

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 651 OF 2012

DIST. : OSMANABAD

Jaisingh Kuwarsingh Thakur,
Age. 48 years, Occu. Service,
R/o C/o Centre for Police Research,
Chavan Nagar, Pashan Road,
Pune – 411 008.

-- APPLICANT

VERSUS

(1) The State of Maharashtra,
Through it's Secretary,
Department of Home,
Mantralaya, Mumbai – 32.
(copy to be served on P.O.,
MAT Mumbai, Bench at Aurangabad).

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

(3) Inspector General of Police,
Aurangabad Division, Aurangabad.

(4) The Superintendent of Police,
Osmanabad, Dist. Osmanabad.

-- RESPONDENTS

APPEARANCE : Shri A.D. Gadekar, learned Advocate for the
applicant.

: Shri I.S. Thorat, learned Presenting Officer for
respondents.

**CORAM : HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN
AND
HON'BLE SHRI J. D. KULKARNI, MEMBER (J)**

PER : HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN

J U D G M E N T**(Delivered on this 15th day of December, 2016)**

1. Heard Learned Advocate Shri A.D. Gadekar for the Applicant and Shri I.S. Thorat, learned Presenting Officer (P.O.) for the Respondents.
2. The Applicant in this O.A. has challenged the order dated 24.5.2012 issued by the Respondent no. 2 that the Applicant cannot be promoted as Assistant Police Inspector (A.P.I.) as by order dated 1.8.2011, he was undergoing punishment of stoppage of four increments, which was imposed by Special Inspector General of Police, Aurangabad. Also, on 24.7.2009, Superintendent of Police, Osmanabad has recommended to Special I.G.P., Aurangabad, that the Applicant may be dismissed from service. Considering these facts, he cannot be promoted.
3. Learned Counsel for the Applicant argued that the Applicant was working as Police Sub Inspector at Osmanabad, and he was promoted as A.P.I. by order dated 31.5.2008. However, this order was not implemented. The Applicant was placed under suspension by order dated 16.8.2008 and a Departmental Enquiry (D.E.) was started against the Applicant on 1.10.2008. In the D.E., punishment order dated 1.8.2011 was issued and 4 annual increments of the applicant have been stopped. Learned Counsel for the Applicant argued that the Applicant was not facing any D.E. when he was promoted by order dated

31.5.2008. He was placed under suspension as he has filed a case against then Superintendent of Police, Osmanabad. He was therefore suspended on trumpeted up charges. Ultimately, he was given minor punishment of stoppage of four increments in the departmental enquiry (D.E.). Now the period of that punishment is also over. There is no reason why the Applicant should not be promoted as A.P.I. and granted deemed date of promotion. A mere proposal to dismiss an Officer, without starting any Enquiry, cannot be a ground for denying him promotion.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the promotion of the Applicant to the post of A.P.I. was conditional. The order could not be effected as a D.E. was pending against the applicant. He was placed under suspension on 16.8.2008 and therefore the promotion order could not be implemented. The Applicant was punished by order dated 1.8.2011, and during that period, he was undergoing punishment, he could not be promoted. The Respondent no. 2 has considered all these aspects and directed the Respondent no. 4 by letter dated 24.5.2012 that the Applicant could not be promoted. In appeal, the punishment was enhanced to bringing the Applicant to the basic pay of P.S.I. for three years by order dated 10.7.2013. Learned P.O. argued that the Applicant is not entitled to any relief and the O.A. may be dismissed.

5. Both the Applicant and the Respondents have placed voluminous documents on record in support of their respective claims in this O.A. It is not necessary to examine them at any length. The salient points in this O.A. are as follows :-

(i) The Applicant was promoted as Assistant Police Inspector (A.P.I.) from the post of P.S.I. by the Respondent no. 2 by order dated 31.5.2008. Para 6.2 of this order reads thus :-

“६.२ उपरोक्त आदेशात नमुद ज्या अधिका-यांविरुद्ध विभागीय चौकशी प्रलंबित आहे, अथवा शिक्षेची अंमलबजावणी सुरु झालेली नाही, अशा अधिका-यांनी त्यांना होणारी शिक्षा पदोन्नतीच्या पदावर भोगण्यास तयार असल्याची लेखी पुर्व संमती घेवून व त्यास अधिन राहुन मगच पदोन्नतीवर सोडण्यात यावे, व तसा स्पष्ट उल्लेख संबंधित अधिका-यांच्या पदोन्नती संबंधीच्या कार्यमुक्त आदेशामध्ये करण्यात यावा. असे संमती पत्र या कार्यालयास दोन प्रतित (लक्षवेध - कक्ष ४ व कक्ष ११) पाठविण्यात यावे, व त्याची प्रत संबंधित अधिकारी ज्या घटकात बदलून जात आहेत त्या घटकाप्रमुखास पाठविण्यात यावे.”

It is quite clear that, even if a D.E. was pending against the Applicant, he was eligible to be promoted by the aforesaid order, subject to the outcome of the D.E. It is seen that the Applicant was facing a D.E. which was ordered on 5.5.2005. This order is as Exhibit R-1 on page 163 of the Paper Book. He was placed under suspension by order dated 16.8.2008 (Exhibit C at p. 36 of the

Paper Book). Another D.E. was ordered on 1.10.2008. The order passed by the Special I.G.P., Aurangabad dated 1.8.2011 refers to D.E. which was ordered on 5.10.2006.

In the affidavit in reply filed by the Respondent no. 4 on 22.11.2013, it is mentioned that one D.E. was pending against him on 31.8.2008, the date of his promotion. Copy of that D.E. is appended as Exhibit R.1, which is no. वि.चौ./८/२००५/६६१६, dated 5.5.2005. The D.E. referred to the order of Special I.G.P., Aurangabad is वि.चौ./पो उपनि-जे.के.ठाकुर/०६/१२९३९, dated 5.10.2006. In the affidavit in reply of Respondent no. 4, copy of punishment order dated 10.7.2013 issued by the Respondent no. 2 is appended as R-3. This is another order dated 1.8.2011, which is annexed as R-4 (page 189 of the Paper Book) which is same as Exhibit W on page 138 of the Paper Book. In the affidavit in reply filed by the Respondent no. 2 on 3.12.2013, there are no annexures. It is stated that the Applicant was under suspension from 28.2.2005 to 26.4.2005. However, in para 2.3 of this affidavit, it is stated that the Respondent no. 2 has imposed punishment by order dated 10.7.2013 in case where the Applicant was suspended by order dated 16.8.2008. From all these, it can be surmised that two D.Es. were started against the Applicant in 2005 or 2006 and in 2008. The action in D.E. started in 2008 can be said to be initiated with his suspension by order dated 16.8.2008, which was issued

after the Applicant was promoted as A.P.I. on 31.5.2008. This D.E. and subsequent punishment by order dated 10.7.2013 cannot be a valid ground to deny promotion dated 31.5.2008 to the Applicant as these developments were subsequent to his promotion.

(ii) A D.E. was pending against the Applicant from 2005 (or 2006), when he was promoted by order dated 31.5.2008. It is presumed that authorities knew about this, when the Applicant was cleared from promotion as A.P.I. and the order was issued on 31.5.2008. The order itself required that the Applicant could be promoted subject to furnishing an undertaking that he will undergo punishment in the promoted post in the pending D.E. That punishment of stoppage of 4 increments was ultimately imposed by order dated 1.8.2011. The period of punishment is already over and there does not appear any impediment in promoting the Applicant as A.P.I. at this stage.

(iii) Even the D.E. started after the promotion order of the Applicant was issued on 31.5.2008 has since been considered and order dated 10.7.2013 was passed. The duration of punishment of that order is also over.

6. Considering all these facts, we are of the considered opinion that the Applicant is eligible for promotion as A.P.I. The issue regarding the deemed date of promotion and whether his suspension was justified or mala fide are not being decided at this stage.

7. The Respondents are directed to allow the Applicant to join in the promoted post of Assistant Police Inspector in pursuance of order dated 31.5.2008, within a period of one month from the date of this order. The Applicant may pursue the matter regarding deemed date of promotion by applying to the Respondents. This O.A. is allowed in these terms with no order as to costs.

MEMBER (J)

VICE CHAIRMAN