

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 879/2020 (D.B.)

Suresh Nagoraoji Atram,
Aged 54 years,
R/o Sawanga, Post Shiva,
Tah. & Dist. Nagpur

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.
- 2) The Director General of Police,
Maharashtra State,
Shahid Bhagatsingh Marg,
Mumbai-1.
- 3) The Additional Director General of Police
and Director of Police Wirelesss M.S. Pune
Chavan Nagar, Pashan Road,
Pune, Dist. Pune.
- 4) The Commissioner of Police,
Nagpur City, Patel Banglow,
Chhaoni Sadar, Nagpur, Dist. Nagpur

Respondents

Shri S.M.Khan, Id. Advocate for the applicant.

Shri M.I.Khan, Id. P.O. for the respondents.

**Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman &
Hon'ble Shri M.A.Lovekar, Member (J).**

JUDGMENT**Judgment is reserved on 18th Nov., 2022.****Judgment is pronounced on 02nd Dec., 2022.****(Per:-Member (J))**

Heard Shri S.M.Khan, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the Respondents.

2. Case of the applicant is as follows. The applicant was appointed as Police Wireless Operator on 01.11.1989. He completed 45 years on 01.12.2011 and thereby became entitled to grant of exemption from departmental examination for further promotion. As a consequence, he would become entitled to the first and the second time bound promotion on 01.12.2011 and 01.12.2019, respectively, and consequential benefits. The respondent ought to have implemented G.Rs. dated 01.11.1977 (A-2), 28.11.1979 (A-3) and 17.05.1980 (A-4). Considering the legal position settled by the Hon'ble Bombay High Court based on which this Tribunal has taken a view with regard to exemption from passing departmental examination on completing 45 years, the impugned communication issued by respondent no. 3 (A-8) will have to be quashed and set aside and instant O.A. allowed.

3. In their reply at pages 46 to 53 respondents 1 to 3 have averred as follows. For grant of time bound promotion passing requisite departmental examination stipulated by Rules is a condition precedent.

G.Rs. dated 08.06.1995 (A-R-1) and 20.07.2021 (A-R-3) make this clear. For promotion to the post of P.S.I. passing classification examination Class-1 is necessary. G.R. dated 01.04.2010 (A-R-4) states:-

“(ड) योजनेच्या दुस-या लाभसाठी पात्रतेच्या अटी व शर्ती - (१) पहिला लाभ घेतलेल्या व त्यानंतर प्रत्यक्ष पदोन्नती मिळालेल्या कर्मचा-यास दुसरा लाभ मंजूर करताना तो पहिल्या लाभाप्रमाणेच दिनांक २० जुलै २००१ च्या आदेशामधील व यासंबंधी वेळोवेळी निर्गमित करण्यात आलेल्या स्पष्टीकरणात्मक आदेशांतल तरतुदीच्या अधिन मंजूर करण्यात यावा, म्हणजेच, ज्या पदाची वेतनसंरचना मंजूर करण्यात येणार आहे, त्या पदावर प्रत्यक्ष पदोन्नती मिळण्यासाठी विहित केलेल्या अटी व शर्तीची पूर्तता करणे आवश्यक राहिल.”

Further G.R. dated 18.07.2008 (A-R-5) states:-

“पीडब्ल्युएस ०२८८/प्र.क्र.१६६/पोल-४, दिनांक १८ जुलै, २००८ वयाची ४५ वर्ष पूर्ण केलेल्या परंतु पुढील पदोन्नतीसाठी आवश्यक वर्गीकरण परीक्षा वर्ग-४ ते वर्ग-१ पास होउ न शकल्याने पदोन्नतीस पात्र नसलेल्या सहायक पोलीस उपनिरीक्षक (रेडियो यांत्रिकी) पोलीस हवालदार (वीजतंत्री, बिनतारी यंत्रचालक) यांना नियमित पदोन्नती न देता त्यांना वरीष्ठ वेतनश्रेणीचा लाभ/ कालबद्ध पदोन्नतीचा लाभ ते पदोन्नतीची पात्रता पूर्ण करित नसल्याने, देता येणार नाही.”

Circular dated 28.11.1979 states:-

“In the case of Departmental examinations prescribed for continuance and confirmation on the existing posts, the exemption is applicable to all Government servants, excepting those, who under the recruitment rules applicable to them, are liable to be discharged

for not passing the departmental examination during the period of probation.”

4. We have considered rival submissions and written notes of argument filed by the applicant (at pages 77 to 81).

5. The applicant has relied on the judgment dated 21.11.2017(A-A-5) delivered by the Hon’ble Bombay High Court in W.P. No. 3643/2009. In this case the question for determination was framed as follows:-

“2. The question that may be required to be dealt with in this Writ Petition is, as to whether inaction to move on the decision of Government taken way back around 1977 to exempt persons of 45 years of age from passing departmental examinations for their further promotions, directing the departments of the State to carry out suitable amendments to the rules, shall keep back the benefits of such decision to petitioner who was working in the Wireless Section of Police Department, when the benefits having been given to employees of almost all departments of the State, and whether impugned order in present writ petition would be justifiable, as Administrative Tribunal has passed orders which are apparently divergent in nature.”

It was held:-

“17. It has been argued on behalf of petitioner, even in the Police department, save Wireless section, the General Administration

Department's directions and instructions have been applied and quite a few persons have been given promotions who have attained age of 45 years without requiring them to pass departmental examination for promotion. This particular aspect has not been met with by any counter argument on behalf of the respondent. Further, benefit of promotions appears to have been given to quite a few departments of the Government including Engineering department, as referred to above without there being suitable amendments to promotional rules. Thus, it appears that so far as Wireless section of Police department is concerned, the authorities are taking a rather hyper-technical view under the plea that as the rules have not yet undergone amendment pursuant to the instructions issued thus far. The Tribunal's order in the present case, particularly looking at that another technical post has been given benefit of decision of Government's refusal to extend the same to petitioner who was working in Wireless Section of Police Department of the State is unjustifiable.

18. In the circumstances, we consider it expedient to follow suit in the decision given by Division Bench in Writ Petitions no. 6212 of 2011 and other companion matters. Having regard to observations therein, that decision of General Administration Department of Government would be binding on all departments of the State and a

department of Government would not be permitted to take a different stand as it appears only 'Wireless Section' of Police Department has not been extended the benefit.

19. In view of aforesaid, it would be appropriate that the petitioner employed in Wireless Section of Police department is given benefit of promotion to the next level post without insisting upon departmental or class I and II examination, on attaining age of 45 years by giving deemed date of promotion."

6. This Tribunal, while passing the judgment dated 14.01.2021 and 18.09.2019 (A-N-2 and A-N-3, respectively) has relied on the above referred judgment in W.P. No. 3643/2019. Hence, the order:-

ORDER

The O.A. is allowed in the following terms:-

The respondents are directed to extend to the applicant the benefits of time bound promotion/s, ACP/s from the date he has completed the age of 45 years, and pay arrears **within three months from today**. No order as to costs.

(M.A.Lovekar)
Member(J)

aps

Dated – 02/12/2022

(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 : 02/12/2022.
on and pronounced on

Uploaded on : 03/12/2022.