

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

215 WRIT PETITION NO. 3259 OF 2004

VIJAYKUMAR TOTARAM VASIKAR ..PETITIONER

VERSUS

UNION OF INDIA AND ORS ..RESPONDENTS

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Mr. M. K. Deshpande, Advocate for the Petitioner.
Mr. S. B. Deshpande, Advocate for the Respondent
Nos.1 to 3.

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**CORAM : S. V. GANGAPURWALA &
S. M. GAVHANE, JJ.**

DATED : 12th OCTOBER, 2018.

PER COURT:-

1. The petitioner assails the order of Central Administrative Tribunal dismissing the Original Application filed by the writ petitioner seeking direction against the respondents to promote the petitioner to Grade-III post from 26.10.1990 and to Grade-IV post from 27.10.1990.

2. Mr. M. K. Deshpande, learned counsel for the petitioner submits that the petitioner joined the services of the respondents as a Telegraphist on 16.11.1963 from the Scheduled Caste category. On 29.04.1983, the petitioner was given promotion to the selection grade post. In the year 1987, when

the petitioner was working as Telegraph Master at the department of Telegraph Office, Nanded chargesheet came to be issued to the petitioner under Rule 14 of the Central Civil Services (C.C.A.) Rule, 1965 alleging misconduct. The petitioner was exonerated from the enquiry. On 16.10.1990 respondent nos.1 and 2 introduced the scheme known as Biennial Cadre Review for giving promotion to the officers concerned on completion of 26 years service. The petitioner was not considered for promotion. The petitioner gave representation. All others were given promotion from Grade-II to Grade-III. Mr. Mandolu was given promotion from Grade-III to Grade-IV on 18.12.1991 on the basis of B.C.R. report. The petitioner made representation on 4.8.1992 and 18.1.1993 through proper channel. However, the same is not considered.

3. The learned counsel submits that the conclusion of the departmental promotion committee that the petitioner is not fit for promotion is not based on objective satisfaction. The adverse ACRs were never communicated to the petitioner. What was the special report considered is not placed before the Court. The petitioner is exonerated from the departmental enquiry. In view of that, there was nothing on record to conclude that the service record of the petitioner is not satisfactory. While considering the Scheduled

Caste candidates for promotion from Grade-III to Grade-IV the only consideration would be seniority cum fitness. The Tribunal has failed to consider the case of the petitioner in its proper perspective.

4. Mr. Deshpande, learned A.S.G. supports the order of the Tribunal.

5. We have considered the contentions, so also we have gone through the judgment of the Tribunal. It has been observed by the Tribunal that the departmental promotion committee had considered the case of the petitioner for promotion. Upon consideration of the ACR and the special reports the departmental promotion committee found petitioner unsuitable for promotion. It has also been made clear that the pendency of the departmental enquiry was not a ground in negating the claim of the petitioner for promotion. However, it was only on the basis of the unsatisfactory service record, the petitioner was not found fit for promotion. The Tribunal has also examined the record of the DPC held on 5.1.1994 and found the situation to be similar. The Tribunal upon consideration of the record found that the petitioner is found unsuitable for promotion due to unsatisfactory record of service and not only on the basis of departmental enquiry.

6. This Court would not sit in appeal over the decision of the DPC.

7. Considering the above, writ petition is dismissed. Rule discharged. No costs.

(S. M. GAVHANE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/October-18

Devendra
Nandkumar
Kale

Digitally signed
by Devendra
Nandkumar Kale
Date: 2018.10.17
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