MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 50 OF 2015

DISTRICT : OSMANABAD

Rajendra S/o Baburao Patil,)
Age : 59 years, Occu. : Nil,)
R/o. D.I.C. Road, Sambhaji Nagar,)
Osmananbad, Tal & Dist. Osmanabad.) .. **APPLICANT**

V E R S U S

1. **The State of Maharashtra**,)
Through Secretary,)
Home Department,)
Mantralaya, Mumbai -32.)

2. **Director General of Police**,)
Maharashtra State, Mumbai.)

3. **Special Inspector General of Police**,)
Maharashtra State, Mumbai.)

(Delete as per the order dated 28.01.2015)

4. **The Home DYSP Officer**,)
Solapur (Rural), Dist. Solapur.)

5. **The Superintendent of Police**,)
Solapur (Rural), Dist. Solapur.)

.. **RESPONDENTS**

APPEARANCE : Shri K.G. Salunke, Advocate for the Applicant.

: Shri M.S. Mahajan, Chief Presenting Officer for Respondents.

CORAM : Justice Shri P.R. Bora, Member (J)
AND
Shri Bijay Kumar, Member (A)

DATE : 27.01.2022.

O R D E R

(Pronounced on 27th January, 2022)

(Per : Shri Bijay Kumar, Member (A))

1. This Original Application has been filed by the applicant Shri Rajendra S/o Baburao Patil, R/o Osmanabad, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985, thereby, challenging the impugned order dated 29.12.2011 passed by the Director General of Police, Maharashtra State, Mumbai (in short, "The DGP"). The applicant is also seeking relief in the form of direction to be issued by this Tribunal to the respondent authorities to consider his name for granting him promotion to the post of Police Inspector, (in short, "PI") along with those promoted to the rank of PI as per the recommendation of Departmental Promotion Committee (in short, "DPC") held in for the year 2007-08 by accepting the claim of the applicant that he was eligible for getting promotion in the same meeting of DPC.

2. Background facts of this case, as stated by the applicant may be summarized up as follows:-

(a) The applicant was appointed a Police Constable in the year 1981 and got promotion to the post of Police Sub-Inspector in due course on seniority cum merit basis.

However, later on, he did not get recommended for promotion to the post of "PI" by DPC for year 2007-08, 2008-09 and 2009-10.

(b) The DPC (2011-12) recommend the name of the applicant for promotion to the post of Police Inspector and accordingly promotion order was issued vide order No. प्रलि/पशा/पोनि-पदोन्न्ती/कार्यमुक्त/२०११-/१७७२१, सो. ग्रामीण, dated 15.11.2011 with his posting as "PI" at Police Training School, Solapur.

(c) The applicant submitted a representation to "The DGP" vide his letter dated 19.12.2011 requesting him for posting him as "PI" on an Executive Post. He had indicated his choices of the places of posting as Solapur (Rural), Pune (Rural) or Navi Mumbai. He had further proposed that in case any of the posts of his choice was not vacant, he may prefer to continue as Assistant Police Inspector (in short, "API") at Police Station Pandharpur, Dist. Solapur (Rural). The representation made by the applicant which is in Marathi, is being reproduced for accuracy and ready reference:-

"दि. १९/१२/२०११

प्रति,

पोलिस महासंचालक साहेब,
महाराष्ट्र राज्य मुंबई यांच्या सेवेस

विषय - नांदेड ते सोलापूर ग्रामीण येथे बदलीवर येऊन ६ महिने पण झाले नाहीत तर माझी बदली A.P.I. ते P.I. या पदावर R.P.T.S, सोलापूर येथे बदली झालेली रद्द करून सोलापूर ग्रामीण, पुणे ग्रामीण, नवी मुंबई येथे बदली करण्याबाबत..... .

अर्जदार - श्री. राजेंद्र बाबूराव पाटील स.पो.नि.तालुका - पो.स्टेशन पंढरपूर, जि. सोलापूर ग्रामीण

महोदय,

विनंती अर्ज करतो की, मी जवळपास १०वर्षे साईड ब्रॅचमध्ये नोकरी केली असून त्यात दोन वेळा (पाच वर्षे सहा महिने) नक्षल भागात ड्युटी केली आहे.

तसेच माझे प्रमोशन २००७ साली मिळायला पाहिजे होते ते आता सन २०११ च्या समाप्ती नंतर देऊन R.P.T.S सोलापूर येथे बदली केल्याने माझ्यावर अन्याय झाला आहे.

मी नांदेड ते सोलापूर ग्रामीण येथे बदलीवर येऊन आणखी सहा महिने सुध्दा पूर्ण झाले नाहीत. माझी पो. स्टेशनला (एक्झीकेटीव्ह - कार्यकारी) नोकरी करायची इच्छा असल्याने माझी सोलापूर R.P.T.S येथे झालेली बदली रद्द करून १) सोलापूर ग्रामणी २) पुणे ग्रामीण ३) नवी मुंबई येथे बदली करावी.

मी थोडयाच दिवसापूर्वी गोंदिया जिल्हयात छत्तीसगडच्या बॉर्डरवर नक्षल विरोधी पथकात काम करून आलो आहे.

जर P.I. या पदाच्या जागा वरील ठिकाणी शिल्लक नसतील तर मी आहे त्या पदावरच (A.P.I.) आहे त्या ठिकाणी जनरल बदल्या होईपर्यंत काम करण्यास तयार आहे. तरी माझी वरील विनंती मान्य व्हावी ही विनंती.

सेवेस सादर

सही
श्री. राजेंद्र बाबूराव पाटील स.पो.नि.
तालुका - पो. स्टेशन पंढरपूर
जि. सोलापूर ग्रामीण"

(d) In response to the representation received from the applicant, the "The DGP" cancelled promotion order of the applicant on ground of 'request of the applicant' vide

impugned order dated 29.12.2011. The contents of the said order are reproduced below for ready reference:-

"*पोलीस महासंचालक यांचे कार्यालय*
शहीद भगत सिंग मार्ग, कुलाबा, मुंबई-०१
दिनांक :- २९/१२/२०११.

संदर्भ:- हया कार्यालयाचे समक्रमांकाचे आदेश, दिनांक ०९/१२/२०११.

आदेश

संदर्भाधिन आदेशातील अ.क्र.४ वरील सहायक पोलीस निरीक्षक राजेंद्र बाबुराव पाटील यांच्या पोलीस निरीक्षकपदी पदोन्तीवरील सोलापूर ग्रामीण ते पोप्रवि, सोलापूर असे नेमणुकीचे आदेश त्यांच्या विनंतीनुसार हया आदेशान्वये रद्द करण्यात येत असून ***त्यांची सोलापूर ग्रामीण येथेच पुन:सहायक पोलीस निरीक्षकाचे पदात नेमणुक करण्यात येत आहे****.*

के. सुब्रमण्यम्,
पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई.

प्रत,
अपर पोलीस महासंचालक, प्रशिक्षण व खास पथके, म.रा., मुंबई,
विशेष पोलीस महानिरीक्षक, कोल्हापूर परिक्षेत्र, कोल्हापूर,
पोलीस अधीक्षक, सोलापूर ग्रामणी.

२. पोलीस, अधीक्षकांनी स.पो.नि. पाटील यांची बदली अधिनियम, २००५ मधील तरतुदींस अनुसरून नियंत्रण कक्ष, अथवा इतर अकार्यकारी शाखेत तातडीने नेमणूक करण्याबाबत आवश्यक ती कार्यवाही करून तसे हया कार्यालयास लवकर कळवावे.

प्राचार्य, पोलीस प्रशिक्षण विद्यालय, सोलापूर.
कार्यासन अधिकारी, का. क्र. ४,९,४०, व
का.क्र. ३ मधील संबंधीत लिपीक.

सही
(डॉ. बी.के.उपाध्याय)
विशेष पोलीस महानिरीक्षक (आस्थापना)
पोलीस महासंचालक यांचेकरिता."

(e) Upon receiving the order of cancellation of the promotion order, the applicant again submitted to the Special Inspector General of Police (Establishment), Maharashtra State, Mumbai yet another representation dated 01.02.2012 reiterating his request to allow him to work as "API" at Pandharpur till any of the post of his choice i.e. Police Inspector at Solapur (Rural), Pune (Rural) or Navi Mumbai falls vacant. Extract of his presentation dated 01.02.2012 is being reproduce below for ready reference :-

"दिनांक ०१.०२.२०१२

प्रति,
मा.श्री. भूषणकुमार उपाध्यायजी साहेब,
विशेष पोलीस महानिरीक्षक (आस्था)
महाराष्ट्र राज्य, मुंबई.

यांच्याकडेस सविनय सादर-

विषय: - **बदली आदेशात बदल होणे बाबत.**
चालू वर्ष २०१२ मध्ये सेवानिवृत्त होत असल्याने.

अर्जदार:- श्री. राजेंद्र बाबूराव पाटील सहा.पोलीस निरीक्षक
नेमणुक : नियंत्रण कक्ष, सोलापूर ग्रामीण
आपला ओ आर दि. १६.१२.२०१२ रोजी घेतला होता.

महोदय,

विनंती अर्ज करतो की, मला दिनांक ०९.०१.२०१२ रोजीच्या आदेशानुसार पोलीस निरीक्षक या पदाचे प्रमोशन देवून पो. प्र. विद्यालय, सोलापूर येथे साईड ब्रॅंच मध्ये नेमणूक देण्यात आल्याने मी आपला ओ. आर. घेवून विनंती केली की, मी १० वर्षे साईड ब्रॅंच केली आहे. त्या कालावधीत दोन वेळा स्वखर्चाने नक्षलवादी एरियात डयुटी केली आहे.

असे असताना सोलापूर (ग्रा), पुणे (ग्रा) किंवा नवी मुंबई येथे कार्यकारी क्षेत्रात बदली होणे बाबत समक्ष भेट घेवून विनंती केली असता, जागा रिक्त नसल्याचे सांगण्यात आले.

मी नांदेड जिल्हयातून येवून ५ महिने झाले आहेत त्यात अडीच महिने मोहोळ व अडीच महिने पंढरपूर ता.पो.स्टे. येथे डयुटी केली. माझी पाच महिन्यात दोनदा बदली व नियंत्रण कक्ष ही तिसरी बदली असल्याने माझ्यावर अन्याय झाला आहे. तरी मी पंढरपूर ता.पो.स्टे. येथे इन्चार्जशिपची मागणी करीत नसून सहा. पो. निरीक्षक या पदावर काम करत होतो. तरी मला आहे त्याच पदावर पंढरपूर ता. पो.स्टे. येथे नेमणूक करण्यात यावी. त्याठिकाणी २ सपोनि, ४ पोसई व त्यावर इन्चार्ज पीआय हे आहेत.

तसेच माझ्या पुर्वीच्या मागणीप्रमाणे जागा रिक्त झाल्यास बढतीसह तरी सोलापूर (ग्रा), पुणे (ग्रा) किंवा नवी मुंबई येथे कार्यकारी क्षेत्रात बदली होणे बाबत विनंती आहे.

कळावे,

आपला विश्वासू,

सही
(राजेंद्र बाबुराव पाटील)
सहा. पोलीस निरीक्षक
नेमणुक : नियंत्रण कक्ष, सोलापूर ग्रामीण"

(f) The applicant also met the Special Inspector General of Police (Establishment), Maharashtra State, Mumbai personally on 28.08.2012 and requested for promotion to the post of Police Inspector. Written reply was given to him on behalf of the Special Inspector General (Establishment), M.S., Mumbai by the Superintendent of Police, Solapur (Rural) vide letter dated 01.10.2012, extract of relevant part of which is reproduced below :-

> *" उपरोक्त संदर्भ व विषयास अनुसरून सहा. पोलीस निरीक्षक राजेंद्र बाबुराव पाटील यांनी दि. २८.०८.२०१२ रोजी विशेष पोलीस महानिरीक्षक (आस्थापना), मुंबई यांना समक्ष भटुन पोलीस निरीक्षकपदी पदोन्नती मिळण्याबाबत विनंती सादर केली आहे.*
>
> *२. सपोनि पाटील यांना यापुर्वी पोलीस निरीक्षक पदी देण्यात आलेली पदोन्नतीबाबतचे आदेश त्याच्यांच विनंतीनुसार हया कार्यालयाचे दि. २९.१२.२०१२ च्या आदेशान्वये रद्द केले होते. त्यामुळे शासन निर्णय, सामान्य प्रशासन विभाग, क्र. एसआरव्ही—१०८७/११३१/प्र.क्र.११—८९/बारा, दि. ३०.०४.१९९१ मधील तरतुदीनुसार कमी करण्यात आले असून, सन २०१२—१३ च्या निवडसूचीवर गुणवत्तेनुसार त्यांच्या नावाचा विचार करण्यात येईल. असे कळविण्यात आलेले आहे."*

(g) The applicant had also represented before the "The DGP" on 24.05.2010 against not promoting him to the post of Police Inspector on earlier occasion of DPC 2007-08 and DPC 2008-09. In response to the representation, the applicant was informed that he was not considered fit for promotion during the year 2007-08 and 2008-2009 and his name may be considered when found fit for promotion. At this juncture the applicant had not approached the Tribunal against the said communication received from the office of "The DGP" in that regard.

(h) Applicant had made representation on 19.10.2012 also for posting him as "PI" at any of the places of posting of his choice as mentioned in aforesaid paras. Thereafter,

filed the present Original Application on 02.04.2014, which was amended with permission of the Tribunal vide order dated 28.01.2015 allowing deletion of name of respondent No. 3 from the title clause of the O.A. In addition, delay of one and half year in filing the O.A. was condoned vided order dated 28.01.2015 in the same M.A. No. 194/2014 in O.A. St. No. 413/2014.

3. The applicant has prayed for following reliefs through prayer clause 10, which reads as follows:-

"10. Relief Claimed:-

A. The Original application may kindly be allowed.

B. Record and proceedings may kindly be called for;

C. By issuing appropriate orders or directions in the like nature, the respondent authorities may kindly be directed to consider the date of promotion for the post of Police Inspector of the applicant from the year 2007 as per the D.P.C. held in the year 2007 and all the benefits / pensionary benefits of Police Inspector may kindly be granted to the applicant;

D. By issuing appropriate orders, this Hon'ble Tribunal may be pleased to quash and set aside the reversion order dated 29.12.2011 by which the applicant is reverted from the post Police Inspector to Asst Police Inspector and for that purpose issue necessary orders;"

4. The applicant had also prayed for interim relief in terms of prayer clause 11, as reproduced below. However, no interim relief was granted by the Tribunal.

> *"11. Interim reliefs:-*
>
> *A. Pending the hearing and final disposal of this Original Application, the respondent authorities may kindly be directed to consider the date of promotion for the post of Police Inspector of the applicant from the year 2007 i.e. when the D.P.C. was held and all the benefits / pensionary benefits may kindly be granted to the applicant;*
>
> *B. Pending the hearing and final disposal of this Original Application, by issuing appropriate orders, this Hon'ble Tribunal may be pleased to quash and set aside the reversion order dated 29.12.2011 and for that purpose issue necessary orders;*
>
> *C. Any other appropriate relief to which the applicant is entitled to may please be granted in favour of the applicant."*

5. All the respondents were duly served notices. The respondent No. 2 filed affidavit in reply on 26.06.2015 and also filed minutes of meeting of the DPC held in the years 2008, 2009 and 2010 in compliance with the Tribunal order dated 01.12.2018. The case was argued by the two contesting sides on 17.01.2022. At the time of arguments, learned counsel for the

applicant submitted a citation of the judgment of Hon'ble Supreme Court in the case of ***Saroj Kumar Vs. Union of India and others in Civil Appeal No. 6081 of 2015 (Arising out of Special Leave Petition (Civil) No. 25572 of 2014),*** dated 18.08.2015, reported in ***2015 DGLS (SC) 824 (Supreme Court)***. The matter was thereafter, reserved for orders.

6. **Analysis of facts and conclusion** : -

(a) It is evident that the applicant had not agitated the issue of not recommending his name for promotion by DPC-2007-08, DPC 2008-09 and DPC 2009-10 on any earlier occasion and has also not given any reason for acquiescing with the result of DPCs. When he was promoted under recommendation of DPC for the year 2011-12, then also he has not registered his grievances of not being considered by DPCs held earlier. Even by filing the MA No. 194 of 2014 the applicant has sought condonation of delay from the date of filing his representation dated 01.02.2012 which relates to promotion and posting based on DPC 2011-12. Therefore, the issue of promotion on earlier occasion is barred by limitation.

(b) The judgment of Hon'ble Apex Court in ***Saroj Kumar Vs. Union of India and others in Civil Appeal No. 6081 of 2015 (Arising out of Special Leave Petition (Civil) No. 25572 of 2014),*** dated 18.08.2015, reported in ***2015 DGLS (SC) 824 (Supreme Court)*** relied upon by the applicant in support of his contentions, has a different ratio. In the said matter the Central Administrative Tribunal had directed authorities to consider case of appellant for promotion from the date when his juniors were promoted, ignoring remarks, which had been communicated after first round of litigation. Hon'ble Apex Court has upheld the decision of the Hon'ble High Court that after ACRs had been communicated and representations had been rejected, the Tribunal should not have treated remarks un-communicated. As the ratio in the cited judgment is altogether different, the same, in our opinion, does not have application in the present O.A.

(c) Further, the applicant had declined to join at Police Training Institute Solapur on getting promotion to the post of "PI' vide order dated 15.11.2011. Even after receipt of communication of cancellation of his promotion order vide letter dated 29.12.2011 issued by respondents, he

continued his adamant approach of insisting on continuing on the post of "API" until he gets posting at any of the 3 places of his choice and accordingly reiterated his earlier stand vide his letter dated 01.02.2012. Thereafter, the applicant retired on superannuation as "API" in the month of December, 2012 and as such, his name could not be considered for promotion by the DPC 2012-13 held in March, 2013.

*(d)**Conclusion*** : - Considering all the facts before us and oral submissions made, in our considered opinion, there is no merit in the case of the applicant and accordingly, following order is being passed:-

O R D E R

(A) The Original Application No. 50/2015 is dismissed for reason of being devoid of merit.

(B) No order as to costs.

MEMBER (A)
(Bijay Kumar)

MEMBER (J)
(P.R. Bora)