

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 160 OF 2018

DISTRICT : NASIK

Shri Subhash Ramchandra More,)
Occ : Police Constable,)
R/at : Room no. 1, Dhobale Niwas,)
Tembhipada, Gaondevi Road,)
Bhandup [W], Mumbai 400 078.)...**Applicant**

Versus

1. The State of Maharashtra)
The Secretary,)
Home Department,)
Mantralaya, Mumbai 400 032.)
2. The Commissioner,)
State Excise, 2nd floor,)
Old Custom House, S.B S Marg,)
Fort, Mumbai.)
3. The Superintendent,)
State Excise, Ground floor,)
Old Custom House, S.B.S Marg,)
Fort, Mumbai.)
4. The Secretary,)
Finance Department, Mantralaya,)
Mumbai.)
5. The Secretary,)
Law & Judiciary Department,)
Mantralaya, Mumbai.)...**Respondents**

Shri K.R Jagdale, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

CORAM : **Justice Mridula R. Bhatkar (Chairperson)**
Shri P.N Dixit (Vice-Chairman) (A)

DATE : **21.05.2021**

PER : **Justice Mridula R. Bhatkar (Chairperson)**

J U D G M E N T

1. Heard Shri K.R Jagdale, learned advocate for the Applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents.

2. The applicant, is Constable in State Excise Department prays that the communication dated 27.11.2017 issued by Respondent no. 1, so also communications dated 6.12.2017 & 16.12.2017 issued by Respondents no 2 & 3 respectively qua the applicant be quashed and set aside.

3. The facts of the case in brief are as follows:-

The applicant pursuant to the advertisement dated 26.6.1990 appeared for the written examination and also interview for the post of Constable, in State Excise Department. The applicant was selected and his name was recommended by the Regional Selection Board on 23.7.1992. Thereafter, the verification of documents was due but it was not conducted for long period of 6 months, thereafter by letter dated 16.4.1993, the applicant was called for verification of document on 22.4.1993. The applicant was given appointment on 26.4.1993 and he joined accordingly.

4. The Respondents in the advertisement has prescribed the eligibility criterion of height of 162 cms for the candidates appearing for

the post of Constable in State Excise Department. However, Government took a policy decision and amended the rules in 1993 wherein the eligibility criterion of height for promotion the post of Sub Inspector from the cadre of Constable is 165 cms. The height of the applicant was 162 cms when he joined as Constable in State Excise Department in 1993. Thus the applicant for want of the eligibility criterion of height of 165 cms was not considered for promotion to the post of Sub Inspector, when he duly reached in the consideration zone, when he became eligible for the post of Sub Inspector.

5. However, the issue of implementation of the new rules of 1993 regarding eligibility criterion for increasing the height for the post of Sub Inspector was a matter of consideration with the Government and vide Notification dated 12.7.2016, the Respondents decided to implement the amended Recruitment Rules of State Excise Department of 1998 regarding minimum height of 165 cms in case of Sub Inspector in the Constabulary from 1.1.1993 and working thereafter. Thus, the date for relaxation of the implementation of amended Rules about increase in the height was upto 1.1.1993.

6. The applicant, though, was recommended on 23.7.1992, his personal verification was not conducted till 26.4.1993. Hence, he was considered as appointed after the cut-off date and so benefits of relaxation was not given to him. Therefore, he is challenging the said Government Resolution and the communication of rejection of his name for the promotion before this Tribunal.

7. Learned counsel for the applicant Mr Jagdale, has submitted that the applicant was found eligible for the post of Constable as per the advertisement dated 26.6.1990, where the eligibility criterion of height was 162 cms. No criterion of minimum height of 162 cms at the relevant time for the post of Police Sub Inspector was prescribed in the earlier rules of 26.12.1958 was mentioned. The G.R dated 5.5.1989 wherein it is stated that the person who is recommended should be given the appointment within 30 days under any circumstances and the said G.R

is to be followed. Learned counsel for the applicant had submitted that though the applicant got appointment late, i.e. after the cut-off date, he is not at fault as his appointment was recommended earlier i.e. on 23.7.1992. Learned counsel contended that the applicant should not suffer and be deprived of his promotion because of the fault on the part of the Respondents. Shri Jagdale, submits that after issuance of the Notification on 12.7.2016, the applicant has made a representation to the Respondents on 9.8.2016 requesting that the benefits of relaxation be given to him because his name was recommended earlier but it was rejected. The applicant in fact is entitled to get the benefits of the said relaxation and he should be considered for promotion to the post of Sub Inspector.

9. Shri A.J Chougule, learned Presenting Officer, argued that the Government has taken correct decision for implementing the earlier decision dated 1.1.1993. The applicant was appointed after the cut-off date of 1.1.1993, and therefore, he cannot be considered for promotion to the post of Sub Inspector as his height is three cms. less than required height of 165 cms. Learned P.O relied on the affidavit in reply dated 8.1.2019 filed on behalf Respondents no 1 to 3 by Shri Manoj Dinkar Shevare, Deputy Superintendent, State Excise, in the office of Superintendent, State Excise, Mumbai. Learned P.O further relied on the opinion given by Ashwini Saini, Deputy Secretary, Law and Judiciary Department dated 26.10.2017, and submitted that the policy of the Government of increasing the height from 162 cms to 165 cms is justified and the applicant whose height is 162 cms could not be considered as he was not eligible for promotion to the post of Sub Inspector, State Excise in view of new eligibility criterion. Learned P.O further submits that though the cut-off date operates harshly on some of the employees, the benevolent provision of relaxation of 2016 cannot be extended to the employees who are not covered within the ambit of cut-off date. In the notings and the information furnished by the Government on the point of relaxation it is found that applicant's file was missing and the reason of delay could not be verified. Learned P.O

submitted that the applicant does not deserve to get the benefits of relaxation and his application be dismissed.

10. Whether the cut-off date of 1.1.1993 regarding eligibility criterion of height for promotion to the post of Sub Inspector, State Excise, can be relaxed in the case of the applicant is the only point before us.

11. The facts regarding the eligibility criterion mentioned in the advertisement, the date of recommendation and the date of appointment of the applicant are admitted. We have gone through the advertisement dated 26.6.1990, Notification dated 1.1.1993 and G.R. dated 12.7.2016. It is to be noted that the Recruitment Rules of 1958 for the post of Constable and Sub Inspector in State Excise Department were applicable in the year 1990 and 1993 also. In the year 1993, the eligible criterion for the post of only Sub Inspector, State Excise Department was changed. Prior to 1993, there was no such condition of height, i.e. 165 cms was mentioned in the earlier rules. Thus, on 1.1.1993, by way of amendment the eligibility criterion in respect of height of Sub Inspector was changed and the height was mentioned as 165 cms. Thus the Constables, who were earlier appointed as per the eligibility criterion wherein the height was prescribed as 162 cms faced an obstacle for their promotion as the height cannot increase.

12. Moreover, at the time of their recruitment as per the rules and the criterion of 1958, there was no specific eligibility criterion of height for the post of Sub Inspector. Thus, in the absence of such eligibility criterion in 1958 and in the year 1990, when the applicant applied for and was recommended, he had legitimate expectation of getting promoted in due course. However, after the amendment when the eligibility criterion of 165 cms was prescribed in 1958 rules, the chance of promotion of the applicant was scuttled and therefore, the applicants and other Constables who were similarly situated had moved to the Government and made representations for relaxation. The Government-Respondent was kind enough to consider the case of the Constables who were appointed as per the earlier eligibility criterion of height therefore,

decided to give effect to the new criterion of increased height from 1.1.1993. Thus, all the Constables, who were appointed prior to 1993 were rightly given the benefit by relaxing the said criterion. The way of their promotion was clear. However, the applicant is having a peculiar case. As per the advertisement dated 26.6.1990, though he was recommended on 23.7.1992, his case for verification was not taken up before 1.1.1993. We, therefore, called upon the Respondents to explain the delay which has occurred in the case of the applicant.

13. Learned P.O pointed out the notings of the Home Department dated 22.6.2017, wherein it was mentioned that there was delay for the verification of documents of the applicant because the original File No. EST-1389/20033/A-I was missing and therefore reason could not be verified. Thus, the verification of documents could not take place. The delay is on the part of the Respondents and not due to the fault of the applicant. Had there been any fault on the part of the applicant, like production of necessary documents or not attending the interview etc, in that situation, the applicant was not entitled to any relaxation in respect of the cut-off date. However, after perusal of all these notings and opinion of Law and Judiciary Department, we are of the view that there is delay on the part of the Respondents between the date of recommendation of name of the applicant, i.e. on 23.7.1992 and verification of documents on 16.4.1993 and the said delay is not explained by the Respondents, hence not justified.

14. It is necessary to point out the G.R dated 5.5.1989 wherein it is specifically mentioned that Government has taken a note that the candidates though are recommended in competitive examinations but not given the actual appointment for a long time; in order to curtail such delay, the Government has directed that in any circumstances within 30 days from the date of recommendation, the appointment order is to be issued. Thus, this G.R is directly in favour of the applicant. There is no valid reason and good ground justifying the denial of relaxation of cut-off date in respect of height of the applicant.

15. Hence, we allow the Original Application with following directions.

ORDER

- (a) The communications dated 27.11.2017, 6.12.2017 and 16.12.2017 issued by Respondents no 1, 2 & 3, qua the applicant is hereby quashed and set aside.
- (b) The applicant is hereby entitled to promotion to the post of Sub Inspector, State Excise as per rules and seniority along with all other consequential service benefits.

Sd/-
(P.N Dixit)
Vice-Chairman (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 21.05.2021
Dictation taken by : A.K. Nair.