

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**DIST-MUMBAI**

**ORIGINAL APPLICATION NO 543 OF 2019**

Mr. Digambar Dattusa Barad )  
Age : 57 years, Occ.PHC )  
R/o. 313, Sai Ganesh Apartment, )  
Gandhar Nagar, Khadakpada, )  
Bhiwandi, Murbad Highway, )  
Kalyan (W) 421 301. )...**Applicant**

Versus

1. The State of Maharashtra, )  
Through the Addl Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai 32. )
2. The Commissioner of Police, )  
(Railways), P. Demello Road, )  
Wadibundar, Mumbai. )
3. The Director General of Police, )  
M.S. Shahid Bhagat Singh Marg, )  
Colaba, Mumbai 1 )...**Respondents**

Mr. R.M. Kolge, learned Advocates for Applicant.

Ms. K.S. Gaikwad, learned Chief Presenting Officer for Respondents.

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

**DATE : 06.09.2022**

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

## **J U D G M E N T**

1. The applicant who retired from the post of Police Head Constable challenges the order dated 5.3.2019 and 3.4.2019 issued by Respondents no 3 & 2 respectively, thereby reverting the applicant to the post of Police Head Constable from the post of Police Sub Inspector.

2. The applicant was appointed as Police Constable 15.7.1987 and was promoted to the post of Police Sub Inspector by order dated 3.5.2014. His services were confirmed after 3 years, i.e. on 9.5.2017. Thereafter, it realized by the Respondents that erroneous promotion was given to the applicant on the basis of information filled up by the office that he belonged to Scheduled Tribe, though he did not. The Respondents, thereafter, cancelled the promotion of the applicant by order dated 3.4.2019. The applicant filed the present Original Application on 11.6.2019 and he challenged the said cancellation of his promotion and the order of reversion. During the pendency of the Original Application, the applicant retired on 31.5.2020.

3. Learned counsel for the applicant submits that the Recruitment Rules for the post of Police Sub-Inspector (Recruitment) Rules, 1995 were amended by Respondent no. 1 on 29.6.2013. Thereafter, the applicant was promoted to the post of Police Sub-Inspector from the 25% quota meant for the promotes. The applicant has furnished the true information of his date of appointment as 15.7.1987 and also further personal information. By order dated 3.5.2014, several Police Head Constables and Assistant Police Sub-Inspectors came to be promoted to the post of Police Sub-Inspector in which the applicant was also promoted and his name appeared at Serial No. 590. After joining the post of Police Sub-Inspector, he rendered the service for three years at

Dadar Railway Police Station and after satisfactory completion of three years, his services were confirmed as Police Sub-Inspector on 9.5.2017. It was shocking to receive the show cause notice dated 4.2.2019 from Respondent no. 3, i.e. after 1 year and 8 months from the date of his confirmation, as to why the applicant should not be demoted. Learned counsel for the applicant submitted that the applicant gave his explanation to the said show cause notice that he has cleared the departmental examination and after verification of his eligibility he was promoted to the post of Police Sub-Inspector by the Respondents. Learned counsel for the applicant further argued that the reason for cancellation of promotion given by the Respondents is that he was wrongly considered in the category of Scheduled Tribe though he belonged to O.B.C category and therefore, the impugned order dated 3.4.2019 is arbitrary and not sustainable in law. Learned counsel further has submitted that the applicant has rendered service satisfactorily as Police Sub-Inspector for nearly 5 years and one prior to his retirement the department should not demoted him.

4. Learned counsel for the applicant has relied on the case of **BALBIR SINGH Vs. STATE OF H.P & ORS, (2000) 10 SCC 166**, on the point that when a promotion, if at all, given erroneously under a mistaken belief then the Government is estopped from reverting such employee.

5. Learned Presenting Officer, while meeting the submissions of the learned counsel for the applicant, relied on the affidavit in reply dated 16.8.2019 filed by the Respondents through Mahmad Mahibub Makandar, Deputy Commissioner of Police, Central Zone, Head Quarters, Railways, Mumbai. Learned P.O has submitted that the applicant belongs to O.B.C. However, at the time of meeting of the Departmental Promotion Committee, there was a

typographical error in the information furnished by the office in respect of the caste of the applicant. The applicant was shown as belonging to S.T category. However, in fact, the applicant does not belong to Scheduled Tribe category, but to O.B.C category. So the promotion was given to him in that category in order to maintain the roster and subsequently his promotion was confirmed. However, when the error was found, his promotion was rightly cancelled by the Respondents. Learned P.O further has submitted that the applicant's date of joining is 15.7.1987 and at the time of promotion the Police Constables entering the service in the year 1985 in fact were considered and not Police Constables who entered service in the year 1987. His colleagues or the persons junior to him were promoted by order dated 20.10.2020, i.e. after the retirement of the applicant. Learned P.O further relied on the additional affidavit in reply dated 22.7.2022 and 27.7.2022, filed by the Respondents through Lakhmi Gautam, Special Inspector General of Police (Establishment) . Learned P.O further produced year wise and caste wise chart of the vacancies and submitted that no injustice is caused to the applicant and the Original Application may be dismissed.

6. Learned P.O for the Respondents relied on the judgment of the Hon'ble Supreme Court in **I.C.A.R & ANR Vs. T.K SURYANARAYAN & ORS, AIR 1997 SC 3108.**

7. In the case of **BALBIR SINGH (supra)**, the issue of giving the promotion erroneously by the Government on the basis of wrong facts considered. The said ratio cannot be made applicable in the present set of facts which may appear similar. In the case of **BALBIR SINGH (supra)**, the appellant was promoted on ad hoc basis. However, he was immediately reverted before his promotion and therefore, the appellant approached the Administrative

Tribunal challenging the said order of reversion. The order of reversion was defended by the Government on the ground that his promotion was erroneously made by way of reservation for scheduled tribe candidate under the mistaken belief that such reservation was permissible for promotion from Electrician Grade-I to the cadre of Junior Engineer (Electrical). However, subsequently, they found no such reservation was permissible under the rules. Therefore, the appellant was reverted to his original post. The Tribunal dismissed the Petition. Hence, this appeal was filed before the Hon'ble Supreme Court. The fact of the record reveals that one Mr B.L Walia, another Junior Engineer had filed Writ Petition against the promotion of the appellant Mr Balbir Singh. However, the said Writ Petition was seriously contested by the Respondent-State and affidavit to that effect was filed before the Hon'ble High Court of Himachal Pradesh by the State, wherein the Writ Petition filed by Mr Walia was dismissed accepting the affidavit in reply filed by the Government. Therefore, in the case of BALBIR SINGH's case, there was a statement on oath made by the Respondent-State confirming its conscious decision of giving him promotion based on reservation in Scheduled Tribe category. The Hon'ble Supreme Court held that the Respondent-State cannot be permitted to blow hot and cold in the same breath inasmuch in the Writ Petition filed by Mr Walia, the Respondent-State justified the promotion of the appellant by stating that he was deprived of his promotion erroneously and when the question of his promotion came, it took the same plea of erroneously promoting him under mistaken belief. Therefore, the said appeal was allowed and the order of reversion was set aside. In the present case, the Government has taken a consistent stand that he was erroneously given promotion because against his name his Caste was mentioned as Scheduled Tribe and therefore, he was given

promotion in that category though none of his batchmates including senior to him were not promoted at the relevant time.

8. In the case of **I.C.A.R & ANR (supra)**, the Respondents were given accelerated promotion to T-2-3 grade for the purpose of promotion from T-1-3 grade as per the Technical Service Rules of Indian Council of Agriculture Research. The Respondents were not holding the necessary higher educational qualification and the fitment as per the Technical Service Rules, though they were promoted. The appellant took decision to revert them. However, it was challenged before the Central Administrative Tribunal by the Respondent-employees. The Tribunal allowed the application and the said decision was challenged before the Hon'ble Supreme Court. The Respondents, though they were having less educational qualification, but they have long experience of service, their demotion will bring clear frustration. The Hon'ble Supreme Court did not accept this case mainly on the ground that the promotion was given contrary to the said services rules which is not sustainable. Though the employees have enjoyed the fruits of improper promotion, that cannot be justified because the erroneous promotion cannot be claimed and cannot be permitted by perpetrating infringement of statutory Service Rules.

9. In the present case, the reservation is based on roster and the quotas. At the relevant time, the applicant got himself promoted in S.T category, though he does not belong to S.T category. A person who belongs to reserved category should be appointed in the reserved quota. This is against the violation of the policy of law and also of reservation. Therefore, this promotion cannot be justified. The submissions of the learned counsel for the applicant that the applicant has worked on that post of more than 4 years and there was also confirmation, two years after the

promotion cannot be a ground for reversion. It may typographical, clerical or inadvertent mistake of writing S.T before the name of the applicant. However, when it was noticed that the Respondents have taken a correct decision to revert him, the mistake continued in perpetrating it.

10. All the facts are admitted by both the parties. We verified from the record and on the basis of the information the Departmental Promotion Committee considered the case for promotion of Police Head Constables and Assistant Sub-Inspector to the post of Police Sub-Inspector. Indeed, before the name of the applicant, his caste was mentioned as Scheduled Tribe category and not O.B.C. Admittedly, the applicant belongs to O.BV.C and therefore, he should not have been considered in the reserved category for Scheduled Tribe. It is also an admitted fact by the Respondents that it was the mistake on their part in furnishing correct information. Thus, the Respondents have admitted the error on their part. True, it was not correct for nearly 5 years and the applicant worked on the promoted post of Police Sub-Inspector for nearly 5 years. However, when it was noticed that it was an error, immediately the applicant was given a show cause notice mentioning the reasons for cancellation of his promotion and after going through his explanation, the Respondent no. 3, passed the impugned order dated 13.4.2019 cancelling his promotion to the post of Police Sub-Inspector.

11. It is to noted that cancellation of promotion is not due to penal action, but it is a correction of the administrative error. Moreover, it is a Constitutional obligation on the part of the Respondent-State to uphold the Constitutional provisions in respect of reservation. It is as per the policy of the Centre and the State that the reservation is to be maintained as per the roster and

if at all a seat is reserved for a particular caste, a deserving candidate from that category only is to be appointed to that post. In the present case, it is the mistake and we found a deviation from the reservation policy which is flown from the Constitutional provisions under Article 15 and 16 of the Constitution of India. Once the error is noticed, it cannot be allowed to be continued for a longer time. It needs to be corrected immediately. Not to correct any administrative mistake even though it is found, affects the credibility and transparency in the administration and so also it has adverse effect on the morale of other Government employees. There is no bar for the State to rectify the mistake when it was noticed but has taken place due to inadvertent clerical mistake. Thus, the order of cancellation of promotion is not stigmatic, but it is only the result of the correction of error. The applicant by mistake could hold the post of Police Sub-Inspector for nearly 5 years. He rendered the service as Police Sub-Inspector and so also he was paid for that. The applicant has not suffered any monetary benefits which he had received when he was holding the post of Police Sub-Inspector.

12. Thus, we are of the view that there is no merit in the Original Application and the same stands dismissed.

**Sd/-**  
**(Medha Gadgil)**  
**Member (A)**

**Sd/-**  
**(Mridula Bhatkar, J.)**  
**Chairperson**

**Place : Mumbai**  
**Date : 06.09.2022**  
**Dictation taken by : A.K. Nair.**