

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.7339/2018

Sachin s/o Ramrao Saturwar
Vs.

Divisional Commissioner, Amravati Division, Amravati and two others.

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S.S.Shingane, Advocate for petitioner.
Shri A.M.Balpande, Assistant Government Pleader for respondent no.1.
Shri V.G.Bhise, Advocate for respondent no.2.

CORAM : A.S.CHANDURKAR, J.
DATED : August 16, 2019.

The challenge raised in the present writ petition is to the order passed on 31.08.2017 by the Departmental Promotion Committee when it did not consider the claim of the petitioner for promotion on the post of Block Development Officer. In the said meeting of the Committee dated 31.08.2017, the case of the petitioner was not considered on the ground that an enquiry was pending against him and the enquiry report was awaited. The petitioner challenged that order by filing an appeal under Rule 14 of the Maharashtra Zilla Parishad Services (Discipline and Appeal) Rules, 1964. The Divisional Commissioner by his order dated 22.06.2018 observed that though the petitioner was senior to the respondent no.3 since departmental proceedings were pending against him in the matter of alleged misappropriation, he could not be considered for promotion. Being aggrieved, the petitioner has challenged these orders in the present writ petition.

Shri S.S.Shingane, learned counsel for the petitioner submits that no enquiry was ever conducted against the petitioner from the year 2013 to 2017. No show cause notice was ever issued to him and therefore

merely on the ground that an enquiry was proposed, he could not have been denied the promotion. According to him, various documents placed on record indicate that recovery of certain amounts though sought has not been actually made. As no enquiry has been held against the petitioner, he could not have been excluded from the zone of consideration for promotion. He therefore submitted that the impugned orders passed in these facts are liable to be set aside.

Shri V.G.Bhise, learned counsel for the respondent no.2 supported the impugned orders by relying upon the reply as filed. According to him, when the meeting of the Departmental Promotion Committee was held, recovery was proposed against the petitioner and hence he was not considered for being promoted to the post of Block Development Officer. Referring to the criteria prescribed for being considered for promotion it was submitted that if any dues are found recoverable from a candidate, he was not liable to be considered for promotion. There was no challenge to the criteria fixed for promoting eligible candidates and therefore the Authorities were justified in not considering the claim of the petitioner for promotion.

Shri A.M.Balpande, learned Assistant Government Pleader for respondent no.1 also supported the impugned orders.

Perusal of the documents on record indicate that the Departmental Promotion Committee on the basis of the criteria already fixed considered various claims for promotion on the post of Block Development Officer. One of the criteria fixed was that if any amount was recoverable from any of the candidates, such claim would not be considered for promotion. Insofar as the petitioner is concerned, it has been shown from the documents on record that recoveries have been proposed against the petitioner. As per audit reports referred to by the respondent no.2 various recoveries that were pending against the petitioner. It is for that reason that the claim of the petitioner was not considered by the Departmental Promotion Committee which order has been confirmed by

the Divisional Commissioner.

Insofar as the submission made on behalf of the petitioner that he has not yet been noticed in the enquiry proceedings is concerned, the same is a matter to be agitated when the petitioner challenges the decision to recover any amounts from him. The Departmental Promotion Committee was duty bound to have considered the material placed before it which indicated that the recovery was pending against the petitioner. It has been clearly indicated that the enquiry report is yet awaited. It would be a different matter if ultimately it is found that no amounts are due from the petitioner and he stands exonerated of that allegation. As noted above, the criteria which was considered by the Departmental Promotion Committee was the pendency of proceedings for recovery against the candidate.

In that view of the matter, it is found that the Departmental Promotion Committee in the light of the material placed before it rightly did not consider the claim of the petitioner for promotion. That order has been confirmed by the Divisional Commissioner and I am of the view that the same does not call for any interference.

By clarifying that if the petitioner is exonerated in the proceedings or if it is found in future that no amounts are due from him, the respondent no.2 would be bound to consider the claim of the petitioner in that eventuality. Writ Petition is accordingly dismissed. No costs.

JUDGE

Andurkar.