

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.562/2016. (D.B.)

Prakash Tukaram Sonawane,
Aged about 52 years,
Occ-Service,
R/o Type-A, Quarter No.16/1,
Ravi Nagar, Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.
2. The Director General of Police (M.S.),
Shahid Bhagatsingh Marg, Colaba, Mumbai-1.
3. The Additional Director General of Police and
Director of Police Wireless,
Dr. Homi Bhabha Road, Chhavan Nagar,
Pune-8.
4. Sanjay Maroti Khande,
O/o Dy. Commissioner of Police (Wireless),
19th floor, New Admn. Building,
Opp. Mantralaya, Mumbai-32.
5. Ishwar Damu Kamble,
O/o Superintendent of Police (Wireless),
West Zone, Dr. Homi Bhabha Road, Chhavan Nagar,
Pune-8.
6. Subhash Kashinath Chakranarayan,
O/o Dy. Superintendent of Police (Wireless),
Wireless Training Centre,
West Zone, Dr. Homi Bhabha Road, Chhavan Nagar,
Pune-8.

7. Sanjay Subhash Chandkhede,
Police Wireless Inspector,
Police Control Room, South Region,
Nagpada, Near J.J. Hospital, Mumbai-8.

Respondents.

Shri A.C. Dharmadhikari, the Ld. Advocate for the applicant.
Shri A.M. Ghogre, the Ld. P.O. for respondent Nos. 1 to 3.
Shri D.M. Kakani, learned counsel for respondent Nos. 4 and 5.
None appeared for respondent Nos. 6 and 7.

Coram:- Shri J.D. Kulkarni,
Vice-Chairman (J).

Dated:- 18th September 2017.

Order

Heard Shri A.C. Dharmadhikari, the learned counsel for the applicant and Shri A.M. Ghogre, the learned P.O. for the respondent Nos. 1 to 3. Shri D.M. Kakani, learned counsel for respondent Nos. 4 and 5. None for respondent Nos. 6 and 7.

2. The applicant is a Superintendent of Police (Wireless). He has filed this O.A. and requested that the communication dated 6.8.2016 (Annexure A-40) and a decision referred therein dated 14.7.2016 issued by respondent No.2, being illegal, improper and arbitrary and the same shall be quashed and set aside. He has also claimed setting aside and quashment of the communication dated 5th/6th August 2017 (Annexure A-43) by way of amendment.

3. The applicant was initially appointed as Assistant Sub Inspector (ASI) and subsequently promoted as Police Sub Inspector

(PSI) on 30.5.1990, Deputy Superintendent of Police (Dy.S.P.) on 4.9.2005 and as Superintendent of Police (S.P.) on 7.4.2010. The date 30.5.1990 was taken as a base date for all promotions and the applicant continued to work in various promotional posts as such from 1990 to 2010. Vide communication dated 6.8.2016, the Additional Director General of Police, and Director of Police Wireless, Pune passed the order whereby the promotion granted to the applicant was withdrawn and he has been granted promotion w.e.f. 13.1.1992 and his seniority was fixed considering that date. This order seems to have been passed by the Additional DGP and Director of Police Wireless, Pune in view of order in O.A. No. 763/2010 on 30.4.2015. This order was passed in consequence with the earlier order dated 14.7.2016. Vide letter dated 5th/6th August 2017 (Annexure A-43), the Additional DGP and Director of Police Wireless, Pune was pleased to observe that the applicant has passed the relevant departmental examination in 1992 and, therefore, it was decided that one Shri Khairnar will be junior to the applicant.

4. According to the applicant, this had happened only because one Shri Sanjay Khade (R.4) took objection to the seniority of the applicant in 2010.

5. The learned counsel for the applicant submits that the applicant was promoted as PSI on 30.5.1990 and as Dy. S.P. on

4.9.2005 and thereafter as S.P. on 7.4.2010. He continued to enjoy all his promotional posts right from 1990 till 2010 till his seniority was challenged by respondent No.4 in the year 2010. In fact, there was absolutely no reason for the respondent authorities to interfere in the seniority list, in which the applicant was shown senior for number of years. The applicant has been shown senior from 30.5.1990 and there used to be publication of seniority list every year from 1992 to 2010. But nobody took objection to the seniority of the applicant. For the first time, the respondent No.4 took objection and on his objection, applicant's seniority was changed in 2010. No opportunity was given to the applicant before reducing his right in the seniority.

6. The respondent Nos. 1 to 3 have filed affidavit in reply and have denied the claim. Respondent Nos. 4 and 5 also filed affidavit in reply. It is stated that as per the Mumbai Police Manual Rule 59 (A) (1) (a), no Radio Mechanic shall ordinarily be eligible for promotion as Police Wireless Sub Inspector (Engineering) unless he passed all the qualified examinations i.e. Class-IV, Class-III, Class-II and Class-I. It is stated that the vacancies of Police Wireless Sub Inspector (Engineering) were filled in by two heads- (1) by direct recruitment for nomination and (2) by promoting departmental candidate amongst Radio Mechanic senior and Class-I examination passed. In the year 1990, Class-I examination passed Radio

Mechanics were not available in the department for promotion to the post of Wireless Sub Inspector (Engineering). Therefore, Radio Mechanics (ASI) who were senior and Class-II examination passed, were promoted. The applicant was Class-II (examination passed) Radio Mechanic) and he was promoted vide order dated 30.5.1990. It was clearly mentioned in the said order that his promotion will be purely temporary and fortuitous and unless Class-I holder Radio Mechanic will be available for promotion, the post of Wireless Sub Inspector (Engineering) will be reverted to this original substantive rank i.e. Radio Mechanic (ASI).

7. According to the respondents in April 1991, respondent Nos. 4 to 7 were appointed as Police Wireless Sub Inspector (Engineering) by direct nomination. At that time, the applicant had not passed Radio Mechanic (Class-I) examination. He passed that examination on 13.1.1992 and, therefore, he should not have been promoted to the regular post, since he was not Class-I Mechanic.

8. The respondents submitted that the Departmental Promotion Committee (DPC) has to be constituted with a sufficient number of members including a member representing Backward Category as per rule. While promoting departmental candidate, i.e.

Radio Mechanic to the post of Police Wireless Sub Inspector (Engineering), the DPC strictly scrutinized that-

- (a) Availability of clear vacancies.
- (b) Gradation Seniority List is considered for promotion.
- (c) Radio Mechanic should be Class-I exam. Passed for promotion.
- (d) No departmental or judiciary enquiry is constituted or pending against the Radio Mechanic.
- (e) Radio Mechanic must have good service record and service gradation.
- (f) Availability of caste certificate and caste validity certificate of respective caste to obtain benefits of particular category.

9. Considering the above facts, final select list of Radio Mechanic, who was Class-I exam. passed and senior will be prepared by the DPC for promotion of Police Wireless Sub Inspector (Engineering) and recommended and the Radio Mechanic gets promotion. Till today, the same procedure is adopted by the department.

10. It is submitted that on 13.1.1992, the applicant passed Class-I examination required to be promoted to the post of Police Wireless Sub Inspector (Engineering), since the applicant

complied with the condition prescribed in Mumbai Police Manual in Rule 59 (A) (1) (a) and being Senior Radio Mechanic. As against this, the respondent No.4 was directly nominated Police Wireless Sub Inspector (Engineering), appointed on 19.4.1991. Respondent Nos.4 to 7 were direct appointees to the post of Police Wireless Sub Inspector (Engineering) vide order dated 19.4.1991 and having Diploma in Engineering alongwith three years working experience. Therefore, the condition to qualify the examination is not applicable to respondent Nos. 4 to 7. On the other hand, the applicant entered into Police Wireless Sub Inspector (Engineering) category on 13.1.1992 on regular basis, whereas the respondent Nos. 4 to 7 attained seniority right from appointment to the post of Police Wireless Sub Inspector (Engineering). Therefore, the applicant is not senior to respondent Nos. 4 to 7.

11. It is submitted that, the answering respondent Nos. 4 and 5 as well as the other private respondents were appointed by a direct recruitment and at the time of recruitment, they were having a requisite qualification to hold the post of Police Wireless Sub Inspector (Engineering). From the following chart, this Honble Court will find that all the respondents were having a requisite qualification initially from the date of their appointment in the cadre of Police Wireless Sub Inspector (Engineering).

Sr.No.	Name (as per merit)	PSI (Engg.) Present date.	Other remarks.
1	Shri Ishwar Damu Kamble.	13.5.1991	Direct recruitment.
2	Shri Sanjay Maruti Khande.	30.4.1991	Direct recruitment.
3	Shri Subhash Kashinath Chakranarayan	6.5.1991	Direct recruitment.
4.	Shri Sanjay Subhash Chandkhede.	17.5.1991	Direct recruitment.

12. It is submitted that the applicant has passed the Radio Mechanic, Class-I examination on 13.1.1992, i.e., after the appointment of the present respondents and, therefore, he became eligible to hold the post of Police Wireless Sub Inspector (Engineering) legally from 13.1.1992.

13. The matter was heard on merit before this Tribunal and this Tribunal vide judgment and order dated 30.4.2015 was pleased to direct the respondents to comply with the order of this Tribunal dated 3.8.2011 in O.A. No. 602/2006 without any further delay. While referring to the orders passed by this Tribunal on 9.1.1998 in O.A. Nos. 559 and 560 of 1997 filed by similarly situated Wireless Police Inspectors who were reverted as Radio Mechanics,

observation was made to para 7 of the order which is reproduced as under:-

It would thus be seen that appointment to the post of Police Wireless Sub Inspector (Engineering) by way of promotion is to be made from amongst suitable Class-I Radio Mechanics. The applicants admittedly not Class-I Radio Mechanics. Their contention that their promotion was against clear, permanent and substantive vacancy and as such have a right to hold the post, has hardly any substance. As admitted by them in their applications, they are promoted to the post of P.S.I. (Wireless) on temporary basis and on certain terms and conditions. It is clearly mentioned in their order that the appointment is fortuitous and purely on temporary basis, until availability of Class-I Radio Mechanics or as and when the direct candidates are available.+

14. The learned P.O. has submitted that the applicant's promotion order was fortuitous and purely on temporary basis, until availability of Class-I Radio Mechanics or as and when the direct candidates are available. The applicant was promoted in the year 1990 and all his subsequent promotions were on the basis of that date. It is an admitted fact that, he cleared that examination in the year 1992 and, therefore, he was eligible for promotion as P.S.I. (Wireless) on

that date, but was wrongly given date of promotion in the year 1990. The said mistake seems to have been corrected by the respondent authorities and thereby the impugned order has been passed.

15. Perusal of the record shows that admittedly, the order passed by this Tribunal in O.A. No. 763/2010 alongwith C.A. No. 342/2012 in C.P. (Stamp) No. 1321/2012 in O.A. No. 602/2006 dated 30.4.2014 was assailed before the Hon^{ble} High Court vide W.P. No. 3218/2015. In the said writ petition on 16.12.2015, the Hon^{ble} High Court was pleased to pass the following order:-

~~%~~heard. The writ petition is disposed of with the consent of the learned counsel for the parties on the following terms-

- (i) The communication dated 11.10.2010 of the Additional Director General of Police, as also the order of the M.A.T, dated 20.4.2015 will not be acted upon and hearing would be granted to the petitioner and the respondent Nos. 4 to 7 by the Director General of Police before fixing the deemed date of promotion of the petitioner as Police Wireless Sub-Inspector.
- (ii) A decision in the matter would be taken by the Director General of Police within a period of two months.
- (iii) No costs.+

16. The aforesaid order, therefore, clearly shows that the order passed by this Tribunal on 20.4.2015 as well as communication dated 11.10.2010 issued by Additional DGP, and Director of Police Wireless, Pune are not to be acted upon and it was directed that hearing would be granted to the petitioner i.e. the present applicant and respondent Nos. 4 to 7 by Director General of Police, Mumbai before fixing deemed date of promotion to the petitioner as Wireless Police Sub-Inspector.

17. It seems that in view of the order passed by the Hon'ble High Court on 16.12.2015 as above, the applicant was called upon to put his case before the competent authority i.e. the Director General of Police, Mumbai. Shri A.C. Dharmadhikari, the learned counsel for the applicant submits that the Director General of Police was to take a decision as per the order issued by the Hon'ble High Court. But the Director General of Police himself did not take any action. But he assigned that the decision to be taken by the Additional Director General of Police (Establishment), Mumbai. He further submitted that, no opportunity was given to the applicant. A decision has been taken on the basis of Tribunal's order dated 30.4.2015, which was not to be acted upon. The said impugned order has been passed without application of mind. The competent authority has not

considered the detailed representation filed by the applicant (Page 443), so also the second representation (Page 547). Even the Hon'ble High Court's order dated 16.12.2016 was not referred to in the order. The learned counsel for the applicant submits that the competent authority was predetermined to take a decision on the basis of the order passed by this Tribunal which was not to be acted upon.

18. The learned counsel for the applicant further submits that even the copy of the order dated 14.7.2016 was not made available and the points raised in the representation were not considered at all. The competent authority has also not considered the fact that the earlier group of employees who were promoted long back, though they did not clear the qualifying examination, were not reverted or in other words the orders of promotion in their respect were not modified.

19. The most important objection taken by learned counsel for the applicant is that, the applicant has been promoted as PSI vide order dated 30.5.1990 and thereafter on the basis of said date of promotion, he was further promoted as Dy. S.P. on 4.9.2005 and as S.P. on 7.4.2010. The applicant was throughout from the year 1990 was shown senior in the seniority list. At the time of appointment of direct recruit i.e. respondent No.4 and others, the name of the applicant

was already in the seniority list on the higher side and respondent Nos. 4 to 7 were throughout shown junior to the applicant till 2010. It is material to note that, respondent No.4 never took objection to the applicant's seniority from 1990 onwards till representation was filed that too in the year 2010. It is also material to note that, the respondent No.4 never objected the applicant's promotion as P.S.I. or Dy. S.P. He merely stated that, his seniority was not properly mentioned. Respondent No.4 never challenged the applicant's promotion either to the post of PSI or Dy. S.P. or even there is absolutely no reason as to why respondent No.4 never challenged the seniority list from the year 1990 till 2010 or at least till 8.9.2005. Thus from 1990, i.e. 30.5.1990 till the impugned order passed in 2010, the applicant was shown senior in the seniority list for the post of P.I., PSI, Dy.S.P. and even S.P. In such circumstances, it was not proper on the part of the respondent authorities to re-consider the objection all of a sudden for the first time in 2010 and to withdraw the seniority of the applicant in the year 2010 which was granted to the applicant on 30.5.1990 i.e. almost prior to 20 years. Considering the argument putforth by the learned counsel for the applicant, I am satisfied with the contention raised by the learned counsel for the applicant, as it seems that neither the seniority of the applicant nor his various promotions were challenged from 1990 to 2010 by all his so-called juniors and it is

not known as to why the respondent authorities all of a sudden thought it proper to pass the impugned order, withdrawing seniority of the applicant without giving him an opportunity.

20. The Hon'ble High Court has rightly granted opportunity to the applicant for being heard and, therefore, the matter was referred back to the competent authority with a clear direction that the order passed by this Tribunal shall not be taken into consideration, so also the impugned order. In short, the Hon'ble High Court gave an opportunity to the respondent authorities to apply their minds freshly to whatever objections raised by the applicant in his representation.

21. The learned P.O. submits that the main issue raised by the applicant in this O.A. is with regard to the question whether his promotion as PSI vide order dated 30.5.1990 was of regular one, this question is required to be examined in the light of relevant rules. Correction slip No.145 of Bombay Police Manual Content Rule 159-A (1), recruitment to the post of Wireless Sub-Inspector (Engineering) which states that the appointment to the post shall be made by promotion from amongst suitable Class-I Radio Mechanic. Rule 191 of the Police Manual deals with various examinations for the personnel of Police Wireless Organization. It described various classes of this examination. It states that for that purpose, class pay mentioned in clause Appendix-23 Wireless Operators, Radio

Mechanics / Electrician which divided in four classes viz. Class-IV, Class-III, Class-II and Class-I and in order to qualify himself in all these classes, every Wireless Operator, Radio Mechanic / Electrician must pass the examination appropriate to the classes. Hence, from the above provision of the rule, it is clear that only Class-I Radio Mechanic can be promoted as PSI and for Radio Mechanic to qualify as Class-I, he has to pass the prescribed examination i.e. Class-I Radio Mechanic. In the present case, when the applicant was promoted in the year 1990 as PSI (Wireless), admitted he had not passed Class-I Radio Mechanic examination or in other words, he was not Class-I Radio Mechanic. Admittedly, the applicant has passed that examination on 13.1.1992 and obtained the status of Radio Mechanic, Class-I and, therefore, he should not have been promoted as PSI prior to passing of the examination i.e. on 13.1.1992. Admittedly, the applicant was promoted to the post of PSI on 30.5.1990 i.e. before passing of the qualifying examination and at that time, the respondents were even not appointed and, therefore, this mistake has been corrected and now he has been shown to have been promoted to the post of PSI from 13.1.1992 i.e. the date on which he pass the qualifying examination. There is nothing wrong in this. However, the question is whether the long standing promotion received by the applicant without any fault on his part can now entitle the respondent

authorities to change the status of the applicant which he obtained during his service period and prior to appointment of nominee respondents.

22. Admittedly, the applicant was promoted as PSI on 30.5.1990. He was promoted as Dy. S.P. on 4.9.2005 and thereafter as S.P. on 7.4.2010. If the order passed in favour of the applicant on 30.5.1990 is modified and the applicant is treated as promoted as PSI w.e.f. 13.1.1992, the applicant will have to be reverted in every stage of promotion, assuming he has been promoted for the first time as PSI on 13.1.1992, whether doing such exercise after a lapse of 20 years will be justified is the issue. That too when the applicant was already promoted in 1990 even prior to appointment of nominee respondents.

23. The learned counsel for the applicant has invited my attention to the judgment reported in **(2013) 12 SCC 580 in case of Kusheswar Nath Pandey V/s State of Bihar and others**. In the said case, time bound promotion scale / increment /scheme was granted to the applicant and the same was revoked after eleven years on the ground that the same was irregularly granted, unless appellant / employee had not passed promotional examination prior thereto. The Honble Apex Court held that it was unsustainable. It was further observed that, the appellant was not at all in any way at fault. It was a time bound promotion which was given to him and some eleven years

thereafter the authority of the govt. woke up and according to them the time bound promotion was wrongly given and that the relevant rules are being relied upon and that too after the appellant had passed the required examination. This approach was totally unjustified.

24. In the present case, the applicant was promoted to the post of PSI (Wireless) on 30.5.1990. Thereafter he was promoted to the post of Dy. S.P. in the year 2005 and to the post of S.P. in the year 2010. Number of seniority lists were published from 1990 to 2010, wherein the applicant was shown senior to various persons including respondent No.4. The respondent No.4 or any junior person to the applicant never challenged his promotion or challenged any seniority list for about 20 years and considering all these aspects, if the respondent authorities took a somersault saying that the applicant was wrongly promoted in 1990 instead of 19.1.1992, and thereby decided to revoke the earlier orders of promotion of the applicant, it will cause great injustice on the applicant and said attitude on the part of the respondents cannot be sustainable.

25. The learned counsel for the applicant submits that after remand of the matter to the competent authority by the Hon'ble High Court vide order dated 16.12.2015, in W.P. No.3218/2015, opportunity was not given to the applicant. However, the applicant himself has placed on record Annexure A-33 i.e. a notice dated

28.1.2016, whereby the applicant was directed to remain present before the Director General of Police (M.S.), Mumbai on 3.2.2016. It seems that the applicant accordingly remained present and filed his written objection. A copy of the said representation is at Annexure A-34 (Page Nos. 443 to 449). It seems that in the said representation, the applicant has raised a point that he was shown senior in the seniority list for a prolonged period for about 24 years and his seniority list was never challenged, since it was in existence and updated continuously from 1.1.1992. The applicant has stated that even after his promotion as PSI, number of Radio Mechanics were promoted, though they did not pass the qualifying examination and their names were very much there in the seniority list and the same was not disturbed. This specific fact is also pleaded at page No. 445 of the representation, whereby arbitrariness was claimed. This particular averment is as under:-

शुतर ढलस ऊढ-नररु क, ब.स. (अभ) यलंकेडुडल मलल वेगळी वलगणूक देडुडलत येऊन मलडी सेवलडुडुठतल कमी करडुडलत येत आहे. तरडु कृमडल मलडेवर अडुडलत न करतल मलडी सेवलडुडुठतल ह मलडे डदुडुनतीके दुनलंकलडलसून ठेवडुडुडलत डलवी ह डुनंती.

अशलड सेवलडुडुठडुडल डकरणलडुडे वषडु १९९३ डुडे वगळ उडुडुणडु डुडुलेले डु. दुंडे व डु कलथलर हे दुनलंक १.१२.१९९३ व ९.१२.१९९३ रोजी आणुण १९९ॡ डुडे वगळ उडुडुणडु डुडुलेले डु संतुडुष कुडुशी हे दुनलंक ९.१.१९९ॡ रोजी डुलस ऊढ-नररु क, ब.स. (अभ) डल डदुडु डदुडुनत डुडुलेले डुडुते. डुडुडुनी डुडुडुडुडुडु आधी डुलस ऊढ-नररु क, ब.स. (अभ) डदुडु डदुडुनत डुडुलेले,

(१) डु. डुहडु के. डुडुडे, दु. ॢ.१०.१९ॢॡ रोजी डु.उढ-नररु.ब.सं (अभ) डदुडु डदुडुनत डुडुलेले व सन १९९ॢ लल वगळ उडुडुणडुडुडुले.

- (२) पी. एच. आर. वमा वगळ उणीण सन १९९५ व पो.उप-ज.ब्र.सं
(अभ) पद पदोपनती द. १९.३.१९८८.
- (३) पी. जे. के. देशपांडे, वगळ उणीण सन १९९६ व पो.उप-ज.ब्र.सं
(अभ) पद पदोपनती द. ९.९.१९८८.
- (४) पी. एम. जी. देशमुख, वगळ उणीण सन १९९६ व पो.उप-ज.ब्र.सं
(अभ) पद पदोपनती द. १.१२.१९८९.
- (५) पी. एम. पी. वल वगळ उणीण सन १९९७ व पो.उप-ज.ब्र.सं
(अभ) पद पदोपनती द. १.१२.१९८९.
- (६) पी. एस.एस. खैरनार, वगळ उणीण सन १९९६ व पो.उप-ज.ब्र.सं
(अभ) पद पदोपनती द. १.११.१९८९.
- (७) पी. जी.बी. तांबोळी, वगळ उणीण सन १९९७ व पो.उप-ज.ब्र.सं
(अभ) पद पदोपनती द. ९.८.१९९०.
- (८) पी. पी. बी. कुलकण वगळ उणीण सन १९९६ व पो.उप-ज.ब्र.सं
(अभ) पद पदोपनती द. ९.८.१९९०.
- (९) पी. डी. बी. पाठक, वगळ उणीण सन १९९४ व पो.उप-ज.ब्र.सं (अभ)
पद पदोपनती द. ८.१२.१९९०.
- (१०) पी. सी. एस. मोडक, वगळ उणीण सन १९९६ व पो.उप-ज.ब्र.सं
(अभ) पद पदोपनती द. ९.९.१९९२.
- (११) पी.ए. सी. काळे, वगळ उणीण सन १९९६ व पो.उप-ज.ब्र.सं
(अभ) पद पदोपनती द. ३०.१.१९९२.
- (१२) पी. एन. एम. गावंडे, वगळ उणीण सन १९९५ व पो.उप-ज.ब्र.सं
(अभ) पद पदोपनती द. २६.१.१९९३.
- (१३) पी. एम. डी. भांडे, वगळ उणीण सन १९९६ व पो.उप-ज.ब्र.सं
(अभ) पद पदोपनती द. १.१.१९९३.
- (१४) पी. एस. एल. जाधव, वगळ उणीण सन १९९४ व पो.उप-ज.ब्र.सं
(अभ) पद पदोपनती द. १४.७.१९९३.

I have perused the impugned orders passed by the Additional Director General of Police, Mumbai vide Annexure A-36, A-40 and A-42 dated 11.2.2016, 6.8.2016 and 14.7.2016 respectively. Perusal of the orders shows that the point raised by the applicant in his representation as already stated are never referred to in the said order. In other words, the objections raised by the applicant have not been

considered with a proper perspective. From the aforesaid orders, nothing could be brought on record as to why the respondent authorities required to quash the promotion order of the applicant alone which he received in 1990 after a gap of almost 26 years. It is material to note that, even a person who made a complaint as regards seniority of the applicant has also never challenged the applicant's orders of promotion. In view of this, the impugned orders passed by the competent authority are definitely without application of mind, arbitrary and perverse and cannot be acted upon.

26. Shri D.M. Kakani, the learned Advocate for respondent Nos. 4 and 5 has placed reliance on the judgment reported in **2015 (iii) CLR 329, 1991, SC 284** in support of his case. He submits that the seniority would be counted only from the date of substantive appointment and *ad hoc* appointment and not according to rules and was made as a stop gap arrangement cannot be considered for computing seniority.

27. The learned P.O. for respondent Nos. 1 to 3 as well as Shri Kakani, Ld. counsel for respondent Nos. 4 and 5 submit that since initial promotion of the applicant was *ad hoc* and it was specifically stated therein that it will be fortuitous, the applicant cannot take disadvantage of such fortuitous promotion and cannot claim seniority. Though, it is true that the applicant's first promotion was *ad*

hoc and on temporary basis, the fact remains that the date of promotion of the applicant remained intact and on that basis, the applicant was promoted to various posts such as Dy. S.P. and S.P. and nobody took objection for his promotion from time to time, so also to his seniority. In such circumstances, judgment on which the learned P.O. has placed reliance, will not be applicable to the present set of facts. It is also material to note that, none of the respondents have ever challenged various promotions granted to the applicant and, therefore, in such circumstances, it will not be legal and proper on the part of respondent authorities to quash the earlier promotions granted to the applicant and hence, the following order:-

ORDER

- (i) The O.A.is allowed.
- (ii) The impugned communication dated 6.8.2016 (Annexure A-40) and a decision dated 14.7.2016 (Annexure A-42) issued by respondent No.2 as well as communication issued by respondent No.1 dated 5th/6th August 2016 (Annexure A-43) stand quashed and set aside.
- (iii) No order as to costs.

(J.D.Kulkarni)
Vice-Chairman(J)

