

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 327 OF 2016**

DISTRICT :

1. Shri Milind Madhukar Kathe,)
Assistant Police Inspector,)
Anti- Terrorism Squad,)
Nagpada, Mumbai)
Residing at Flat No.1,)
Ground Floor, European,)
Officers, Quarters, V.P. Road)
Police Station Premises,)
Girgaon, Mumbai 400 004)

2. Shri Ajay Sudhir Kulkarni,)
Assistant Police Inspector,)
Kandivali Police Station,)
S.V. Road, Kandivali (W),)
Mumbai 400 067)
Residing at Police Officers)
Quarters, Type 2, Building)
No.1, Room No.2, S.V. Road,)
Kandivali (West),)
Mumbai 400 067)

3. Shri Chandrakant Vinayak)
Jadhav, Assistant Police)
Inspector, Yerawada Police)
Station, Pune City, Nagar-)
Pune Road, Shastrinagar)
Chauk, Yerwads, Pune 6)
R/at. A-3, Building Flat No.)
15, New Indira Park)
Housing Society, Shastri)
Nagar, Yerwada, Pune 6)

4. Shri Santosh Ramchandra)
Mulkule, Assistant Police)
Inspector, Kalamboli Police)
Station, Navi Mumbai,)
Taluka Panvel, District)
Raigad, Navi Mumbai, and)
R/at. Sai Shraddha CHS,)
A/2/101, Khanda Colony,)
Sector 17, Panvel,)
District Raigad.)
5. Shri Sidheshwar Bugappa)
Pujari, Assistant Police)
Inspector, Taloja Police)
Station, Taloja MIDC, Near)
Dena Bank, Panvel,)
Dist. Raigad and R/at)
Shivsagar CHS, Sector 7,)
Plot no.8A, Khanda Colony,)
Panvel, District Raigad.)
6. Shri Samadhan Kisan)
Chavare, Assistant Police)
Inspector, Medha Police)
Station, Medha, Taluka)
Jaoli, District Satara, and)
R.at Medha Police Station,)
Medha, Satara.)
7. Shri Vijaykumar Ranjit)
Kuril, Assistant Police)
Inspector, DSB, S.P. Office)
Bhandara, and R/at. C/o.)
Tulsiram Navkhare,)
Near Khan Gandhi Chowk,)
Bhandara)
8. Shri Shriganesh Sahebrao)
Kangude, Assistant Police)
Inspector, City Traffic Branch)

- Raviwar Peth, Satara, R/at)
 Post Soundare, Taluka)
 Barshi, District Solapur 413 401)
9. Shri Baban Maruti Avhad)
 Assistant Police Inspector,)
 Uran Police Station, New)
 Mumbai Commissionerate,)
 And R/at. Room No.1001,)
 A-Wing, MHASLA, Residency)
 Plot No.06, Sector 36,)
 Kamothe, Taluka Panvel)
10. Shri Sanjay Vithalrao)
 Narawad, Assistant Police)
 Inspector, Modus Operandi)
 Bureau, Crime Branch,)
 Office of the Police)
 Commissioner, Sadhu)
 Vasvani Road, Pune411 001)
 And R/at. Flat No.1137,)
 Building Parmanagar,)
 Pune 411 1013)
11. Shri Aniruddha Ramesh)
 Puri, Police Inspector, ACB)
 Wardha and Division/)
 Section of Office of Dept.)
 Supdt. of Police, Anti)
 Corruption Bureau, Wardha)
 And R/at. 224, Chhatrapati)
 Nagar, Wardha Road,)
 Nagpur 15)
12. Shri Sanjivkumar D Zade,)
 Assistant Inspector of Police,)
 Kamti Police Station,)
 Solapur (R), Taluka Moho,)
 District Solapur 413 253)...**APPLICANTS**

VERSUS

1. Government of Maharashtra)
 Through Add. Chief)
 Secretary, Home Department,)
 Mantralaya, Mumbai 400 032)
2. Director General of Police,)
 Old Council Hall, Colaba)
 Mumbai)...**RESPONDENTS.**

Shri M.D Lonkar, learned advocate for the Applicant.

Ms Archana B.K, learned Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)

DATE : 29.02.2024

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicants pray that this Tribunal be pleased to hold and declare that in the light of conscious decision already arrived at the level of Respondent No. 2, the applicants are entitled for retrospective seniority at par with 1999 selection batch of Police Sub-Inspectors and accordingly they be granted all consequential service benefits including pensionary benefits.

2. Learned counsel for the applicants submitted that the applicants appeared for the 1999 batch examination of the year 1997 for the post of P.S.I held in the year 2003. Total candidates recommended and selected were 431. Out of 431 candidates 327

were sent for training on 1.7.2005 and training completed on 31.6.2006. The Hon'ble High Court in P.I.L No. 2096/2002 has stayed the appointment of 104 candidates. The applicants though were recommended and were included in the list of candidates sent for training in the list of 104 candidates they were not amongst the 65 candidates who actually joined training of remaining part of Batch of 1997.

3. Learned counsel submitted that the applicants were not sent for training. Total 104 candidates were recommended for training and the present 12 applicants were out of 104 candidates. The applicants were not earlier sent for the training because of the stay granted by the Hon'ble High Court in PIL No. 2096/2002. The said W.P (PIL) was withdrawn on 23.6.2006.

4. Learned P.O has submitted that the recommendation list of those 104 candidates was forwarded to the Government by MPSC on 8.12.2006. The Respondent-State took decision to send Batch of 104 candidates for training on 20.2.2007 and the training started on 10.12.2007. Out of 104 candidates, only 65 candidates went for PSI training and the present 12 applicants were not in the group of 65 candidates who went for training. Thus, the present 12 applicants opted out for not going for training of the 1999 recruitment which is Batch No. 98 and commenced on 10.12.2007.

5. Learned counsel has contended that it is not correct to say that the applicants themselves chose not to go for training. Learned counsel has pointed out that the Hon'ble High Court stayed the process of 104 candidate in the 1998 Batch of the year 1999. Meanwhile, further the advertisement for the post of PSI was issued by MPSC in the year 2003. The Preliminary Examination was held on 8.5.2004 and Main Examination was

held on 26.12.2004. The final result was published on 29.9.2005. Learned counsel submitted that all the applicants have cleared the Examination of the year 2003 of Batch 1997 in the year 2005 and were sent for training on 31.8.2006 as Batch No. 99.

6. Learned counsel submitted that training for the Batch of 1999 started on 10.12.2007. When the select list of the Batch of 1997, i.e., 2003 advertisement was declared, the stay granted by the Hon'ble High Court was in operation. Learned counsel submitted that the PIL was withdrawn on 23.6.2006.

7. Learned counsel submitted that the training of the Batch No. 98 was completed on 1.9.2007, i.e., before the 65 candidates of the Batch of 1998 were sent for training. The 65 candidates out of 104 were sent for training on 10.12.2007 and their training was completed on 11.12.2008 as batch No. 98.

7. Learned P.O relied on the affidavit in reply dated 7th Day 2023 of Shrishail C. Imade, Dy. Assistant in the office of D.G.P. It is admitted in para 4 that the names of the applicants reflected in the list of 104 candidates recommended by MPSC to the Government on 24.7.2007. Learned P.O further submitted that the names of the present applicants appeared in the said list of 104 candidates and these applicants relinquished their claim on the 1999 Examination and appeared for the PSI-2003 Examination in which they passed and were appointed and sent for training on 31.8.2006 and 1.9.2006. Thus, their dates of seniority can only be taken from their dates of training in view of the judgment and order delivered by this Hon'ble Tribunal dated 7.6.2017 in O.A Nos 918 & 1094/2015. Learned P.O relied on Rule 89(3) of the Bombay Police Manual, wherein it is stated that the date of appointment of PSI recruited directly is the date on which they are

sent for training. The Respondents have given the deemed date of seniority to the applicants of Batch No. 97-B as per seniority of 1999 Batch. Therefore, this Original Application praying for retrospective seniority at par with the recruitment of 1999, i.e., selection of Batch No. 97 and giving them consequential relief is to be rejected. Learned P.O relied on the decision of this Tribunal dated 7.6.2017 in O.A Nos 918 & 1094/2015, S.B Shingte & Ors Vs. The Government of Maharashtra & Ors

6. In the beginning it is appropriate to reproduce Rule 89(3) of the Bombay Police Manual which reads as under:-

“89. Sub-Inspectors.....

(3) The seniority of Sub-Inspectors, recruited direct and Head Constables passing the Sub-Inspectors’ course is determined by the order of merit in which they pass out from the Police Training School.” (emphasis placed).

There is no dispute that this seniority rule must be followed in the normal course. However, the present Original Application unfolds a very peculiar situation where the applicants cannot be held responsible to be pushed down in the Batch of 98 instead of their batchmates of 1997B. Admittedly, these applicants are one of the 104 selected candidates in the recruitment process initiated in the batch of 1999. It is also admitted fact that though the total selected and recommended candidates in the recruitment process of 1999 were 431 and 327 candidates were sent for training on 1.7.2005, whose training was completed on 31.6.2006. However, in PIL No. 2096/2002, which was filed the Hon’ble High Court stayed the appointment of remaining 104 candidates who were waiting for their training. The training completed on 31.6.2006 is called Batch No. 97. It is also admitted and known fact that more number of candidates selected in one recruitment process sometimes cannot be sent for training at one time due to scarcity

of the space, logistics required for the training and the later portion of the selected candidates are sent and accommodated in the next training session at Police Academy. Under such circumstances the selected candidates who undertake the training in the next session are necessarily considered as a part of the earlier batch. They cannot be scissored from their parent batch as they are selected and recommended candidates from one and same year of recruitment.

7. In the present case, the applicants faced a genuine difficulty on account of the stay granted for their training by the Hon'ble High Court in PIL No. 2096 /2002. The stay continued till the PILC was withdrawn on 23.6.2006. Meanwhile 327 candidates who were earlier sent for training on 1.7.2005 have completed their training on 31.6.2006, immediately seven days after the said PIL was withdrawn. We for the sake of clarity in their batch identification and to avoid confusion named them as Batch No. 97-A. Meanwhile, another incident took place and the State came out with the advertisement for further recruitment in the year 2003 and at the relevant time the stay of the Hon'ble High Court in the PIL No. 2096/2002 continued. The applicants indeed were put in a critical position and have decided to appear for the second time for the preliminary examination which was conducted on 8.5.2004 and as they cleared it they further appeared for the Main Examination conducted on 26.12.2004. The names of the present applicants were included in the final select list published on 29.9.2005. It is to be noted that at the relevant time also the stay granted by the Hon'ble High Court in PIL No. 2096/2002 continued and the applicants were sent for training for the recruitment of the year 2003 on 31.8.2006 and they completed their training on 1.9.2007 and the said recruitment was numbered as Batch no. 98. The present applicants might have continued in

the same batch and their seniority was fixed by applying Rule 89(3) of the Bombay Police Manual.

8. We have gone through the decision of this Tribunal dated 7.6.2017 in the case of S.B Shingte & Ors (supra). So far facts are concerned, they are different and the application of Rule 89(3) of the Bombay Police Manual on the point of fixing seniority in the normal course is not disputed. However, the facts of the present case are peculiar. Further, on account of withdrawal of the PIL No. 2096/2002 from the Hon'ble High Court on 23.6.2006, the stay was automatically vacated and the Respondent-State found it necessary to send those recommended and selected candidates who were the recruits of the year 1999 to be sent for training. It was a correct decision of the Respondent-state. Accordingly, the Respondents issued the order of the training of 104 candidates. Out of that some candidates joined the training on 10.12.2007 and total 51 candidates successfully completed the training on 30.12.2008. The office of the D.G.P on 24.2.2015 has issued order that those trained candidates whose parent recruitment is of 1999 are entitled to their seniority and has to be fixed and counted from the dated 1.7.2005 by applying the date of training i.e., 1.7.2005 of the Batch no. 97-A. Thus, out of 104 candidates who were subjected to the stay granted by the Hon'ble High Court in PIL No. 2096/2002, were divided into two groups, i.e., the present 12 applicants who were sent for training on 10.12.2007 and completed their training on 30.12.2008, we call them as Batch No 97-B. The applicants naturally claim that the said dated 24.2.2015 is also to be made applicable to them while fixing their seniority on the ground of parity as they were earlier selected and recruited in the recruitment of the year 1999. We would have not accepted this prayer in absence of the stay granted by the Hon'ble High Court. The act of the Court should not be detrimental to the fate of the

party in certain circumstances and the present situation is one of them. The applicants definitely would have appeared second time in the recruitment of the year 2003. In a way they were constrained to take up the examination second time though they have cleared the earlier examination. They studied, appeared and cleared the written and physical test second time. Thus, they proved their merit. It is to be noted that though they were recommended second time, at that time also the stay granted by the Hon'ble High Court in PIL No. 2096/2002 was in force. The applicants had no clue as to what will be the decision in the said PIL 2096/2002. Thus, they found their fate absolutely uncertain and thus they were compelled to go for the training the Batch 1998. Therefore, it cannot be said that it was their wrong decision or they happily opted for appearing second time for the examination and therefore they should be now compelled to maintain their placement in the next batch of 1998. We cannot apply Rule 89(3) of the Bombay Police Manual hyper technically and blindly. We are of the view that the applicants are genuine. Under rule of parity and equality the case of the present applicants is to be weighed and they cannot be disassociated from their parent recruitment of the year 1999. If the applicants would have failed in the second examination, i.e., recruitment of 2003, yet they would have got in the later training course which we call Batch No. 97-B and would have been benefitted while fixing their seniority by order dated 24.2.2015. The applicants worked hard and proved themselves in the merit successfully and completed the training along with Batch No 1998 and earlier too their original batchmates of 97-B. Thus, the statement of the learned P.O and the objections raised are not tenable. The case of present applicants stand on merit.

9. Hence, we pass the following order:-

ORDER

- (i) The Original Application is allowed.
- (ii) The applicants are to be treated as part of Batch No. 97 [104 candidates] & 97-A and they are to be placed as per their merit in the recommendation list of 104 candidates and they are to be given the placement accordingly.
- (iii) The applicants be granted all consequential service benefits accorded to 104 candidates including pensionary benefits in accordance with law.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 29.02.2024
Dictation taken by : A.K. Nair.