

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1019 OF 2015

DISTRICT : MUMBAI

1. Shri Janardan V. Patil)
Age : 52 years, Sitaram Building, G Block)
Room No.10, Palton Road, Mumbai - 1.)
2. Shri Subhash B. Chawan, Age 56 years,)
R/at 3rd floor, A Wing, Commissioner of)
Police Compound, Officers Quarters, B. T.)
Marg, Mumbai 400 001.)
3. Shri Shivaji M. Pasalkar, Age 47 years,)
11 A/B, 3rd floor, Police Camp, Tardeo,)
Mumbai 400 034.)
4. Shri Pandurang Dashrath Khillari,)
Age 47 years, 83/2476, Pantnagar Police)
Wasahat, Pantnagar, Ghatkopar, (E),)
Mumbai 400 075.)
5. Shri Rajendra Mahadeo Shonani,)
Age 50 years, Prakash Bhava, Shinde)
Chawl, Room No.6, Gavdevi Road, Tembhi)
Pada, Bhandup (W), Mumbai.)
6. Shri Sadashiv Tukaram Sawant,)
Age 47 years, A-401, Visamo, Co-op.)
Housing Society, Plot No.100, Gorai – II,)
Boriwali (W), Mumbai.)
7. Shri Ram Mahadev Mangle,)
Age 51 years, Flat No. 204, Plot No.4)
Priyanka Heritage, Sector-16A,)
Sanpada, Navi Mumbai.)
8. Shri Deepak Ganpat Girkar,)
Age 49 years, B-35, B Wing / 003,)
R.M.M.M., Goregaon (E), Mumbai-400 063.)
9. Shri Sambaji Ramchandra Mohite,)
Age 50 years, B/102, Rukhmini Co-op,)
Housing Society, Sector 20, Airoli,)
Navi Mumbai.)

10. Shri Raghunath Ramchandra Nimbalkar,)
Age 51 years, Building No. 26/1,)
BDD Chawl, Ganpat Jadhav Marg, Worli)
Mumbai -400 018.)
11. Shri Sanjay Abaji Bhosale,)
Age 51 years, 1/60, Tardeo Police Officers)
Quarters, Tardeo, Mumbai – 400 034.)
12. Shri Sanjay Shivajirao Thakur,)
Age 49 years, C/102, Himgiri Co-op. Hsg.)
Society, Veenanagar, L.B.S., Road,)
Mulund (W), Mumbai.)
13. Shri Snajay Narhari Rane,)
Age 48 years, Tejukary Mansion, 5/13,)
Dr. Babasaheb Ambedkar Road,)
Lalbaug, Mumbai – 400 012.)
14. Shri Shatrughna Dinkar Rane,)
Age 48 years, B/70, Saraf Choudhary Nagar)
Kandivali (E), Mumbai – 400 101.)
15. Shri Pradip Ghanshyam Chopade,)
Age 50 years, 2/12, Officers Quaters)
Near Mittal Court, Somwar Peth, Pune.)
16. Tanaji Eknath Sangale,)
Occu. Service, Hindu, Indian Inhabitant,)
Aged about 51 years, residing at 8,)
Police Officer Quarters, Room No.7,)
Bhoiwada, Naigaon, Mumbai- 400 0014.)
17. Sunil Laxman Deshmukh,)
Occu. Service, Hindu, Indian Inhabitant,)
Aged about 51 years, residing at 8,)
Police Officer Quarters, Room No.7,)
Bhoiwada, Naigaon, Mumbai- 400 0014.)
18. Dilip Tukaram Naik,)
Occu. Service, Hindu, Indian Inhabitant,)
Aged about 52 years, residing at A/13,)
Mumbai Central, Mumbai.)
19. Shrikant Chandrakant Ubale,)
Occu. Service, Hindu, Indian Inhabitant,)
Aged about 56 years, residing at Plot No.49,)
Rajebaug, Near Azad College,)
Aurangabad - 430001.)

20. Wilson Melwin Rodrigues,)
Occu. Service, Hindu, Indian Inhabitant,)
Aged about 52 years, residing at)
Room No.19, Block, New Police Line,)
G.D. Ambekar Road, Mumbai- 400 012.)
21. Govind Vitthal Lad,)
Occu. Service, Hindu, Indian Inhabitant,)
Aged about 55 years, residing at)
D/48, Worli Police Camp, Sir)
Pockhanwala Road, Worli Mumbai- 30.)
22. Prakash Ramchandra Dinde,)
Occu. Service, Hindu, Indian Inhabitant,)
Aged about 53 years, residing at B-2,)
12/21, Sector – 15, Vashi, Navi Mumbai.)
23. Rajendra Vasant Todwalkar,)
Occu. Service, Hindu, Indian Inhabitant,)
Aged about 56 years, residing at D-26,)
Meghwadi, Dr. S.S. Rao Road,)
Lalbaug, Mumbai- 400 012.)
24. Anand Kashinath Wadkar,)
Occu. Service, Hindu, Indian Inhabitant,)
Aged about 55 years, residing at Flat No.)
713, 7th Floor, D Wing, R.A. Kidwai)
Police Station Compound, Rahul Nagar,)
Shivdi, Mumbai- 400 015.)
25. Ashok Ganpat Kumbhar,)
Occu. Service, Hindu, Indian Inhabitant,)
Aged about 58 years, residing at)
Bachatdham Room No.9, 1st Floor,)
Opposite Saibaba Temple, Shrinagar,)
Wagle Estate, Thane (W), Thane.)
26. Vijay Kisan Ukarde,)
Occu. Service, Hindu, Indian Inhabitant,)
Aged about 55 years, residing at Room,)
No.206, B Wing, Trimurti Sada,)
Mahatma Phule Nagar, Thane (W), Thane.)
27. Vishwanath Dhanaji Pujare,)
Occu. Service, Hindu, Indian Inhabitant,)
Aged about 57 years, residing at D - 57,)
3rd Wing, 4th Floor, Worli Police Camp,)
Sir Pochkhanwala Road, Worli,)
Mumbai- 400 025.)

28. Jaywant Govind Dukhande,)
 Occu. Service, Hindu, Indian Inhabitant,)
 Aged about 54 years, residing at Jal)
 Ghara CHS, Near Durga Mata Temple,)
 Gorai No.1 Borivali (W), Mumbai – 91.)
29. Govind Bhujangrao Adatrao,)
 Occu. Service, Hindu, Indian Inhabitant,)
 Aged about 52 years, residing at P.S.I.,)
 Quarters, S.T. Colony, Block No. 26,)
 Vijapur Road, Solapur, Dist: Solapur.)
30. Sunil Chandu Tambe,)
 Occu. Service, Hindu, Indian Inhabitant,)
 Aged about 50 years, residing at Sharma)
 Quaters, Building No. 52, Room No.8,)
 Worli Police Camp, Sir Pockhanwala)
 Road, Worli, Mumbai- 400 018.)
31. Ramdas Nivrutti Awate,)
 Occu. Service, Hindu, Indian Inhabitant,)
 Aged about 53 years, residing at Officer's)
 Quarters, Room No.301, A Wing, behind)
 Ghatkopar Police Station, Ghatkopar,)
 Mumbai- 400 025.)
32. Vastad Jagu Virkar)
 Occu. Service, Hindu, Indian Inhabitant,)
 Aged about 55 years, residing at Build,)
 No.141/4784, Nehru Nagar)
 Kurla (E), Mumbai- 400 024.)
33. Surendra Karbhari Ghegadmal,)
 Occu. Service, Hindu, Indian Inhabitant,)
 Aged about 52 years, residing at)
 Nanddham Building, B-204, Kashimira)
 Junction, Mira-Bhayender Rd,)
 Mira Road (E), Thane.)
34. Ranjana Tanaji Salunkhe)
 Occu. Service, Hindu, Indian Inhabitant,)
 Aged about 50 years, residing at 32,)
 Offier's Quarters, Building No.2, Room)
 No.16, Naigaon, Mumbai- 400 014.)
35. Rajesh Sahebrao Shinde,)
 Occu. Service, Hindu, Indian Inhabitant,)
 Aged about 47 years, residing at B-42/A,)
 SBI Colony, Sector 13, Nerul (East),)

- Navi Mumbai- 400 706.)
36. Dattatraya Tryambak Sonawane,)
Occu. Retired, Hindu, Indian Inhabitant,)
Residing at 11/63, 3rd floor, BDD Chawl,)
Shivadi (W), Mumbai- 400 015.)
37. Annasaheb Maruti Todkar)
Occu. Retired, Hindu, Indian Inhabitant,)
Residing at 272/22, Shri Om Co-operative)
CHS Sector -2, Charkop,)
Mumbai- 400 067.)
38. Suhas Pandurang Joglekar,)
Occu. Retired, Hindu, Indian Inhabitant,)
Residing at House No.1199, Post)
Hatkhamba, Tal. & Dist. Ratnagiri.) **)...Applicants**

Versus

1. State of Maharashtra, through Chief)
Secretary, Mantralaya, Mumbai 400 032.)
2. The Additional Chief Secretary, Home)
Department, Mantralaya, Mumbai 400 032)
3. The Director General of Police, M.S.)
Shahid Bhagatsingh Road, Colaba,)
Mumbai.)
4. Shri Suryakant K. Thorat,)
Occu. Service, Aged about 57 years,)
Attached to the Additional Director)
General of Police (Traffic), M.S.Mumbai,)
DD Buildng, 4th floor, Old Custom House)
S. B. Road, Mumbai 400 001.)
5. Vijay Dnyanoba Jadhav,)
Occu. Service, Aged about 48 years,)
residing at Police Officer's Quarters, A/302)
Near Ghatkopar Police Station, LBS Road,)
Ghatkopar (W), Mumbai.)
6. Ashok Shridhar Ugale)
Aged about 43 years, Occ. Service,)
R/at 54/13, Sir Pochkhanwala Road,)
Worli Police Camp, Mumbai 400 030.)
7. Vijay Babasaheb Dandvate,)
Aged about 43 years, Occ : Service)
R/at Room No.17, 4th floor, Building No.)
11A, Tardeo Police Officers Quarters,)

- Tardeo, Mumbai – 400 034.)
 8. Gautam S. Shinde, Age : Adult,)
 Occ : Service, R/at. B-13, Gagan Mahal)
 Building, Worli, Sir Pochkhanwala Road,)
 Worli, Mumbai 400 030.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicant Nos.1 to 15.

Shri N.A. Agashe, Advocate for Applicant Nos.16 to 38.

Smt. Kranti Gaikwad, Presenting Officer for Respondent Nos. 1 to 3.

Ms. Manisha Khemka, Advocate for Respondent Nos.5, 6 and 7. None for Respondent Nos.4 and 8.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 05.12.2019

JUDGMENT

1. Present O.A. was initially filed by 15 Applicants claiming deemed date of promotion from the date of ad-hoc promotion granted to them to the post of PSI and O.A. was initially allowed by this Tribunal on 22.08.2017. However, the Respondent Nos.1 to 3 have filed W.P. No.11725/2018 which was allowed by the Hon'ble High Court on 22.02.2019 whereby the matter was remitted back to this Tribunal for decision afresh with directions to the Applicants to implead the Sub-Inspectors from two other categories in representative capacities. Accordingly, the Applicants have carried out the amendment and added the parties as Applicant Nos.16 to 38 and also added Respondent Nos.4 to 8.

2. The Applicants were initially appointed as Police Constables. They claim to be eligible for promotion to the post of PSI in terms of Rule 3(a) of Police Sub-Inspector (Recruitment) Rules, 1995

(hereinafter referred to as 'Recruitment Rules 1995'). The Government by G.R. dated 15.07.2000 created additional 1500 posts of PSI and out of which 750 posts were to be filled in and in accordance to Rule 3(a) of 'Recruitment Rules 1995' which *inter-alia* provides for 25% quota for departmental candidates after passing departmental examination subject to other eligibility. The grievance of the Applicants is that despite availability of posts of PSI, they were promoted on ad-hoc basis by order dated 03.07.2003 onwards. The Applicants have passed departmental examination contemplated in Rule 3(a) of 'Recruitment Rules 1995' in 2002. Later, they were regularly promoted to the post of PSI in 2010 onward.

3. In present O.A. the Applicants claim relief of deemed date of promotion on the post of PSI from the date on which they were promoted on ad-hoc basis. Admittedly, at the time of ad-hoc promotion, they were promoted from other quota under Rule 3(b) and 3(c) of 'Recruitment Rules 1995'.

4. Initially, the Tribunal allowed the Original Application by judgment dated 22.08.2017 which was challenged in W.P. No.1175/2018. The Hon'ble High Court was pleased to set aside the judgment of M.A.T. and remanded the matter to the Tribunal for decision afresh with liberty to implead the Sub-Inspectors from other two categories in representative capacity as there was defect of non-joining of necessary parties. Beside, while remitting the matter, the Hon'ble High Court directed the parties to produced entire relevant data before the Tribunal to find out whether there were vacancies in 2003 onward so as to consider their claim of deemed date of promotion on the post of PSI. Accordingly, the parties have produced additional documents/affidavit.

5. Smt. Punam Mahajan, learned Counsel as well as Shri N. A. Agashe, learned Counsel for the Applicant Nos.16 to 38 sought to

contend that as per information availed under RTI Act, there were huge vacancies on the post of PSI during the period from 2003 onward, and therefore, the stand taken by the Respondent Nos.1 to 3 that there were no vacancies in the quota of the Applicants (under Rule 3(a) of Recruitment, Rules 1955) is factually incorrect. Smt. Mahajan, learned Counsel sought to contend that the Respondent No.1 to 3 have suppressed the factual position about vacancy position and denied the legitimate claims of the Applicants for deemed date of promotion.

6. Per contra, Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents urged that though by G.R. dated 15.07.2000, the Government has created 750 additional posts for the post of PSI to be filled in as per Rule 3(a) of 'Recruitment Rules 1995', it was only creation of post and the posts were to be filled in subject to grant of financial approval in subsequent years. According to learned P.O., Police personnel about 1261 who passed Departmental Qualifying Examination for promotion to the post of PSI, as contemplated under Rule 3(a) of 'Recruitment Rules 1995' were required to be promoted firstly and accordingly, they were given promotion as and when vacancies arose up to 2010. The Applicants have passed departmental examination in 2002, and therefore, it being next batch they were promoted regularly from 2009-2010 onward as per vacancy position. She has further pointed out that while giving ad-hoc promotion to the Applicants in 2003, they were given ad-hoc promotions with clear stipulation in their promotions that they will be regularized in future as per their seniority as and when the posts of PSI would become available to fill in. learned P.O. has also produced the compilation of orders (Page Nos.435 to 464 of P.B.) issued by the department in favour of the candidates who had passed departmental qualifying examination in 2000 in order to substantiate that the batch of 2000 being earlier was accommodated firstly before taking up the batch of Applicants who passed departmental examination in 2002.

7. In view of pleadings and submissions advanced at bar, the crux of the matter is whether there were regular vacancies to the post of PSI in 2003 onward for the appointment of Applicants on regular basis from their quota under Rule 3(a) of 'Recruitment Rules 1995' and secondly, whether the Applicants are entitled to seek deemed date of promotion on the date, they were promoted on ad-hoc basis.

8. It would be apposite to see the pleadings of the parties in this behalf. In Para No.6.10, the Applicants pleaded as under:-

“6.10 The Petitioners got the information by the letter dated 20.02.2010, about the vacancies in the cadre of Police Sub-Inspector from 2002 to 2009. The details of the vacancies from 2002 is as under:-

Sr. No.	Year	Vacancies	25%of the total vacancies
1	2002	2304	576
2	2003	2615	654
3	2004	3387	847
4	2005	2974	744
5	2006	3145	786
6	2007	2810	703
7	2008	2201	550
8	2009	2072	518

The Respondent No.3 has not filled in these vacancies from the category of the promote Police Sub-Inspector and they have been given ad-hoc promotions in 2003 instead of regular promotions. The Petitioners on the basis of the details of the vacancies given by the office of the Respondent No.3 by the letter dated 20.02.2010 are entitled for regular promotion, from the date of the passing of the departmental examination and the contention of the Respondent No.3 that there were no regular vacancies and therefore the Petitioners were given ad-hoc promotions is totally incorrect and illegal.”

9. According to Applicants the foundation of the Para No.6.10 is information availed by them under RTI Act which is at page no.86 to 88. Under RTI, following information was provided to the Applicants.

इ.स.२००२ ते २००९ पर्यंत दरवर्षी पोलीस उपनिरीक्षक दर्जाचे महाराष्ट्रामध्ये किती जागा रिकाम्या आहेत	वर्ष	पोउपनि रिक्त पद
	२००२	२३०४
	२००३	२६१५
	२००४	३३८७
	२००५	२९७४
	२००६	३१४५
	२००७	२८१०
	२००८	२२०१
	२००९	२०७२

Thus according to the Applicants 25% of total vacancies shown in this Chart come above as set out in Para No.6.10.

10. Whereas while giving reply to Para 6.10, the Respondent Nos.1 to 3 in Para 15.01 & 15.2 of reply states as follows:-

15.1 Although there were vacancies from the promoted quota of 25% yet, it is also factually correct that the Departmental Qualifying Examination for promotion to the post of PSI were held in the month of August, 2000.

15.2 In the aforesaid examination held in the month of August, 2000, there were 1261 candidates declared pass and they were to be given promotions as per the quota available for the promottees and that was given up to the 2010.”

11. After remand of the matter in pursuance of directions given by Hon'ble High Court, the Respondent Nos.1 to 3 have again filed Additional Affidavits along with Annexures showing vacancy position during the relevant period. The Additional Affidavits are at Page Nos.420 to 430 and 432 to 433 of Paper Book. Whereas, Annexures

regarding orders passed about batch of 2000 are at Page Nos.435 to 464 of Paper Book.

12. In these Affidavits, in Para No.5 (Page No.1421 of P.B.), the Respondents plead as follows :-

“It is submitted that it is undisputed position that the applicants were given promotions to the posts of P.S.I. purely temporary, ad hoc and as a stop gap arrangements, against the vacancies available at that time against the quota of 50% (direct nominees, i.e. as per Rule 3(c)) and 25% i.e. (as per Rule 3 (b)) of the P.S.I. (Recruitment) Rules, 1995.

13. Furthermore, in Para No.7 (Page Nos.442 and 443 of P.B.), they plead as under :-

“7. With reference to Paragraph No.5 and 8, I say that the averments made therein are not correct and hence denied on the basis of the following submissions viz :

(i) The vacancies shown in chart in this para of the affidavit are the total vacancies of PSI in State of Maharashtra. The vacancies of the applicant's quota are nowhere shown in this chart. The applicant has simply calculated the 25% of the total vacancies, which is a wrong circulation. The vacancies available for different quota are different, and it cannot be calculated, as have been calculated by the applicants by calculating the 25% of total vacancies. By doing this the applicant is miscalculating and misguiding this Hon'ble Tribunal to ascertain the vacancies in their quota.

(ii) The averments are also denied on the factual position that the regular promotions to the post of P.S.I., i.e. as per the 25% quota, i.e. as per Rule 3(a) of the P.S.I. (Recruitment) Rules, 1995 have been given as under :

(a) The vacancies from the said promote quota available for the years 2000 to 2010 have been filled by giving regular promotions to the 1261 candidates declared pass in the Departmental Qualifying Examination held in the year 2000.

(b) Then, the vacancies from this quota, i.e. promote have been filled from vacancies arisen for the year 2010 onwards by giving the regular promotions of P.S.I. to the successful candidates from the Departmental Qualifying Examination held in the year 2002.

- (c) The vacancies available for the promotes from the year 2011 to 31.12.2016 have been filled on the basis of the Departmental Qualifying Examination held for promotion to the post of P.S.I. held in the year 2013.
- (d) Thus, it is respectful submission that there are no vacancies from the quota of promotes, for the period 2000 to 2010 for giving the retrospective seniority from 2002, i.e. passing of examination or from the date of giving the applicants ad hoc promotion i.e. from 2003 at all.”

14. Furthermore, in reference to above, the Respondent Nos.1 to 3 have shown vacancy position and filling-in the posts of P.S.I. falling under Section 3(a) of 'Recruitment Rules 1995' in the form of Chart on Page No.432 of P.B, which is as under :-

“This present affidavit is filed to point out the vacancy position at the relevant time which is described in the chart as follows:

Vacancy position for the post of P.S.I. from 3(a) category (category of Applicants) for this period was as follows :

Year	Sanctioned Post in 3(a) category	Already Occupied Posts	Posts filled from the Exam of the year 2000	Vacant Posts
2003	1706	1612	94	0
2004	1706	1555	151	0
2005	1706	1634	72	0
2006	1770	1651	119	0
2007	1840	1714	126	0
2008	1865	1861	4	0

Year	Sanctioned Post in 3(a) category	Already Occupied Posts	Posts filed from the Exam of the year 2002	Vacant Posts
2009-10	1866	875	926 (the Applicant is given promotion at Sr. No.924)	65

15. The entire edifice of the Applicants' claim that there were vacancies of regular promotion in the year 2003 onwards, but instead of regular promotion, they were promoted on ad-hoc basis is based upon the information which is obtained by the Applicant under RTI. Before filing of O.A, the Applicant availed information under RTI Act (Page No.86 of P.B.) which is set out in Para No.9 above in the Judgment. On the basis of it, the Applicant sought to contend that 25% vacancies for quota to be filled in under Rule 3(a) of 'Recruitment Rules 1995' were available to them as set out in Para No.8 above of this Judgment. After remand also, the Applicants have sought information under RTI ACT (Page No.418 of P.B.) dated 20.07.2019 wherein it is shown that 3004 posts of PSI were vacant in 2000. Adverting to this information sought under RTI, the learned Advocate for the Applicant emphasized that there were vacancies, and therefore, the Applicants are entitled for deemed date of promotion from the date of ad-hoc appointment.

16. However, the learned P.O. sought to explain that only posts were created but those were to be filled-in subject to financial approval as and when the same is available, and therefore, mere creation of post was not enough.

17. As such, it is necessary to find out whether there exists vacant posts to fill-in the quota under Rule 3(a) of 'Recruitment Rules 1995'. True, in information sought under RTI in 2000, 3004 posts of PSI shown created. Out of it, 750 posts were to be filled in under Rule 3(a) of 'Recruitment Rules 1995' i.e. 25% by promotion for departmental candidates. Indeed, in promotion order dated 03.07.2003 itself, there is specific mention about the non-availability of posts and the nature of ad-hoc promotion given to the Applicants, which is as follows :-

“अट १ :- सदरची पदोन्नती तात्पुरती (अभावित) असल्याने त्यांना स्थानापन्न पोलीस उपनिरीक्षक या पदावरील सेवाज्येष्ठता किंवा या पदाच्या वेतनश्रेणीतील वार्षिक वेतनवाढ देय होणार नाही.

अट २ :- स्थानापन्न पोलीस उपनिरीक्षक या संवर्गात या पुढे पोलीस उपनिरीक्षक यांची पदे उपलब्ध होतील त्यानुसार त्यांच्या ज्येष्ठतेप्रमाणे त्यांना नियमित स्थानापन्न पोलीस उपनिरीक्षक या पदावर पदोन्नती देण्याबाबतचे आदेश यथाअवकाश निर्गमित करण्यात येतील.”

18. The Applicants have accepted ad-hoc promotion without any demur knowing that regular vacancies were not available and they will be accommodated in regular vacancies as and when available subject to availability of posts. In this behalf, reference of G.R. dated 15.07.2000 is essential, which is at Page No.32 of P.B. which shows that, by the said G.R, 1500 posts of PSI were created and out of which 750 posts were for departmental promotion under Rule 3(a) of 'Recruitment Rules 1995'. However, it was only creation of posts and not actual availability of posts as explicit from the contents of G.R. that those posts will be filled-in after grant of financial approval only. This being the position, it is quite clear that there is no such actual vacant post to be filled-in immediately under Rule 3(a) of 'Recruitment Rules 1995'.

19. As rightly contended by learned P.O, prior to the batch of Applicants, the candidates who have passed departmental examination in 2000 were to be accommodated first. As per the Affidavit filed by Respondent Nos.1 to 3, the candidates passed examination in 2000 were accommodated from 2003 to 2009 as and when vacancies were available, and therefore, the batch of 2002 to which Applicants belong was taken up from 2009-2010 onwards. The Respondent Nos.1 to 3 have also filed Additional Affidavit showing the vacancy position in tabular form which is set out in Para No.15 of the Judgment above. It is explicit that from 2003 to 2008, there were no vacancies to be filled in from the batch of 2002 as the batch of 2000 were required to be accommodated first and that is why, the batch of Applicants was taken up onwards 2009-2010. This being the position, it cannot be said that Respondent Nos.1 to 3 have suppressed vacancy position and deliberately withheld the promotions of batch of 2002 to which the Applicants belong. I see no reason to

doubt the vacancy position as reflected from Affidavits filed by Respondent Nos.1 to 3, which are based upon official record.

20. In this reference, it would be imperative to take note of the event took place while accommodating batch of 2000. The Respondent Nos.1 to 3 have placed on record letter dated 02.07.2011 during the course of hearing (which is taken on record and marked by letter 'X'). This letter was issued by Director General of Police addressed to Government explaining the position of accommodating batch of 2000. The perusal of letter makes it quite clear that, after accommodating some candidates of 2002, there were 333 candidates remained to be accommodated for want of vacancy in departmental quota contemplated under Rule 3(a) of 'Recruitment Rules 1995'. In letter, it is stated that those 333 candidates were temporarily promoted on ad-hoc basis considering the urgency and the requirement of the Department. The DGP, therefore, requested Government to enhance quota of departmental candidates for 2004. However, the Government by its letter dated 2nd August, 2011 rejected the request of DGP. This aspect lends support to the contentions raised by Respondent Nos.1 to 3 that there were no vacancies available from the quota of Applicants while they were promoted on ad-hoc basis and fortify the conclusion that there were no such vacancies at the relevant time for quota of Rule 3(a) of 'Recruitment Rules 1995'.

21. As such, the information collected by the Applicants under RTI, which is the only foundation of the claim is satisfactorily explained by Respondent Nos.1 to 3. There is nothing concrete to establish that, despite the availability of vacant posts from the quota of Applicants, they were promoted on ad-hoc basis only to exploit their services. Material placed on record clearly demonstrates that only posts were created, but there was no financial approval to fill in the posts and secondly, prior to the batch of Applicants who have passed the departmental examination in 2002, one earlier batch of 2000 were in

queue and those were accommodated from 2003 to 2009, and thereafter, the batch of Applicant was taken up onward 2009 and regular appointments were given to them upto 2011.

22. Significant to note that it is nowhere case of the Applicants that the candidates junior to them were appointed on regular basis prior to them. This aspect is vital which suggest that there was no such discrimination in the appointment of the Applicants. Had any junior was appointed on regular basis then the Applicants would not have failed to plead it and to bring such material on record. Suffice to say, it cannot be said that despite the availability of vacancies, the Applicants were not given regular promotions deliberately.

23. As stated above, admittedly, when the Applicants were appointed on ad-hoc basis in 2003 onwards, they were promoted from other quota falling under Rule 3(b) and (c). This aspect again fortifies the conclusion that there was no such regular quota falling in category Rule 3(a) of 'Recruitment Rules 1995', and therefore, they were temporarily accommodated by giving ad-hoc promotion from other quota of Rule 3(b) and (c) of 'Recruitment Rules 1995'. At the cost of repetition, it is necessary to point out that in appointment order itself, it was made clear that the Applicants are being promoted purely on ad-hoc basis without their entitlement to yearly increment and they will be accommodated in officiating capacity as and when posts would become available in future. The Applicants have not raised any grievance and continued to work on *ad-hoc* basis and later, they were taken in regular cadre in 2010 and 2011. Whereas, the O.A. is filed in 2015 which gives rise to inference that the Applicants have acquiesced the position. They have approached the Tribunal quite belatedly and raking up the stale issue of deemed date of promotion.

24. Ms. Khemka, learned Advocate for Respondent Nos.5 to 7 referred to the following decisions in support of her submission that

where initially the appointment is purely on ad-hoc basis as a stop gap arrangement and not according to Rules, the officiation in such post cannot be taken into account for considering the seniority. She rightly pointed out that the Applicants have filed the O.A. quite belatedly and raking up the stale issue of deemed date of promotion.

- (i) Service Direct Recruit Class-II Engineering Officers' Association V. State of Maharashtra (AIR 1990 SC 1607);
- (ii) State of West Bengal and Ors. V. Aghore Nath Dey and Ors. (1993 (3) SCC 371);
- (iii) Chief of Naval Staff and Another V. G. Gopalakrishna Pillai & Ors. ((1996) 1 SCC 521);
- (iv) Ashwani Kumar V. State of Bihar (1997(2) SCC 1);
- (v) M.K. Shanmugam V. Union of India (AIR 2000 SC 2705);
- (vi) Santosh Kumar V. G.R. Chawla ((2003) 10 SCC 513);
- (vii) Umarani V. Registrar, Cooperative Societies, (SC) (2004 (7) SCC 114);
- (viii) Sanjay Baliram Dhamal V. State of Maharashtra (Bombay) (DB) (2008 (2) Mh.LJ 580);
- (ix) State of Uttaranchal V. Shri Shiv Charan Singh Bhandari ((SC) 2013 (12) SCC 179);
- (x) State of Maharashtra V. Shri Ashok Laxman Sawant, (Bombay) (DB) (2017 (1) AIR Bom.R.659);
- (xi) Kum. C. Yamini V. State of Andhra Pradesh & Another (Civil Appeal No.6296 of 2019 (arising out of S.L.P.(C) No.20990 of 2017);
- (xii) Dr.(Mrs.) Chanchal Goyal V. State of Rajasthan, (2003) AIR (SC) 1713).

25. The conspectus of the above decision is that where the appointment is purely on ad-hoc basis as a stop gap arrangement and not according to Rules, the officiation of that post cannot be taken

into account for considering the seniority. In the present case, admittedly, the Applicants were appointed purely on ad-hoc basis from other quota with clear understanding that they will be accommodated on regular vacancy subject to its availability in future and they will not be entitled to increment during the period of ad-hoc promotion. They accepted promotion without any demur and after getting regular promotion in 2010 and 2011, filed O.A. in 2015 for deemed date of promotion for considering the date of ad-hoc promotion. This claim of the Applicants is obviously untenable in view of settled legal principles culled out from the aforesaid decisions and in the light of factual position of non-availability of posts.

26. The necessary corollary of aforesaid discussion leads me to conclude that the Applicants have failed to establish that there existed vacancies falling in quota Rule 3(a) of Recruitment Rules. Having failed to do so, consequently, the question of grant of deemed date does not survive. They were appointed purely on ad-hoc basis from other quota falling in Rule 3(b) and (c), and therefore, cannot claim deemed date of promotion under the quota Rule 3(a) from the date of ad-hoc appointment. Consequently, the Applicants are not entitled to the relief claimed and O.A. deserves to be dismissed. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai

Date : 05.12.2019

Dictation taken by : S.K. Wamanse

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