

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
AURANGABAD BENCH, AURANGABAD**

ORIGINAL APPLICATION OF 497 OF 2014

DISTRICT : AURANGABAD

1. Shri Kisan Rangnath Godam,)
Occ : Service as Head Constable in)
Bharat Rakhiv Battalion No. 1,)
Gr. No. 14, Aurangabad.)
R/o: Garkheda, Aurangabad.)
2. Dattoba Bansi Jadhav,)
Occ : Service as Head Constable in)
Bharat Rakhiv Battalion No. 1,)
Gr. No. 14, Aurangabad.)
R/o: Garkheda, Aurangabad.)..**Applicants**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
Through P.O, M.A.T,)
Aurangabad Bench.)

2. The Commandant,)
State Reserve Police Force,)
Gr. No. 12, Hingoli, Camp at Jalna.)
3. The Commandant,)
State Reserve Police Force,)
Gr No. 5, Daund, Dist-Pune.)
4. The Commandant,)
Bharat Rakhiv Batalian-1,)
Gr. No. 14, Aurangabad.)
5. The Additional Director General of)
Police, S.R.P.F, Police Head Quarters))
M.S, Mumbai, Shaheed Bhagatsingh))
Road, Colaba, Mumbai 400 001.)
6. Special Inspector General,)
State Reserve Police Force,)
Hingana, Nagpur Range, Nagpur.)
7. Shri Sunil Wamanrao Wankhede,)
Occ : Service as Assistant)
Sub-Inspector of Police under the)
Establishment of R-4, Aurangabad)
8. Shri Somnath B. Jadhav,)
Service as Assistant Sub-Inspector,)
of Police under the establishment)
of Res.no. 4, Aurangabad.)...**Respondents**

Shri Ajay S. Deshpande, learned advocate for the Applicants.

Shri V.B Bhumkar, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri B.P Patil (Member) (J)

DATE : 16.08.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri Ajay S. Deshpande, learned advocate for the Applicants and Shri V.B Bhumkar, learned Presenting Officer for the Respondents.

2. In this Original Application, the Applicants are seeking deemed date of promotion to the post of Police Head Constables in Indian Reserve Battalion, ahead of the Respondent nos 7 & 8 and the Applicants are also seeking deemed date of promotion to the post of Assistant Sub-Inspector of Police (ASI) w.e.f 25.1.2012, the date on which the Respondents no 7 & 8 were promoted to that post.

3. Learned Counsel for the Applicants argued that the Applicant no. 1, who belongs to Scheduled Caste (S.C) category, was appointed as Police Constable in SRPF Group-12, Hingoli on 31.8.1994 and was promoted as Police Naik on 23.10.2007. The Applicant no. 2, who belongs to open category, was appointed as Constable on 27.1.1998 in S.R.P.F, Daund and was promoted as Police Naik on 30.6.2006. As against these, the Respondents no. 7 & 8 was appointed in S.R.P.F as Constable on 2.2.2002 and 26.10.1999 respectively and promoted as Police Naik on 3.10.2008 and 17.9.2008 respectively. Both the Respondents were, therefore, junior to the Applicants as Constables and as Police Naik. Government decided to create a Battalion known as Indian Reserve Battalion, by G.R dated 7.10.2005 (Annexure R-1 at page 72). A total of 1007 new posts were created, including 675 posts of Constables and 160 posts of Head Constables. It was decided to fill up 160 posts of Head Constables by giving one step promotion to Police Constables / Police Naik who have worked in S.R.P.F for three years. The Applicants and the Respondents expressed their willingness to join the newly raised battalion and orders were issued posting them on the establishment of the Respondent no. 4. The orders were issued by Respondent no. 5. Order posting the Applicant no. 1 dated 26.12.2008 is at Exhibit 'A' (at page 12 of the Paper Book). It clearly mentions that seniority of the persons posted as Head Constable on the

establishment of the Respondent no. 4 is as per their seniority. The Applicants no. 1 & 2 joined on 31.12.2008 and 1.1.2009 respectively. Learned Counsel for the Applicants argued that the Applicants had no control on the date of issuance of order of their posting on the establishment of the Respondent no. 4, nor they had any control over their date of relief from the earlier establishment. The Respondents no 7 & 8 were relieved earlier and they were given order of posting also earlier than the Applicants. However, date of joining itself cannot be the basis to decide seniority. In fact, the Applicants should have been placed above the Respondents no 7 & 8, as they had joined as Police Constables and were promoted as Police Naik before the Respondents no 7 & 8. However, the Respondent no. 4 had ignored the specific instructions of the Respondent no. 5 that the seniority of Head Constables on the establishment of the Respondent no. 4 was to be fixed in accordance with their respective seniority in S.R.P.F companies in which they were working. This is also in accordance with the provisions of Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. Learned Counsel for the Applicants argued that the Respondent no. 4 had published two seniority lists of Head Constables as on 1.1.2011 on 5.12.2011 and on 1.1.2012 on 17.10.2012. Both these seniority lists are provisional and the Applicants have objected to them. However, no final seniority lists have been prepared. In the

meanwhile, the Respondents no 7 & 8 have been promoted as A.S.I on the basis of provisional seniority lists on 12.1.2012. Learned Counsel for the Applicants prayed that the Respondent no. 4 may be directed to prepare final seniority lists of Head Constables, based on the date of appointment as Constables and date of promotion as Police Naik and also grant the deemed date of promotion to the Applicants in the cadre of A.S.I w.e.f 12.1.2012.

4. Learned Presenting Officer argued on behalf of the Respondents that the Respondent no. 4 has published seniority lists on the basis of date of joining as Head Constables on the establishment of the Respondent no. 4. The seniority in SRPF companies, where they were working before joining the establishment of the Respondent no. 4 is irrelevant. Learned Presenting Officer argued that there is no merit in the present Original Application and it may be dismissed.

5. We find that Government had issued G.R dated 7.10.2005 and decided to raise a new battalion known as Indian Reserve Battalion. A total of 1007 new posts were sanctioned. 675 posts of Police Constables were to be filled by direct recruitment, while 160 posts of Head Constables were to be filled by one step promotion of Constables/Naik already working in different companies of S.R.P.F and who were willing to join the

new establishment of the Respondent no. 4. Orders were issued by the Respondent no. 5, posting Head Constables to the new establishment. The order in respect of the Applicant is at Exhibit 'A' (page 12). It has the following stipulation:-

“ २. सदर कर्मचारी हे रा.रा.पो.बल गट क्र.१४ औरंगाबाद येथे हजर झाल्यानंतर समादेशक यांनी आपल्या आस्थापनेवरील सर्व कंपन्यामध्ये सेवाजेष्ठतेनुसार समान विभागणी करून नियुक्ती द्यावी.”

All other orders have the same stipulation.

6. The question arises as how to fix the inter seniority of Head Constables in the newly created Battalion. It is seen that all employees were not posted by a single order. Various orders were issued by the Respondent no. 5. There was a time limit given to apply for posting to the establishment of the Respondent no. 4 as Head Constable and those who applied earlier were posted on the establishment of the Respondent no. 4 earlier. That was at best a fortuitous circumstances and the inter-se seniority cannot be decided on that basis. More importantly, the Respondent no. 5 had made it clear that seniority was to be decided on the basis of seniority of the transferred employees in the S.R.F.P companies in which they were earlier working. That decision appears to be logic and is fair to all. That is also in tune with Rule 4(2)(a) of the Maharashtra Civil

Services (Regulation of Seniority) Rules, 1982, wherein inter-se seniority of direct recruits selected in one batch of appointment is determined on the basis of their rank in the selection process and seniority of those who join within 30 days is not affected. On the same analogy, in the present case, persons, who joined as Head Constables, had earlier been selected as Constables and promoted as Police Naik, in their respective SRPF companies. When they are taken on a new establishment, the inter se seniority has to be decided on the basis of earlier seniority. Fixing inter-se seniority on the basis of date of joining, which was a fortuitous circumstances, would be totally arbitrary and cannot be upheld.

7. We find that the Respondent no. 4 had not published final seniority lists as on 1.1.2011 and 1.1.2012. We direct the Respondent no. 4 to publish the final seniority lists, based on the instructions of the Respondent no. 5, included in the posting order of various employees as Head Constables and in accordance with our observations in the preceding paragraph. If the final seniority lists have been published during the pendency of this Original Application, the Respondent no. 4 will revise them in accordance with our directions.

8. The Respondent no. 4 will also call a D.P.C./review D.P.C with a view to grant deemed date of

promotion as Assistant Police Sub Inspector to the Applicants w.e.f 25.1.2012. This should be done within eight weeks from the date of this order. This Original Application is allowed accordingly with no order as to costs.

Sd/-
(B.P Patil)
Member (J)

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 16.08.2017
Dictation taken by : A.K. Nair.