reported in AIR 1998 SC 1015**
- (7) Nutan Arvind V/s Union of India and another reported in AIR 1996 SC 3352**
- (8) State of Rajasthan V/s Shriram Varma reported in (1996) 6 SCC 493**
- (9) I.P.S. Dewan V/s Union of India reported in (1995) EQ-SC 327**
- (10) D. D. Suri V/s Union of India and another reported in AIR 1979 SC 1596**
- (11) State of Punjab V/s Chamanlal Goyal reported in (1995) 2 SCC 570**
- (12) E. P. Royappa V/s State of Tamilnadu reported in AIR 1974 SC 555**
- (13) Union of India V/s Tejander Singh reported in (1991) 4 SCC 129**
- (14) State of Mhaisoor V/s C.R. Seshadri and others reported in AIR 1974 SC 460.**

18) We have already discussed in the foregoing para that fact is not in dispute that the petitioner was senior most person in the zone of consideration for the three posts of Chief Engineer to be filled in by promotion from feeder cadre of Additional Chief Engineer and out of which one post was reserved for candidate belonging to scheduled caste. Petitioner was only candidate belonging to scheduled caste and entitled for the post of Chief Engineer from the said category. Thus there were 3 vacant promotional posts for which only three candidates were eligible for promotion i.e. petitioner and respondent nos. 3 & 4. The fact is not in dispute that petitioner was fulfilling all the requisite criteria for promotion on the basis of Seniority-Cum-Merit and only circumstance which operated against the petitioner to deny promotion was the pendency of departmental enquiry proceeding against him.

19) As discussed in the foregoing para, petitioner was senior most candidate in the zone of consideration for the promotional post of Chief Engineer. The fact is also not in dispute that he was fulfilling the bench mark fixed for promotion for the post of Chief Engineer. The fact is also not in dispute that petitioner was in the zone of consideration and his claim was considered by the Selection Committee. There is no dispute that promotion for the post of Chief Engineer was to be made on the basis of "Seniority-Cum-Merit". We have perused the rulings as relied by learned counsel representing petitioner and respondents in support of their respective contention. In fact, in the case of **Balbir Singh Bedi V/s State of Punjab and others 2013 (11) Supreme Court Cases 746** referred and relied by Mr. P. M. Shah, the learned counsel representing respondent no.

2, all the earlier decisions on this issue of promotion by way of Seniority-Cum-Merit and Merit-Cum-Seniority have been referred and discussed by the Apex Court. It is settled position in law that in the case in which the rule governing promotion provides for promotion on the basis of “Seniority-Cum-Merit”, the greater emphasis is on seniority, even though, seniority alone cannot be deciding factor. What is required to be considered in such cases is to consider as to whether the senior most person possesses minimum necessary merit i.e. the bench mark prescribed for the promotion are fulfilled or not. Once the person is found to have fulfilled the minimum bench mark and also fulfills the criteria of seniority, then normally such person deserves to be considered for promotion on the basis of seniority-cum-merit, even though there may be persons possessing more merit than person to be promoted. Even in promotion based upon criteria of Seniority-Cum-Merit, the person lower in seniority can also be promoted, ignoring the claim of person senior to such person, if such person senior in the seniority list fails to achieve bench mark i.e. criteria of minimum merit. Whereas in promotion to be made on the basis of “Merit-Cum-Seniority”, merit alone constitutes deciding factor.

20) In the instant case, as discussed in the foregoing para, the fact is not in dispute that petitioner was in zone of consideration. He was senior most amongst the three candidates considered by the Selection Committee against three vacant posts. The fact is also not in dispute that petitioner was only candidate entitled to promotion for one post to be filled in from reserved category. The fact is also not in dispute that for the purpose of determining merit of candidate, the department has prescribed bench mark as average of 5 years confidential report of the person to be not

below Grade 'A'. In the preceding 5 years, petitioner was rated 'A' or 'A+' and his average rating or Grade 'A'. Thus, petitioner was fulfilling the requisite criteria of minimum merit beside senior most candidate. Thus, petitioner was eligible to be recommended for promotion in accordance with the Rules governing the promotion. It is nowhere the case of respondent no. 2 that petitioner was not fulfilling the criteria of minimum requisite merit and therefore, the case of person junior to petitioner was considered for promotion does not falls for consideration. In view of this, the rulings relied by learned counsel for respondent have no bearing upon the facts of the case.

21) Recruitment and the promotion of the employees and officers working on the establishment of respondent no. 2 is governed by Rules known as Maharashtra Industrial Development Corporation Officers/Employees (Classification, Recruitment and Promotion) Regulations, 2012 (Hereinafter referred to as 'said rules') Rule 20 of said rules specifically provides that all appointments by promotion shall be made on the basis of Seniority-cum-merit amongst the eligible employees, who possess requisite qualification. Rule 20 reads as under:

“20. Appointment by Promotion: All appointments by promotion shall be done on the basis of “Seniority-Cum-Merit” from amongst the eligible employees who have passed the departmental examination as prescribed under regulation 18 Annexure II List A and who possess other required qualifications.”

22) Further the Rule 22 of the said Rule clearly provides that all appointments by promotion and nomination shall be regulated as per procedure prescribed in Appendix-I to said regulation. Annexure-I of said Regulation prescribed the procedure for making appointments by

nomination and promotion as per said Regulation. Clause (1) of the said Annexure provides for Constitution of Selection Committee by Competent Authority i.e. Chief Executive Officer of M.I.D.C. Clause (3) of the said Annexure lays down the procedure to be adopted for filling up the post by promotion. Which reads as under:-

“3. Promotion : - following procedure shall be adopted for filling up the posts by promotion.

(a) Administrative department of the Corporation shall take a review in the month of June every year as to how many posts in each of the cadre are to be filled up by promotion during the period from 1st September to 31st August following year.

(b) (i) As per the aforesaid review, after the number of posts to be filled by promotion is determined, a list of employees eligible for consideration shall be prepared from amongst the employees possessing the necessary qualification in the proportion of number of posts, as may be determined by the Chief Executive Officer from time to time.

(ii) **If the names of the candidates against whom departmental enquiry is pending or who are suspended, come in the zone of consideration, then their names should not be excluded. After consideration of their names, the Selection Committee shall record its opinion about their fitness or otherwise.**

However while considering them for actual promotion, the criteria prescribed by the Govt. should be considered and then further action should be taken.

(iii) After preparation of such lists for consideration of promotion of candidates, generally in the month of September-October every year, meetings of Selection Committee shall be held.

(iv) Select list shall be prepared according to norms fixed by the Govt. for promotion from time to time.

(v) Select list prepared shall be confidential and as when the vacancies arise, this Select list shall be used for filling up the vacancies and candidates shall be appointed as per their number in the select list.

(vi) Secretary of the Committee shall prepare minutes of Committee's meeting and shall obtain thereon the signature of the person presiding over the meeting. He shall be responsible for taking back all the documents prepared for the meeting and made available to the members and collectively maintain them properly.”

23) Thus, Clause (ii) (b) of Clause 3 of Annexure I of said Regulation clearly provides that if the names of the candidate against whom departmental enquiry is pending falls in the zone of consideration, then names of such candidate or candidates should not be excluded from consideration. It further provides that after consideration of their names, the Selection Committee shall record its opinion about their fitness or otherwise. Rule further provides that while considering the appointment of such candidate for actual promotion, criteria prescribed by the Government should be considered and then further action be taken. Hence, the rule governing appointment by promotion by respondent no. 2, nowhere debars or disqualify the person like petitioner to be promoted to the higher post pending departmental enquiry proceeding. The Selection Committee can not decide the fate of such person and finally declare such person as unfit for promotional posts. The role attributed to Committee in such cases is to record its opinion as to fitness or otherwise of such candidate. The procedure prescribed specifically provides that criteria prescribed by the Government should be considered in such matter while considering the cases of such candidate for actual promotion and further action in that behalf shall be taken in accordance with the criteria prescribed by the Government.

24) It appears from record of the case that procedure prescribed and envisaged in rule applicable in making promotion has not been strictly followed by respondent no. 2 in the matter of Petitioner. Respondent no. 2 appears to have taken decision solely on the basis of recommendation made by Selection Committee as if the recommendation made by Selection Committee as final. Selection Committee has found petitioner unfit for

promotion only on the ground that promotional post involves higher responsibility and petitioner was facing departmental enquiry proceeding relating to causing huge loss to the corporation. Respondent no. 2 has not taken into consideration clause (ii) (b) of clause (3) of Annexure (I) which specifically provides procedure in respect of candidate against whom departmental enquiry is pending or who are are lying under suspension. The respondent no. 2 has failed take into consideration that actual decision in such cases relating to promotion is to be taken as per the criteria prescribed by the Government. However, in the instant case, the criteria prescribed by the Government in that behalf was not at all taken into consideration by respondent no. 2, while denying promotion to the petitioner. In accordance with the procedure prescribed under rule, the competent authority was expected to had taken conscious decision in the matter of petitioner in the light of criteria prescribed by State Government.

25) The learned Counsel for respondent no. 2 has produced on record the copy of circular dated 02/04/1976 issued by General Administration Department, Government of Maharashtra bearing circular no. SRV-1075/X, Sachivalaya, Bombay, which provides the instructions/criteria prescribed by State Government as to procedure to be followed in the cases of person whose conduct under investigation or against whom Departmental enquiries are pending. The contents of which reads as under:

Promotion

Procedure to the followed in The cases of persons whose conduct as under

investigation or against whom
departmental enquiries are pending

**GOVERNMENT OF MAHARASHTRA
GENERAL ADMINISTRATION DEPARTMENT,**

Circular No. SRV-1075/X,
Sachivalaya, Bombay-400 032

Dated the 2nd April 1976

CIRCULAR OF GOVERNMENT

According to the existing practice, Government servants whose conduct is under investigation or against whom a departmental enquiry is pending, are ordinarily not considered for promotion. This practice is however, likely to cause hard-ship in the case of Government servants who are otherwise fit for promotion and the charges against whom may not be so serious as to disqualify them for provisional promotion during the pendency of the investigation or enquiry. The question has been examined. There are three stages at which action will have to be taken viz.

1. The stage of preparing the select list.
2. Interim promotion during the pendency of the proceedings, and
3. The final action to be taken after the conclusion of the investigations and the departmental enquiry if any. Action as below should be taken in respect of these three stages.

2. The Stage of preparation of select list:

- (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; **but this inclusion should be considered to the purely provisional to be reviewed after the conclusion of the departmental enquiry or investigation if on conclusion of the investigation it is decided that a departmental enquiry is not necessary.** This position will apply to all persons irrespective of whether they are under suspension or not.
- (b) If the state of his record is such that because of his suspension, his record for the past 2/3 years is not available and so no decision either way can be taken then the Selection Committee should keep his case

'open' i.e. to be considered at the later date without prejudice to him because of the delay.

(c) If, on the basis of his record, he is not found fit for promotion, no further question arises.

3. Interim promotion during the pendency of the proceedings.

If the person is found fit and his name is provisionally included in the select list;

(a) During the pendency of the proceedings, the question of promoting a person under suspension does not arise such a person shall not be promoted.

(b) In respect of a person who is not under suspension, the competent authority should take a conscious decision, after taking into consideration the nature of the charges levelled whether the person should be promoted without waiting for the conclusion of the enquiry. If it is decided that he should be so promoted such promotion will be provisional and will be reviewed on the conclusion of the investigation or enquiry.

4. On conclusion of the investigations and/or departmental enquiry:

(a) If a person is completely exonerated the following consequences should follow:

- (i) If he was provisionally promoted, his provisional promotion should be treated as regular.
 - (ii) If such a person had become due for promotion but was not promoted, he should be promoted at the first opportunity. He should retain the seniority of his position in the select list. His pay should also be fixed at a stage which he would have reached had he been actually promoted according to his rank in the select list, but he should not be entitled to any arrears of pay on this account.
- (b) If he is not completely exonerated, then his case should be re-examine and a fresh decision should be taken as to whether, in view of the result of the investigations of enquiry, he is fit to be promoted.
- (i) If he is not found fit in such a re-examination and if he was provisionally promoted earlier the provisional promotion should come to an end. If he was not so promoted, no further question arises.

- (ii) If he is found fit, the competent authority should indicate his revised place in the Select List. This revised place is expected to be lower than original provisional place in most cases because of the interest resulting from the proceeding. If such a person was already provisionally promoted earlier, he should be deemed to be promoted accordingly to his revised position in the select list and the period his earlier promotion should be treated as fortuitous. If such a person was not already promoted, he should be promoted according to his revised position in the select list and the same consequence as in clause (a) (ii) above should follow.
- (c) Cases which are kept Open should be decided expeditiously.”

26) Thus, if we consider the facts of the present case in the light of circular dated 02/04/1976, then the select list was not prepared in accordance with procedure prescribed as per guidelines/criteria for preparation of list mentioned above. Admittedly the petitioner was fulfilling eligibility criteria for promotion on the basis of his service record. The Committee ought to have included the name of petitioner for provisional promotion to be reviewed after conclusion of departmental enquiry. In the case of petitioner, the respondent no. 2 ought to have examined the case of petitioner and thereafter taken conscious decision as provided under clause 3 (b) of said circular dated 02/04/1976. The decision of Selection Committee to deny promotion to petitioner appears to be taken purely on the recommendation and in ignorance of criteria laid down by State Government. Undisputedly, the procedure as prescribed under Annexure I to said Rule was not followed in the matter of petitioner. In view of this, the decision of respondent no. 2 to deny promotion to petitioner is not sustainable in law and liable to set aside. Since the petitioner has retired during the pendency of petition, no purpose would be served by referring back the case for taking conscious decision by

respondent no. 2. In view of facts and circumstances of the case, it is desirable to direct respondent no. 2 to promote petitioner as Chief Engineer with deem date of promotion w.e.f. 13/05/2013 i.e. the date on which respondent nos. 3 & 4 who were juniors to petitioner were promoted as Chief Engineer, subject to outcome of pending departmental enquiry proceeding against petitioner with further direction to expedite the enquiry and conclude the same within one year.

27) It is pertinent to note that in the instant case, the petitioner has taken a specific stand that he has been charge-sheeted for alleged lapses committed during the period 28/10/1997 to 21/12/1997, i.e. the period during which the petitioner claims that he was never posted and worked at Yavatmal as an Executive Engineer. We have perused the affidavit filed by respondent no. 2 as well as respondent nos. 3 & 4. There is no specific denial and counter submission on their part as to categorical statement made by petitioner that he was not working as Executive Engineer at Yavatmal during the period 28/10/1997 to 21/12/1997. There is a vague reply filed by respondent no. 2 to specific assertion made by the petitioner. If petitioner has filed this petition for quashing of charge-sheet by raising specific ground that he has been subjected to departmental enquiry and denied promotion for the acts committed at a particular place, about 17 to 18 years back, where he never worked, it was necessary on the part of respondent no. 2 to have specifically responded to those averments in its affidavit-in-reply. For not specifically dealing with those averments and denying the material case put forth by the petitioner in the petition by the respondent no. 2, the inference can be drawn that there may be substance in say and submission made by petitioner in that respect.

28) Perusal of memorandum dated 19/04/2010 of the alleged charges against petitioner reveals that it has been alleged that petitioner had worked during the period 28/10/1997 to 31/12/1997 as a Executive Engineer, Yavatmal Division and during that period, the budget estimate, DTP etc in respect of air strip constructed at airport at Yavatmal, were prepared and the actual construction was started. According to the allegations levelled, the petitioner is alleged to have failed in discharge of his duty as a Executive Engineer during the said period and committed number of lapses in preparation of documents, and also failed to take notes of the progress of the work. It is further alleged that he has not kept proper supervision over the contractor, officers and employees working under him. As per charge-sheet served upon the petitioner by respondent no. 2, it is alleged that on account of claim lodged by the contractor, the respondent no. 2 Corporation was required to pay 26 crores to contractor, for which petitioner is alleged to be responsible. Perusal of the charge-sheet reflects that contractor employed for construction of air strip as for airport at Yavatmal has initiated arbitration proceeding against respondent no. 2. In the arbitration proceeding, the arbitrator appears to have pass award in favour of contractor. Department contested the matter up to the Apex Court and lost the matter. On account of payment which department was required to pay to contractor as per said proceeding, the petitioner is subjected to face the departmental enquiry.

29) Admittedly, the alleged lapses are claimed to be occurred way back in the year 1997-1998. Earlier charge-sheet filed against petitioner was quashed by the Division Bench of this Court in Writ Petition No. 4188 of 2007, as the charge-sheet was found to be issued by person incompetent to

issue charge-sheet. Thereafter, the fresh charge-sheet appears to have been served to petitioner on 19/04/2010. It is pertinent to note that petitioner was given promotion as Superintending Engineer and Additional Chief engineer during the pendency of departmental enquiry proceeding based on same allegations. Promotion of petitioner to the post of Superintending Engineer and Additional Chief Engineer was not denied under the pretext of pendency of departmental enquiry proceeding against him, though those posts also involves high responsibility. Order dated 30/06/2009 passed in Writ Petition No. 4188 of 2007 reflects that after filing of the petition in the year 2009, petitioner was promoted as Additional Chief Engineer as per the recommendation of the Selection Committee while departmental enquiry in respect of same charge was pending against petitioner. Similarly, the order dated 25/02/2000 in writ petition no. 2415 of 1998 passed by the Division Bench of this Court also reveals that though Selection Committee recommended the name of the petitioner, order of promotion was not issued to petitioner as Superintending Engineer. Pursuant to the direction given by Division Bench of this Court to consider the case of petitioner and to take decision before 31/03/2000, the respondent no. 2 promoted him to the post of Superintending Engineer. If the Selection Committee headed by Chief Executive Officer has earlier found the petitioner eligible for promotion as a Superintending Engineer and Additional Chief Engineer, then there appears to be no justification in denying promotion to the petitioner on the ground of pendency of departmental enquiry proceeding.

30) We have considered judgments as relied by learned counsel for the petitioner as well as respondents referred in foregoing paras as to

quashing of departmental enquiry proceeding on the ground of delay in conduct of such enquiry. In our view of delay in conduct of inquiry is not sole criteria which leads to vitiate departmental enquiry proceeding. In the case of **State of A.P. V/s N. Radhakrishnan AIR 1998 SUPREME COURT 1833 (1)** Hon'ble Apex Court has considered the aspect as to whether the delay in conduct of proceeding alone vitiates the disciplinary proceeding. In para 19, the Court has observed as under.

“19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent

employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.”

31) Thus, as observed by the Apex Court no predetermined principles can be laid down irrespective of facts of each case, the delay in conduct of disciplinary proceeding would result into vitiating departmental enquiry proceeding. Each case needs to be examined on its own merit. In the instant case, the fact is not in dispute that earlier charge-sheet issued against the petitioner was quashed by the Division Bench of this Court in the year 2009. While quashing the charge-sheet issued to petitioner on technical ground, this Court has observed that order passed to quash the proceedings would not come in the way of respondent no. 2 to initiate fresh enquiry proceeding. After disposal of the said writ petition, respondent no. 2 has issued fresh charge-sheet in the year 2010. In view of this, we are not inclined to entertain the prayer of petitioner to quash the departmental proceeding against him. However, looking to the fact

that petitioner has retired from service and the legitimate claim of the petitioner for promotion to the higher post was denied, solely on the ground of pendency of departmental enquiry proceeding against the petitioner, we are inclined to direct the respondent no. 2 to complete the enquiry within a period of one year from the date of passing of this order. Failure to complete enquiry and take appropriate decision in disciplinary proceeding within one year would naturally debar respondent no. 2 to continue the proceeding.

32) Apart from this, pendency of the enquiry proceeding and allegation made therein cannot be made basis to deny promotion to the petitioner for the lapses allegedly committed about 16 to 17 years back. Respondent no. 2 has not explained as to why the departmental enquiry is kept pending for last so many years. Petitioner has retired from service in the year 2014 still the enquiry against petitioner has not been concluded. It is not justified to deny promotion to any person, merely on the basis of allegations against person in departmental enquiry proceeding. To keep the departmental enquiry proceeding pending for years together by respondent no. 2, itself amounts to an act of arbitrariness and denial of legitimate right of a person to seek promotion.

33) We are therefore of the view that denial of promotion to petitioner under the facts and circumstances of the case only on the basis of departmental enquiry pending against him is not justified. As discussed in foregoing para, as per instruction contained in Government circular dated 02/04/1976, as petitioner was fulfilling all the requisite criteria i.e. benchmark prescribed for provisional post and senior most eligible candidate, it was expected on the part of Selection Committee to have recommended

the name of the petitioner for the provisional promotional post, subject to outcome of departmental proceeding so as to avoid miscarriage of justice being caused to petitioner, in the event of exoneration from the charges levelled against the petitioner. Since the petitioner was fulfilling all other requisite criteria of seniority-cum-merit and belonging to scheduled caste for which one post of Chief Engineer was reserved, we are of the view that petition of the petitioner deserves to be allowed to the extent of directing respondent no. 2 to promote the petitioner to the post of Chief Engineer w.e.f. 13/05/2013 i.e. the date from which respondent nos. 3 & 4 were promoted from the posts available from open category, though juniors to petitioner. Since petitioner can be promoted to one of the posts available to be filled in from reserved category and same was kept vacant, the respondent no. 2 can promote petitioner from the vacant post meant for scheduled caste candidate w.e.f. 13/05/2013 without disturbing the promotion of respondent nos. 3 & 4 who were otherwise found eligible for promotion by the Selection Committee from 2 vacant posts to be filled in from candidates belonging to open category. We are therefore, not inclined to set aside the promotion of respondent nos. 3 & 4, though inclined to consider the case of the petitioner for promotion as Chief Engineer w.e.f. 13/05/2013, subject to outcome of departmental enquiry proceeding against the petitioner. Since Departmental enquiry was pending against petitioner on the date of consideration of claim by the Selection Committee, we are of the view that legitimate claim of the petitioner should not be defeated merely on the ground of pendency of departmental proceeding against petitioner. We therefore pass following order.

ORDER

- (i) Writ petition is partly allowed to the extent of prayer clause (C).
- (ii) Respondent no. 2 is directed to promote the petitioner to the post of Chief Engineer with deemed date of promotion w.e.f. 13/05/2013 and extend all consequential benefits, subject to outcome of departmental enquiry pending against the petitioner.
- (iii) Respondent no. 2 is directed to expedite the departmental enquiry proceeding against the petitioner and ensure that same shall be completed within a period of one year from the date of this order.
- (iv) In the facts and circumstances of this case, parties to bear their respective costs.
- (v) Rule is made partly absolute in above terms.

(VL. ACHLIYA, J.)

(S. V. GANGAPURWALA)