

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 799/2011 WITH C.A. NO. 312/2016 (D.B.)**

Rajendra Sitaram Jambhulkar,
Aged about 44 Yrs., Occupation : Service,
Assistant Section Commander (Naik Police Constable)
/382, B, Company C/o Group No. XIII, State Reserve Police Force,
S.R.P.F. Camp, Hingna Road,
Nagpur, District Nagpur.

Applicant.**Versus**

- 1) The State of Maharashtra,
Through the Secretary,
Home Department,
Mantralaya, Mumbai.
- 2) The Commandant,
State Reserve Police Force,
Group No. XIII, State Reserve Police Force,
SRP Camp, Hingna Road, Nagpur.
District Nagpur.
- 3) The Inspector General of Police,
(Special) State Reserve Police Force, SRP
Camp, Hingna Road, Nagpur, District Nagpur.
- 4) Shri Ramdas J. Sonawane,
Age Major, Occ. Service, Assistant Section Commander
(Naik Police Constable)/378-A Company C/o Group No. XIII,
State Reserve Police Force, SRPF Camp, Hingna Road,
Nagpur, District Nagpur.

Respondents

Shri R.V.Shiralkar, the Id. Advocate for the applicant.

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

**Coram :- Hon'ble Shri Shree Bhagwan, Vice Chairman.
Hon'ble Shri A.D.Karanjkar, Member (J).**

JUDGMENT**PER : MEMBER (J)**

Judgment is reserved on 22nd August 2019.

Judgment is pronounced on 23rd September 2019.

Heard Shri R.V.Shiralkar, Id. counsel for the applicant and Shri H.K.Pande, Id. P.O.
for the respondents.

2. The present application is filed for issuing directions to the respondent no. 2 to correct the date of joining of the applicant as 19/09/1997 and to place the applicant in seniority above the respondent no. 4 and for deemed date of promotion as Assistant Section Commander (Police Naik Constable) w.e.f. 22/08/2006 and next promotion as Section Commander (Police Hawaldar) w.e.f. 01/09/2009. The facts in brief are as under;

3. It is case of the applicant that in consequence of the order dated 19/09/1997, he was appointed as Armed Police Constable in S.R.P.F., Group-III, Jalna. The applicant was sent for training from 01/10/1997 and after completion of the training, the applicant was posted as Armed Police Constable in a Company with S.R.P.F., Group-III, Jalna.

4. It is contended that policy decision was taken by Government of Maharashtra to transfer one Company of S.R.P.F., Group-III, Jalna to S.R.P.F., Group-XIII, Nagpur, in consequence of this decision one Company of S.R.P.F., Jalna was transferred to S.R.P.F., Group-XIII, Nagpur vide order dated 29/06/2002. As a result of the transfer of the Company the service of the applicant was transferred to the establishment of S.R.P.F., Group-XIII, Nagpur.

5. It is submitted that as per the general transfer order by which the Company was transferred, the applicant name was at Sr. No. 26 and respondent no.4's name was at Sr. No. 57.

6. It is submitted by the applicant that as per the service rules, the Armed Constable after services of three years were eligible for promotion on the post of Assistant Section Commander (Police Naik Constable), the Assistant Section Commander and the Constables with minimum services of seven years were eligible for the promotion as Commander (Hawaldar).

7. According to the applicant, the respondent no. 4 was initially appointment in S.R.P.F., Group-XII, Hingoli Camp, Jalna as Police Constable on 25/09/1997. It is contended that in the seniority list at Annexure-A-7 of S.R.P.F., Group-XII, Hingoli Camp, Jalna, name of respondent no. 4 is at Sr. No. 395. It is case of the applicant that respondent no. 4 applied for transfer on request and accordingly the respondent no. 4 was transferred from Hingoli Camp to Group-III, S.R.P.F., Jalna. On basis of this it is submitted that the respondent no.4 become junior to the applicant in Group III S.R.P.F. Jalna.

8. It was noticed by the applicant that his date of entry in the service was incorrectly recorded as 01/10/1997 and his seniority was wrongly fixed. Though the respondent no. 4 was junior to the applicant, he was shown senior to the applicant; therefore, request was

made by the applicant for correction of the entry regarding date of joining of the applicant and for correction of the seniority but no heed was paid. Ultimately, the respondent no. 2 wrote letter dated 12/03/2008 to the Commander, S.R.P.F., Group-III, Jalna to correct the entry in the service book of the applicant. It is grievance of the applicant that no action was taken by the respondent no. 3 to correct the date of joining of the applicant and the correction of the seniority list.

9. It is contention of the applicant that though the respondent no. 4 was Junior to the applicant, respondent no. 4 was promoted on 22/08/2006 as Assistant Section Commander (Police Naik Constable) and as Commander (Police Hawaldar) w.e.f. 01/09/2009. According to the applicant, respondent no. 4 was junior to the applicant, as applicant joined service before the respondent no. 4 in S.R.P.F., Group-III, Jalna and, therefore, directions be given to the respondents to correct the date of joining of the applicant as 19/09/1997 and for correcting seniority list dated 01/01/2003 and for the deemed date of promotion.

10. The application is resisted by the respondent no. 3 vide reply at P.B., Pg. No. 64. The respondent no. 3 contended that the first order was issued to appoint 51 candidates as Police Constables in S.R.P.F., Group-III, Jalna vide order dated 09/09/1997 but in that order name of the applicant was not mentioned. The respondent specifically submitted that the Commander, S.R.P.F., Group-III, Jalna issued appointment order dated 09/10/1997 and appointed the applicant in service, but in that order it was wrongly mentioned that applicant should resume duty/ training on 01/10/1997. It is submitted that in fact Criminal case was pending against the applicant, therefore, though the applicant was selected/appointment order was not issued, thereafter information was given by the applicant that this Criminal case was compromised and he was acquitted, thereafter, vide order dated 09/10/1997, the applicant was appointed. It is contention of the respondent that as per this appointment order dated 09/10/1997, the applicant resumed duty on 09/10/1997 on the same date the applicant submitted his joining report and requested permission to join the duty. It is submitted by the respondent that there is no substance in the case of the applicant that vide order dated 019/09/1997 the applicant was appointed in the service.

11. So far as seniority and promotion of the respondent no. 4 are concerned, it is contention of the respondent that the respondent no. 4 was rightly placed at proper place in seniority list and the respondent no. 4 was promoted for the reason that he was member of

Nomadic Tribe-B candidate and he was promoted on the post reserved for the category. It is submission of the respondents that the applicant is trying to take advantage of the error committed while typing the letter at Annexure-A-1. It is submitted that in this letter, it was wrongly mentioned that the applicant should resume the training commencing from 01/10/1997. According to the respondents they have not committed any illegality while promoting the respondent no. 4 and while fixing the seniority of the applicant, therefore, there is no substance in this original application.

12. In order to established that the applicant was appointed in service as per order dated 19/09/1997 reliance is placed by the applicant on Annexure-A-1 i.e. appointment order. It appears from Annexure-A-1 that the date of this order is not legible; the legible part is appointment/97/9557. It is contention of the respondent that Annexure-R-10 is the same order and it is dated 09/10/1997. The last paragraph of the order Annexure-A-1 and Annexure-A-10 is identical, which is under:-

"if{k{k.kkFhps if{k{k.k fn- 1-10-1997 ikl u ukufot if{k{k.k dnm] jkjkikcy xV dz 5 nM ; fks l q >kys vl Y; kusl nj fuoM >kyY; k menokjkl l i ukZl jdkjh l jatke nnu , dk l 'kL= ilyhl gokynk l kcr if{k{k.kkl kBh vkt p jokuk djkos o vuikyu vgo ky l knj djlok."

13. Thus after perusing both documents (Annexure-A-1, Annexure-R-10), it is clear that though Annexure-R-10 is dated 09/10/1997 in the last paragraph it was mentioned that the candidate had to join the training commencing from 01/10/1997.

14. The Id. P.O. invited our attention to Annexure-R-4, in Annexure-R-4 which is written by the applicant, it is clearly mentioned that the applicant was appointed as Armed Police Constable on 09/10/1997. It is important to note that in Annexure-R-2, it was mentioned that the matter was referred to the Police Superintendent, Chandrapur for calling report of the authority regarding character of the applicant and it was informed that Criminal case was pending against the applicant in the Court in respect of the Crime registered at Police Station, Shegaon, Taluka Varora, District Chandrapur. It further appears that report was forwarded by Superintendent of Police, Chandrapur dated 19/09/1997. It is also mentioned in this letter that the applicant gave one application on 26/09/1997 and informed the authorities that in that crime the matter was compromised on 27/01/1996. As a matter of fact, this material falsifies the case of the applicant that appointment order was issued on 19/09/1997. In fact the character verification report was

forwarded by Superintendent of Police, Chandrapur on 19/09/1997 and it was informed that the Criminal case was pending in Court against the applicant and thereafter letter dated 03/10/1997 was written by the Commandant, S.R.P.F., Group-III, Jalna to D.I.G., S.R.P.F., Nagpur. Annexure-R-3 is the letter written by Commandant, S.R.P.F., Group-III, Jalna to the applicant, it is dated 03/10/1997. In this letter, the applicant was informed that after receiving the letter he should report to the office of the Commandant, S.R.P.F., Group-III, Jalna along with all original papers. The joining report (Annexure-R-4) and all these documents are sufficient to falsify contention of the applicant that vide order dated 19/09/1997 he was appointed in service as Armed Police Constable and in consequence of the appointment order he resume the duty i.e. training on 01/10/1997. In view of this evidence, it is not possible to accept this case of the applicant. The applicant was unable to point out or produced any order dated 19/09/1997 by which he was appointed in services and he was called upon to resume the training on 01/10/1997. On the contrary the respondent no. 3 has produced Annexure-R-1 dated 09/09/1997, by which 51 candidates were appointed as Armed Police Constable on establishment of S.R.P.F., Grade-III, Jalna and in this office order, name of the applicant is not mentioned. Thus there is substance in the contention of the respondents that it is an attempt of the applicant to take benefit of the typing mistake in Annexure-R-10. It seems that only format was used when appointment order was issued to the applicant and last paragraph of the appointment order was left as it was, it was not corrected. In this situation, it is difficult to digest that the date of appointment of the applicant was 19/09/1997 and he resumed the training on 01/10/1997.

15. The applicant is challenging the promotion of the respondent no. 4 on the ground that respondent no. 4 was junior to him and on this ground the applicant is claiming deemed date promotion on the post of Assistant Section Commander (Naik) and promotion on the post of Section Commander (Hawaldar). The respondents have cleared the position and it is contention of the respondent no. 3 that the respondent no. 4 was member of Nomadic Tribe-B candidate, consequently he was promoted on the post reserved for the candidate Nomadic Tribe-B. The respondents have placed on record the copy of the certificate issued by Divisional Caste Scrutiny Committee, Nagpur, it is at P.B., Pg. No. 284. The Caste Scrutiny Committee accepted the contention of respondent no. 4 that he was member of Nomadic Tribe-B i.e. Lohar. Thus it is submitted that the respondent no. 4 was promoted as Assistant Section Commander and

thereafter as Section Commander, as per the benefits which were available to his Caste, therefore, we do not see any reason in his contention that respondent no. 4 was illegally promoted. This is regarding the seniority of the applicant. Consequently, it is not possible to accept the contention that applicant is entitled for deemed date of promotion from 22/08/2006 as Assistant Commander and as Section Commander from 01/09/2009.

16. In this regard, we would like to point out that in the seniority list Annexure-A-9 name of respondent no. 4 is shown as Sr. No. 170 and name of applicant is at Sr. No. 246 but considering the date of appointment of the applicant as 09/10/1997, it is not possible to accept that applicant is entitled for any relief. In this regard note must be taken of the fact that the candidates from Sr. Nos. 171 to 245 in the seniority list joined the services before the applicant, therefore, if any relief is granted to the applicant then they would lose their seniority though they joined services prior to the applicant. The applicant didn't join all these candidates as respondents in this matter, the legal position is settled that any person who is likely to be affected by the Judicial order which will be passed in the proceeding, then he is necessary party, because without giving opportunity of hearing no order can be passed against such person. In view of this discussion, we are of the firm view that there is no substance in the O.A..

ORDER

O.A. as well as C.A. are dismissed with no order as costs.

(Shri A.D.Karanjkar)
Member (J)

(Shri 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 : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman & Hon'ble Member (J).

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

Uploaded on : 24/09/2019.