

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.434/2005.

Chandu Timaji Dodke,
Aged about 45 years,
Occ-State Govt. Servant,
R/o Plot No.30, Near School Praveen,
Sanmarg Nagar, Hudkeshwar Road,
Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Director General of Police,
(M.S.), Old Secretariat Building,
Chhatrapati Shivaji Maharag Marg,
Mumbai-39.
3. The Superintendent of Police (Rural),
Nagpur.

Respondents

Shri S. Dhole, Learned counsel for the applicant.
Shri S.C. Deshmukh, Ld. P.O. for the respondents.

**Coram:- B. Majumdar, Vice-Chairman and
Justice M.N. Gilani, Member (J).**

Dated:- 4th July, 2014.

Order

Per: M.N.Gilani, M(J)

In this O.A., issue involved for consideration is whether the applicant deserves to be granted deemed date of promotion to the post of Police Inspector, w.e.f. 19.5.2003.

2. The applicant joined the Police department as Police Constable in the year 1981. In the year 1988, he was promoted to the post of Police Sub-Inspector. During his service tenure, he received 40 awards for his excellent performance.

3. On 18.5.2003, while he was in-charge of Veltur police station, District Nagpur, some untoward incident occurred. One Bhushan Humane was arrested by A.P.I. Shamrao Tantrapale on the charge of distilling illicit liquor. Magisterial custody of the said Bhushan Humane was obtained. Unfortunately, on 22.5.2003, he died in jail. This was followed by allegations of torture of said Bhushan and then investigation by the C.I.D. The applicant and four other police officers were prosecuted in Sessions Trial Nos. 210, 448 and 515 of 2005. Ultimately on 2.5.2009, the applicant was acquitted of all the charges, although rest of the accused were convicted.

4. It is the case of the applicant that on the basis of his performance and seniority, his case was under consideration alongwith others for promotion to the post of Police Inspector. Accordingly on 19.5.2003, the orders (Annexure A-2) promoting provisionally the applicant and 118 police officers to the post of Police Inspector issued. This was to be given effect to from the date of joining the promotional post. However, for the reason that the applicant was (falsely) involved in the alleged offence of torture, he was denied the posting. The applicant continued to make representations, but in vain. It is the case of the applicant that despite pendency of criminal cases against the officers who are named in para 6 of the application, they were promoted whereas discriminatory treatment is meted out to him (applicant). Ultimately vide order dated 30.5.2007 (Annexure A-6), he was given posting. In the nutshell, his case is that since on account of pendency of criminal prosecution, he was denied posting and this ground did not exist owing to his acquittal in those cases, he is entitled for deemed date of promotion, i.e. the date on which promotion orders (Annexure A-2) were issued.

5. The respondents submitted reply. It is not denied that vide order dated 19.5.2003, the applicant was promoted and so far as he is concerned, the orders were not giving effect to, obviously, owing to the pendency of the criminal case against him. It is stated that the charges levelled against the applicant were of serious nature. Had he been given posting on promotional post, this would have sent wrong signals.

6. Facts which are relevant to decide the controversy with which we are concerned, are not disputed. The Departmental Promotion Committee found the applicant fit for promotion to the post of Police Inspector and, therefore, issued the orders (Annexure A-2). Despite pendency of the criminal case and before the applicant was pronounced not guilty, he was given posting, however, the posting was prolonged for a period of about five years.

7. It is well settled law that the promotion of a person against whom chargesheet has been filed in criminal case may be deferred till the proceedings are concluded. On conclusion of the criminal case and if it ends in acquittal of such an employee and if found suitable, he is entitled for promotion with retrospective effect and particularly from the date on which his juniors were promoted. It is not disputed that vide order dated 19.5.2003 (Annexure A-2), number of officers junior to him were promoted and posted. In case of **Sulekchand and Salekchand V/s Commissioner of Police, 1994 (5) SLR 742-743**, it has been held thus:

“Once the acquittal was on merits the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the departmental enquiry is obviated. It is settled law that though the delinquent official may get an acquittal on technical grounds, the authorities are entitled to conduct departmental enquiry on the self-same

allegations and take appropriate disciplinary action. But, here, the acquittal was on merits. The material on the basis of which his promotion was denied was the sole ground of the prosecution under section 5 (2) and that ground when did not subsist, the same would not furnish the basis for DPC to overlook his promotion. We are informed that the departmental enquiry itself was dropped, by the respondents. Under these circumstances, the very foundation on which the D.P.C. had proceeded is clearly illegal. The appellant is entitled to the promotion with effect from the date his immediate junior was promoted with all consequential benefits”.

8. This is a case where the applicant was already promoted, but owing to registration of an offence and then the criminal proceedings going on, posting of the applicant was deferred. Even before conclusion of the criminal trial, he was favoured with posting order on 30.5.2007 (Annexure A-6). Moreover, it is not the case of the respondents that any departmental enquiry was initiated on the similar set of facts to which the applicant was prosecuted. It is also not the case of the respondents that the learned Sessions Judge, while acquitting the applicant cast any aspersions on him.

9. For the reasons aforesaid, O.A. succeeds in the following terms:

(a) It is declared that the applicant is entitled for deemed date of promotion w.e.f. 19.5.2003 or with effect from the date (whichever is later) when any of the officers junior to him in the list (Annexure A-2) dated 19.5.2003 was given posting, with all consequential benefits like arrears of salary and seniority in the cadre of Police Inspector.

(b) The respondents shall take necessary steps of giving monetary benefits, giving the applicant proper placement

in the seniority list etc within six months from the date of receipt of this order.

(c) No order as to costs.

(Justice M.N.Gilani)
Member (J)

(B.Majumdar)
Vice-Chairman

pdg

