

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

COMMON ORDER IN O.A. NOS. 306 AND 485 BOTH OF 2022

1. ORIGINAL APPLICATION NO. 306 OF 2022

DISTRICT : NANDED

Papindersingh s/o Shobhasingh Sandhu (Pujari),

Age : 56 years, Occu. : Head Constable,)

R/o : 302, BMS Heights, Yatri Niwas Road,)

Nanded -431602.)..

APPLICANT

V E R S U S

1. The State of Maharashtra,)

Through Secretary, Home Department,)

Mumbai, Mantralaya, Mumbai-32.)

2. The Superintendent of Police,)

Nanded.)..

RESPONDENTS

W I T H

2. ORIGINAL APPLICATION NO. 485 OF 2022

DISTRICT : NANDED

Jaspalsing s/o Bacchansingh Kalon,)

Age : 48 years, Occu. : Police Naik (Constable),)

Bakkal No. 2162.)

R/o : Block No. 4, Sector-II, Abchalnagar,)

Nanded -431602.)..

APPLICANT

V E R S U S

1. The State of Maharashtra,)

Through Its Secretary,)

Department of Home,)

Mantralaya, Fort, Mumbai-32.)

2. The Superintendent of Police,)

Nanded.)..

RESPONDENTS

APPEARANCE :- Shri Amit Mukhedkar, learned Advocate for the applicants in both the matters.
: Smt. Deepali S. Deshpande, learned Presenting Officer for the respondent authorities in both the matters.

CORAM : Hon'ble Shri Justice P.R. Bora,
Vice Chairman
AND
Hon'ble Shri Vinay Kargaonkar, Member (A)
DATE : 31st October, 2023

O R A L - O R D E R

1. Heard Shri Amit Mukhedkar, learned counsel for the applicants in both the matters and Smt. Deepali S. Deshpande, learned Presenting Officer for the respondent authorities in both the matters.

2. The applicant in Original Application No. 306/2022 entered into the Police services as a Constable vide appointment order dated 13.2.1989. He came to be promoted to the post of Police Naik on 4.1.2006. He further came to be promoted on the post of Head Constable on 2.8.2007. Thereafter he came to be promoted to the post of Assistant Sub Inspector of Police on 15.6.2019 vide the promotion order issued by the respondent no. 2 i.e. the Superintendent of Police, Nanded. While the

applicant was serving on the post of Assistant Sub Inspector of Police, he came to be reverted by respondent no. 2 vide order dated 18.1.2022 to his erstwhile post of Police Head Constable. Aggrieved by the aforesaid order, the applicant has approached this Tribunal.

3. Applicant in Original Application No. 485/2022 joined the Police services on 15.3.1993 as a Police Constable. In the year 2008, he came to be promoted to the post of Police Naik. On 21.9.2019, he was promoted to the post of Police Head Constable and was posted at Vajirabad Police Station at Nanded. Since then till passing of the impugned order the applicant was discharging his duties on the post of Head Constable. Respondent no. 2 i.e. the Superintendent of Police, Nanded vide his order dated 18.1.2022 reverted the applicant to his erstwhile post of Police Naik. The aforesaid order is questioned by the applicant in the present Original Application.

4. As is revealing from the impugned order, both the applicants have been reverted on the ground that when the orders of promotion were passed in their favour, both were having criminal cases pending against them. As is revealing from the contents of the impugned orders in both these applications, the Police personnel against whom criminal

prosecutions or the departmental enquiry is pending, is not entitled for promotion.

5. Shri Amit Mukhedkar, learned counsel appearing for the applicants in both these applications submitted that the impugned order is contrary to the provisions of law and has been passed in utter violation of the principles of natural justice. Learned counsel has placed reliance on the judgment of the Hon'ble Apex Court in the case of **P.C. Wadhwa vs. The Union of India and another, AIR 1964 SC 423**. The learned counsel submitted that the offences, which are pending against the applicants, are not arising in relation to the services being rendered by the applicants or conduct of the applicants as Police personnel. The learned counsel, therefore, prayed for setting aside the impugned order in both these applications.

6. In both these matters the respondent nos. 01 and 02 have filed their joint affidavits in reply. In the affidavits in reply filed in both these matters it is the common contention raised on behalf of the respondents that a Government employee or a Police personnel against whom a criminal case is pending is not entitled for promotions. It is further contended that since the applicants did not disclose the fact of criminal cases pending against them when the promotion orders were passed in their

favour, both the applicants are liable to be reverted to the post from which they were promoted. It is further contended that the offences pending against the applicants are of the serious nature and, as such, respondent No. 2 has rightly reverted both of them to their erstwhile posts.

7. The learned Presenting Officer appearing for the respondent authorities in both these matters supported the impugned orders. Learned P.O. further submitted that the respondent no. 2 has rightly reverted both these applicants, since they did not disclose the fact of criminal cases pending against them while accepting the orders of promotion. Learned P.O. further submitted that the Police personnel against whom criminal cases are pending cannot be given promotions. Learned P.O., therefore, prayed for dismissal of the O.As.

8. We have duly considered the submissions made on behalf of the applicants, as well as, the respondent authorities. We have also perused the documents placed on record. It is not in dispute that the applicant in O.A. No. 306/2022 was promoted to the post of Assistant Sub Inspector of Police on 15.6.2019 and since then till the date of the impugned order he was discharging the duties of the said post. Similarly, the applicant in O.A. No. 485/2022 was promoted to the post of

Police Head Constable on 21.9.2019 and since then till the date of the impugned order was serving on the said post of Police Head Constable. There is further no dispute that both the applicants came to be reverted vide the order dated 18.1.2022 passed by the respondent no. 2.

9. The main and precise objection raised on behalf of the applicants is that without issuance of any show cause notice to the applicants and without giving them any opportunity of hearing, the impugned order has been passed by the respondent no. 2. As against it, it has been argued on behalf of the respondent authorities that there was no necessity of issuance of any show cause notice or giving opportunity of hearing to the applicants, since it is undisputed that against both the applicants criminal cases were pending on the date of their promotions and the said fact was not disclosed by the applicants.

10. The contention as has been raised on behalf of the respondents is, however, difficult to be accepted. As has come on record, both the applicants were admittedly promoted to the respective posts in the year 2019; one was promoted to the post of Assistant Sub Inspector of Police, whereas other was promoted to the post of Police head Constable. The order of

reversion or cancellation of their promotion has been passed after both have rendered their services on the promotional posts over the period of more than three years.

11. It is quite evident that the applicants have been promoted to the next higher post as they were possessing the requisite eligibility, as well as, merit for such promotion. It also does not seem to be the case of the respondents that the applicants provided any false information that no criminal case is pending against them. From the contents of the impugned order it reveals that the concerned department failed in placing before the Promotion Committee the fact of criminal cases pending against the applicants.

12. In premise of the aforesaid facts, the question arises whether after having worked for the period of more than 03 years on the promotional posts, the applicants could have been reverted without issuing them the show cause notice or without giving them the opportunity of hearing on the ground that criminal cases were pending against them on the date of their promotion? Vide the impugned order the applicant in O.A. No. 306/2022 has been reverted from the post of Assistant Sub Inspector of Police to the post of Police Hawaldar and the applicant in O.A. No. 485/2022 is reverted from the post of

Police Hawaldar to Police Naik. The aforesaid order of reversion is in fact reduction in rank. As provided under article 311(2) of the Constitution, a person in the services of the State or, who holds a civil post under the State, cannot be dismissed or removed or reduced in rank without holding an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of the charges. In view of the observations made and the conclusions recorded by the Hon'ble Apex Court in the case of **P.C. Wadhwa vs. The Union of India and another** (cited supra), the order of reduction in rank falls within the meaning of article 311(2) of the Constitution of India. Since the said order has been passed by respondent no. 2 without giving any opportunity of hearing to the applicants, there is apparent violation of the provisions under article 311 of the constitution of India. The impugned order, therefore, cannot be sustained.

13. The respondent No. 2 was under an obligation to follow the principles of natural justice by giving opportunity of hearing to the applicants before cancelling their promotions. When both the applicants had been working on the promotional posts for the period of more than 03 years and when criminal cases pending against them were not having any nexus with the

duties the applicants were performing, according to us, respondent no. 2 should have instead of cancelling the promotions of the applicants only on the ground of pendency of the criminal cases against them, could have adopted the course of making said orders of promotions, subject to outcome of the criminal cases pending against them. Of course, even in that case also the respondent no. 2 could not have passed that order without giving an opportunity of hearing to the applicants.

14. For the reasons stated above, the following order is passed:-

ORDER

- (i) Order dated 18.01.2022, whereby the applicants in these Original Applications are reverted, is quashed and set aside.
- (ii) The respondents are not precluded, if they so desire, from taking appropriate action against the applicants in accordance with law by giving due opportunity of hearing to them.
- (iii) The Original Applications stand allowed in the aforesaid term without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad
Date : 31st October, 2023