
(2020) 04 BOM CK 0006
In the Bombay High Court
Case No : Writ Petition No. 4921 Of 2019

Mohan Vasantrao Sangvikar	Vs	APPELLANT
State Of Maharashtra And Others		RESPONDENT

Date of Decision : 30-04-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 19, 19(1)(g), 21, 20(2), 226

Citation : (2020) 04 BOM CK 0006

Hon'ble Judges : S. V. Gangapurwala , J; Shrikant D. Kulkarni, J

Bench : Division Bench

Advocate : Sujeet D. Joshi, S.G. Karlekar,

Final Decision : Dismissed

Judgement

Shrikant D. Kulkarni, J

1. The petitioner has challenged the order dated 26.3.2019 passed by the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad in Original Application No.593 of 2018, coupled with prayer to declare Clause No.B in paragraph 14 of the Government Resolution dated 15.12.2017 issued by the State in its General Administration Department as arbitrary, illegal and violative of provisions of Articles 14, 16 and 20 (2) of the Constitution of India with further prayer to issue writ of mandamus or any other appropriate writ to promote the petitioner to the post of Executive Engineer (Civil) with effect from the date when incumbents under the Departmental Promotion Committee (herein after referred to as D.P.C. for brevity), meeting held on 24.4.2018 were promoted, by invoking provisions of Article 226 of the Constitution of India.

2. The factual scenario leading to this petition in brief is as under :

The petitioner is qualified as B.E. (Civil) and working as Sub-Divisional Engineer in the office of Public Works Sub-Division (Construction), Nanded. The petitioner possesses excellent service record. According to the petitioner, by looking to his track record of service and his excellent work, he was expecting promotion.

There were no complaints against him during the period from 30.6.2003 to 15.7.2005 while working as Sub-Divisional Engineer at Public Works (North) Sub-Division, Nanded. The petitioner has given details about total sanctioned strength of the Executive Engineers, promotional avenues for the promotees in paragraph 3 of the petition. According to the petitioner, respondent no.1 has served the charge-sheet dated 7.12.2012 and slapped seven charges against him in respect of the work carried out by him at Public Works (North), Sub Division, Nanded. The petitioner was held guilty for charges no.1, 4, 5 and 6. The disciplinary authority imposed punishment on the petitioner of stoppage of one increment for two years without any effect on future increments vide order dated 3.11.2017. Feeling aggrieved by the said punishment, the petitioner had preferred an appeal, but same came to be rejected in the month of September 2018. According to the petitioner, the State of Maharashtra in its General Administration Department has issued Circular dated 2.4.1976 empowering the competent authority to take a conscious decision to consider the employees for promotion after evaluating the nature of charges levelled against them and promote them if they are otherwise found to be eligible. Another Resolution came to be issued on 22.4.1996 by respondent no.2 effecting slight modification in the Circular dated 2.4.1976 empowering the competent authority to secure undertaking from the Government employee facing minor punishment.

3. It is contended by the petitioner that the D.P.C., in its meeting held on 24.4.2018 discussed and considered the names of various incumbents for promotion. Twenty two officers were promoted to the post of Executive Engineer, but the names of present petitioner and one Shri S.D. Mate were held ineligible as they were undergoing the minor punishment. According to the petitioner, the decision taken by the D.P.C. appears to be based on Clause-B of paragraph 14 of the Government Resolution dated 15.12.2017. According to the petitioner, the note put up before the D.P.C. makes it clear that no enquiry is pending against the petitioner and as such, the said Government Resolution is not applicable. According to the Government Resolution dated 15.12.2017, not only the Resolution dated 22.4.1996 is superseded but also kept away the petitioner from promotion for undergoing the minor punishment. It clearly violates Articles 14 and 16 of the Constitution of India.

4. Feeling aggrieved by the decision of D.P.C., the petitioner has filed Original Application No.593 of 2018 before the Maharashtra Administrative Tribunal Mumbai, Bench at Aurangabad and challenged the decision as well as Clause B in paragraph 14 of the Government Resolution dated 15.12.2017 and prayed to declare it as arbitrary, illegal and violative of Articles 14, 16 and 20 (2) of the Constitution of India and the ratio laid down in case of Union of India and Ors., Vs. K.V. Jankiraman and Ors., reported in (1991) 4 SCC 109 does not apply in this case and the Government Resolution dated 22.4.1996 still holds the field. However, the Maharashtra Administrative Tribunal was pleased to dismiss the Original Application by order dated 26.3.2019. According to the petitioner, the Tribunal has not appreciated the contention of the petitioner in a right

perspective.

5. The respondent-State has stuck up to the stand taken before the Maharashtra Administrative Tribunal, Bench at Aurangabad.

6. We have heard Shri Sujeet Joshi, learned Counsel for the petitioner and Shri S.G. Karlekar, learned A.G.P. for respondents no.1 to 4 at length.

7. We have studied the Judgment and order passed by the Maharashtra Administrative Tribunal, bench at Aurangabad in Original Application No.593 of 2018 dated 26.3.2019 and the Government Resolution dated 15.12.2017, Government Resolution dated 22.4.1996 and Circular dated 2.4.1976 issued by the General Administration Department, Mantralaya, Mumbai. We have also carefully gone through the judgment of Honourable Supreme Court in case of Union of India and ors. Vs. K.V. Jankiraman and Ors. (cited supra). We have also perused the Recruitment Rules dated 19.12.1970 regarding appointment to the Maharashtra Service of Engineer Class-I and Class-II.

8. It is not disputed that the petitioner is working on the post of Sub Divisional Engineer in the office of Public Works Division, Sub-Division (Construction), Nanded. There is also no dispute that Executive Engineer (Civil) is the 100% promotional post and promotion to the post of Executive Engineer is made from amongst the following feeder cadres as per the quota prescribed in the Recruitment Rules dated 19.12.1970:

(1) Assistant Executive Engineer (40%)

(2) Assistant Engineer Grade-1 (25%)

(3) Sub Divisional Engineer (25%)

(4) Sub Divisional Officer (10%)

As per Government Resolution dated 14.10.2016, the total cadre strength of Executive Engineers is 346. Out of which, 86 posts are reserved for the candidates from the Sub-Divisional Engineer cadre for promotion. In the seniority list of Sub Divisional Engineers published on 27.1.2014, the petitioner stood at Serial No.221 and thus, he was in the zone of consideration for the post of Executive Engineer from Sub Divisional Engineer cadre. The D.P.C. in its meeting held on 24.4.2018 after perusing the confidential service record and fitness, has recommended the names of 22 candidates eligible for the promotion of Executive Engineer for select list 2017-2018. The D.P.C. noticed that the petitioner was penalised in departmental enquiry by withholding his one increment for two years without cumulative effect. Considering the nature of punishment, the first increment would be withheld due in July 2018 and increment for second year would be withheld due in July 2019. As such, the effect of punishment would remain upto 30.6.2020 and by considering this aspect as well as general guidelines issued by General Administration Department by Government Resolution dated 15.12.2017, the petitioner was found ineligible for promotion to

the post of Executive Engineer.

9. Shri Sujeet Joshi, learned Counsel for the petitioner invited our attention to the Government Resolution dated 15.12.2017, more particularly, to Clause (B) in paragraph 14 issued by the State of Maharashtra in its General Administration Department and argued that the ratio laid down by the Honourable Supreme Court in case of Union of India and ors. Vs. K.V. Jankiraman and Ors. (cited supra) does not apply in this case. According to Shri Joshi, the Government Resolution dated 22.4.1996 continues to hold the field as the same was in keeping with the provisions of Articles 14 and 16 of the Constitution of India. Shri Joshi, learned Counsel for the petitioner further took us through the decision rendered by the Maharashtra Administration Tribunal, Mumbai, Bench at Aurangabad in Original Application No.593 of 2018 and vehemently argued that the decision is erroneous. The Tribunal has not taken into consideration the legal submissions made on behalf of the petitioner as to how Clause (B) in paragraph 14 of the Government Resolution dated 15.12.2017 is violative of Articles 14 and 16 of the Constitution of India and arrived at incorrect conclusion.

10. Shri Joshi, learned Counsel for the petitioner submitted that Clause (B) in paragraph 14 of the Government Resolution dated 15.12.2017, issued by the General Administration Department, Mantralaya, Mumbai is arbitrary, illegal and violative of the provisions of Articles 14, 16 and 20 (2) of the Constitution of India and as such, needs to be quashed and set aside as well as the decision of the Tribunal in Original Application No.593 of 2018 needs to be quashed and set aside.

11. On the other hand, Shri Karlekar, learned A.G.P. for the State argued that the State Government has issued the Government Resolution dated 15.1.22017 keeping in mind the decision of the Honourable Supreme Court. According to learned A.G.P. Shri Karlekar, Government Resolution dated 15.12.2017 is not at all violative of Articles 14, 16 and 20 (2) of the Constitution of India. The Government Circular dated 2.4.1976 and Government Resolution dated 22.4.1996 were superseded in view of issuance of Government Resolution dated 15.12.2017. According to learned A.G.P., the case of the petitioner for promotion was considered by the D.P.C. After examining the case of the petitioner, the Committee found that petitioner was ineligible in view of punishment imposed upon him in a disciplinary proceeding and his punishment would come to an end on 30.6.2020. Shri Karlekar, learned A.G.P. submitted that it is not a fit case to interfere with the disputed Clause of the Government Resolution dated 15.12.2017, issued by the General Administration Department, Mantralaya, Mumbai.

12. Before entering into the merits of the case, it would be appropriate to reproduce the challenged part of the Government Resolution dated 15.12.2017 which reads in vernacular thus :

" 14½ f"klrHkaxfo"k;d dk;Zokgh@U;k;ky;hu dk;Zokgh lq: vlrkuk vf/

kdkjh@deZpk&;kyk rnFkZ inksUurh u nsrpk R;kP;kojhy f"klrHkaxfo"kd dk;ZokghP;k vuq"kauskus rks nks"kh Bjr vly;kl o R;kP;koj f"kk@"kkLrh ykoY;kl R;kP;kckcrhr [kkyhyizek.ks dk;Zokgh djkoh &

c½ ,d fdaok vf/kd o"ksZ osruok< jks[k.;kph fdaok fofufnZ"V dkyko/khlkBh osruJs.khrhy osru [kkyP;k VII;koj vk.k.;kph f"kk{kk >kY;kl] ,[kk|k izdj.kkr vf/kdkjh@deZpk&;kauk fnysY;k f"kk{kspk vaey R;k fuoMlwph o"kkZP;k dkyko/khrp lai.kkj vly;kl o f"kk{kspk dkyko/kh lai"Vkr ;s.kkP;k vk/khp foHkkxh; inksUurh lferhph CkSBd gks.kkj vly;kl R;k cSBdhr lac/khr vf/kdkjh@deZpk&;kpk inksUurhlkBh fopkkj djkok o xksiuh; vgokykP;k vk/kkjs vls vf/kdkjh@deZpkjh ik= Bjr vly;kl R;kauk f"kk{kspk dkyko/kh laiY;kauarj inksUurh |koh- ek= vU; izdj.kkr vf/kdkjh@deZapk&;kaP;k f"kk{kspk dkyko/kh laiY;kauarj foHkkxh; inksUurh lferhP;k iq<hy fu;fer cSBDhe/s v'kk vf/kdk&;kaP;k inksUurhpk izLrko brj vf/kdkjh@ deZpk&;kalkscr fopkjkFkZ Bsokok o rs inksUurhl ik= Bjr vly;kl R;kauk inksUurh ns.;kr ;koh- p "

13. Main pillar of the argument advanced by Shri Joshi, learned Counsel for the petitioner is that the ratio laid down in the case of Union of India Vs. K.V. Jankiraman (supra) is not applicable to this case and abovesaid Clause of the Government Resolution dated 15.12.2017 be declared as arbitrary, illegal and violative of provisions of Articles 14, 16 and 20 (2) of the Constitution of India.

14. On studying the impugned Clause of the Government Resolution dated 15.12.2017, it would be clear, under what background the said Government Resolution came to be issued by the General Administration Department, Mantralaya, Mumbai. The first paragraph of the Government Resolution dated 15.12.2017 speaks about introduction which reads thus :

" izLrkouk %

foHkkxh; pkSd"kh izyachr vlysY;k vf/kdkjh@deZpkjh ;kaP;k inksUurhlkBh fopkj djrkuk dks.krh dk;Zai/nrh okijkoh ;kckcrP;k lfoLrj lwpuK fn-02-04-1976 P;k "kklu ifji=dkUo;s fnysY;k vkgsr- rj foHkkxh; pkSd"kh izyafcr vlrkuk tk.khoiwoZd fu.kZ; ?ksÅu rkRiqjrh inksUurh ns.;kr vkysY;k vf/kdkjh@deZpk&;kauk pkSd"khvarjP;k fu.kZ;kuqlkj osruok<@osruok<h jks[k.;kph f"kk{+kk fnY;kl d'kk izdkjs dk;Zokgh djkoh ;kckcrP;k lwpuK fn- 22-04-1996 P;k "kklu fu.kZ;kUo;s fnysY;k vkgsr-

2- fn- 02-04-1976 o fn- 22-04-1996 e/khy rjrwneh fopkjr ?ksÅu iz"kkldh; foHkkx fdaok l{ke izkf/kdkjh] foHkkxh; pkSd"kh lq: vlysY;k "kkldh; vf/kdkjh@deZpk&;kaP;k inksUurhlkBh tk.khoiwoZd fu.kZ; ?ksr vlrkr- ek= vls fu.kZ; ?ksrY;kaurj foHkkxh; pkSd"khvarh fnysY;k rkRiqjR;k inksUuR;k fu;fer dj.ks fdaok lacf/kr vf/kdk&;kP;k@deZpk&;kaP;k inksUurhps iqufoZyksdu dj.ks vko';d vlrs- rFkkfi] l{ke izkf/kdk&;kdMwu v'kh dk;Zokgh dsY;kps izdj.k vk<Gwu ;sr ukgh- ;k [ksjht Jh- tkudhjkeu fo:/n dsanz "kklu izdj.kkr ek-loksZPp'U;k;ky;kus foHkkxh; pkSd"kh lq: vlysY;k vf/kdkjh@deZpk&;kaP;k ckcrhr d"kkizdkjs dk;Zokgh djkoh ;kckcr funksZ"knfnsys vkgsr-

3- dsanz "kklukus ns[khy] dsanz iz"kkldh; deZpk&;kalanHkkZr T;kaP;kfo:/n f'kLrHkaxfo"k;d ok U;k;ky;hu dk;Zokgh izyafcr vkgs] R;kaP;kckcrhr d'kkizdkjs inksUurhph dk;Zokgh djkoh ;kckcr osGksosGh vkns"k fuxZfer dsys vkgsr- ek- loksZPp U;k;ky;kps vkns"k o dsanz 'kklukps vkns"k fopkjr ?ksÅu ;k foHkkxkP;k fn-02-04-1976 P;k "kklu ifji=dkrhy o fn- 22-04-1996 P;k "kklu fu.kZ;ke/khy rjrwñh jñ~n d:u lq/kkjhr rjrwñh ykxw dj.;kps "kklukP;k fopkjk/khu gksrs- ;k vuq"kaxkus fn- 02-04-1976 P;k "kklu ifji=dkrhy o fn-22-04-1996 P;k "kklu fu.kZ;krhy vkns"k jñ~n d:u izLrkfor lq/kkjhr dk;Zi/nrh lanHkZ dz- 3 ;sFkhy "kklu ifji=d izfl/n d:u] R;k dk;Zi/nrhr vf/kdkjh@deZpkjh o R;kaP;k la?kVukauk dkgh lq/kkj.kk lqpoko;kP;k vly;kl R;kaP;kdMwu lwpuk@lq/kkj.kk ekxfo.;kr vkY;k gksR;k-

"kklu fu.kZ; & '

izLrkousrhy ckch o lanHkZ dz- 3 ojhy "kklu ifji=dkUo;s ekxfo.;kr vkysY;k lwpuk fopkjr ?ksrk] lanHkZ dz- 1 ojhy fn- 02-04-1976 ps "kklu ifji=d vkf.k lanHkZ dz- 2 ojhy fn- 22-04-1996 pk "kklu fu.kZ; ;k "kklu fu.kZ;kUo;s jñ~n dj.;kr ;sr vluw] foHkkxh; pkSd"kh o U;k;ky;hu izdj.ks izyafcr vlysY;k vf/kdkjh@deZpk&;kaP;k inksUurh ns.;kP;k dk;Zi/nrhckcr iq<hyizek.ks vkns"k ns.;kr ;sr vkgsr- Þ

15. Therefore, it is clear that the General Administration Department has cancelled Circular issued earlier on 2.4.1976 and Government Resolution dated 22.4.1996 and issued new Government Resolution dated 15.12.2017 in view of guidelines issued by the Honourable Supreme Court in case of Union of India and ors. Vs. K.V. Jankiraman and Ors. (cited supra). We are not in agreement with the arguments advanced by learned Counsel Shri Joshi that Government Circular dated 2.4.1976 still holds the field and applicable to the present case. On studying the Government Resolution dated 15.12.2017, it would be evident that the General Administration Department has laid down the guidelines and the procedure in respect of Government Officers/Staff for giving promotion when their departmental proceedings are pending or decided or subjudice before the Courts/Tribunals. In the present case, the D.P.C. has examined the case of the present petitioner, his service record and held that the petitioner was ineligible for promotion to the post of Executive Engineer in view of punishment imposed upon him in the disciplinary proceedings. It was also observed by the D.P.C. that the punishment period of the petitioner would come to an end by June 2020. The petitioner was found unfit for the promotion in view of Government Resolution dated 15.12.2017.

16. The Honourable Supreme Court, in case of Union of India Vs. K.V. Jankiraman (supra), has held that :

"29. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of misconduct cannot be placed on par with

the other employees and his case has to be treated differently. There is therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified.

In case of A.K. Narula (Air 2007 SC 2296), the Hon'ble Supreme Court has observed as under:

" The guidelines give a certain amount of play in the joints to the DPC by providing that it need not be guided by the overall grading recorded in the CRs, but may make its own assessment on the basis of the entries in the CRs. The DPC is required to make an overall assessment of the performance of each candidate separately, but by adopting the same standards, yardsticks and norms. It is only when the process of assessment is vitiated either on the ground of bias, malafides or arbitrariness, the selection calls for interference. Where the DPC has proceeded in a fair, impartial and reasonable manner, by applying the same yardstick and norms to all candidates and there is no arbitrariness in the process of assessment by the DPC, the court will not interfere."

In case of Om IOI & Anr. Vs. S.K. Goel & Ors. (Appeal (Civil) 268/2007-SLP-2410/2007), the Hon'ble Supreme Court has held as under :

" DPC enjoyed full discretion to devise its method and procedure for objective assessment of suitability and merit of the candidate being considered by it. Hence interference by High Court is not called for."

While delivering the abovesaid judgment, the Court has observed that :

".. It is now more or less well settled that the evaluation made by an Expert Committee should not be easily interfered with by the Court which do not have the necessary expertise to undertake the exercise that is necessary for such purpose."

Further, in case of State of Tamil Nadu Vs. Thiru K.S. Murugesan and Ors., in Civil Appeal No.3432-33/1995 vide order dated 28.2.1995, the Honourable Supreme Court has held as under :

" When promotion is under consideration the previous record forms basis and when promotion is on merit and ability. The currency of punishment based on previous record stands an impediment. Unless the period of punishment gets

expired by efflux of time, the claim for consideration during the said period cannot be taken up. Otherwise, it would amount to retrospective promotion which is impressible under the Rules and it would be a premium on misconduct. Under these circumstances, we are of the opinion that the doctrine of double jeopardy has no application and non-consideration is neither violative of Article 21 nor Article 14 read with 16 of the Constitution."

17. The Honourable Supreme Court has endorsed as under in case of State of Andhra Pradesh Vs. Mcdowell and Company Limited (1996 DGLS (SC) 623 : 1996 AIR (SC) 1627 : 1996 (3) JT 679 : 1996 (3) Scale 146 as under :

" Keeping in mind basic principles and power of the State while enacting the law or publishing any circular, resolution and taking any decision including the aspect of Article 14, 19 (1) (g), 21 and 226 of the Constitution of India :

" Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds, viz., (i) unreasonableness, which can more appropriately be called irrationality, (ii) illegality and (iii) procedural impropriety [See Council of Civil Services Union v. Minister for the Services which decision has been accepted by this Court as well]. The applicability of doctrine of proportionality even in administrative law sphere is yet a debatable issue. [See the opinions of Lords Lowry and Ackner in R.V. Secretary of State for the Home Department Ex-parte (1991 A.C.696 at 766-7 and 762]. It would be rather odd if an enactment were to be struck down by applying the said principle when its applicability even in administrative law sphere is not fully and finally settled. It is one thing to say that a restriction imposed upon a fundamental right can be struck down if it is disproportionate, excessive or unreasonable and quite another thing to say that the Court can strike down enactment if it thinks it unreasonable, unnecessary or unwarranted."

The Honourable Supreme Court in case of Om Kumar Vs. Union of India (2000 DGLS (SC) 1642 : 2000 AIR (SC) 3689 : 2000 AIR (SCW) 4361: 2000 (Supp.3) JT 92 in para No.66 has observed as under :

" It is clear from the above discussion that in India where administrative action is challenged under Article 14 as being discriminatory, equals are treated unequally or unequals are treated equally, the question is for the Constitutional Courts as primary reviewing Courts to consider correctness of the level of discrimination applied and whether it is excessive and whether it has a nexus with the objective intended to be achieved by the administrator. Here the Court deals with the merits of the balancing action of the administrator and is, in essence, applying

'proportionality' and is a primary reviewing authority.

18. Division Bench of this Court, in case of *Girjamata Labour Cooperative Society Ltd. Vs. State of Maharashtra & others*, reported in 2017 (2) Mh.L.J.622 to which one of us was party (S.V. Gangapurwala, J.) held that framing of policy is within the competence of State in its executive authority. The Court cannot sit in judgment of the policy of the Legislature or the Executive nor can strike down a policy decision taken by the Government merely because it feels that another decision would have been more logical or wiser. The court can only interfere if the policy framed is irrational, arbitrary, unreasonable and thereby offend Article 14 of the Constitution of India.

19. In the present case, Government Resolution dated 15.12.2017 is a executive decision. Executive powers can be exercised by issuing administrative orders, circular, instructions or resolution. Administrative decision can be reviewed by the authority at any time provided no constitutional or statutory provision is violated, thereby one administrative order may be changed by another administrative order. The administrative Rule or orders may be relaxed, altered or revoked without any formality, provided, there is no legislation or statutory Rules to the contrary and where no provision of the Constitution is violated by such change.

20. In the case in hand, the Disciplinary Authority has imposed punishment upon the petitioner of stoppage of one increment for two years without any effect on future increments. It does mean that it has no cumulative effect. The case of the petitioner for promotion to the post of Executive Engineer

would be considered after tenure of punishment of two years. The punishment of stoppage of one increment for two years without cumulative effect is certainly reasonable. It cannot be said to be arbitrary or irrational having regard to the material found in the course of departmental enquiry initiated against the petitioner. When an officer is found guilty in discharge of his duties, imposition of punishment is with an object to improve his conduct and to enforce discipline and become a good public servant and ensure purity in the administration. Denial of promotion in such circumstance is not a penalty but a necessary consequence of his conduct. While considering the petitioner for promotion, his whole record was taken into consideration and if a promotion committee has taken into consideration penalties imposed upon the petitioner and denied him promotion, such denial is not illegal and unjustified.

21. To qualify for promotion, least that is expected of an employee is to have an unblemished record. An employee found guilty of misconduct cannot be placed at par with other employees and his case has to be treated differently. There is, therefore, no discrimination found in the matter of promotion of the present petitioner. It cannot be expected from any administration to reward an employee with promotion during his period of sentence. If such an employee is promoted, obviously it would be an award to an employee who is undergoing sentence

imposed upon him in departmental enquiry. The punishment imposed upon the petitioner of stoppage of one increment for two years would come to an end in June, 2020 which is not far away. He has not been debarred permanently from getting promotion. As such, we do not find any arbitrariness in the decision taken by the departmental promotion committee. The guidelines given in the Government Resolution dated 15.12.2017 are not found contrary to the provisions of the Constitution of India or any other Statute. The policy decision taken by the State Government vide Government Resolution dated 15.12.2017 is for public interest and keeping in mind difficulties faced by various departments dealing with such cases.

22. The Government Resolution dated 15.12.2017 is in tune with the decision of the Hon'ble Supreme Court in case of Union of IndiaVs. K. V. Jankiraman (supra). The State Government has taken decision and issued guidelines as to how departmental promotions are to be considered, particularly, in the case where departmental enquiry is going on and/or departmental enquiry is concluded and punishment is imposed and period of punishment not over.

23. Having regard to the legal position laid down by the Honourable Supreme Court and Bombay High Court in the citations supra, we do not find that Clause-B in paragraph 14 of the Government Resolution dated 15.12.2017 issued by the General Administration Department, Mantralaya, Mumbai is violative of the provisions of Articles 14, 16 and 20 (2) of the Constitution of India.

24. As such, we endorse the view taken by the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad in Original Application No.593 of 2018 vide order dated 26.3.2019.

25. We do not find any merit in the present petition. The petition needs to be dismissed.

26. Writ Petition is dismissed. No order as to costs.