

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 250 OF 2019
(Subject – Pay and Allowances)**

DISTRICT : BEED

Shri Navnath s/o Narayan Hazare,)
Age : 58 years, Occu. : Retired,)
Police Sub Inspector,)
R/o : At Canal road, Shinde Nagar,)
Beed, Tq. and Dist. Beed.)

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through its Secretary,)
Home Department,)
Mantralaya, Mumbai-32.)
- 2) **The Director General of Police,**)
Maharashtra State, Shahid Bhagat)
Singh Marg, Colaba, Mumbai – 32.)
- 3) **The Inspector General of Police,**)
Aurangabad Range, Aurangabad.)
- 4) **The Superintendent of Police,**)
Dist. Beed.)

.. **RESPONDENTS**

APPEARANCE : Shri O.D. Mane, Advocate for the Applicant.

: Shri I.S. Thorat, Presenting Officer for
Respondents.

CORAM : **B.P. PATIL, ACTING CHAIRMAN.**

RESERVED ON : **22.01.2020.**

PRONOUNCED ON : **24.01.2020.**

ORDER

1. The applicant has challenged the order dated 26.11.2018, by which his claim of monetary benefits of the post of P.S.I. since the date of promotion i.e. from 24.10.2013 has been rejected by filing the present Original Application and prayed to quash and set aside the said order and to declare that he is entitled to get monetary benefits of the promotional post of Police Sub Inspector w.e.f. 01.10.2013 and to extend the monetary benefits to him accordingly.

2. The applicant was initially appointed as Police Constable on 17.10.1978 in Beed District. He served at various police Stations i.e. at Parali (Town), Talwada, Shirur, Neknur, Kej, etc. on the same post. In the year 1998, he was promoted as Police Head Constable and thereafter in the year 2008, he was promoted on the post of Assistant Police Inspector. In the year 2013, the Police Department conducted the departmental examination for the promotion on the post of P.S.I. and the applicant appeared for the said examination and got qualified for promotion on the post of P.S.I. On 24.10.2013, the Director General of Police, Mumbai i.e. the respondent No. 2 issued the order dated 24.10.2013 promoting 314 candidates on the post of

P.S.I. The applicant is one of them and he was placed at Sr. No. 189. It is his contention that in spite of issuance of the said order by the Director General of Police, the S.P., Beed had not intimated or issued the order to the applicant immediately.

3. It is contention of the applicant that on 16.10.2013, the applicant was working at Police Station Georai as Assistant Police Sub-Inspector and that time crime bearing C.R. No. 302/2013 for the offences punishable u/s 452, 384, 386, 389, 323, 504, 506 and 34 of I.P.C. has been registered against him on the basis of false complaint filed against him. After registration of the said crime, no action was taken by the concerned authority for one month. After one month, the applicant was arrested in the said crime and thereafter, he was placed under suspension on 28.11.2013. Thereafter, he was reinstated in the service on 13.04.2014 subject to decision of the criminal case. It is his contention that the charge sheet has been filed in the Court of J.M.F.C. Georai in the criminal case bearing R.C.C. No. 77/2014. After trial the applicant was acquitted from the charges levelled against him. It is his contention that after acquittal, his suspension period commencing from 28.11.2013 to 12.04.2014 had been treated as duty period for all the purposes in view of the order dated 09.03.2018. After acquittal in the

criminal case, the applicant has filed an application to the D.C.P. and requested to issue him the promotion order on the post of Police Sub Inspector, but he had not paid heed to his request. The applicant retired on 30.06.2018 as Assistant Sub Inspector on attaining the age of superannuation. Thereafter, on 10.01.2019 D.G.P. issued the impugned promotion order and promoted him as P.S.I. It is his contention the applicant is entitled to get monetary benefits from the date of promotion and therefore, he made request to the respondents by filing representation to grant monetary benefits to him from the date of promotion on the post of P.S.I. After retirement, S.P. Beed issued the order dated 31.12.2018 and fixed the pay of the applicant in the pay scale of Rs. 13710+4300 from 01.10.2013 . But he was not given monetary benefits from the date of promotion. It is his contention that there was no mistake on his part, but the promotion was given to him belatedly because of the inaction on the part of the respondents. It is his contention that he was given promotion w.e.f. 01.10.2013 and therefore, he is entitled to get the monetary benefits on the post of P.S.I. w.e.f. 01.10.2013. Therefore, he approached this Tribunal and challenged the impugned order rejecting his claim of monetary benefits on the promotional post of P.S.I. w.e.f. 01.10.2013.

4. The respondent Nos. 2 to 4 have filed their affidavit in reply and resisted the contentions of the applicant. It is their contention that the applicant was facing serious charges in the criminal case, he was placed under suspension. Therefore, the applicant was not promoted, though promotion order was issued. They have admitted the fact that the applicant has been acquitted in the criminal case and thereafter, he was given promotion on the promotional post of P.S.I. w.e.f. 01.10.2013. It is their contention that the respondent No. 4 revised the pay of the applicant on 31.12.2018, but monetary benefit was not given to him for the period from 01.10.2013 to 30.06.2018, as he was retired on 30.06.2018. It is their contention that the applicant has not discharged work/duties on his promotional post i.e. on the post of P.S.I. therefore, he is not entitled to get the monetary benefits in view of the provisions of Rule 32 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981. Accordingly, the respondent No. 2 passed the impugned order. It is their contention that there is no illegality in the impugned order and therefore, they have justified the same and prayed to dismiss the present Original Application.

5. I have heard Shri O.D. Mane, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for the

respondents. I have perused the documents placed on record by both the parties.

6. Admittedly, the applicant joined the Police Department as Police Constable by the order dated 17.10.1978. He served at various Police Stations i.e. at Parali (Town), Talwada, Shirur, Neknur, Kej, etc. on the same post. In the year 1998, he was promoted as Police Head Constable and thereafter in the year 2008, he was promoted on the post of Assistant Police Inspector. Admittedly, the applicant appeared for the departmental examination conducted for the promotion on the post of P.S.I. In the year 2013, he got qualified for the promotion on the post of P.S.I. and accordingly, the Director General of Police, Mumbai i.e. the respondent No. 2 issued the order dated 24.10.2013. There is no dispute about the fact that meanwhile on 16.10.2013, a crime bearing C.R. No. 302/2013 for the offences punishable u/s 452, 384, 386, 389, 323, 504, 506 and 34 of I.P.C. has been registered against the applicant with the Police Station Georai and thereafter criminal case bearing R.C.C. No. 77/2014 has been registered in the Court of J.M.F.C. Georai. Admittedly, because of the pendency of the criminal case, the applicant was not promoted on the post of P.S.I. Admittedly, the applicant was acquitted in the criminal case on 07.10.2017.

Meanwhile, the applicant was placed under suspension during the period from 28.11.2013 to 12.04.2014 and thereafter, he was reinstated in the service on 12.04.2014 subject to decision of the criminal case. On 28.11.2013 after his acquittal in the criminal case, the order regarding regularization of his suspension period in view of the provisions of Rule 72 (3) (2) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payment during Suspension, Dismissal and Removal), Rules, 1981, has been passed and his suspension period was treated as duty period for all the purposes. After acquittal of the applicant in the Criminal Case, the promotion order has been issued on 10.01.2019 and the applicant was promoted w.e.f. 01.10.2013. Meanwhile, the applicant has been retired from the service on 30.06.2018. Thereafter, the respondent No. 2 issued the order dated 26.11.2018 and the applicant was promoted on the post of P.S.I. w.e.f. 01.10.2013 but he had not granted monetary benefits from the date of promotion i.e. from 01.10.2013.

7. Learned Advocate for the applicant has submitted that initially the applicant was promoted on the post of PSI in the year 2013, but because of the pendency of the criminal case, he was not promoted on the promotional post. He has submitted that the in the year 2017, criminal case was ended in acquittal of

the applicant and thereafter, the impugned order came to be passed giving deemed date of promotion from the year 2013. He has submitted that in fact, the applicant was involved in a false criminal case and thereafter he was placed under suspension and his promotion was withheld. There was no mistake on the part of the applicant. But the respondents issued the suspension order illegally. The respondents granted promotion to the applicant by the order dated 26.11.2018 w.e.f. 01.10.2013. He has submitted that the respondents ought to have granted monetary benefits to the applicant regarding promotional post of P.S.I. w.e.f. 01.10.2013, but the respondents have illegally denied the monetary benefits to the applicant and therefore, he has prayed to quash and set aside the impugned order and to direct the respondents to extend monetary benefits of promotional post of P.S.I. to the applicant w.e.f. 01.10.2013. Therefore, he has prayed to allow the present Original Application.

8. Learned Presenting Officer has submitted that the applicant retired on 30.06.2018 from the post of A.S.I. As the criminal case was pending against him, the promotion was not given to the applicant, though the applicant was promoted in the year 2013. He has submitted that after decision in the criminal case, the applicant was given promotion on the promotional post

of P.S.I. by the impugned order dated 26.11.2018. He has submitted that the applicant has never worked on the promotional post of P.S.I. He has submitted that promotional post of P.S.I. has enlarged responsibilities, but the applicant had never joined the promotional post and not discharged the duties assigned to it. Therefore, he is not entitled to get the monetary benefits in view of the provisions of Rule 32 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. He has submitted that the respondent No. 2 has rightly rejected the claim of the applicant in view of the provision of Rule 32 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 and there is no illegality in it. Therefore, he has justified the impugned order.

9. I have gone through the documents on record, which shows that the applicant was initially promoted temporarily on the post of P.S.I. in the year 2013 by the order dated 24.10.2013. Before issuance of the order, a crime bearing C.R. No. 302/2013 for the offences punishable u/s 452, 384, 386, 389, 323, 504, 506 and 34 of I.P.C. has been registered against him with Georai Police Station on 16.10.2013. The applicant was placed under suspension during the period from 28.11.2013 to 12.04.2014 due to his involvement in the criminal case. On the basis of the

said crime, a case bearing R.C.C. No. 77/2014 has been registered in the Court of J.M.F.C. Georai. The said case ended in the acquittal of the applicant on 07.10.2017. Thereafter, his suspension period was treated as duty period for all the purposes in view of the provisions of Rule 72 (3) (2) of the Maharashtra Civil Services (Joining Time, Foreign Service and Payment during Suspension, Dismissal and Removal), Rules, 1981. After decision in the criminal case, the applicant was promoted on the post of P.S.I. by the impugned order dated 26.11.2018 w.e.f. 01.10.2013, but no monetary benefit has been given to him from 01.10.2013, but other benefits were given to him. Admittedly, before issuance of the impugned order of promotion, the applicant retired from service w.e.f. 30.06.2018. The applicant had never worked on the promotional post of P.S.I. Rule 32 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981, provides as to how the date of promotion is to be determined. The said provision is relevant in the present matter and therefore, I reproduce the same :-

“32. How the date of promotion is determined. – *The promotion of a Government servant from a lower to a higher post, his duties remaining the same, takes effect from the date on which the vacancy occurs, unless it is otherwise ordered. But, when the promotion involves the*

assumption of a new post with enlarged responsibilities, the higher pay is admissible only from the date on which the duties of the new post are taken.”

10. On perusal of the said Rule 32 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981, it reveals that the higher pay is admissible only from the date on which the duties of the new post are taken, in case, the promotion involves the assumption of a new post with enlarged responsibilities. In the instant case, the applicant was serving as A.S.I. He was promoted on the post of P.S.I. Higher responsibilities were enlarged to the promotional post of P.S.I. The applicant never served as P.S.I. and therefore, he is not entitled to get the monetary benefits of the promotional post of P.S.I., on which he never worked during the period from 01.10.2013 to till his retirement on 30.06.2018. Therefore, the respondent No. 2 has rightly passed the impugned order and denied to give monetary benefits to the applicant in view of the provisions of Rule 32 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981. There is no illegality in the impugned order. Therefore, no interference is called for in the impugned order. There is no merit in the present O.A. Consequently, the O.A. deserves to be dismissed.

11. In view of the discussions in the foregoing paragraphs, the Original Application stands dismissed with no order as to costs.

PLACE : AURANGABAD.
DATE : 24.01.2020.

(B.P. PATIL)
ACTING CHAIRMAN

KPB S.B. O.A. No. 250 of 2019 BPP 2020 Pay and Allowances