

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 28 OF 2010

The State of Maharashtra
& others

Petitioners

Versus

Kashinath Namdeo Waghmare

Respondent

Mr. S.Y. Mahajan, AGP for the petitioners.

Mr. Ajay Deshpande, Advocate holding for Mrs. Geeta Deshpande,
Advocate for the respondent.

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

DATE: 24.09.2019

PER COURT :

1] Heard learned counsel for the parties.

2] Grievance of the petitioners to the order dated 25.08.2008 passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad, in Original Application No. 952/2001 is to the part where the order directs the respondent to be promoted as *Awal Karkoon*.

3] We have perused the impugned order and we find that the same has allowed the Original Application in terms of prayer 'A' concerning the issue raised in the appeal. Prayer 'A' is to grant promotional benefits to the applicant before the Tribunal.

4] The facts to understand the controversy are that while working as a Junior Clerk, the applicant was charged for offences punishable under Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act. He was suspended. During the trial he superannuated from service on 31.12.1997. He was acquitted of the charges on 30.09.2001. The appeal filed by the State was dismissed on 17.03.2008.

5] It is not in dispute that a person junior to the applicant before the Tribunal in the seniority list earned promotion.

6] There is no clarity in the pleadings as to at the DPC which empaneled persons junior to the applicant before the Tribunal being promoted whether the name of the applicant was considered and recommendation placed in a sealed cover. Be that as it may, a person

suspended and facing disciplinary proceeding is entitled to be considered for promotion but recommendations have to be kept in a sealed cover.

7] Thus, we dispose of the petition clarifying that if respondent's name was considered at the DPC which recommended promotion of persons junior to the respondent, the recommendations pertaining to the respondent would be opened and if the recommendations of the DPC are to promote the respondent, he would be promoted from the date the person immediately junior to him in the seniority list was promoted.

8] The petitioner would also be entitled to consequential benefits but notionally till he superannuated from service, meaning thereby, pensionary benefits would be fixed on actual basis. The reason to deny actual wages is the principle of law that not having shouldered the responsibility of the superior post, the respondent would not be entitled to wages thereof and additionally the fact that as a Government servant, the respondent was facing charges under the Prevention of Corruption Act which justified his suspension.

9] If for some reason, respondent's name was not considered by the DPC and person immediately junior to the respondent was promoted, a review DPC would be held. If respondent is held entitled to be promoted, notional benefits as afore-directed would be accorded in said eventuality. Needful shall be done within six weeks from today.

10] Writ petition stands disposed of.

(R.G. AVACHAT, J.)

CHIEF JUSTICE

dyb