

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.1124 OF 2017**

**(Subject : Promotion)**

Nitendrasingh Kumarsing Patil )  
Working as Assistant Police, )  
Inspector, (Protection of Civil Rights) )  
Maharashtra Police Head Quarter, )  
Old Council Hall, Shahid Bhagatsingh Marg, )  
Mumbai 400 039 )

**....Applicants.**

**Versus**

1. The State of Maharashtra, )  
Through Additional Chief Secretary, )  
Home Department, )  
having office at Mantralaya, )  
Mumbai 400 032 )

2. The Director General of Police and Inspector )  
General of Police, Maharashtra State )  
Having office at Old Council Hall, )  
Shahid bhagatsingh Marg, Mumbai 400 039 )

**....Respondents**

Shri Chaitanya Pendse, the learned Advocate for the Applicant.

Ms. S.P. Manchekar, the learned Chief Presenting Officer for the Respondents.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

RESERVED ON : 07.12.2018.

PRONOUNCED ON : 19.12.2018

**J U D G M E N T**

1. This O.A. pertains to the business allotted to Division Bench, Administrative Member Shri P.N. Dixit, is enable to take this case because he was part of process which is impugned.

2. Learned Advocate for the Applicant and the learned C.P.O. for the Respondents agreed that let the O.A. be heard by Chairman sitting Singly. Hence O.A. is taken up for final hearing by Chairman sitting singly.

3. Heard Shri Chaitanya Pendse, the learned Advocate for the Applicant and Ms. S.P. Manchekar, the learned Chief Presenting Officer for the Respondents.

4. By this Original Application, Applicant has challenged the order dated 02.01.2017.

By impugned order the decision is taken which reads as follows:-

“स.पो.नि. नितेद्रसिंह कुमारीसिंग पाटील यांना पोलीस निरीक्षकपदी पदोन्नतीकरिता सन २००७ च्या निवडसूचीवर पात्र ठरविण्यात आले आहे. परंतु त्यांचेविरुद्ध खालील प्रकरणे प्रलंबित असल्याने त्यांचे पदोन्नती विषयीचे प्रकरण सिलबंद लिफाफ्यात ठेवण्याचा निर्णय विभागीय पदोन्नती समितीने घेतला आहे.”

(Quoted from page 11, Exhibit-A, of the paper book of O.A.)

5. The reasons which have led to taking of the said decision are incorporated in the said paragraphs which reads as follows :-

“१. स.पो.नि. पाटील यांना निलंबनातून मुक्त करून शासन सेवेत पुनःस्थापित केल्यानंतर त्यांच्या नागरी हक्क संरक्षक विभागात नेमणुकीबाबतचे आदेश दिनांक १७/१/२०१४ रोजी स्विकारले असून ते अद्यापपावेतो तेथे कर्तव्यार्थ हजर झालेले नाहीत. सदर गैरहजेरीच्या अनुषंगाने प्राथमिक चौकशीचा अहवाल वि.पो.म.नि.ना.ह.सं., म.रा. मुंबई यांनी या कार्यालयास सादर केला आहे, त्यावर कार्यावाही चालू आहे.

२. स.पो.नि. पाटील यांच्याविरुद्ध मनोर पोलीस ठाणे (ठाणे ग्रामीण) गुरनं १११/०६ या गुन्हासंदर्भात कलम १९७ जा.फौ.सं. अन्वये न्यायालयात दोषारोपपत्र दाखल करण्याकरीता पुर्वमंजूरी मिळण्याबाबत अपर पोलीस महासंचालक, गु. अ.वि., म. रा.च्य, पुणे यांचा प्रस्ताव शासनास सादर करण्यात आला आहे, त्यावरील शासन आदेश प्रलंबित आहेत.

३. सपोनि पाटील हे मनोर पोलीस ठाणे (ठाणे ग्रामीण) येथे कार्यरत असताना त्यांच्या कर्तव्यातील गंभीर स्वरूपाच्या कसुरीच्या अनुषंगाने आदेशीत करण्यात आलेल्या विभागीय चौकशीत त्यांना या कार्यालयाचे आदेश क्र.पोमसं/११/२२/६/१३/२००६, दि.९/६/२०१६ अन्वये “**त्यांचे वेतन वेतनावाढीच्या दोन टप्प्यांनी एक वर्षाकरिता कमी करणे**” ही शिक्षा देण्यात आली आहे. परंतु स.पो.नि. पाटील हे दिनांक १७/१/२०१४ पासून कर्तव्यावर गैरहजर असल्यामुळे त्यांच्या त्या शिक्षेची अंमलबजावणी अद्याप सुरु करण्यात आलेली नाही.”

(Quoted from page 11, Exhibit-A, of the paper book of O.A.)

6. The State admits the position that as per policy of Government as was in vogue at relevant time, whenever Criminal Case is pending conscious decision has to be taken, as to whether the Government servant be promoted. Hence, while considering the challenge the reasons mentioned in the order quoted in foregoing paragraph requires to be examined.

7. It is seen that the Departmental Promotion Committee was required to consider applicant's eligibility /entitlement with reference to date of consideration i.e. in 2007. The reason considered by Committee spelt out from 1<sup>st</sup> paragraph of the decision quoted in foregoing paragraph No.5 pertains to 2014 and not 2007, hence, the said fact is irrelevant and extraneous and hence said ground is held to be erroneous to the matter to be considered.

8. This Tribunal shall now consider third reason. It is an accepted position, as on the date of hearing that applicant's appeal was allowed and now i.e. by order dated 09.06.2016, the applicant has been punished by reducing his pay by two stages of annual increment.

9. In so far as second reason is concerned, it appears that the policy of the Government is to take conscious decision by the Departmental Promotion Committee, D.P.C. after applying its mind to the facts of the case, upon the merit of the case, and based thereon, the decision as to whether in view of pendency of the said criminal case applicant should be promoted. However this has not been done.

10. The language employed in paragraph 2 discloses refusal to consider applicant's case for promotion apparently on the ground of pendency and hence this case. Application of mind to the factual matter and merit and effect of nature of involvement of applicant in said offence and its gravity is not done. In fact record ought to have been called and considered after application of mind to it.

11. This approach of the D.P.C. is in the nature of shirking responsibility and refusal to apply its mind and hence impugned order deserves to be quashed and set aside and is accordingly set aside.

12. Respondents No.1 and 2 are directed as follows :-

- (a) Hold fresh Departmental Promotion Committee (D.P.C.).
- (b) Place before D.P.C. entire material as prevailed with reference to 2007, the year in which applicant's case was being considered, including draft charge-sheet etc. as would be available and in existence in relation to Crime No.111 of 2006.

13. All that prima facie, appears is that after State took more than 12 years to decide the matter of sanction as to whether the offence is serious be kept in mind.

14. Original Application is partly allowed. Decision is to be taken by the Committee within three months from the date of receipt of this order.

15. Steno copy and Hamdast is allowed to learned C.P.O..

16. Learned C.P.O. is directed to communicate this order to the Respondents.

Sd/-

**(A.H. Joshi, J.)**  
**Chairman**

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