

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 687/2015 (D.B.)

Baban S/o Trimbakrao Belsare,
Age 60 Yrs., Occ. Retired as Naik Police Constable
R/o Plot No.23, Vaibhav Nagar, Wanadongari,
Hingana Road, Nagpur.
Moobile No.7028494351.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Ministry of Home Department,
Mantralaya, Bombay-32.
- 2) The Special Inspector General of Police,
Nagpur Region, Nagpur having his office
near Sadar Police Station, Nagpur.
- 3) The Superintendent of Police,
(Nagpur Rural), Nagpur having his office near
Police Control Room & Crime Branch office, Nagpur
Civil Lines, Nagpur.
- 4) Devidas S/o Gulabrao Deshmukh,
Age 45 Yrs., Occ. Service as Assistant Sub Inspector (ASI),
Buckle No.931 and r/o Ramratan Complex Ward No.14,
Kalmeshwar, Tq. Kalmeshwar, Dist. Nagpur.
- 5) Dnyaneshwar S/o Champatrao Thakare,
Age 56 years, Occ. Service as Assistant Sub Inspector (ASI)
Buckle No.990 and at present attached to Kelvad Police Station,
Kelvad, Tq. Saoner, Dist. Nagpur.
- 6) Shriram Giripunje,
Age 45 yrs., Occ. Service as Assistant Sub Inspector (ASI),
Buckle no.565 and at present attached to Ramtek Police
Station, Ramtek, Tq. Ramtek, Dist. Nagpur.

Respondents.

**S/Shri S.G. Malode, Neha Sahu, Advocates for the applicant.
Shri V.A. Kulkarni, P.O. for respondents.**

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar, Member (J).**

Date of Reserving for Judgment : 6th August, 2019.

Date of Pronouncement of Judgment : 23rd September, 2019.

JUDGMENT

Per : Anand Karanjkar : Member (J).

(Delivered on this 23rd day of September, 2019)

Heard Shri S.G. Malode, Id. counsel for the applicant and
Shri V.A. Kulkarni, Id. P.O. for the respondents.

2. The applicant was appointed in service as Police Constable on 11/8/1977. The applicant was posted at Mauda, Dist. Nagpur. During his service the applicant was transferred to various places in the Nagpur District, ultimately the applicant retired on superannuation on 30/9/2011.

3. It is case of the applicant that in the year 2009 he was promoted as Police Naik, the applicant made representation on 10/11/2010 and requested to give him deemed date promotion, but no action was taken by the respondents, consequently, representations were made by the applicant vide Annex-A-5, but it was in vain and

ultimately the applicant filed the present proceeding. It is claimed by the applicant that on completion of 12 years of service on the post of Police Constable, he was entitled for the first promotion as Police Naik i.e. in the year 1989 and after completion of next 12 years service, he was entitled to be promoted as Police Head Constable and on completion of next 5 years service, he was entitled to be promoted as Assistant Sub Inspector (ASI). It is submitted by the applicant that he was suspended on 30/9/2011 and the suspension was continued till 9/7/2002. The Criminal case No. 138/2002 was filed against the applicant in the Court of JMFC, Katol and the JMFC, Katol acquitted the applicant by the Judgment dated 4/8/2008. It is grievance of the applicant that without considering the fact that the applicant was acquitted and it was honourable acquittal and his suspension period was treated as duty period, therefore, the respondents should have promoted him as per the time bound promotion scheme, but it was not done. On the basis of this fact, it is contended by the applicant that his application be allowed.

4. The application is resisted by the respondent no.2 vide reply at page no. 59 and the respondent no.3 by reply at page no.64. The respondents have denied that the performance in service of the applicant was up to the mark. It was contended that there were adverse entries in the ACRs of the applicant from 1981 to 1990 and

1993 to 2000. It is submitted that there is no substance in the contention of the applicant that on completion of 12 years service since the date of joining, he was entitled to be promoted as Police Naik in the year 1989. It is contention of the respondents that the G.R. dated 8/6/1995 was issued by the Government to give solace to the Government servants in Group-C and Group-D who were eligible for the promotion, but could not be promoted due to the vacancy. It is submitted that the scheme as per the G.R. dated 8/6/1995 was brought in force w.e.f. 1/10/1994. It is submission of the respondents that as the performance of the applicant was poor, therefore, he was not given benefit of the G.R. dated 8/6/1995. It is submitted that the FIR was registered against the applicant and in consequence of the FIR the Regular Criminal Case No. 138/2002 was filed against the applicant. The applicant came to be acquitted in that case on 4/8/2008 and thereafter considering the performance of the applicant, he was promoted in the year 2009. It is submitted that no illegality is committed by the Department in not promoting the applicant earlier. It is contention of both the respondents that there is no substance in the O.A. and it is liable to be dismissed.

5. After hearing submissions on behalf of the applicant and on behalf of the respondents, we do not see any merit in the contention of the applicant that as of a right he was entitled to be

promoted as Police Naik Constable w.e.f. 11/8/1989. The learned counsel for the applicant was unable to point out any legal provision by virtue of which the applicant was entitled for that relief.

6. It is rightly pointed out by the respondents that by issuing the G.R. dated 8/6/1995, the scheme was brought in force w.e.f. 1/10/1994 to promote the Government servants in Group-C and Group-D who were eligible for the promotion, but could not be promoted due to absence of vacant post. In this relation it is contention of the respondents that the ACRs of the applicant were poor and adverse, consequently, benefit of the G.R. of 1995 was not given to the applicant. We have perused the Note sheet which is at page no.80. It seems that the ACR of the applicant for the year 1981 was Average, 1984,1985 to 1989 unfit for promotion. His ACR for the year 1990 was not eligible for promotion and ACR of 1993,1994 and 1995 unfit for promotion. Similarly, the subsequent ACRs for the year 1997,1998,1999 were unfit for promotion. Thus it seems that considering the poor performance of the applicant, benefit of G.R. of 1995 was not given to him. The benefit of the G.R. dated 8/6/1995 was not as of right and for granting the benefit of this G.R. the performance of the Government servant during preceding 5 years was also one of the important factor.

7. It appears from the facts and circumstances of the case that on 17/7/2001 the applicant was placed under suspension and the suspension was continued till 9/7/2002. Thereafter charge sheet was filed against the applicant in the Court of JMFC, Katol and in Regular Criminal Case No.138/2002 the applicant faced the criminal trial. It seems that the applicant was acquitted by the learned JMFC, Katol vide Judgment dated 4/8/2008. We have perused the Judgment which is at Annex-A-2. The charge against the applicant was that the applicant and three other Police Personnel stopped the Vehicle of the complainant and demanded the papers, the applicant and other demanded four boxes of sweets and Rs.2000/- bribe and as he refused, the applicant and his companions beat the complainant removed the keys and license of the complainant. Thereafter the complainant lodged report on 14/7/2000 in office of Police Superintendent, Nagpur (Rural). The offence was registered against the applicant and his companions. We have also perused the Judgment. It appears from the discussion of evidence that the complainant Shaikh Hamid supported the facts narrated by him in the report, he deposed that the applicant and other companions demanded his driving license and key of the vehicle. Earlier they demanded bribe of Rs.2000 and four sweet boxes, he was beaten by the applicant and others. The complainant also deposed that 6-7

months after the incident, the test identification pored was held in the office of Executive Magistrate, Katol and in the test identification pored the complainant identified the applicant and his three companions, who were standing in between 24-25 other persons. The witness no.4 examined in the trial also supported the case that at the test identification pored the present applicant and his companions were identified by the complainant. The learned JMFC gave benefit of doubt to the applicant and others as in view of the learned JMFC the evidence of the complainant and other witnesses was not reliable. Thus it seems that the acquittal of the applicant was not clear acquittal.

8. It is important to note that as per the Circular issued by the Government of Maharashtra in 1976 as the applicant was facing criminal trial, he was not eligible for the promotion. After the acquittal of the applicant in the year 2008 his performance was examined and he was promoted in the year 2009. Thus the action of the respondents not promoting the applicant was based on his ACRs which were adverse and due to the criminal trial. Under these circumstances, it is no possible to accept that any illegality was committed by the respondents in not promoting the applicant in the year 1989 as Police Naik, in the year 2001 as Police Hawaldar and

five years thereafter as Assistant Police Sub Inspector. In the result,
we pass the following order –

ORDER

The O.A. stands dismissed. No order as to costs.

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 23/09/2019.

*dnk..

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 23/09/2019.
and pronounced on

Uploaded on : 24/09/2019.