

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 1005 OF 2022**

**DISTRICT : AURANGABAD**

Ganpat s/o Harichandra Darade, )  
Age : 56 years, Occu. : Service as Police Inspector,)  
R/o. Deolai, Beed By-Pass, Plot No. 26, )  
Aurangabad. ).. **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Additional Chief Secretary, )  
Home Department, )  
Mantralaya, Mumbai – 400 032. )
2. **Director General of Police,** )  
Maharashtra State Police Head Quarter,)  
Shahid Bhagatsingh Marg, Kulaba, Mumbai-400001)
3. **Additional Director General of Police,**)  
(Establishment), Maharashtra State Police Head Quarter,)  
Shahid Bhagatsingh Marg, Kulaba, Mumbai-400001)
4. **Additional Director General of Police,**)  
(Admin), Maharashtra State Police Head Quarter,)  
Shahid Bhagatsingh Marg, Kulaba, Mumbai-400001)
5. **The Commissioner of Police,** )  
Aurangabad City, Mill Corner, )  
Aurangabad-431001. ).. **RESPONDENTS**

-----  
**APPEARANCE** : Shri S.K. Chavan, Advocate for Applicant.

: Shri M.S. Mahajan, CPO for the Respondents.

-----  
**CORAM** : **Shri V.D. Dongre, Member (J)**  
**and**  
**Shri Bijay Kumar, Member (A)**

**Reserved on** : **02.03.2023**

**Pronounced on** : **20.04.2023**  
-----

**ORDER****(Per : Shri V.D. Dongre, Member (J))**

1. This Original Application is filed considering his non-inclusion in the select list 2021-22 published by the respondent No. 3 i.e. the Additional Director General of Police (Establishment) Maharashtra State Police Head Quarter, Mumbai vide impugned communication dated 03.11.2022 (Annexure A-8) as regards promotion on the post of Dy. Superintendent of Police / Assistant Police Commissioner (Unarmed), wherein juniors than the applicant are enlisted and seeking modification in the said list including the name of the applicant therein.

2. The facts in brief giving rise to this application are as under:-

(a) That the applicant came to be appointed as Police Sub-Inspector (PSI) through MPSC on 15.09.1993. Thereafter he was promoted as Asst. Police Inspector and worked as such from 27.12.2003 to 13.08.2009 at various places. Thereafter, he was promoted as Police Inspector and working as such from 14.08.2009 till date. Entire service of the applicant is clear and unblemished.

(b) That the applicant received show cause notice dated 04.08.2022 (Annexure A-1) from the respondent No. 3 i.e. the Additional Director General of Police (Establishment) Maharashtra State Police Head Quarter, Mumbai in consultation with respondent No. 2 asking to show cause as to why his two annual increments shall not be stopped without affecting future benefits alleging misconduct against him and Police Inspector Ravindra Muktaram Shinde that they misbehaved with each other entering into altercation and physical fight as to who would be first reached at their respective destinations from office vehicle, while travelling together.

(c) The applicant submitted his reply dated 07.09.2022 (Annexure A-2) to the said show cause notice denying the allegations levelled against him being false.

(d) Thereafter, the office of the respondent No. 2 issued Notice dated 28.10.2022 (part of Annexure A-3 collectively) and in correspondence to that the office of respondent No. 5 i.e. Commissioner of Police, Aurangabad and another notice dated 31.10.2022 (part of Annexure A-3 collectively) thereby calling upon the applicant to remain present in the

orderly room before the respondent No. 4 i.e. the Additional Director General of Police (Admin) Maharashtra State Police Head Quarter, Mumbai on 3.11.2022 at 11.30 am. During that period, the applicant's father expired on 23.10.2022 & as such, he was on leave from 23.10.2022 till 05.11.2022. Thereafter applicant did not receive the notices dated 28.10.2022 and 31.10.2022 and as such, did not attend the orderly room on 03.11.2022.

(e) It is contended that in the list of Police Inspector in the zone of consideration for promotion to the post of Dy. Superintendent of Police / Assist. Police Commissioner (Unarmed), the name of the applicant appeared and as such, requisite information was called for and information was submitted as reflected in the documents dated 12.02.2021 & 17.02.2021 (Annexure A-4 collectively) and 28.01.2022 and 10.02.2022 (Annexure A-5 collectively).

(f) Thereafter the office of respondent No. 2 i.e. the Director General of Police, Mumbai by communication dated 07.10.2022 published temporary seniority list of Police Inspector (Unarmed) (Annexure A-6). The name of the applicant is shown at Sr. No. 146 in the said seniority

list. In the said list, the officers shown at Sr. Nos. 147 to 155 are junior to the applicant.

(g) Thereafter list of Police Inspectors in the zone of consideration for 2021-22 came to be published and the respondent No. 3 i.e. i.e. the Additional Director General of Police (Establishment) Maharashtra State Police Head Quarter, Mumbai under communication dated 24.01.2022 (Annexure A-7), which contained 415 names. In the said list, the name of the applicant is shown at Sr. No. 141 and officers named in earlier paragraph are shown below the name of the applicant at Sr. No. 147 onwards.

(h) Thereafter the respondent No. 3 published impugned select list 2021-22 dated 03.11.2022 (Annexure A-8), which contained 175 names. However, in the said list the name of the applicant is not mentioned. On the other hand, name of officers junior to the applicant as mentioned earlier at Sr. No. 147 onwards are included. Therefore preferences for posting are called for. However, till today no promotion orders are issued as per the select list dated 3.11.2022 (Annexure A-8).

(i) In the circumstances, it is contended that till date, the applicant has not received any notice informing him that any departmental enquiry is initiated against him after issuance of show cause notice dated 04.08.2022 (Annexure A-1) as stated earlier.

(j) It is contended that perusal of the said show cause notice (Annexure A-1) would show that there is no misconduct on the part of the applicant. In fact, Police Inspector Ravindra Mukhtaram Shinde, who is junior to the applicant and named in the show cause notice dated 04.08.2022 (Annexure A-2) initiated quarrel and used criminal force against the applicant and the applicant tried to prevent physical attack on him. The applicant was not at fault. The applicant is due to retire on superannuation on 31.05.2025.

(k) The punishment of stoppage of two annual increments proposed against the applicant is certainly going to affect pension and pensionary benefits of the applicant on his superannuation. Hence, holding of departmental enquiry is mandatory before punishment is imposed. Hence, the present Original Application.

3. The present Original Application is resisted by filing affidavit in reply on behalf of respondent No. 1 (page Nos. 65 to 69) by one Swapnil Gopal Borse, working as Under Secretary to the Government of Maharashtra, Home Department, Mantralaya, Mumbai. Thereby he dined all the adverse contentions raised in the present Original Application. The specific pleading thereof are raised in para Nos. 5, 6 & 8 as follows :-

*"05. I say and submit that, a meeting of the Departmental Promotion Committee (D.P.C.) was held on 19.08.2022 for recommendation of "Regular Select List - 2021-22 (Part-II)" of officers in the cadre of "Police Inspector (Unarmed)" for promotion to posts in the cadre of "Dy. Superintendent of Police/ Asst. commissioner of Police (Unarmed)" for filling up 179 vacant posts in promotion quota. The D.P.C. assessed the suitability of in all 297 officers, including the applicant Sh. Ganpat Harichandra Darade [S.No.403/S.L. of P.I. (Unarmed), as on 01.01.2021] who were in the zone of consideration.*

*06. I say and submit that, in view of the Show Cause Notice dated 04.08.2022 issued by the office of Respondent No.2 i.e. the Director General of Police, Maharashtra State, which also specifies the charges against him, the D.P.C. decided to keep their assessment in respect of his fitness for promotion in a sealed cover, in accordance with the procedure laid down vide G.R., G.A.D., dated 15.12.2017 read with G.R., G.A.D., dated 30.08.2018. The said decision is just, legal and proper.*

*08. I say and submit that, Revenue Divisions have been allotted to the officers in "Regular Select List-2021-22 (Part-11) as per the provisions of the "Maharashtra Govt. Allotment of Revenue Divisions for appointment by nomination and promotion to the posts in Group A and Group B (Gazetted and Non-Gazetted) Rules, 2021. "The Revenue Divisions so allotted have been communicated to the Director General of Police, Maharashtra State, vide Govt. letter, Home Department, dated 22.11.2022. Director General of Police, Maharashtra State, has been asked to submit the recommendation of the Police Establishment Board No.1 as regards the posting-on-promotion of the officers in the said "Regular Select List-2021-22 (Part-II)"."*

4. The applicant filed rejoinder affidavit denying the adverse contentions raised in the affidavit in reply and specifically contended in para Nos. 4 to 9 as under :-

*“4. The applicant says and submits that, though the Show Cause Notice dated 04.08.2022 issued by the respondent No.2 mentions the proposed action as against the applicant as withholding of two increments without affecting the future increments, the respondent No.2 by final order dated 19.12.2022 modified the punishment and imposed punishment reprimand/ censure. The copy of final order dated 19.12.2022 passed by the respondent No.2 is annexed herewith and marked as EXHIBIT A-9’.*

*5. The applicant says and submits that in view of an order dated 19.12.2022 and procedure contemplated under G.R. dated 15.12.2017 and 30.08.2018 now it is incumbent on the part of the respondents to take necessary steps. For the sake of convenience of this Hon'ble Tribunal the copies of G.R. dated 15.12.2017 and 30.08.2018 issued by G.A.D. are annexed herewith and marked as EXHIBIT "A-10".*

*6. The applicant says and submits that, considering the order dated 19.12.2022, the applicant preferred written application dated 26.12.2022 addressed to respondent No.2 who is Competent Authority. The said written request application is forwarded through Tirupati Courier Services Pvt. Ltd. On 26.12.2022. As per instructions of the applicant the said request application is received at the office of respondent No.2. Furthermore, the applicant also forwarded the similar request application by pointing out the order dated 19.12.2022 passed by respondent No.2, through proper channel. The Copy of request application dated 26.12.2022 along with courier receipt is annexed herewith and marked as EXHIBIT A-11".*

*7. The applicant says and submits that, in view of the fact of order dated 19.12.2022 and punishment of Censure/ reprimand, there is no Department Enquiry or any other enquiry pending penalty or proposed penalty reveals as against the applicant and therefore, the assessment of the applicant in respect of his fitness for promotion which is kept in a sealed cover by the Departmental Promotion Committee needs to be opened and all other consequential procedure need to be followed, forthwith as till date no promotion orders are issued to others, more particularly junior than the applicant,*



8. *The applicant says and submits that, as per the instructions of the applicant, the promotion orders are yet not issued, therefore, the applicant respectfully prays to direct the respondent No.2 to initiate necessary steps, forthwith, so as the applicant may not be deprived from his option/preference along with others and the said delay be resulted into injustice as later on the applicant would get only remaining post rather than preferential place as given to all other candidates. Moreover, if the junior than the applicant came to be promoted.*

9. *The applicant says and submits that, as such presently there is no departmental enquiry or any other enquiry or judicial case or legal proceeding or proposed penalty or pending penalty punishment is going on as against the applicant and there is no hurdle for promotion of the applicant. So also, on the face of record, the juniors than the applicant namely Ravindra Dagdu Howale, Satish Krishnarao Kasbe, Sunil Ramchandra Telure, Sunil Chaganrao Kamble etc. are enlisted in the select list and if they got promoted keeping the applicant outside, would result in injustice. Undisputedly, the applicant is senior than them and already in a zone of consideration and therefore, respectfully pray that, the respondent No.2 & 3 may kindly be directed to forthwith take necessary steps and consider the claim of the applicant for promotion on the post of Deputy Superintendent of Police Assistant Police Commissioner (Unarmed), in the interest of justice and for the said purpose, issue necessary directions to the Departmental Promotion Committee (D.P.C.) constituted by them.”*

5. We have heard the arguments advanced by Shri S.K. Chavan, learned Advocate for the applicant on one hand and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents on the other hand.

6. After having considered the rival pleadings, documents and submissions, what emerges before us is that the name of the applicant was there in the list of the Police Inspector (Unarmed) as per the communication dated 24.01.2022 (Annexure A-7), who

were under zone of consideration for the promotion to the post of Dy. Superintendent of Police / Assistant Police Commissioner (Unarmed). However, the name of the applicant was excluded, while publishing the impugned select list dated 03.11.2022 (Annexure A-8), by which options of allotment of Revenue zone for postings were called.

7. It appears from the contentions raised in the affidavit in reply that the name of the applicant is excluded as per DPC meeting minutes that departmental action is proposed against the applicant for misconduct and sealed cover procedure is followed in case of the applicant.

8. However, in the affidavit in rejoinder the applicant has placed on record subsequent development that as per the final order dated 19.12.2022 (Exhibit A-9) passed by the respondent No. 3 i.e. the Additional Director General of Police (Establishment) Maharashtra State Police Head Quarter, Mumbai punishment of 'Censure' (सक्त ताकीद) is imposed upon the applicant, which is un-appealable order. The applicant said to have undergone the said punishment.

9. It is also a fact that the officers junior to the applicant in the seniority list as pleaded by the applicant have been shown in

the impugned list under communication dated 03.11.2022 (Annexure A-8) calling for options of allotment of Revenue Zone for promotional posting. It is also a fact that apart from pending of proposed disciplinary action, no other ineligibility for promotion is pleaded against the applicant. Now the legal impediment for promotion of the applicant to the post of Dy. Superintendent of Police / Assistant Police Commissioner (Unarmed) is no more in existence.

10. Hence, in our considered opinion, the legal right is accrued to the applicant for considering his claim for promotion in accordance with law. In view of the same, the Original Application can be disposed of by passing the following order :-

### **ORDER**

The Original Application is partly allowed in following terms:-

(A) The respondents are directed to issue modified order in respect of impugned communication dated 03.11.2022 (Annexure A-8) issued by the respondent No. 3 by calling option of allotment of Revenue division from the applicant for consideration of giving promotion to the post of Dy. Superintendent of Police / Assistant Police Commissioner

(Unarmed) in accordance with law within the period of one month from the date of receipt of certified copy of this order by opening sealed envelope.

(B) There shall be no order as to costs.

**MEMBER (A)**

**MEMBER (J)**

**Kpb**/D.B. O.A. No. 1005/2022 VDD & BK 2023 Promotion