

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 713 OF 2017
DISTRICT : PARBHANI**

Venkat S/o. Dadarao Mundhe,)
Age : 57 years, Occu. : Service,)
R/o : C/o. Police Station Palam,)
Tq. Palam, Dist. Parbhani.)
.. **APPLICANT**

V E R S U S

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

2) **The Special Inspector General of Police,))**
Nanded Region, Nanded.)

3) **The Superintendent of Police,**)
S.P. Office, Parbhani.)

4) **The Police Inspector,**)
Police Station, Palam, Tq. Palam,)
Dist. Parbhani.)

5) **Rajabhau s/o Kishanrao Katkade,**)
Age : 53 years, Occu. : Service as A.S.I.,))
R/o. C/o Police Station Sonpeth,)
Tq. Sonpeth, Dist. Parbhani.)

6) **Sugriv S/o. Maruti Mundhe,**)
Age : Major, Occu. : Service as A.S.I.,))
R/o. C/o Sub-Divisional Police Officer,))
Parbhani Rural, Parbhani.)
.. **RESPONDENTS**

APPEARANCE : Shri K.G. Salunke, Advocate for the Applicant.
: Smt. M.S. Patni, Presenting Officer for
respondents.

CORAM : Justice Shri P.R. Bora, Member (J)
and
Shri Bijay Kumar, Member (A)
DATE : 19.01.2022

O R D E R

(Pronounced on 19th January, 2022)

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

1. Original Application No. 713 of 2017 was filed on 25.09.2017 by the applicant Shri Venkat S/o Dadarao Mundhe, R/o Parbhani by invoking provisions of Section 19 of the Administrative Tribunal Act, 1985 and thereby, challenging the impugned order dated 31.08.2017 passed by the respondent authorities rejecting the applicant's claim for getting deemed date of promotion after reconvening meeting of Departmental Promotion Committee (in short, "DPC") for year 2000 as per the directions given by the Tribunal in O.A. No. 430/2015, order dated 01.08.2017.

2. The background facts of the matter as stated in original application are that the applicant who joined the service in the Police Department as a Constable on 25.08.1983 along with respondent Nos. 5 and 6 was promoted as Police Naik by an order dated 30.12.2003, whereas respondent Nos. 5 and 6, who

were junior to the applicant were promoted in the year 2000 based on recommendations of DPC of year 2000. As the respondents did not consider his request for granting deemed date of promotion from the year 2000, he filed Original Application No. 430/2015 before this Hon'ble Tribunal, which in turn, passed order dated 01.08.2017, operative part of which is extracted as follows:-

“6. The respondents are therefore directed to hold a review DPC meeting and consider the case of the applicant for promotion to the post of Police Naik from the same date on which the respondent nos.5 and 6 were given such promotion. This should be done within a period of 4 weeks from the date of this order and the applicant should be informed about the outcome of the review DPC meeting within a period of one week thereafter. O.A. is disposed of accordingly with no order as to costs.”

3. It is alleged by the applicant that the respondent authorities conducted the Review DPC on 24.08.2017 and decided his case in a biased mind and, without giving any reasons the respondents determined that the applicant was not fit for promotion w.e.f. year 2000 at par with the respondent Nos. 5 and 6. The operative part of the decision of the Review DPC, which is in Marathi, is reproduced for accuracy and ready reference as follows:-

“सदर प्रकरणात या कार्यालया कडून दि. २८.०८.२०१७ रोजी डी.पी.सी. पुनर्विचार पदोन्नती मिटिंग घेण्यात आली असून त्यामध्ये अर्जदार यांना प्रतिवादी नं. ५ व ६ प्रमाणे सन २००० पासून पोलीस नाईक या पदावर पदोन्नती देण्यासाठी फेरविचारामध्ये त्यांच्या सेवा अभिलेखानुसार ते अपात्र ठरलेले आहे अशी समज देण्यात यावी.”

4. A performance chart attached with the letter communicating decision of the Review-DPC shows that the “Service Sheet” remarks of the applicant for the year 1996-97, 1997-98 and 1998-99 were as “Unfit” for promotion. Therefore, the applicant’s performance for next three years had been taken into account based on which he was promoted as Police Naik in the year 2003.

5. The applicant has contended that he was not communicated adverse remarks in his performance sheet and during the period his Service Sheet Remarks had been adverse, he had been awarded cash prize as follows :-

Year	Date of cash prize	Amount	Item/Good performance
1996-97	16.10.1996	Rs. 25/-	For excellent pared and good turn out
1997-98	Prize Not Given	N.A.	N.A.
1998-99	01.08.1998	Rs. 05/-	Bandobast of Shri Krishna Committee
	26.08.1998	Rs. 05/-	Ganpati Bandobast
	10.12.1998	Rs. 05/-	Reason not mentioned
	19.02.1999	Total Rs. 175/- (Rs. 50+50+50+25)	For investigations in C.R. 72/98 u/s 457, 380 of IPC C.R. 149/98 u/s 395 of IPC C.R. 115/98 u/s 395 of IPC C.R. 105/98 u/s 457, 380 of IPC

6. The applicant has prayed for relief in following terms as stated in para No. 10 of the Original Application:-

- “A) Record and proceedings of the case may be called for;*
- B) Original Application may kindly be allowed.*
- C) The impugned order dated 31.08.2017 passed by the respondent No. 3 may kindly be quashed and set aside. With further direction issuing appropriate order or directions the respondent authorities may kindly directed to grant deemed date of promotion to the post of Police Naik since 2000 at par with respondent No. 5 & 6 when they were promoted and considered by the DPC and grant him further benefits of promotions for which he is entitled. Further directions to grant him all the monitory benefits for which he is entitled.*
- D) By issuing appropriate order or directions the respondent authorities may kindly be directed to grant further benefits after the post of Police Naik for which he is entitled and grant him the deemed date at par with respondent No. 5 and 6 and also grant him all the monitory benefits for which he is entitled.*
- E) Any other just and equitable relief to which the applicant is found entitled may kindly be granted.”*

7. In the earlier Original Application No. 430 of 2015, the applicant has pleaded ignorance about granting him promotion late by 3 years as compared to respondent Nos. 5 and 6. Instead,

he had made mention of a Criminal Case lodged against him U/s 12 (A) of the Bombay Prevention of Gambling Act, 1887 with S.C.C. No. 153 of 2014, in which he was acquitted by the Court of J.M.F.C. and pleaded that as he was acquitted in the criminal proceedings and there was no other case against him therefore, his service record was unblemished.

8. The respondents have countered the claim of the applicant made in O.A. No. 430/2015 that the service record of the applicant was unblemished. The respondents in their affidavit in reply in O.A. No. 430/2015 had mentioned that there were adverse entries in "Service Sheet" of the applicant during 3 out of 5 years' period immediately preceding year of holding DPC i.e. year 2000. The respondents had also mentioned that earlier in the year 1991 after completing a departmental enquiry, the applicant was removed from service vide order dated 03.09.1991 and later on reinstated by the appellate authority on 16.05.1992 by imposing lesser punishment of stoppage Of 3 increments. As the process of giving effect to the same, in ordinary course, would have been over on 1st July 1995 and therefore, in an opinion the same is not relevant for adjudication in O.A. No. 713/2017. Likewise, assertion by the respondents that applicant was prosecuted under Criminal Cases Nos. 43/2010 and C.R. No.

28/2011 under Section 294, 323, 504, 392, 452, 353 of IPC too, are not relevant in the instant case for the reason that the merit of recommendations by Review DPC for the prior period i.e the year 2000 is under examination. Moreover, in none of the criminal cases the applicant was convicted.

9. Upon hearing the two contesting sides following critical facts emerge for consideration and deciding the matter on merit:-

(a) It is a matter of record that there are adverse remarks in Service Sheet of the applicant for the year 1996-97, 1997-98 and 1998-99. It is admitted by the contesting sides that the adverse remarks were not communicated to the applicant in writing at any stage prior to holding of DPC of year 2000 and had been disclosed for the first time by respondent no. 3 by a letter dated 21.02.2015, a few month before the earlier O.A. No. 430 of 2015 had been filed by the applicant, which was filed on 18.06.2015.

(b) The decision taken by the Review DPC is extracted as follows: -

“उपरोक्त पददोन्नती समितीची बैठक दि. २४.०८.२०१७ रोजी बोलविण्यात आलेली आहे. पददोन्नती देण्यात करिता शासन निर्णय सामान्य प्रशासन विभाग, क्र. एस आर व्ही-१०८९/३६५४/(प्र.क्र.१२/८९)/बारा, दि.

२८/०३/१९९० नुसार पदोन्नती साठीची पात्रता/ अपात्रता तपासताना निवडसुचीतील कर्मचार्यांचे अलिकडचे पाच वर्षांचे गोपनीय अहवाल विचारात घेण्यात आले आहेत. तसेच शासन निर्णय सामान्य प्रशासन क्र. एस आर व्ही-१०९५/प्र.क्र. २९/९५/बारा, दि. २२/०४/१९९६ नुसार

१)

२)

निवड सुचीतील पो.ना./२३८ व्यंकट दादाराव मुंढे यांचे वार्षिक गोपनीय अहवाल (शिफ्ट रिमार्क्स) सन १९९५-९६, १९९६-९७, १९९७-९८, १९९८-९९ व १९९९-२००० चे पाहता समाधानकारक नसल्याने अपात्र ठरविण्याबाबत पदोन्नती समितीने एकमताने निर्णय घेतलेला आहे.

पदोन्नती समितीने पो.ना./२३८ व्यंकट दादाराव मुंढे यांचा पदोन्नतीच्या अनुसंगाने मा. न्यायालयाने दिलेल्या आदेशाप्रमाणे डि. पी.सी. बेटक घेवून विचार करून घेतलेल्या निर्णयाप्रमाणे कार्यवाहीचा अहवाल मा. न्यायालयास सादर करून संबंधितास कळविण्यात आलेला आहे.

स्वा.

(दिलीप झलके)

पोलिस अधीक्षक,

परभणी

10. As per affidavit in reply filed by the respondents in O.A. No. 713/2017, it is in view of adverse remarks in the Service Sheet of the applicant that the D.P.C. conducted in the year 2000 did not recommend the case of the applicant for promotion to the post of Police Naik in the year 2000. Only after subsequent 3 years' remarks in Service Sheet became available, making the overall gradation of the applicant of acceptable grade for a period of immediately preceding five years that the applicant was

recommended for promotion to the rank of Police Naik by the DPC of year 2003.

11. It is evident from the copy of Service Sheet submitted by the respondents as annexure to the Additional Affidavit in Reply that in the present matter, more than one officer as District Superintendent of Police has recorded adverse remarks in respect of the performance of the applicant for the three year, i.e. 1996-97, 1997-98 and 1998-99 and that the applicant had been punished 3 times, 6 times and 7 times respectively during the three years in which he earned adverse remarks, which fact must be known to him.

12. On the other hand, the applicant has relied upon the provisions of clause 39 of Annexure A of the General Administration Department of Government of Maharashtra bearing No. CFR 1295/प्र.क. ३६/९९/तेरा, मंत्रालय, मुंबई, dated 01.02.1996, titled as “प्रतिकूल शरे कळविणे व अभिवेदनावर कार्यवाही करणे”. The applicant has also based reliance upon judgment of Hon’ble Apex Court in a case of **Sukhdev Singh Vs. Union of India & Ors reported in (2013) 9 SCC 566**, in which the Hon’ble Apex Court has settled the law that uncommunicated and adverse ACRs cannot be relied

upon in the process of promotion. The same law has been reiterated by the Hon'ble Apex Court in Civil Appeal No. 32 of 2013, Rukhsana Shaheen Khan vs. Union of India, dated August 28, 2018.

13. In response, the respondents have contended that the provisions of Government Resolution of General Administration Department are not applicable to police personnel who are governed by the provisions of Chapter XIV of the Maharashtra Police Manual, Part 1. The respondents have specifically mentioned that the Service Sheet of applicant has been maintained under provisions of clause 473 of Police Manual Part-1, which is different from the guidelines issued by the General Administration Department of Government of Maharashtra bearing No. CFR 1295/प्र.क. ३६/९९/तेरा, मंत्रालय, मुंबई, dated 01.02.1996. Remarks in Service Sheet of Police Constabulary has to be recorded by the District Superintendent of Police which is not necessarily annual exercise but has to be recorded during visit of the District Superintendent of Police and such remark has to be recorded at least once a year. On the other hand, the guidelines issued by the General Administration Department are related to Annual Confidential Reports written at the end of the year. There is a provision of maintaining Service Sheets in duplicate

but in case of Constabulary, Service Sheets/ Rolls should be duplicated except in respect of entries for 'Remarks', 'Punishments', 'Rewards' and 'Record of Postings'.

14. Now, relevant provisions of The Bombay Police Manual, 1959 are being reviewed as follows :-

(a) Clause 467 of the Bombay Police Manual deals with Annual Confidential Reports of officers of the rank not below the rank of Police Sub-Inspectors. To be specific, clause 467 (1) of the said Manual states that Confidential Reports should be maintained in respect of all Government Servants other than Head Constables, Constables and Class IV Government servants, but including temporary Government servants, provided in the case of the latter, they have been in service for three months and are likely to continue. **(Emphasis supplied)**

(b) Clause 468 (6) of the Bombay Police Manual, 1959 deals with communication of adverse remarks in Annual Confidential Reports which are applicable only to members of Indian Police Service and members of State Police Service, not below the rank of Sub Inspectors. It reads as follows :-

“(6) (a) The following procedure should be followed in communicating remarks: Remarks as finally approved by Government in respect of offices of Indian Police/Indian Police Service and Bombay Police Service should be communicated by the Inspector General of Police/Commissioner of Police Orally. But, if they pertain to a serious defect, they may be communicated

in writing by Government or, at its instance, by the Inspector General of Police / Commissioner of Police.

(Emphasis Supplied)

(6) (b) *Remarks in respect of members of Class III service should be communicated orally by the Inspector General / Commissioner of Police or Superintendents of Police as the case may be.* **(Emphasis Supplied)**

(c) It is the Clause 473 of the Bombay Police Manual, 1959 which deals with maintaining Service Sheets of Head Constables, Constables and Class IV employees. The said clause reads as follows :-

“Service Sheet : (1) *For Policemen employed in of rank not higher than a Head Constable, there will be maintained by the Superintendent of Police a Service Sheet in Standard Form No. P.M. 34 e. It should be opened immediately the men are enlisted. (2) (a) Superintendents of Police should see every Head Constable and constable in their districts and write up their service records at least once a year. For this, they should spread over their programme throughout the year rather than do it at the time of, the annual inspection. They should test a few Read, Constables and Constables particularly those who are senior, on parade and inspect their kit every time they visit Head Quarters or a Police Station end make entries in their service Sheets. They should visit Town and Taluka Police Stations and Head Quarters once a week if and when they are in Head Quarters at least for some part of a week. (3) When inspecting a District, the Deputy Inspector Generals should verify, this and satisfy themselves that the Superintendents of Police have been implementing the contained in sub (4)rule (a) above.*

15. From the provisions of Bombay Police Manual 1969, discussed in the preceding para No 13, it may be inferred that performance of the police personnel of the rank of Head Constables, Constables and Class IV employees is recorded in the form of Service Sheet instead of Annual Confidential Reports and adverse remarks are not required to be communicated in writing. Even in respect of senior police personnel above the rank of Head Constables, the procedure of communicating adverse remarks is preferably oral. While considering rationale of these provisions, the operational challenges faced by higher officers commanding the police force need to be duly appreciated. In order to neutralize the possibility of personal bias in writing Service Sheets of Head Constables, Constables and Class IV employees, the power to write the same has not been conferred on Sub-Inspectors, Inspectors, Assistant Superintendent of Police or Deputy Superintendent of Police but only on the Head of the District Police i.e. the Superintendent of Police.

16. We are inclined to review legal basis and constitutional provisions under which special provisions of dealing with service matters of subordinate police personnel have been made.

(a) The article 313 of the Constitution of India is being reproduced below for ready reference : -

“313. Transitional Provisions- *Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of the Constitution and applicable to any service or post which continues to exist after the commencement of this Constitution, as an All India Service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution.”*

(b) Section. 2 of Police Act, 1861, as amended in the year 1937, reads as follows: -

“2. Constitution of the force: - *The entire police-establishment under a State Government shall, for the purposes of this Act, be deemed to be one police-force and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner, as shall from time to time be ordered by the State Government.*

Subject to the provisions of this Act, the pay and all other conditions of service of members of the subordinate ranks of any police-force shall be such as may be determined by the State Government.
(Emphasis Supplied)”

Above position of law in respect of sub ordinate police personnel continue to be there under s. 5 (b) of Bombay Police Act, 1951.

17. Based on above analysis, it is inferred that service conditions of the subordinate ranks of the various police forces in India which have been framed under provisions of Police Act, 1861 read with Bombay Police Act, 1951 to the extent they are consistent with provisions of Indian Constitution, are good in the eyes of law.

18. **Conclusion**: - After considering all the facts on record and oral arguments made by the two contesting sides, we are of the considered opinion that the Service Sheet of the applicant has been maintained as per the provisions of Police Manual and the applicant had knowledge of a crucial fact of having been punished during the period under consideration of DPC. The applicant had been considered favorably for promotion after he earned remarks up to mark during immediately following three years. Therefore, the applicant has not been able to make out a case requiring intervention by the Tribunal. Therefore, we pass following orders :-

ORDER

[A] The Original Application No. 713 of 2017 is hereby, dismissed for reason of being devoid of merit.

[B] No orders as to costs.

MEMBER (A)

MEMBER (J)