

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.6836 OF 2015

Shaikh Abdul Bari s/o Shaikh
Abdul Rahim, Age : 62 years,
Occu. Nil, R/o Plot No.4,
Naheed Nagar, Near Rohini Police Line,
New Mondha Road, Katkat Gate,
Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra,
through its Secretary,
Home Department, M.S.
Mantralaya, Mumbai
2. The Additional Director General
of Police & Director of Police
Wireless, M.S., Pune
3. The Special Inspector General
of Police, Aurangabad Range,
Aurangabad
4. The Superintendent of Police,
Wireless, East Division,
Nagpur

RESPONDENTS

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Mr. Avinash Deshmukh, Advocate holding for Mr. Rajendra
S. Deshmukh, Advocate for the petitioner
Mr. P.S. Patil, A.G.P. for the respondents

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**CORAM: PRADEEP NANDRAJOG, CJ &
R.G. AVACHAT, J.**

DATE: 24.09.2019

PER COURT :

- 1] Heard learned counsel for the parties.
- 2] On being convicted for the offence punishable under Section 7(1) of the Prevention of Corruption Act, with reference to the circumstances and the evidence of conviction, penalty of dismissal from service was inflicted upon the petitioner on 19.11.2011. The same was challenged by filing Original Application No.874/2011. The Maharashtra Administrative Tribunal has dismissed the Original Application vide impugned order dated 10th December, 2014.
- 3] The impugned order notes that the argument advanced was that having been appointed by the Superintendent of Police, Parbhani as a Junior Clerk but having earned time-bound promotions, the disciplinary authority would be the Deputy Inspector General of Police. The Tribunal has, in our opinion, rightly held that a time-bound promotion is merely

placing the incumbent in the higher scale of pay in the post held and does not amount to a *de facto* or *de jure* promotion.

4] Thus, as regards the contention noted and dealt with by the Tribunal, we find no error.

5] However, we find that in the Original Application, reference has been made to the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Reference has been made as to who would the disciplinary authority contemplated by the Rules and further reference is made to the fact that the penalty has been inflicted as per the powers conferred by clause (i) of Rule 13 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

6] Learned counsel for the petitioner asserts that the arguments were made with respect to Rule 6.

7] We do not know whether such an argument was advanced or not.

8] It is settled law that where the grievance is that an argument

was advanced and the same has not been dealt with, at the first instance an application needs to be moved before the Court concerned or the Tribunal concerned. The reason is that many a times contentions in the pleadings are given up at the stage of arguments. Since it relates to the record of the Court or Tribunal, if the grievance is of a point urged not being dealt with, an application needs to be filed before said Fora.

9] Thus, as regards challenge to the impugned order is concerned which deals with only one contention, agreeing with the view taken by the Tribunal and as a result dismissing the writ petition, we simply observe that if the petitioner were to file an application before the Tribunal pointing out that an argument advanced has not been dealt with, the Tribunal shall decide such application as per law.

10] No costs.

(R.G. AVACHAT, J.)

CHIEF JUSTICE