

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 71/2017 (S.B.)

Sanjay S/o Rajendraprasad Pande,
Aged about 49 years, Occ. Service,
r/o Building no.10/430, Police Line Takli,
Nagpur.

Applicant.

-VERSUS-

- 1) The State of Maharashtra,
through its Additional Chief Secretary,
Home Department having its office at Mantralaya,
Mumbai-32.
- 2) Commissioner of Police,
Civil Lines, Nagpur

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

Shri A.M. Ghogre, P.O. for the respondents.

**Coram :- Hon'ble Shri Shree Bhagwan,
Vice-Chairman.**

Date of Reserving for Judgment : 5th April,2021.

Date of Pronouncement of Judgment : 8th April,2021.

JUDGMENT

(Delivered on this 8th day of April,2021)

Heard Shri S.P. Palshikar, learned counsel for the applicant and Shri A.M. Ghogre, Id. P.O. for the respondents.

2. As submitted by the learned counsel for the applicant, the applicant entered in the Police Department as Police Constable on 11/9/1989. After five years, he was to be promoted as Naik Police Shipai (NPC) on 1/5/2002 when his batch mates were promoted, however, he was not given promotion and as submitted by the learned counsel since record of applicant was not available to the department, he was not given this promotion. Subsequently, the applicant was under suspension between 23/10/2004 to 6/8/2008 and after revocation of suspension, he joined duty on 7/8/2008. He was promoted in 2012 after taking into consideration of C.Rs. and record. The learned counsel for the applicant also pointed out Annex-A-1, Page no.18 of the O.A., in which the applicant obtained the information under RTI Act and for not promoting the applicant as Naik Police Shipai, it is mentioned in the said letter that for year 2000 and 2001 only for these two years remarks were available of applicant and these two remarks were not sufficient to make eligible for promotion to the applicant as Naik Police Shipai. Now it seems that the five years remarks i.e. 1997,1998 & 1999 were not available to the department and for that the applicant was not responsible at all.

3. The learned counsel for the applicant has also pointed out the facts regarding applicant on page no.5 Para-iv in the O.A. which is reproduced below -

“ (iv) It is further submitted that the applicant was put under suspension from 23/10/2004 to 6/8/2008 because there was an offence registered against him at Ranapratapnagar Police Station vide Crime No.305/2004, for offence punishable under Section 384 of IPC. It is further submitted that the order of suspension dated 23/10/2004, was revoked and the applicant was reinstated w.e.f. 7/8/2008. Thereafter, it appears that for the year 2009 to 2011 he was not fit for promotion as per the C.R. and thereafter in the year 2012 he was promoted as a Naib Police Shipai (NPC)”.

4. The learned counsel for the applicant also pointed out Annex-A-2, Page no.29 from which Judgment of the Special Court at Nagpur was passed on 24/3/2009 and operative part on Page no.64 which is as under –

“ Accused Sanjay S/o Rajendraprasad Pande is hereby acquitted U/Sec. 235 (i) of the Cr. P.C. of the offence punishable U/Sec. 384 of I.P.C. and U/Sec. 13 (1) (b) & (d) and Sec. 8 of the Prevention of Corruption Act,1988”.

5. The applicant has been acquitted from various sections, but from 2009 to 2011 due to C.Rs. he was not made eligible for promotion and in 2012 he was promoted. Again learned counsel pointed out that the document at page no.66 which was issued by the

Deputy Commissioner, Head Quarters, Commissionerate of Police Nagpur letter dated 23/4/2014 by which DE was started against the applicant for which he was acquitted in the Session Court. In the charge sheet (P-68) 7 charges are mentioned.

6. The inquiry report on page nos.75 to 95 (both inclusive). The Inquiry Officer's findings recorded on page no.95 in the last para which is reproduced as below –

^ ; ko#u l nj i d j . kh vi pljh uki kf'k@ 1048 l at ; i kMl s use . kpl i ksyhl e[; ky ;] ukxi ij ; kps ojhy dR ; ko#u o vkt i korlsR ; kpf o #/n d syY ; k foHkkxh ; plkl'kko#u ueq vi pljh ; kauh i ksyhl foHkkxkl u 'kkkukj s vR ; r cf'kLr o cstckcnkji . ks tuek.kl kr i ksyhl kph i frek eyhu vl s dR ; dsysvlgsvl sfinl u ; rs**

7. Final order was passed after completing the inquiry on page no. 96 vide letter dated 8/12/2015 by DCP, head quarters, Nagpur City and order was recorded on page no.97 which is as below-

^ uki kf'k@ 1048 l at ; i kMl s use . kpl i ksyhl e[; ky ;] ukxi ij 'kgj ; kaur R ; k ; k ; k ojhy i d kj P ; k dl jh cnny R ; kph i q-hy ; skkj h olf'kzl oruok < 2 o "kkzlfjrk LFkfxr dj . ; kph f'k{kk ns ; kr ; r vlg s l nj f'k{kpk i q-hy oruok < hoj i fj . kke gkstkj ukgh-

Lknjps vknskkfo#/n tj R ; kaur vfi y djko ; kph bPNk vl sy rj gk vknsk feGkY ; ki kl u rs60 fno l kpsvkr i ksyhl egkl pkyd] egjk"V"j kT ;]epbz ; kpdMsvfi y l knj d# 'kdrkr-**

8. The applicant preferred appeal vide his letter dated 28/1/2016 (A-9, Page no.106 to 109) to DGP, M.S., Mumbai through DCP, headquarters, Nagpur. He has also given reminder on 25/2/2016. The document at page no.111 the DCP, headquarters,

Nagpur has written to DGP, M.S., Mumbai to decide the appeal and appeal was enclosed. The show cause notice was issued from page nos. 112 to 117 (both inclusive) by the ADG, Administration, Maharashtra Police, Mumbai. The applicant submitted reply to the show cause notice vide A-12, P-118 to 148 (both inclusive). The ADG, Administration vide letter dated 16/17/10/2017 A-13, P-149 to 157 passed the order and order was on page no.157 which is as below –

^ eh] MKW i Kk I jon] vij i kyhl egkl pkyd %i z kkl u%] e-jk-]e; kOnkjsuki k'k@1048 I at ;
i kMs; kps i dj . kh nks'kkjki Bb. ; kP; k VII; ki kl u u0; kusfoHkkxh; pkk'kh %DENOVO% dj . ; kpsvknk
nr vkg**

9. Now the fact as pleaded by the learned counsel is that for all the charges in which DE was started, the applicant was already acquitted by the Special Court, Nagpur and whatever order was passed in the DE that order was challenged in the appeal and in appeal it was directed to initiate *denovo* inquiry. The order on appeal was passed on 2/11/2017 and outward number was given 16/17/10/2017. However, on page no.157 internal page of order page no.9 the signature of ADG is put on 2/11/2017 which is also very much doubtful. During the course of hearing, the learned P.O. was directed to produce the documents from the respondents regarding denovo inquiry. The letter was produced by the P.O. on 9/10/2019 which is at page no.160. The letter dated 25/9/2019 written by the Jt. Police

Commissioner, Nagpur City which says that denovo inquiry has not been done. It is also stated that the DE pertains to the year 2004 and this issue has no relevance to that DE.

10. The applicant has filed Affidavit dated 13/7/2020 and in para nos.3&4 he has clarified his tenure and also questioned the respondents conclusion about his service.

11. The respondents have filed letter dated 30/6/2017 and at page no. 99 in para-5 they have mentioned about seniority list, but they have not filed seniority list. This is duty of the establishment of Controlling Officer to maintain the seniority list of every 1st January of the year and publish it on the Notice Board. It is expected that the respondents shall maintain seniority list of the applicant's cadre, however, they have not filed seniority list along with the reply. The respondents are directed to file seniority list and clarify on what grounds the deemed date promotion of the applicant has been denied.

12. During course of hearing on 28/1/2021 as per para-4&5 applicant was acquitted in court of law. As per para-6 departmental inquiry report was submitted and the respondent no.2 to initiate denovo inquiry. The respondents were asked by the Bench about progress of denovo inquiry and the respondents replied as per their correspondence dated 9/10/2019 (P-160) that till now no denovo inquiry has been initiated.

13. In view of discussions in above paras, as on today applicant is acquitted in court case and no departmental inquiry is pending against the applicant. So applicant's relief clause no.8 (i) i.e. granting deemed date of promotion as Naib Police Shipai (NPC) as of 1/5/2002 when his batchmates were promoted requires to be granted. Hence, the following order –

ORDER

- (i) The O.A. is partly allowed.
- (ii) The respondent no.2 is directed to grant applicant deemed date of promotion as Naib Police Shipai (NPC) from 1/5/2002 when his batchmates were promoted.
- (iii) The applicant will be also entitled for all the financial benefits which his batchmates have been given.
- (iv) No order as to costs.

Dated :- 08/04/2021.

dnk*...

(Shree Bhagwan)
Vice-Chairman.

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 Vice-Chairman.

Judgment signed on : 08/04/2021.
and pronounced on

Uploaded on : 08/04/2021*.