

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 683 OF 2014 WITH
CIVIL APPLICATION NO. 605 OF 2012 (S.B.)

Subhash S/o Irbhanji Pusande,
Aged about 54 years, Occupation – Service,
R/o Shegaon, District : Buldhana.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) Director General of Police,
Having its office Near Regal Theater,
Kulaba, Mumbai.

Respondents

Shri S.P.Palshikar, the Id. Advocate for the applicant.

Shri H.K.Pande, Id. P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 22nd day of January, 2018)

Heard Shri S.P.Palshikar, the learned counsel for the
applicant and Shri H.K.Pande, learned P.O. for the respondents.

2. The C.A.No.605 of 2012 is for condonation of delay in O.A.No.683 of 2014. Vide order dated 08/09/2014 it was directed that the O.A. shall be registered and the application for condonation of delay will be decided alongwith O.A. on merits. Since the O.A. has been decided on merits, the C.A. for condonation of delay is allowed.

3. In the O.A.No.683/2014, the applicant has claimed for direction, particularly to respondent no. 2 to consider and grant him deemed date of promotion on the post of API/PI as on 1992.

4. The applicant was initially appointed as P.S.I., through M.P.S.C. on 01/03/1983, he was due for promotion to the post of P.I. in 1992. The committee also considered his case, but due to pendency of departmental enquiry / criminal case, his case was kept open. Thereafter in 1993 also the applicant's case was considered for promotion, but it was noticed that a crime has been registered against him and criminal case/ departmental enquiry was pending. In the meantime, the applicant was kept under suspension vide order dated 01/10/1992 due to registration of crime under section 7(1), 13(1)(d) read with section 13(2) of Prevention of Corruption Act and he was dismissed from service on 25/03/1993. In the appeal, the order of dismissal was set aside on 18/10/1993 and punishment of minimum pay for a period of one year was imposed on the applicant. Against the said punishment also the applicant preferred an appeal, but it was rejected.

5. In 2002, the applicant was found fit for promotion and has assumed to the post of A.P.I. However, the promotion granted to the applicant as A.P.I. was cancelled on 22/03/2003 and the applicant was reverted back as P.S.I.

6. The applicant was thereafter again kept under suspension for the period from 28/10/1993 to 09/12/1998. He was acquitted by the Session Court, Chandrapur in the criminal case under provision of corruption act in appeal no. 302/1992 on 29/03/2008. The applicant was thereafter promoted as A.P.I. on 09/01/2009. He was granted deemed date of promotion to the post of A.P.I. w.e.f. 29/05/2003. The applicant was thereafter promoted as P.I. on 14/07/2010. He made a representation on 26/03/2011 for grant of deemed date of promotion from 1992 and the said representation was rejected on 03/08/2011 by respondent no. 2 and, therefore, the applicant has filed this O.A.

7. The respondent no. 2 i.e. the Director General of Police, Maharashtra State, Mumbai denied the claim of the applicant by filing affidavit-in-reply.

8. The respondent no. 2 has given in details the history of the applicant's case and the said affidavit-in-reply is self explanatory. The applicant is claiming deemed date of promotion from 1992 to the post of P.I. The respondent no. 2 has stated in para no. 4 of the affidavit-in-reply as under:-

4. With reference to para nos. 03 of the O.A., it is submitted that, the averments raised by the applicant are not tenable on the basis of the following factual and legal submissions viz.

(2.1) The applicant is direct nominee to the post of P.S.I. and from the batch of 01.03.1983 and belongs to S.T. Category. His case was kept before the D.P.C. for the year 1992 for considering / examining his eligibility and fitness for the promotion to the post of P.I. but his case was kept open, because of following reasons :

(a) That C.V.C. was pending, (b) he was placed under suspension w.e.f. 13.02.1991 and was released from suspension w.e.f. 18.08.1991 and (C) he has not completed his tenure in specialized branches.

(2.2) Thereafter, a post namely A.P.I. between the post of P.S.I. and P.I. came to be created by State Government in the year 1992 and hence his case was kept for examining his eligibility and fitness before the D.P.C. for the years 1993, 1994, 1995, 1996, 1998 and 2000 for promotion to the post of A.P.I. However, the said D.P.Cs. found his unfit and hence he was not promoted to the post of A.P.I.

(2.3) Then, there was no D.P.C. for the year 2001 and hence his case was kept before the D.P.C. for the year 2002 for examining his eligibility and fitness for the promotion to the post of A.P.I. and at this he was found fit for the promotion and hence he came to be promoted to the post of A.P.I. vide the office order dated 10.10.2003.

(2.4) As matter of fact, the applicant had made representation dated 19.11.2004 for seeking deemed date of promotion in the cadre of A.P.I. as on 1991. This was given consideration and the factual position as started hereinabove noticed. As a matter of fact, an offence vive Ramnagar Police Station , (Dist- Chandrapur) C.R. NO. 302 of 1992 under Section 7(b) (d), 13(2) of the Prevention of Corruption Act, 1988 was also registered against him, but this had not come up before the D.P.C. and it had resulted in giving promotion.

(2.5) After coming to know the aforesaid factual position about the registration of an offence against the applicant, this office has given a Memorandum to the applicant on 04.03.2006 as to why his promotion given to the post of A.P.I. should not be cancelled. The applicant has responded to the said Memorandum and taking into his say with that regards this office cancelled the promotion given to the applicant to the post of A.P.I. vide this office order dated 18.05.2006. (This order is challenged by the present applicant before this Hon'ble Tribunal by filing O.A. no. 271/2006 and its present status is being called fro). However, subsequently he came to be acquitted in the aforesaid offence by the concerned Hon'ble Court vide Judgement and Order dated 29.03.2008. The State has filed an appeal against the said order of the concerned Hon'ble Trial Court before the Hon'ble High Court, Bench at Nagpur vide Criminal Appeal no. 357 of 2008. However, the same came to be dismissed vide Order dated 16.07.2008. Hence, since the reason for which his promotion order was cancelled, found to be

not survived and hence the applicant was given promotion to the post of A.P.I. vide this office's order dated 09.01.2009.

(2.6) As matter of fact, since he had submitted a representation dated 21.02.2009 for seeking deemed date of promotion for the year 1992 in the cadre of A.P.I. It was given due consideration by this office and his case kept before the Review D.P.C. by way of circulation for examining his eligibility and fitness for the same. The Review D.P.C. found him fit for grant of deemed date of promotion on the D.P.C. for the year 2002 and hence he has been granted 29.05.2003 as deemed dated of promotion to the post of A.P.I. by this office's order dated 28.01.2010.

(2.7) Therefore, the applicant again made a representation dated 26.03.2011, reinterring his demand of grant of deemed date of promotion for the year 1992 in the cadre of A.P.I. It was given due consideration and it was turned down by this office order dated 03.08.2011 and was communicated to the applicant through Superintendent of Police, Buldhana.

Thus, whatever decisions have been taken by this office are free of any malafide, vindictiveness and also not in violation of any statutory rules and hence the averment raised in this para are denied.

9. From the affidavit-in-reply filed on record, it is crystal clear that the applicant's case was considered from time to time for promotion and he was not found fit for promotion in the year 1992 and, therefore, the same was denied to him.

10. It is material to note that when the applicant's promotion to the post of A.P.I. was cancelled and the applicant was reverted by the respondent no. 2 vide order dated 18/05/2006, the said act was challenged by the applicant by filing O.A.No. 271/2006 and detailed order was passed on 02/12/2015 in the said O.A. mentioning that no claim was made for deemed date of promotion to the post of P.I. from 1992 as alleged in this O.A. The applicant has miserably failed to place on record any documents to show that the respondents authority acted with

bias against him or that it has acted malafide, on the contrary that the affidavit-in-reply clearly shows that his case was considered from time to time for promotion. It is, however, cleared that the A.C.R.'s of the applicant were not upto the mark and for various reasons stated in the affidavit-in-reply, he was not found fit for promotion of the A.P.I. in the year 1992. I, therefore, do not find any merits in the O.A. Hence the following order :-

ORDER

1. The C.A. No. 605 of 2012 is allowed.
2. The O.A. No. 683 of 2014 stands dismissed.
3. No order as to costs.

Dated :-22/01/2018

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