

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.838/2010.

(D.B.)

Shri Madhukar Mahadeo Kumbhare,
Aged about 56 years,
Occ- Pensioner,
R/o B/32, Vrundavan Nagar, Near Darshan Colony,
Nandanvan, Nagpur-440009.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.
2. The Director General of Police (M.S.),
Police Headquarters,
Shaheed Bhagat Singh Marg,
Colaba, Mumbai-400 039.
3. The Commissioner of Police,
Civil Lines, Nagpur-440 001.

Respondents

Shri Shashikant Borkar, the Ld. Advocate for the applicant.
Shri P.N. Warjekar, the Ld. P.O. for the respondents.

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J) and
Shri Shee Bhagwan, Member (A)

JUDGMENT

(Delivered on this 23rd day of October 2018.)

Per:Vice-Chairman (J)

Heard Shri Shashikant Borkar, the learned counsel for the applicant and Shri P.N. Warjekar, the learned P.O. for the respondents.

2. The applicant in this case is claiming promotion to the post of Police Inspector alongwith consequential benefits w.e.f. 1.2.1999, i.e. the date on which his junior Shri Rajendra Murlidhar Chavan was granted such promotion.

3. The applicant was appointed as a Police sub-Inspector (P.S.I.) on 6.5.1985 whereas one Shri Bhikan Rahman Tadvı was appointed on the same date and one Shri Rajendra Murlidhar Chavan was appointed on 15.6.1988. The applicant, Shri Bhikan Rahman Tadvı and Shri Rajendra Murlidhar Chavan belong to S.T. category. Shri Bhikan Rahman Tadvı was promoted to the post of Assistant Police Inspector (A.P.I.) on 26.2.1993 and to the post of Police Inspector on 25.10.2000 whereas Shri Rajendra Murlidhar Chavan was promoted to the post of Assistant Police Inspector on 1.7.1993 and on the post of Police Inspector on 1.2.2009. Thus, though the applicant was senior to Shri Bhikan Rahman Tadvı and Rajendra Murlidhar Chavan, he was not considered for promotion.

4. Being aggrieved by non-promotion to the post of A.P.I. and P.I., the applicant has filed O.A. No.878/2001. A copy of judgment of the said O.A. is at Annexure A-1 at Page Nos. 28 to 37 (both inclusive) In para No.9 of the said judgment, it was observed as under:-

“In the light of the above, the application deserves to be allowed. Respondents are directed to hold a review D.P.C. and consider the case of the applicant as of 1998-2000, the dates on which his juniors were promoted to the post of Police Inspector and grant him deemed date of promotion, if he is found fit. No order as to costs.”

5. Since the respondents did not comply with the order as aforesaid, the applicant preferred C.P.No.110/2003 and in the said C.P., following order was passed on 3.9.2004:-

“Heard both sides. The applicant is already given deemed date in the post of API. Granting of deemed date to the post of P.I. is in process. The order is partly complied with. C.A. is disposed of. No order as to costs.”

6. In spite of such order as aforesaid, the respondents did not take any action and, therefore, the applicant again filed second C.P. bearing No. 21/2005. In the said C.P., the respondents filed an affidavit mentioning that the applicant's claim for promotion to the post of P.I. was under consideration and, therefore, this Tribunal, in the second C.P., was pleased to pass the following order:-

“Heard. Admittedly the deemed date on the cadre of PSI and API is given already. The deemed date of P.I. is in process. Thus the order passed in the main matter is substantially complied with. C.A. is disposed of. No order as to costs.”

7. From the admitted facts on record, it is clear that the applicant has been promoted to the post of API on 11.3.2004 whereas he has been promoted to the post of P.I. w.e.f. 16.11.2005. The applicant is, however, claiming deemed date of promotion to the post of P.I. from 1.2.1999, i.e. the date on which his juniors were promoted. The respondent No.2 tried to justify the promotion orders of the applicant.

8. The learned counsel for the applicant submits that, though the respondents admitted before this Tribunal in the C.P. that

the case of the applicant for promotion was under consideration, they did not comply the order. The learned counsel for the applicant also invited our attention to the affidavit filed in C.P.No.21/2005 on behalf of respondent no.2, a copy of which is at Annexure A-4, pages 41 to 43 (both inclusive). It is stated that because of filing of such affidavit, the Tribunal was pleased to dispose of the second petition, since granting of deemed date of promotion to the post of P.I. was in process. It is stated that the respondents, therefore, should have promoted the applicant w.e.f. 1.2.1999.

9. The learned P.O. has placed on record one notification dated 4.11.1992 which is marked "X" for the purpose of identification and submits that earlier there was no post of API. But since it was being late to promote the officers from the post of PSI to the post of P.I. and since it was a long and time consuming process, 1500 posts were upgraded and the post of API was created w.e.f. 4.11.1992 and accordingly the applicant was rightly promoted to the post of API instead of P.I. Thereafter the applicant's case was considered for promotion to the post of P.I. also and he was promoted when he was found fit for the said post.

10. In reply affidavit filed by respondent No.2, it is stated that the applicant was appointed from ST category in 1985 as

PSI and as per seniority, his case was considered for the post of API in the year 1992 and he was found unfit. Thereafter he was also considered in 1994-95 and in those meetings of D.P.Cs also, he was not found fit for promotion. In the year 1996, it was noticed that ST category officers were in excess and as per the guidelines issued by the Hon'ble Apex Court in Sabharwal's case, applicant's case was not considered. His case was again considered by the D.P.C. in the year 1998-2000. But he was not found fit. Thereafter the applicant filed O.A. No. 878/2001 and as per the directions of this Tribunal, his case was considered in the D.P.C. Since in between, the post of API was created in the year 1994, the applicant was promoted to the post of API vide order dated 8.3.2004 and deemed date was granted to him from 5.2.2001.

11. It seems from the reply that the applicant's case was again kept before the DPC in 2004, since he was granted promotion as API after examining his eligibility for the next promotion to the post of P.I. But he was not found fit. As against this, juniors of the applicant, against whom the applicant has grievance, were found fit and thereafter they were promoted to the post of P.I. Thereafter the applicant was found fit for promotion w.e.f. 16.11.2005 to the post of P.I. and, therefore, he was promoted to that post.

The learned P.O. submits that contention of the applicant that, he was not promoted and his juniors were promoted, has no meaning, since the D.P.C. found the applicant not fit for promotion whereas his juniors were found fit, and if this is a fact that there was no question of granting deemed date of promotion to the applicant.

12. The learned counsel for the applicant invited our attention to the order passed in O.A. No. 878/2001 on 4.6.2003, para No.9 of which has already been reproduced earlier. Even though, in para No.9, it has been stated by this Tribunal that the applicant be promoted to the post of P.I. and grant him deemed date of promotion, such promotion was always subject to eligibility of the applicant. It was specifically stated that he be promoted, if he is found fit. As already stated, the Review Committee of the DPC has undertaken case of the applicant in subsequent meetings wherein he was found not fit for promotion to the post of P.I. and he was finally fit for promotion on 16.11.2005 and was accordingly promoted to the post of P.I. We do not find any illegality in the process adopted by the respondent authorities. Merely because juniors of the applicant were promoted, the applicant cannot get any right to be promoted particularly when the DPC found him unfit for promotion. We are,

therefore, satisfied that there is no merit in this O.A. Hence, we proceed to pass the following order:-

ORDER

The O.A. stands dismissed with no order as to costs.

(Shree Bhagwan)
Member (A)

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

Dated:- 23.10.2018.

