

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5747 OF 2021

Sachin Namdev Wadgaye

Age – 42 years,

R/o. 10/187, Juhu Adarsh, new D. N. Nagar,

Andheri (East), Mumbai-400 051

....Petitioner

Versus

1. Maharashtra Housing area and Development Authority, having its office at Griha Nirman Bhavan, Kala Nagar Bandra (E) Mumbai-400 051.
2. The Secretary Maharashtra Housing area and Development Authority, having its office at Griha Nirman Bhavan, Kala Nagar Bandra (E) Mumbai-400 051.
3. Savita Bodke
Age – 38 years, having her office address at Maharashtra Housing area and Development Authority, having its office at Griha Nirman Bhavan, Kala Nagar Bandra (E) Mumbai-400 051.
4. The State of Maharashtra
Through the Government Pleader

and through Principal Secretary,
Housing Department, 2nd floor,
New Administrative Building,
Mantralaya, Mumbai.

....Respondents

...

Mr. A. V. Anturkar, Senior Counsel a/w. Mr. Piyush Shah &
Mr. Jay Vora for the Petitioner.
Mr. P. G. Lad a/w. Ms. Sayli Apte, Shrya Shah for (MHADA)-
Respondent Nos.1 & 2
Mr. Shailesh Naidu i/b. Mr. S. N. Biradar for Respondent No.3.

...

**CORAM: NITIN JAMDAR, ACJ &
SANDEEP V. MARNE, J.**

DATE : 15 JUNE 2023.

JUDGMENT (*Per – Sandeep V. Marne, J.*):

Rule. Rule is made returnable forthwith. With the consent of parties, petition is taken up for final hearing.

2. Petitioner has filed present petition challenging order dated 27 August 2021 promoting Respondent No.3 to the post of Information and Communication Technology Officer. Petitioner seeks his own promotion to that post in place of Respondent No.3. He also seeks a direction to call for records relating to involvement of Respondent No.3 in respect of alleged fabrication of tender for renewal of Oracle license to LDS Infotech Pvt. Ltd. as well as report submitted by the Vigilance Committee on 29 January 2020. He also challenges the recruitment rules to the extent of prescription of Decree in

Management as qualification for promotion to the post of Information and Communication Technology Officer.

3. Briefly stated, facts of the case are that Petitioner has been working on the post of Information and Communication Technology Officer (**ICT Officer**) since 3 May 2012. Respondent No.3 came to be appointed on the post of ICT Officer w.e.f. 23 July 2012. Petitioner is the senior to Respondent No.3 in the cadre of ICT Officer.

4. After the post of Chief ICT Officer fell vacant, Petitioner was given additional charge of that post in accordance with his seniority. However, later one Mr. S. B. Kumthekar was appointed on the post of ICT Officer in the year 2016, but he resigned on 31 January 2017 and once again additional charge of the post was given to Petitioner on 6 February 2017. It is averred that when Petitioner was on leave during 24 May 2017 to 26 May 2017, additional charge of the post of Chief ICT Officer was handed over to Respondent No.3. However, when Petitioner resumed duties after leave, the charge of the post of Chief ICT Officer was not given back to him.

5. Petitioner avers that the Chief Vigilance Security Officer of MHADA submitted a report to the Vice Chairman and Chief Executive Officer of MHADA about certain irregularities committed by Respondent No.3 and recommended initiation of departmental proceedings against him. Petitioner further contends that accordingly Respondent No.3 came to be censured for commission of irregularities by letter dated 23 August 2021. Petitioner was also issued letter dated 23 August 2021 blaming him for misplacement of file, in respect of which inquiry was going on against

Respondent No.3. He alleges that this was done for denial of promotion to him.

6. The recruitment Rules for the post of Chief ICT Officer were notified on 16 June 2021 which envisages promotion to the post on the basis of merit and seniority from amongst persons holding post of ICT Officer for 3 years. Preference is to be given to officer possessing MBA or M.E./M.Tech in Computer Engineering/ Computer Technology / Computer Science and Engineering/ Information Technology Engineering or to a person possessing experience of information about software / software domain. Petitioner questions requirement of MBA qualification prescribed in the recruitment rules and alleges that the said qualification is included in preference criteria only for the purpose of favouring Respondent No.3.

7. Respondent MHADA commenced the process for filling up post of Chief ICT Officer by promotion and called for information relating to Petitioner and Respondent No.3 by letter dated 16 September 2020. He contends that though a departmental inquiry was proposed against Respondent No.3, the information relating thereto was suppressed from the Departmental Promotional Committee(DPC). Petitioner also alleges various complaints received against Respondent No.3.

8. The DPC meet on 7 August 2021 and considered cases of Petitioner and Respondent No.3 for promotion to the post of Chief ICT Officer and recommended Respondent No.3 for promotion. However one of the members of the DPC differed with the opinion of other members and recommended obtaining views of the State Government. Based on the

recommendations of the DPC, order dated 27 August 2021 was issued promoting Respondent No.3 to the post of Chief ICT Officer. Petitioner has challenged the order 27 August 2021 in the present petition. He has also challenged preference condition in the recruitment rules for officers possessing MBA Degree. He has also sought records relating to inquiry initiated against Respondent No.3. For the sake of convenience, prayers made by Petitioner in the petition are reproduced below.

- a) That this Hon'ble Court may be pleased to issue Writ of Certiorari and/or any other appropriate Writ, Order of directions of this Hon'ble Court which the court may deem fit.*
- b) That this Hon'ble Court may be please to issue any order of direction for calling the papers and Proceeding related to the Order dated 27.08.2021 passed by the Respondent No. 2 and after examining the legality and validity thereof to quash and set aside the order dated 27.08.2021 & the Petitioner may be considered for promotion & if found fit then may be promoted to the post of Chief ICT officer.*
- c) That this Hon'ble Court may be pleased to issue any order of direction for calling all the papers and files concerning the involvement of Respondent No.3 in enquiry in respect of fabrication of a tender concerning grant of renewal of Oracle License to LDS Info Tech Private Limited passed in respect of renewal of oracle license in the year 2017 and also the report submitted to Vice President, Mhada by the Vigilance Department dated 29.01.2020.*
- d) The condition mentioned in the Recruitment Rules dated 16.06.2021 about degree in management (MBA) for the promotion to the post of Chief ICT Officer may be declared as malafide, arbitrary and not in accordance with law.*
- e) Pending the hearing and final disposal of the petition this Hon'ble Court be pleased to stay execution, implementation and operation of the impugned order dated 27.08.2021 passed by the Respondent No.2.*
- f) Interim and ad interim relief in terms of prayer clause (e) above be granted.*

- g) *Cost of this petition be provided for.*
- h) *Such other and further reliefs as this Honourable Court may deem fit and proper in the facts and circumstances of the case.”*

9. Appearing for Petitioner Mr. Anturkar, the learned senior advocate would submit that though Petitioner was always senior than Respondent No.3, the seniority list was deliberately tweaked by bifurcating the same into the post of ICT Officer-I (Application and Database Management Software) and ICT Officer-II (Systems Analysis). He would submit that this was done with a view to ensure Petitioner's supercession in promotion to the post of Chief ICT Officer. He would submit that the cadre of ICT Officer has not been bifurcated and continuous to be single cadre and therefore bifurcation of seniority into two posts was clearly unwarranted. He would further submit that since Petitioner is senior to Respondent No.3, due weightage ought to have been given to his seniority position. Inviting our attention to the minutes of the DPC, he would submit that one of the members of the DPC had clearly disagreed with the opinion of other members and had recommended that views of the Government be sought. That without obtaining the views of the Government, MHADA went ahead and issued promotion order to the Respondent No.3.

10. He would further submit that departmental inquiry was recommended against Respondent No.3 by Chief Vigilance and Security Officer of MHADA, who is in the rank of Additional Director General of Police. He would draw our attention to letter dated 29 January 2020 of Chief Vigilance and Security Officer in which Respondent No.3 was indicted for various commissions and omissions with regard to award of tender to M/s.

LDS Infotech Pvt. Ltd. for Oracle Software. Inviting our attention to the letter dated 16 September 2020, calling for information regarding pending, completed and proposed disciplinary inquiries, Mr. Anturkar would allege that though departmental inquiry was proposed against Respondent No.3 the information was deliberately suppressed from the DPC. He would submit that though Respondent No.3 was solely responsible for acts of commission and omission with regard to tender process, letter dated 23 August 2021 was deliberately issued to Petitioner admonishing him for misplacement of file. He would submit that instead of initiating departmental proceedings against Respondent No.3, who was the main culprit in the tender process, she was let off by issuance of a mere admonition letter dated 23 August 2021. Even that aspect of Respondent No.3 being admonished has not been taken into consideration by the DPC. That proposal for initiation of departmental inquiry against Respondent No.3 in respect of serious misconduct was the relevant factor, which ought to have been taken into consideration by the DPC. He would therefore submit that the recommendations of the DPC suffers from non-application of mind and that therefore promotion order of Respondent No.3 passed on the recommendations of the DPC deserves to be quashed and set aside.

11. Petition has opposed by Respondent-MHADA by filing affidavit in reply. Mr. Lad, the learned counsel appearing for the MHADA would submit that cases of Petitioner and Respondent No.3 for promotion to the post of Chief ICT Officer have been objectively considered. That the promotion is to be granted on the criteria of merit-cum-seniority and that therefore seniority alone cannot be a factor for deciding suitability of officer. That though

Petitioner is senior to Respondent, the DPC has found Respondent No.3 to be more meritorious than Petitioner. Respondent No.3 also possesses better qualifications than Petitioner. He would invite our attention to the additional affidavit dated 14 June 2023 pointing out that a lenient view was taken against Respondent No.3 by closure of inquiry as Respondent No.3 clarified that the amount in the work order was mentioned by mistake and that the steps were taken for the recovery of the said amount with interest thereby causing no loss to the MHADA.

12. Mr. Naidu, the learned counsel would appear for Respondent No.3 and would oppose the petition. He would submit that the DPC has adjudged Respondent No.3 as more meritorious than Petitioner. That there is difference between the criteria of 'merit cum seniority' and 'seniority cum merit'. That in the criteria of 'merit cum seniority' more emphasis is required to be given to merit and seniority is relevant only in the event both candidates secure same merit. He would submit that recommendations for initiation of departmental inquiry is an irrelevant factor for consideration of case of officer for promotion. He would also seek to justify actions of Respondent No.3 and would make an attempt to demonstrate as to how Respondent No.3 has not committed any irregularities. In support of his contention Mr. Naidu would rely upon following judgments:

- i) Central Council for Research in Ayurveda & Siddha & Anr.
Vs. Dr. K. Santhakumari¹

¹ (2001) 5 SCC 60.

- ii) U. V. Mahadkar Vs. Subhash Anand Ahavan & Ors.²
- iii) Kumar Shailendra Sinha and Ors. Vs. Union of India & Ors.³
- iv) Union Public Service Commission Vs. L. P. Tiwari & Ors.⁴
- v) Union of India & Ors Vs. K. V. Jankiraman & Ors.⁵

13. Rival contentions of the parties now fall for our consideration.

14. Before we advert to the competing claims of Petitioner and Respondent for promotion to the post of Chief ICT Officer, it would be necessary to consider the manner in which the post can be filled up. By Notification dated 15 June 2021, Chief Information and Communication Technology Officer (Recruitment to Service) Rules 2021 were notified. Rule 3 deals with appointment to the post of Chief ICT Officer and provides thus-

“3. The post of Chief Information and Communication Technology Officer in Engineering services on the establishment of the Authority can be filled by way of promotion from amongst suitable officer holding the post of Information and Communication Technology Officer and completing 3 years’ service on that post on the basis of merit and seniority. Preference would be given to persons possessing qualification of MBA or M.E./M.Tech in Computer Engineering/ Computer Technology / Computer Science and Engineering/ Information Technology Engineering or to a person possessing experience of information about software / software domain.”

15. Thus, the post of Chief ICT Officer is to be filled in by promotion from amongst officers completing 3 years of service on the post of

2 (2016) 1 SCC 536

3 (2023) SCC OnLine Bom 982

4 (2006) 12 SCC 317

5 (1991) 4 SCC 109

ICT officer on the basis of merit cum seniority. There is preference clause in the recruitment rules under which candidate possessing MBA or BE / B. Tech. degree in prescribed disciplines or possession information and experience in software / software domain are to be given preference.

16. Petitioner has set up a challenge to the Recruitment Rule to the limited extent of preference clause. He has alleged that the provisions for grant of preference to candidate possessing MBA Degree is deliberately included in the recruitment rule so as to favour Respondent No.3. Apart from the fact that this allegation is loosely made without implementing any particular official in personal capacity for leveling allegation of malafides, no material is produced on record in support of c challenge to preference clause. Also, Respondent No.3 has not been recommended for promotion only on account of preference clause.

17. It is well settled law that qualification and experience required for a post is a matter of which employer is the sole judge. It is for the employer to decide what qualification would be necessary for appointment to a particular post. Courts or Tribunals, in exercise of power of judicial review, cannot substitute its own opinion about requirement of a particular qualification. Reference in this regard can be made to the judgment of the Apex Court in **Maharashtra Public Service Commission v. Sandeep Shriram Warade**, (2019) 6 SCC 362, in which it is held as under:

9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of

the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.

(emphasis supplied)

18. The employer is thus within its right to prescribe preferenc clause in the Recruitment Rule. This Court cannot decide the issue whether the degree of MBA is relevant for the post of not. That would fall in the exclusive domain of the employer. We therefore do not find any merit in Petitioner's challenge to prescription of preference condition in the Recruitment Rule and the challenge is therefore repelled.

19. Now we proceed to determine Petitioner's challenge to the recommendations of the DPC for promotion of respondent No.3. The DPC meet on 8 July 2021 for taking into consideration of cases of officers for promotion to the post of Chief ICT Officer, ICT Officer and Senior Programmer. The DPC comprised of Divisional Commissioner, CEO MHADA, CEO Mumbai Board, Chief Engineer and Secretary MHADA. The minutes of DPC would indicate that Petitioner was considered senior over Respondent No.3. This fact has been confirmed by MHADA in its affidavit in reply as well. Therefore, we need not go into the issue of bifurcation of cadre of ICT Officer into two different seniority lists. Considering Petitioner as senior

over Respondent No.3, DPC took into consideration Annual Confidential Reports (**ACRs**) of the duo for 5 years from 2015-16 to 2019-20. The DPC found that Petitioner and Respondent No.3 were awarded following gradings during the years 2015-16 to 2019-20.

	2015-16	2016-17	2017-18	2018-19	2019-20
Petitioner	A+	B+ (1/04/16 to 6/10/16)	A	A	A+
Respondent No.3	A+	B+ (1/04/16 to 6/10/16)	A+	A+	A+

20. The DPC awarded marks for various gradings secured by the officers in 5 years' ACRs and while Petitioner secured total 22 marks, Respondent No.3 secured 24 marks. Since the Respondent No.3 secured more marks, she was adjudged more meritorious than Petitioner. Additionally Respondent No.3 was found to be possessing experience in Software Domain as well as MBA Degree and therefore the DPC recommended the name of Respondent No.3 for being promoted to the post of Chief ICT Officer. The name of Petitioner was recommended for being included in the waiting list.

21. One of the members of the DPC, Shri. D. S. Pundirkar, who acted in dual capacity as Chief Engineer as well as representative of reserved category, recorded his dissent with the recommendations of other committee members. He wrote a separate report stating that Petitioner was senior than Respondent No.3 and that guidance was required to be sought from the State

Government on the issue of 'merit' as the term 'merit' was not defined in the Recruitment Rules. He further remarked that for filling up any post by direct recruitment, additional qualification become first criteria and experience becomes the second criteria. However, for promotion, seniority becomes first criteria and experience on lower post is the second criteria and educational qualification is the last criteria, if required. He remarked that only educational qualification cannot be considered for adjudging suitability of an officer.

22. We find the objection raised by Shri. D. S. Pundirkar to be totally contrary to the provisions of the Recruitment Rules. The DPC was required to consider suitability of the officers for promotion in accordance with provisions of the Recruitment Rules. Its members were not supposed to comment upon correctness of any provision of the Recruitment Rules. Therefore, the remarks made by him about impermissibility of grant of weightage to higher qualifications are clearly erroneous and deserve to be ignored. Furthermore, the term 'merit' need not to be defined in the recruitment rules. Comparative assessment of merit of officers is required to be adjudged *inter alia* on the basis of their performance reflected in their ACRs. In fact, one of the most important purposes for maintaining Performance Appraisal Reports of officer is to adjudge their suitability for promotion to the higher post. Therefore, there was no necessity of seeking any guidance from the State Government on the aspect of 'merit'. Therefore, mere disagreement by one of the members of the DPC would not vitiate its recommendations.

23. The DPC has adjudged Respondent No.3 to be more meritorious than Petitioner on account of the fact that she was awarded 'A+' grading

during 2017-18 and 2018-19 as compared to 'A' grading awarded to Petitioner for same period. Petitioner did not question award of these gradings at the relevant time. Therefore, no fault can be found with the recommendations of the DPC in adjudging Respondent No.3 to be more meritorious than Petitioner.

24. It has been contended on behalf of Petitioner that due weightage is required to be given to his seniority over Respondent No. 3. We are unable to agree. Recruitment rules envisages grant of promotion on the basis of 'merit cum seniority'.

25. The Apex Court has dealt with the issue of difference between the criteria of 'merit cum seniority' and 'seniority cum merit' in catena of judgments. In **B. B. Shivaih Vs. K. Adalanki Babu**⁶, the Apex Court held that the principle of 'merit cum seniority' lays greater emphasis on merit and ability and that seniority plays less significant role. That seniority is to be given weightage only when merit and ability is approximately equal. It is held:

9. The principle of "merit-cum-seniority" lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal. In the context of Rule 5(2) of the Indian Administrative Service/Indian Police Service (Appointment by Promotion) Regulations, 1955 which prescribed that "selection for inclusion in such list shall be based on merit and suitability in all respects with due regard to seniority" Mathew, J. in Union of India v. Mohan Lal Capoor [(1973) 2 SCC 836 : 1974 SCC (L&S) 5] has said: (SCC p. 856, para 37)

"[F]or inclusion in the list, merit and suitability in all respects should be the governing consideration and that seniority should play only a

⁶ (1998) 6 SCC 720.

secondary role. It is only when merit and suitability are roughly equal that seniority will be a determining factor, or if it is not fairly possible to make an assessment inter se of the merit and suitability of two eligible candidates and come to a firm conclusion, seniority would tilt the scale.”

Similarly, Beg, J. (as the learned Chief Justice then was) has said: (SCC p. 851, para 22)

“22. Thus, we think that the correct view, in conformity with the plain meaning of words used in the relevant Rules, is that the ‘entrance’ or ‘inclusion’ test for a place on the select list, is competitive and comparative applied to all eligible candidates and not minimal like pass marks at an examination. The Selection Committee has an unrestricted choice of the best available talent, from amongst eligible candidates, determined by reference to reasonable criteria applied in assessing the facts revealed by service records of all eligible candidates so that merit and not mere seniority is the governing factor.”

10. On the other hand, as between the two principles of seniority and merit, the criterion of “seniority-cum-merit” lays greater emphasis on seniority. In State of Mysore v. Syed Mahmood [AIR 1968 SC 1113 : (1968) 3 SCR 363 : (1970) 1 LLJ 370] while considering Rule 4(3)(b) of the Mysore State Civil Services General Recruitment Rules, 1957 which required promotion to be made by selection on the basis of seniority-cum-merit, this Court has observed that the Rule required promotion to be made by selection on the basis of “seniority subject to the fitness of the candidate to discharge the duties of the post from among persons eligible for promotion”. It was pointed out that where the promotion is based on seniority-cum-merit, the officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted.

26. In **Central Council for Research in Aayurveda & Siddha & Anr. Vs. Dr. K. Santhakumari**⁷ the Apex Court once again dealt with the difference between concepts of ‘merit cum seniority’ and ‘seniority cum merit’ and held in paragraph No.6 to 11 as under-

“6. The principle of merit-cum-seniority is an approved method of selection and this Court in Sant Ram Sharma v. State of Rajasthan held that promotion to ‘selection grade posts’ is not automatic on the basis of ranking in the gradation list and the promotion is primarily based on merit and not on seniority alone. At p. 1914 of the judgment, it is stated as under: (AIR para6)

“The circumstances that these posts are classed as ‘selection grade posts’ itself suggests that promotion to these posts is not automatic being made only on the basis of ranking in the gradation list but the question of merit enters in promotion to selection posts. In our opinion, the gradation list does not confer any right on the Petitioner to be promoted to selection post and that it is a well-established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is, therefore, available.”

7. The Court further held that such mode of selection is not violative of Article 14 of the Constitution.

8. In State of Orissa v. Durga Charan Das the Constitution Bench of this Court held that the promotion to a selection post is not a matter of right which can be claimed merely by seniority.

9. In Union of India v. Mohan Lal Capoor (SCC at p. 856, para 37) it was held as under:

[F] or conclusion in the list, merit and suitability in all respects should be governing consideration and that seniority should play only a secondary role. It is only when merit and suitability are roughly equal that seniority will be a determining factor, or, if it is not fairly possible

⁷ (2001) 5 CC 60.

to make an assessment inter se of the merit and suitability of two eligible candidates and come to a firm conclusion, seniority would tilt the scale.”

10. In *V.B. Sivaiah V. K. Addanki Babu* this Court held that the principle of “merit-cum-seniority” lays greater emphasis on merit and ability and seniority plays a less significant role. Seniority is to be given weight only when merit and ability are approximately equal.

11. In *Union of India v. Lt. Gen. Rajendra Singh Kadyan* (SCC in para 12, at p. 707) it was observed as under:

“Wherever fitness is stipulated as the basis of election, it is regarded as a non-selection post to be filled on the basis of seniority subject to rejection of the unfit. Fitness means fitness in all respects. ‘Seniority-cum-merit’ postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed. Subject to fulfilling this requirement the promotion is based on seniority. There is no requirement of assessment of comparative merit both in the case of seniority-cum-fitness and seniority-cum-merit. Merit-cum-suitability with due regard to seniority as prescribed in the case of promotion to all India services necessarily involves assessment of comparative merit of all eligible candidates, and selecting the best out of them.”

27. In **U. V. Mahadkar Vs. Subhash Anand Chavan & Ors.**⁸ the Apex Court held in paragraph No.12 and 17 as under -

“12. It is well settled that there is a sharp distinction between “merit-cum-seniority” and “Seniority-cum-merit”. In the former case, the merit shall have to be given preference over the seniority. It is only when the seniormost candidate has no merit and he is not suitable to be appointed on the selection post, merely because of seniority, then the Committees have to select a meritorious candidate. The question as to the distinction between the two is no longer *res integra*.”

17. After giving our anxious consideration in the matter, we are of the definite opinion that the High Court should not have entered into the arena of the experts and to reassess the merit of the candidates when

⁸ (2016) 1 SCC 536

it is finally decided by a duly constituted Committee of Experts in the same field.”

28. In ***Kumar Shailendra Sinha*** (Supra) Division Bench of this court (to which one of us, Sandeep V. Marne J, was party) after considering the decision in ***Central Council for Research*** (supra) held that seniority will have to take a back seat when criteria of ‘merit cum seniority’ is prescribed for adjudging suitability of the officers for promotion.

29. Therefore, Petitioner’s seniority over Respondent No.3 cannot *ipso facto* entitle him for promotion to the post of Chief ICT Officer.

30. Now we turn to the aspect of recommendation of departmental inquiry against Respondent No.3. It is contended by the Petitioner that since departmental inquiry was proposed against Respondent No. 3, the same ought to be a relevant factor to be taken into consideration by DPC. Reliance is placed by Petitioner on admonition letter issued to Respondent No.3 on 23 August 2021. Conversely, Respondent No.3 has placed reliance on similar admonition letter issued on same day (23 August 2023) to Petitioner. We find that the DPC meeting was conducted on 7 August 2021. Admonition letters, issued to Petitioner and Respondent No.3 subsequently on 23 August 2021, would be wholly irrelevant for determining of correctness of recommendations of the DPC. Even otherwise ‘censure’ is one of the punishments prescribed under the provisions of Maharashtra Civil Service Rules (Discipline & Appeal) Rules and the punishment of ‘censure’ cannot be imposed without conducting departmental inquiry. Admittedly no departmental inquiry has been conducted either against the Petitioner or against Respondent No.3. Therefore, letter dated 23 August 2021 containing admonitions cannot be

construed as punishment of 'censure' so as to make an entry thereof in the service record of both the officials.

31. It has been strenuously contended on behalf of Petitioner that though disciplinary inquiry was ultimately not initiated against Respondent No.3 and though she was let off, the *factum* of recommendation for initiation of Disciplinary Inquiry by Chief Vigilance and Security Officer ought to have been placed before DPC. Reliance is placed on the letter dated 29 January 2020 of Chief Vigilance and Security Officer recommending initiation of Disciplinary Inquiry. Here again, we are unable to agree with the Petitioner's contention. The law relating to consideration of cases of officers for promotion who are under cloud has been settled by the judgment of Apex Court in **Union of India Vs. K. V. Jankiraman**. The Apex Court has held that cases of officers can be kept in sealed cover against whom a charge memo / charge sheet for disciplinary inquiry has been issued or who are placed under suspension or who are facing criminal prosecution. Therefore mere recommendations by Vigilance and Security Officer for initiation of disciplinary inquiry cannot be a ground for placing case of Respondent No. 3 in sealed cover. Equally true is the position that mere recommendation for initiation of disciplinary inquiry cannot be a factor to be taken into consideration for adjudging suitability of an officer for promotion. We therefore find that the DPC has rightly has not taken into consideration the recommendation of Chief Vigilance and Security Officer MHADA for initiation of Disciplinary Inquiry against Respondent No.3.

32. Strenuous efforts are made on the part of Petitioner to contend that Respondent No.3 is let off by taking lenient view without initiation of disciplinary inquiry. We are afraid, this cannot be a subject matter of the present petition. Whether MHADA wants to take action against Respondent No.3 or not is something on which this court would not be in position to comment. Petitioner cannot demand that the employer must take Disciplinary Inquiry against Respondent No.3. It is also required to be noted that the conduct of Petitioner himself was adversely commented upon in the very same tender process in which Respondent No.3 was sought to be indicted. After consideration of the entire material on record, the employer has ultimately arrived at a conclusion that no disciplinary proceedings are warranted against Respondent No.3 or even against Petitioner and that they were required to give warning to be careful in future. We are neither called upon nor we propose to enter into merits of this decision on the part of employer.

33. Resultantly we do not find any merit in the petition filed by Petitioner. Writ Petition is accordingly dismissed with no order as to costs. Rule is discharged.

SANDEEP V. MARNE, J.

ACTING CHIEF JUSTICE

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signed by
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VISHNU
KAMBLE
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