

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.493 OF 2013

DISTRICT : PUNE

Shri Chandrakant Mahadeo Kute.)
420/4/4, Police Officers Quarters,)
Shivaji Nagar University Road,)
Pune - 411 005.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Addl. Chief Secretary,)
Home Department, World Trade)
Centre No.1, 7th Floor, Cuff Parade,)
Mumbai - 400 007.)
2. The Addl. Director General of Police)
and Director, Police Wireless, M.S,)
Pune.)
3. Shri Dattratraya V. Waychal.)
Police Wireless Inspector (ENG),)
C/o. Deputy Superintendent of)
Police Wireless, Kolhapur Range,)
Dist. Police Headquarter Kolhapur,)
Kasba Bavda Road, Kolhapur - 3.)
4. Shri Anil Laxman Raut.)
Police Wireless Inspector (ENG),)
C/o. The Commissioner of Police)



- Ghadhi Chowk, Civil Line,)
Kolhapur - 2.)
5. Shri Sanjay L. Kulkarni.)
Police Wireless Inspector (ENG),)
C/o. Assistant Commissioner of)
Police, Wireless, Santacruz, Opp.)
Opp. Santacruz Police Station,)
Link Road, Santacruz (W),)
Mumbai 400 054.)
6. Shri Dhanjay R. Deshpande.)
Police Wireless Inspector (ENG),)
C/o. The Superintendent of)
Police, Nandurbar, Tokar Talac Road,)
Before Collector Office,)
Nandurbar - 425 412.)
7. Shri Sunil V. Shirsudhde.)
Police Wireless Sub Inspector (ENG),)
C/o. Police Wireless (Railway),)
Ground Floor, N.M. Joshi Marg,)
Byculla West, Mumbai 400 027.)
8. Shri Govind D. Mungase.)
Police Wireless Sub Inspector (ENG),)
Wireless Workshop, C/o. Deputy)
Commissioner of Police, Zone-III,)
Mahatma Fule Chowk, Behind Court,)
Near BSNL Office, Kalyan (W) - 301.)...Respondents

Smt. Punam Mahajan, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 09.08.2016



JUDGMENT

1. This Original Application (OA) made by a Police Personnel working in Wireless Department seeks the relief of deemed date in the select list of September, 1996 to August, 1997 along with consequential service benefits.

2. I have perused the record and proceedings and heard Mrs. Punam Mahajan, the learned Advocate for the Applicant and Shri A.J. Chougule, the learned Presenting Officer for the Respondents.

3. The Applicant was born on 1.1.1969. As present, he is functioning as Police Sub Inspector (PSI) in Wireless Department under the Superintendent of Police, Ahmednagar. Earlier he was posted in the same capacity at Pune Rural. He joined the Police Force on 21.10.1988 as Assistant Sub Inspector (ASI) Radio Mechanic (RM). For him, the next promotion was PSI. In order to achieve that post, he was required to pass RM classification exam, Class-I. He appeared for the said exam in 1996 of which the results were declared on 5.1.1997. It is the case of the Applicant that it was general practice in the department that he ASIs who got through the said exam got the promotion within a short span of time. Apparently,

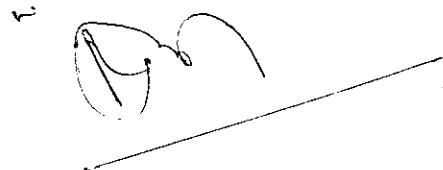


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because there was some delay in case of the Applicant, he seeks a deemed date on the ground that there were several vacancies in that particular cadre at the time relevant hereto. As on 19.9.1997, a list of 19 RMs who came to be promoted as PSIs was issued. It was made clear that those were the temporary promotions and they stood to be reverted, if they failed to pass the RM classification exam, Class-I. On that very day, six ASIs were reverted for the same reason. As at that point in time, the RMs like the Applicant who had already cleared that exam were awaiting for promotion as PSIs.

4. It is further the case of the Applicant that on 4.5.1998, there were reversion of 14 PSIs for having failed to pass the said exam and 4 resigned to avoid reversion. By order of the same date, 18 RMs came to be promoted as PSIs. The Applicant came to be promoted by the order of 6.7.1998 as PSI, a copy of which order is there at Exh. 'A-4' (Page 25 of the Paper Book (P.B)).

5. According to the Applicant, he was not aware of the alleged illegality perpetrated by the Respondents in not reverting the ineligible PSIs back as RMs. He came to know all about the order dated 19.9.1997 which has already been discussed above. But very pertinently, he has

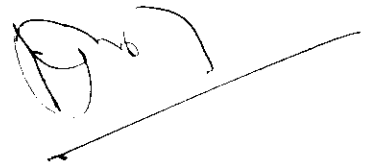


not mentioned the date on which he gained this knowledge and the significance of this aspect of the matter would become clear as the discussion progresses. It was as late as on 4.6.2010 that the Applicant invoked his rights under the Right to Information Act asking for the details of the names of the persons who caught the RM classification exam and were promoted as PSIs from 1993 to 2000. He got that information on 2.9.2010 which according to him was incomplete. But the details mentioned in Para 6.8 of the OA are that they were S/S S.J. Joshi, A.S. Deshmukh, A.S. Kolwaghe, S.K. Agarwal and S.K. Chavan.

6. On 8.9.2011, the Applicant submitted an application to the 2nd Respondent – Additional Director General of Police and Director, Wireless asking for deemed date of January, 1997. According to the Applicant, he was informed that a decision in his matter would have to be kept in abeyance pending the decision of OA 763/2010 of Shri P.T. Sonawane before the Nagpur Bench of this Tribunal. He made another representation on 14.3.2012 pointing out that the facts in Sonawane's case and his case were different. Vide the order dated 13.6.2012 (Annexure 'A-9', Page 48 of the P.B.), his representation came to be rejected, which has given rise hereto. I may have to read that particular communication cum order presently. But

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before I did that, be it noted that even with this OA had become Part Heard, it came to be amended vide the order of 15th March, 2016. By way of amendment, private Respondents 3 to 8 came to be impleaded. It is the case of the Applicants that these private Respondents passed the said examination after the Applicant did it. The Applicant did it on 5.1.1997 while the Respondents 3 to 8 cleared that examination on 24.11.1997. It is the case of the Applicants that had the Respondents been diligent and regular in preparing the select list, the Applicant would not have been made to suffer. The grievance is that the Respondents were not so diligent and regular in the matter of preparation of select list. According to him, the private Respondents 3 to 8 were not eligible for being promoted till 23rd November, 1997, and therefore, their names could not have been there in the select list for the year 1996-97. The private Respondents 3 to 6 have already been promoted and it was heard that the 7th Respondent would be promoted shortly. Therefore, according to the Applicant, if the deemed date was given to him, the private Respondents would not suffer. He claims to be similarly placed as that of the private Respondents and by way of amendment, the relief of a deemed date, "by preparing an independent select list of 1996-97 (September, 1996 to August, 1997)



and other relief etc. is claimed. The earlier relief sought was grant of deemed date to the Applicant.

7. The Respondents have resisted the claim by filing their Affidavit-in-reply and the learned P.O. advanced submissions consistently therewith just as Mrs. Mahajan did consistently with her stand in the OA.

8. It is very pertinent to note that in Para 8 of the Affidavit-in-reply, a plea is specifically raised that ever since 1997, the Applicant was quite aware of whatever facts he has founded his OA on and yet for years and years on, he did not agitate his claim by way of filing of any proceeding which he did in the year 2013. That is a matter of some moment and as I shall be presently pointing out with the guidance of a Judgment of the Hon'ble Supreme Court in **C. Jacob Vs. Director of Geology and Mining, AIR 2009 SC 264**, it is almost decisive though against the Applicant.

9. Before I discuss that particular authority, I may as well mention the fact that Mrs. Mahajan, the learned Advocate for the Applicants referred me to a Judgment of the second Division Bench of this Tribunal which spoke through me in **OA 930/2014 with MA 1/2016 (Smt.**



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Suwarna A. Joshi Vs. State of Maharashtra and 2 others, dated 8th March, 2016, basically for the proposition that the select list must be prepared very year and that was not done in this particular matter. That according to Mrs. Mahajan has caused prejudice to the Applicant.

10. As to the above submission of the learned Advocate, I find that here the exhibition of indolence (Exh. 'A') by the Applicant for about 15 years for all practical purposes has deprived him of any right to successfully ventilate his grievance. The facts emerging from the record have been discussed in extenso and I do not think anything more needs to be said thereabout. Now, there is no apparent justification for this delay although there the Applicant wants to explain away everything by citing lack of knowledge of the events. Had it been a period of 1 or 2 years may be, one could have understood it. But here, just to accept for the asking that for 15 long years, the Applicant did not know the facts and he came to know them later on is highly improbable, if not downright impossible although in my view, it in fact almost verges on impossibility.



11. Now, in **Jacob's** case, the facts were somewhat different but the essence of the mandate was, as I can read it based on the principle that the law must help those who are vigilant rather than those who are indolent. In that particular matter, though in a different set of facts, the Applicant there, "woke up" 20 years afterwards, I must repeat that the facts therein were somewhat different, but the effect of the delay and as to how it affects the over-all administration is something which will be applicable hereto. If one were to take the amendment made by the Applicant as it is, it becomes very clear that over the period of time, the administrative events must have taken place as indeed it is common knowledge, they do which if now disturbed would lead to multiple complications which need to be avoided. In my opinion, this may appear to be the solitary point, but as I mentioned a short while ago, it is decisive. The argument that the deemed date would not affect any third party may appear to be somewhat attractive at first blush, but would not bear judicial scrutiny in the context of the present facts because unmindful of any objections which came 15 years too late as I mentioned above, some important administrative events must have taken place, and therefore, if at this stage, I have to choose between an individual interest and



the interest of a number of employees, I will be constrained to opt in favour of the later.

12. The Original Application for the foregoing is, therefore, dismissed with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
09.08.2016

09.08.16

Mumbai
Date : 09.08.2016
Dictation taken by :
S.K. Wamanse.