

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.267 OF 2013

DISTRICT : SATARA

Mr. Ravindra Ramchandra Avtade.)
Age : 65 years, Occu.: Retired from)
Service and residing at 40, Samartha)
Krupa, Dhanalaxmi Colony, Shahapuri,)
Satara.)...Applicant

Versus


1. The State of Maharashtra.)
Through the Secretary,)
Home Department,)
Mantralaya, Mumbai - 400 032.)
2. The Commissioner.)
State Excise, Old Custom House,)
2nd Floor, Shahid Bhagatsingh Road,)
Fort, Mumbai 400 023.)...Respondents

Shri K.R. Jagdale, Advocate for Applicant.

Shri K.B. Bhise, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 25.07.2016

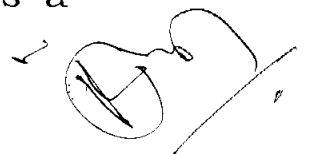

A handwritten signature in black ink, appearing to be 'R.B. Malik', is written over a horizontal line. The signature is stylized and cursive.

JUDGMENT

1. One good outcome of the indecisiveness and may be even stubbornness of the Respondents in the matter of considering the request of deemed date relating to the events that took place way back in 1988 is that the Applicant is still on his toes and running about even ten years after retirement for which deemed date issue, he is up before me by way of this Original Application (OA). That way even this Tribunal is also not an unfamiliar place for him. This is the fourth order that this Tribunal is making in the same set of facts and facts at issue. The adverse orders were challenged successfully before the Hon'ble High Court twice. Let me see if the curtain falls finally now at least.

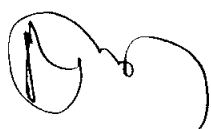
2. I have perused the record and proceedings and heard Mr. K.R. Jagdale, the learned Advocate for the Applicant and Shri K.B. Bhise, the learned Presenting Officer (PO) for the Respondents.

3. There is no issue about limitation. Even, the Respondent No.2 in Para 3 of the Affidavit-in-reply, accepts this position. It is not disputed that the Applicant was born on 22.08.1948. His retirement on superannuation was, therefore, on 31.08.2006. He was appointed as a



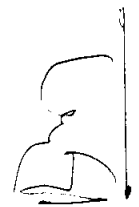
Constable in State Excise under the direct control of the Respondent No.2 – Commissioner of State Excise. The 1st Respondent is the State of Maharashtra in the Department of Home. He comes from NT Reserved category. He is educated upto S.Y.B.A. (Post Matriculation though undergraduate).

4. The promotional post which has eluded the Applicant throughout his career was of Sub-Inspector, State Excise from Reserved category. I shall keep calling it as the promotional post. Inseparably connected therewith is the issue of deemed date. And now, that is the only relief the Applicant can ask for. By a communication, dated 10.10.2012 (Ex-A Colly., Page 12 of the P.B.), the Government (Respondent No.1) informed the Commissioner, State Excise (Respondent No.2) that the latter was competent to take a final decision about the said issue. There was a reference to the DPC (Departmental Promotion Committee) meetings of 06.06.2002 and 07.09.2009 in that letter. However, my order dated 29.06.2016 would make it clear that no DPC was held on 06.06.2002 and may be that was the date of a certain G.R. A DPC meeting did take place on 07.09.2009 and a copy of its minutes has been placed on record. There is another letter on record dated 27.11.2012 from the 2nd Respondent to his Superintendent of Satara. It refers to a wrongly



mentioned DPC of 06.06.2012 because no such DPC took place on that day. If thereby a reference was to the DPC of 06.06.2002, then as found just now, no such DPC met on that day. Another DPC mentioned there was 07.09.2009. As per that DPC, it was stated, the deemed date could not be given to the Applicant. These two communications are herein impugned (Prayer Clause (a)). Be it noted, however, that the effect and consequences of the DPC of 15th June, 1988 (15.06.1988) is quite compelling in favour of the Applicant, and therefore, in fact, a very detailed foray into the various aspects touched upon by the Respondents will be not quite germane. But, still the discussion to the extent it is mandatory will be made.

5. Let me now read the minutes of the meeting of 15.06.1988 (Exh. 'B', Page 14 of the P.B.). It is clear that the promotional posts were to be filled from two sources viz. Clerical and Jawans (Constables). The Applicant was from the source of Constables (Jawans). Eleven vacancies were available because in the previous meeting of 30.03.1988, some candidates failed in the Physical Test and a few did not produce required testimonials. That DPC was chaired by Shri G.C. Tripathi, Commissioner, State Excise. In due course, he was to become an Administrative Member of this Tribunal. This has some relevance as would become clear when I discuss an order



of a Division Bench of the Hon'ble Bombay High Court in **Writ Petition No.3689 of 2005 (Ravindra Avtade Vs. State of Maharashtra, dated 15.07.2005)**. What really happened was that Shri G.C. Tripathi constituted the Division Bench of this Tribunal in deciding **OA 261 of 2002 with M.A. 47 of 2005 (post remand) (Ravindra Avtade Vs. State of Maharashtra, dated 16.03.2005)**. The remand was as per the direction of the Hon'ble High Court in **Writ Petition No.1229 of 2004 (Shri Ravindra Avtade Vs. Government of Maharashtra, dated 15.12.2004)**. This Writ Petition arose out of the selfsame OA 261 of 2002. Both the orders were rendered by a Bench of the same composition with Shri G.C. Tripathi, Administrative Member being a part of it. The Hon'ble High Court, for quite obvious reasons, in the order on Writ Petition No.3689 of 2005 again remanded that OA. Let me complete the discussion in respect of the Legal Proceedings before this Tribunal. Post second remand, the OA 261 of 2002 came up before a Bench of which Shri G.C. Tripathi was not a part. On 31.01.2006, that OA was allowed to be withdrawn with liberty to file a fresh OA. The Applicant then brought **OA 184 of 2006 (Shri Ravindra Avtade Vs. State of Maharashtra and 1 another, dated 16.08.2006)**. The Division Bench of the then Hon'ble Chairman, in fact, found no substance in the case of the Applicant but

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because his grievance was pending for long for a proper decision, liberty was given to the Applicant to submit a detailed and comprehensive representation. The competent authority was directed to take an appropriate decision thereon preferably within three months. The Respondents quite promptly failed to keep the deadline and in effect, took the ultimate decision against the Applicant driving him to initiate the present OA proceedings.

6. Returning to the minutes of the DPC of 15.06.1988, it is quite clear that the Applicant was cleared for promotion from the Constabulary (NT). From the same source, Shri S.G. Meshram (S.C) was cleared. It is not in dispute that a vacancy accrued because one Shri Jadhav from an earlier DPC had to lose out because of the defect in the matter of his qualification. It may also be noted that in this DPC of 15.06.1988, one Shri Syed Ali Syed Abdul Karim originally a Constable but later on a Clerk and Shri G.R. Sonawane also a Constable from S.C. category came to be cleared.

7. The case of the Applicant is that he was never informed about this DPC of 15.06.1988. At the first blush, it may not sound convincing. But it was indeed so. The Applicant had to really toil hard to get this document by his applications under the Right to Information Act. A



second Appellate order, in fact, could unearth this and may be other documents.

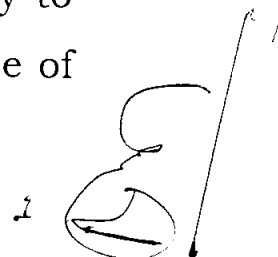
8. Now, it is quite clear that the conspiracy be it manmade or circumstantial cannot force me to blind myself of the indisputable deduction that in the DPC of 15.06.1988, the Applicant was cleared for the promotion as S.I. At that point in time, the Rules published on 26th December, 1958 were in force. In so far as this OA is concerned, the only requirement would "have to undergo and pass in a course of physical training" (Exh. 'RJ-1', Page 89 of the P.B.). The Respondents pick no holes in the case of the Applicant based on 1958 Rules. According to them, the undoing of the Applicant (height) was as per 1993 Rules. I do not have to turn to 1993 Rules at all. The rights of the Applicant got crystallized in 1988 as per 1958 Rules. Its fructification and effectuation was denied to him by the Respondents for no fault at all, of the Applicant. Even now, whatever is possible to be given to the Applicant will have to be given and that will be under 1958 Rules. The Applicant just did not give any indication of having abandoned his rights ever in past. The discussion in regard to the legal proceedings adopted by him needs to be recalled. Therefore, his right of getting promotion from at least July, 1988 (the DPC was on 15.06.1988) has got to be upheld. In that DPC, the

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Applicant was unequivocally held entitled to be promoted. Therefore, the directions generally given in such matters to consider his case will be neither just nor proper nor even legal. A huge time lag has been there but that is for no fault of the Applicant. Now, practically, all he can get is deemed date and may be money equivalent. It will, therefore not affect any third party. Therefore, the Applicant cannot be denied whatever is his due.

9. No doubt, there was some litigation in the form of T.A.278 of 1991 (earlier W.P.1438/1988). But the fact that the Applicant's name was cleared for promotion is admitted in Respondents' Affidavit-in-reply (Para 9). But the legal position stated in that Para supposedly based on a Supreme Court Judgment is not accurately stated. It is pleaded that selected candidate has no right to be appointed. The legal position is that consideration for promotion and not promotion per-se is the right that resides in the employee. Here the list was operationalised and some of them were actually promoted. Only the Applicant remained. Here, it is a case of hostile discrimination which constitution and law frown upon. Further, as pointed out in Para 6 of Affidavit-in-Rejoinder filed by the Applicant on 03.12.2015, there was no stay to the DPC of 15.06.1988 nor was it challenged. The case of




the Respondents relying on those legal proceedings, therefore, cannot be accepted.

10. The record shows that Sarvashri S.A.A. Karim, G.R. Sonawane and B.L. Chavan from amongst those eleven whose names were there in the DPC of 15.06.1988 came to be promoted. It seems that they were promoted in 1999-2000. The Applicant will, therefore, have to be given the deemed date from that very date.

11. Now, the issue is as to whether the Applicant should be held entitled to what can be called only for description as back-wages. Now, in this matter, there was no earthly reason why despite crystallization of his rights way back on 15.06.1988, the Applicant should have been discriminated against. Had there been even a particle of justifying material may be, that could be considered. But here, it is not so. On the other hand, he was made to run from pillar to post, what with a number of legal proceedings and the repeated representations, but all in vain. It will be a travesty of justice, if the monetary relief was denied to the Applicant.

12. The Applicant is held entitled to the deemed date of promotion from the date S/s S.A.A. Karim and G.R. Sonawane were promoted in 1999-2000 which date, the



Respondents shall ascertain and act on. The Applicant is also held entitled to the arrears of pay and the admissible allowances till his retirement. The Applicant's pension and other post retiral benefits shall also be reworked out and the accruing arrears paid to him. All the monetary benefits be paid to the Applicant within three months from today. In the event of default, the said amounts shall carry interest at Rs.12% p.a. from the dates, they became payable till the date of actual payment. The Respondents do comply. The compliance to commence forthwith and be completed within three months from today.

13. The Original Application is allowed in these terms with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
25.07.2016

25-07-16

Mumbai
Date : 25.07.2016
Dictation taken by :
S.K. Wamanse.