

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 394/2011**

Devidas son of Somaji Khaparde,  
Aged about 59 years, Occ. Retired Govt. Servant,  
Resident of 14, Adivasi Gruha Nirman Society,  
Trisharannagar, Khamla, Nagpur-25.

**Applicant.**

**Versus**

- 1) The Commissioner of State of Excise,  
Old Custom House, Fort,  
Mumbai.
- 2) The Secretary,  
Home Department, Mantralaya,  
Mumbai-32.

**Respondents**

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**Shri P.S. Wathore, Advocate for the applicant.**

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

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

**Dated :- 30/03/2017.**

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**ORDER -**

Heard Shri P.S. Wathore, the Id. Counsel for the applicant  
and Shri H.K. Pande, the Id. P.O. for the respondents.

2. The applicant is claiming deemed date of promotion to the  
post of Sub-Inspector (State Excise) w.e.f. 01/01/1988 and also a  
declaration that the applicant should have been promoted to the post  
of Inspector (State Excise) on or immediately after the receipt of caste

validity certificate dated 09/03/2010. In the alternative he has claimed declaration that he is entitled to time bound promotion to the post of Inspector (State Excise) w.e.f. 01/01/2010 after he had completed 12 years of continuous service in the post of Sub-Inspector (State Excise).

3. The applicant was appointed to the post of Police Constable in State Excise Department vide order dated 17/08/1974. The seniority list of the different cadres of the post in State Excise Department was ordered to be corrected vide Judgment 22/03/1990 in W.P.No.1134/1988 by the Hon'ble High Court, Bench at Nagpur in the ratio of 3:1. In view of the said Judgment the Rules of Recruitment were also published on 01/01/1993.

4. According to the applicant, the respondent authority did not comply with the order passed by the Hon'ble High Court and therefore he has filed O.A.No.160/1993. In pursuance of this statement made in that O.A., the applicant was promoted on 30/12/1997 to the post of Sub-Inspector. In fact he was actually promoted on 07/01/1998.

5. In the meeting dated 04/06/2008 the respondents decided to promote the applicant and referred the concerned candidates to the Caste Scrutiny Committee. Accordingly, the applicant submitted his application in prescribed proforma on 25/08/2008. The caste validity

certificate was issued on 09/03/2010 and the applicant stood retired on superannuation on 31/05/2010. No deemed date of promotion was granted to the applicant and hence this O.A.

6. According to the respondents, the applicant was not eligible for the promotion to the post of Sub-Inspector in 1988. The applicant could not produce any documents on record to show that any junior to the applicant was promoted. It is stated that the applicant has filed O.A.No.160/1993 and the said O.A. was disposed of along with O.A.No.1054/1993 by this Tribunal and the applicant's claim for promotion to the post of Sub-Inspector w.e.f.01/01/1988 was rejected by the Tribunal vide order dated 14/08/1996.

7. It is further stated that the departmental examination was held in 1993 and the applicant was promoted on 30/12/1997 and hence the applicant's claim for promotion w.e.f. 01/01/1988 is not tenable.

8. As regards applicant's claim for the post of Inspector, it is stated that the caste validity certificate is required to be obtained by the employee, but the applicant failed to produce that certificate in time. He produced the certificate on 18/03/2010 and was accordingly promoted. The applicant could not be promoted earlier as he failed to produce the caste validity certificate.

9. The respondent no.2 also filed additional affidavit and reiterated the defence. It is stated in the said affidavit that the officers who are senior as per the gradation list to the applicant like Sub-Inspector Shri A.D. Chabukswar and Shri M.L. Valhe, who were of the same caste as that of applicant (S.C.) were promoted vide order dated 17/02/2010 and the promotion order was issued in respect of senior as well junior officers. However, the applicant could not be promoted as he did not produce the caste validity certificate.

10. The applicant filed Rejoinder and submitted that the respondents have admitted that juniors to the applicant were promoted and therefore the applicant should have been promoted from the date of his juniors were promoted. It is stated that in 1998 there was no G.R. compelling the employees to produce the caste validity certificate.

11. I have perused the order in O.A.No.160/1993 along with O.A.No.1054/1993. Admittedly the applicant himself has filed O.A.No.160/1993. It is material to note that in the said O.A. also the applicant had claimed deemed date of promotion w.e.f. 01/01/1988. While disposing of said application, this Tribunal has observed in para-12 that there is no substance whatsoever in O.A.N.160/1993 and therefore it was accordingly rejected. Thus the claim of the applicant for deemed date of promotion to the post of Sub-Inspector had already

been rejected by this Tribunal in O.A.No. 160/1993. So far as the applicant's claim for promotion is concerned in para-11, it is observed as under :-

*“(11) In the above context, it may also be stated that on behalf of the respondents, we are told that all these petitioners appeared for the written examinations as also for physical fitness test on 12/03/1993, petitioner no.1 in O.A.No.160/1993 was not considered, because as on that date he had become age barred. Other petitioners failed in the viva-voce, fitness test as also in the written test, but some candidates made representations that they could not appear for physical test as also for viva-voce and the written test on the aforesaid date because of the Bomb Blast in Bombay on that date. Therefore, all the eligible candidates were again called giving them a second chance. Therefore, all these petitioners again appeared at the time of the second chance. However, petitioner no.1 in O.A.No.160/1993 was again not considered as he had become age barred other petitioners appeared for physical test as also for viva-voce and written test. Petitioner no.2 in O.A.No.160/1993 namely Shri Devidas Khaparde and the petitioner in O.A.No.1054/1993 have succeeded and they are being promoted. It is said that the orders in their cases will be issued. As regards petitioner no.3 in O.A.No.160/1993 namely Shri Balwant, he has failed even in the second chance”.*

12. There is nothing on record to show that any junior to the applicant has been promoted in 1988 or till the applicant was promoted to the post of Police Sub-Inspector. As already stated the applicant's claim has already been rejected for deemed date of promotion in O.A.No.160/1993.

13. It is clear that there is no legal force in the contention of the applicant that he is entitled to deemed date of promotion to the post of Police Sub-Inspector since 1988. So far as the applicant's claim to the post of Police Inspector is concerned, it is material to note that the applicant was promoted to the said post and his case was considered in the meeting of the Committee on 18/03/2009. The applicant was found fit for promotion and accordingly the promotion orders have been issued subject to production of caste validity certificate. It seems that the applicant produced the caste validity certificate on 09/03/2010 and came to be retired on superannuation on 31/05/2010. The applicant was therefore rightly promoted on the date on production of caste validity certificate. Admittedly, the order of promotion to the post of Police Inspector was subject to the production of caste validity certificate and since he could not produce the caste validity certificate, the department cannot be blamed for not issuing the promotion order.

14. In the rejoinder affidavit the applicant has submitted that the respondents have admitted that some juniors to the applicant were promoted. However it will be cleared that juniors were given promotion because they were able to produce the caste validity certificate and the applicant could not produce the same and therefore in such circumstances it cannot be said that the juniors were given promotion order illegally.

15. In view of discussion in the foregoing para, I therefore do not find any merit in the O.A. Hence, the following order.

**ORDER**

- (i) The O.A. stands dismissed with no order as to costs.

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