

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO 42 OF 2015

DISTRICT : MUMBAI

Shri Nishikant Krushnarao More)
Service as Additional Superintendent of)
Police, M.T, Mumbai.)
R/o: G-14, 15, Lane No. 5,)
Sector-9, C.B.D, Belapur, Navi Mumbai.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Addl. Chief Secretary,)
Home Department,)
Mantralaya,)
Mumbai.)
2. The Director General of Police,)
Colaba, Mumbai 400 001.)
3. Shri K.Y. Joshi,)
Superintendent of Police,)
Motor Transport, Pune.)
4. Chief Secretary,)
Government of Maharashtra,)
General Administration Department,))
Mantralaya, Mumbai 400 032.)...**Respondents**

Shri J.N. Kamble, learned advocate for the Applicant.

Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents no 1, 2 & 4.

None for Respondent no. 3.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 04.01.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri J.N. Kamble, learned advocate for the Applicant, Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents no 1, 2 & 4. None for Respondent no. 3.

2. This Original Application has been filed by the Applicant seeking directions to the Respondents to consider the case of the Applicant for promotion to the post of Deputy Inspector General of Police (Motor Transport).

3. Learned Counsel for the Applicant argued that the Applicant was appointed as Assistant Commissioner of Police (Motor Transport) on 6.7.1988. He belongs to

Scheduled Caste (S.C) category. Learned Counsel for the Applicant stated that two posts of Deputy Commissioner of Police / S.P (M.T) became available on 12.7.2007 and the Applicant was eligible to be promoted to one of the posts. As per the G.R dated 29.3.1997, one of the two posts should have been filled by a backward class candidate. As the Applicant was the only such candidate, he should have been promoted. As the Respondents did not do it, the Applicant filed O.A no 396/2007, before the Nagpur Bench of this Tribunal. By order dated 2.12.2009, this Tribunal while disposing of the O.A, as well as Contempt Application, directed the Respondents to consider the prayer of the Applicant for promotion to the post of Deputy Commissioner of Police / S.P (M.T). The Applicant was then given ad hoc promotion as Addl. Superintendent of Police (M.T), which was later held as equivalent to the post of Deputy Commissioner of Police / S.P (M.T), by order dated 31.3.2010. He was given regular promotion on 31.1.2013 and deemed date of promotion w.e.f 21.4.2011, which was the date when revised Recruitment Rules for the post of Superintendent of Police / Deputy Commissioner of Police (M.T) were notified. Learned Counsel for the Applicant argued that despite order dated 31.3.2010 in O.A no 772/2010, the Applicant was not granted proper deemed date of promotion. If he was granted the correct deemed date of promotion in 2007 he would have been eligible to be promoted as D.I.G (M.T) in 2012 when two posts of D.I.G


(M.T) were created and as per draft recruitment rules, five years experience in the lower post was required for promotion to the post of D.I.G (M.T). Learned Counsel for the Applicant argued that one post of D.I.G (M.T) has already been filled by an open candidate, while the other post is vacant and the Applicant should be considered for promotion to that post which has to be filled by Backward Class candidate. Learned Counsel for the Applicant argued that reservation for promotion was brought in Maharashtra by the Maharashtra State Public Services (Reservation for Scheduled castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward category and Other Backward Classes) Act, 2001. This Act came into force before the Applicant was required to be considered for promotion to the post of Superintendent of Police/Deputy Commissioner of Police (M.T) in 2007 and then for the post of D.I.G (M.T). The Respondents should have followed G.R dated 29.3.1997 and applied 100 point roster for promotion. Learned Counsel for the Applicant stated that as per Government Circular dated 15.2.2005, minimum experience of 3 years in a lower post is required for promotion at all levels from Group 'C' to Group 'A' posts, unless there is a specific provision in the recruitment rules for higher experience. As the Recruitment Rules for the post of D.I.G (M.T) have not yet been finalized, the Applicant was eligible to be considered

for promotion as D.I.G three years after 21.4.2011, when he was given deemed date of promotion as S.P (M.T).

4. Learned Chief Presenting Officer (C.P.O) argued that the Applicant in the present O.A is seeking the following relief, viz:

“10(b) That by a suitable order/direction the Respondent may kindly be directed to consider the case of the Applicant and recommend the name of the Applicant to the Departmental Promotion Committee.”

The Applicant was given deemed date of promotion as S.P (M.T) w.e.f 21.4.2011. When the Departmental Promotion Committee met on 23.6.2015 to consider promotion to the post of D.I.G (M.T), the Applicant did not have requisite 5 years experience in the lower post of S.P (M.T) required as per the draft recruitment rules for the post. Learned C.P.O argued that in the case of Union of India & Another Vs. V. Ramakrishnan & others (2005) 8 S.C.C 394, Hon'ble Supreme Court has held that the provisions in the draft recruitment rules can be followed till the rules are finalized. Now the Applicant will complete 5 years on the post of S.P (M.T) on 21.4.2016 and the Applicant's case for promotion as D.I.G (M.T) will be considered in due course.



5. The Applicant is claiming that if he was given correct deemed date of promotion in the post of S.P (M.T) w.e.f 12.7.2007, when two posts were vacant, he would have been eligible to be promoted as D.I.G (M.T) when D.P.C met on 23.6.2015 to consider such promotion. In para 7.5 of the O.A, it is stated by the Applicant that:-

“7.5 That the Applicant was directly appointed as Assistant Commissioner of Police, Motor Transport, Mumbai on 6.7.1988. His continues service up to 2007 is more than 9 years. The post of Superintendent of Police, Dy. Commissioner of Police, Motor Transport section on 2007 two posts of promotion was vacant. Out of these two post, as per the 50% bindu namawali, one post goes to reserved category. The Respondent has not considered the name of the reserved candidate of the Applicant.”

In the affidavit in reply filed by the Respondent no. 1 on 18.2.2015, is stated in para 17 that:-

“17. With reference to Para no. 7.5 of the O.A, it is submitted that the averments raised by the Applicant are similar to that of the averments raised by him in Para no 6.5 of the O.A, and the same are denied on the basis of submission made while dealing with the Para no. 6.5 above.”

Para 6.5 of the O.A is dealt with in para 5 of the affidavit in reply, which reads:-

“5. With reference to Para no 6.4 and 6.5 of the O.A, it is submitted that as per official records his date of enlistment in the cadre of Deputy Superintendent of Police, Motor Transport is 9.8.1999. Also the Applicant belongs to S.C category. However, it is not binding on the Respondent to give him regular promotion on the further post in the hierarchy, till he fulfills criteria fixed for the promotion to that post.”

6. It is clear that the Respondent no. 1 has not given a clear reply to the averment made by the Applicant in para 7.5 of the O.A. From the seniority list of S.P (M.T) as on 1.1.2014 published on 30.6.2015, it is seen at p. 129 of the Paper Book that the names are in the following order:-

Sr No	Name of the person	Category	Date of appointment as S.P (M.T)
1.	Shri A.P. Patil	Open	3.10.2003
2.	Shri K.Y Joshi	Open	1 .12.2007
3.	Shri N.K. More	S.C	18.2.2013 (deemed date 21.4.2011)

The Applicant claims that two posts of S.P (M.T) were vacant on 12.7.2007. The Respondents have not covered this issue in their reply. However, in order dated 4.2.2014, granting deemed date of promotion to the Applicant, it is stated that :-

“ पोलीस अधीक्षक / पोलीस उपआयुक्त, मोटार परिवहन” या संवर्गाचे दि.२१.४.२०११ च्या अधिसूचनेन्वये सेवाप्रवेश नियम अधिसूचित झालेले असून त्यापूर्वी, या संवर्गात मंजूर असलेल्या ३ पदांपैकी २ पदे पदोन्नतीने व १ पद सरळसेवेने भरण्यात येत होते. यापैकी पदोन्नतीच्या कोट्यातील पदावर श्री. अतुल पाटील व श्री. के.वाय जोशी हे २ अधिकारी कार्यरत होते. यास्तव, त्यावेळी श्री. मोरे यांना पदोन्नती देणे शक्य झालेले नाही.”

It appears that out of two posts of S.P (M.T), one post was filled by promoting Shri A.P. Patil on 8.3.2003. On 12.7.2007, two vacancies were available, one from promotion quota and another from nomination quota as per the order mentioned hereinabove. One post out of two, from promotion quota was already filled by a person belonging to open category. It is not clear as to why the second post was also filled by a person belonging to open category, viz Shri K.Y Joshi, who was promoted on 1.12.2007. The claim of the Applicant that if he was considered for promotion in the post of S.P (M.T), when the second vacancy in the promotion quota arose on 12.7.2007, he would be eligible to be considered for promotion to the post of D.I.G (M.T) when the D.P.C met on 23.6.2015. Even as per the deemed date of promotion

granted to the Applicant in the post of S.P (M.T) viz 21.4.2011, and as per the provisions of draft recruitment rules, he would be eligible for promotion to the post of D.I.G (M.T) after 21.4.2016 from reservation quota as per G.R dated 29.3.1997.

7. Having regard to the aforesaid facts and circumstances of the case, the Respondents are directed to consider the claim of the Applicant for deemed date of promotion to the post of S.P (M.T) when a vacancy of S.P (M.T) arose in the promotion quota in the year 2007 within a period of 3 months from the date of this order. If the Applicant is found eligible for the deemed date of promotion from any date between 2007 to 2010, he may be considered for promotion to the post of D.I.G (M.T) within a further period of one month. Otherwise, he may be considered for promotion in the normal course and in any case on or before 30.6.2016. The Original Application is disposed of accordingly with no order as to costs.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 04.01.2016
Dictation taken by : A.K. Nair.