

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR, BENCH AT NAGPUR**

**ORIGINAL APPLICATION NO.627 OF 2007
(Subject : Promotion)**

DISTRICT : NAGPUR

1. Prakash Tulsiram Shinde)
R/o. Mahesh Nagar, Near Aditya Traders,)
Plot No.43, Boregaon, Nagpur 13.)
2. Rangrao Wamanrao Bedwal,)
Since deceased through his legal heirs.)
 - 2a. Smt. Rukhmini W/o. Rangrao Bedwal,)
R/o. Flat No.A-10, KC Apartment,)
Manjidana Colony, Katol Road, Nagpur.)
 - 2b. Sunil S/o. Rangrao Bedwal,)
R/o. Flat No.Ā-10, KC Apartment,)
Manjidana Colony, Katol Road, Nagpur.)

...APPLICANTS

VERSUS

1. The State of Maharashtra,)
Through its Secretary,)
Ministry of Home Department,)
Mantralaya, Mumbai 400 032.)

2. The Director General of Police,)
State of Maharashtra,)
In front of Regal Talkies,)
Mumbai.)
3. The Commissioner of Police,)
Civil Line, Nagpur.)
4. The Special Inspector General of Police,)
Motor Pariwahan, Pune 07)
5. The Deputy Superintendent of Police,)
Motor Pariwahan Divisional Work Shop,)
Kotal Road, Nagpur.)

....RESPONDENTS.

Shri V.G. Wankhede, learned Advocate for the Applicants.

Smt. S.V. Kolhe, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN (A)
SHRI J.D. KULKARNI, VICE-CHAIRMAN (J)

DATE : 11.08.2017.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN (A)

J U D G M E N T

1. Heard Shri V.G. Wankhede, learned Advocate for the Applicants and Smt. S.V. Kolhe, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicants challenging the order of reversion and recovery of excess salary paid to them.

3. Learned Counsel for the Applicants argued that the Applicant No.1 was promoted to the post of Assistant Police Sub Inspector w.e.f. 26.06.2000 on regular basis. He was given Time Bound Promotion to that post w.e.f. 01.06.2000. This was done by order dated 16.02.2006 which was issued by the Respondent No.3. The Applicant No.2 (since deceased, represented by his legal heirs) was given regular promotion as Assistant Police Sub Inspector by the same order. Learned Counsel for the Applicants argued that they were initially recruited as Police Constables on 01.08.1974 and 28.05.1979 respectively. Since, 1983, they were posted as Drivers and they also completed training at Pune. The Applicant No.1 was promoted as Head Constable Driver, (Mechanic II) in the year 1988 while the Applicant No.2 was promoted on 01.07.1991 in the same capacity. The Respondent no.3 passed order dated 08.10.2007 cancelling the promotion granted to the Applicants by order dated 16.02.2006. This was done behind the backs of the Applicants without giving them any notice. The excess amount paid to them was ordered to be recovered. Learned Counsel for the Applicants argued that the Applicants had worked for 12 years in the post of Head Constable. They were clearly eligible to be given Time Bound Promotion in pay scale of Assistant Police Sub-Inspector (A.S.I.) even if it was

held that regular posts to promote them as A.S.I. were not available. Learned Counsel for the Applicants further argued that the cadres of Drivers Constables and Head Constables were merged with the Executive Cadres by the Circular dated 01.03.1999 issued by the Respondent No.2 i.e. Director General of Police, M.S.. As such, to claim that the Applicants were not the employees of the Respondent No.3 has no legal basis. Learned Counsel for the Applicants relied upon the judgment of Hon'ble Supreme Court in the case of **State of Punjab & Others Vs. Rafiq Masih (white washer) & others : (2015) 4 SCC 334** wherein Hon'ble Supreme Court has held that no excess payment can be recovered from the employee who has retired or is due to retire within one year unless the excess payment was made due to any misrepresentation by them. In the present case, there is no allegation of any misrepresentation by the Applicants.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicants were posted at Motor Transport Division, Nagpur City as Police Head Constable - Driver - Technician, Grade II. They were under the administrative control of the Special Inspector General of Police, Motor Transport, Pune, the Respondent No.4. They were transferred by order dated 10.09.2007 by the Respondent No.4 to the Divisional Workshop, Nagpur.

5. Learned P.O. contended that the Applicants were initially appointed in the State Reserve Police Force (S.R.P.F.) and were promoted as Head Constable Driver (technician) Grade II by Deputy Inspector General of Police, Training and Special Units, Mumbai. The Applicants joined M.T. Section, Nagpur on 01.06.1988 and 26.09.1991 respectively. The Applicants had undergone training at Motor Transport, Division Pune for 14 weeks. They are required to qualify in departmental promotional examination to become eligible for the post of A.S.I. Driver (Technician). As such they were not eligible to get promotion as A.S.I. Driver (Technician) and also not eligible to get Time Bound Promotion.

6. We find that the affidavit-in-reply in this O.A. has been filed by the Respondent No.3. On careful perusal of the same, the question which comes to one mind is, who was the appointing authority of the Applicant. This question assumes importance as the cadres of constables in the State Reserve Police Force and in Regular Police are separate & distinct. For transfer from S.R.P.F. to Regular Police, there is a quota prescribed and seniority in the transferred unit (S.P. or C.P.'s office in regular police) is required to be fixed. In the present case, the Applicant No.1 was admittedly appointed as a Constable in S.R.P.F, Group IX on 01.08.1974. He was then transferred to S.R.P.F, Group IV at Nagpur. By order dated 29.04.1988, he was promoted as Head Constable Driver (Technician) Grade II by order of the D.I.G, Training and

Special Units, Mumbai. The Applicant No.2 was also appointed as Police Constable in S.R.P.F, Group IX. He was also promoted as Head Constable Driver – Technician by D.I.G, Training & Special Units by order dated 25.04.1991. Before that both the Applicants had passed some special training course at Pune and were working as Drivers. Copies of the orders of promotion of the Applicants by D.I.G, Training & Special Units, Mumbai have not been placed on record. The fact that the Applicants were initially appointed as Constables in S.R.P.F. and were promoted as Head Constables by D.I.G, Training & Special Units, Mumbai makes it quite clear that the Respondent No.4 was never their appointing authority and they never worked under his control.

7. From the admission of the Respondent No.3, it is quite clear that the applicants were working on his establishment from 01.06.1988 and 26.09.1991 in Motor Transport Section, Nagpur City. It has to be presumed that they were transferred to the establishment of the Respondent No.3 in public interest, as there is no claim on behalf of the Respondents that they were transferred on their own request. The Applicants were accordingly, on the establishment of the Respondent No.3.

8. The Applicants in paragraph 11-F of O.A. have claimed that D.G.P. has issued Circular dated 01.03.1999, (Annexure C-6, p 10-J) providing for a common seniority list of all police constables, including constable Drivers. The relevant portion reads :-

“यापुढे मोटार परिवहन विभागासाठी वेगळे मंजुर संख्याबळ राहणार नाही. ती संख्या त्या संबंधित घटकाच्या मंजुर संख्येत समाविष्ट करण्यांत यावी. मोटार परिवहन विभागातील पोलीस कर्मचा-यांना (चालक पोलीस शिपाई / चालक पोलीस नाईक / चालक पोलीस हवालदार) सामायिक सेवाज्येष्ठता यादीतील सेवाज्येष्ठतेप्रमाणे पदोन्नती दिल्यानंतर त्यांची त्यात विशेष आवश्यकतेनुसार नेमणूक करण्यात येऊन त्यांना नियमाप्रमाणे विशेष वेतन देण्यात यावे.”

The Applicants had filed C.A.No.270 of 2015 for earlier hearing as they were not getting regular pension. The C.A. was allowed on 28.07.2015. The Respondents, however, never filed any further affidavit-in-reply. There is nothing on record to show that the Applicants were on the establishment of the Respondent No.4. Also, in paragraph 6 of the affidavit-in-reply dated 13.02.2008, the Respondent no.3 has claimed that the Applicants required to pass the Departmental Examination, before they could be promoted as A.S.I. Driver (Technician). This arguments is not tenable for the following reasons :-

- (i) The Respondents have failed to establish the Applicants were on the establishment of the Respondent No.4. On the contrary, they appear to have been transferred in the establishment of the Respondent No.3.
- (ii) Even if they were required to pass Departmental Examination for promotion, that requirement will not survive after they cross the age of 45 years;
- (iii) Order of promotion dated 16.02.2006 speaks of promotion in 'executive branch' (कार्यकारी दलात) as Assistant Police Sub Inspector and not on the post of A.S.I. Driver (Technician).

9. The claim of the Respondents that order dated 16.02.2006 was issued by the Deputy Commissioner of Police, Nagpur, who was not empowered to pass the order cannot be accepted. D.C.P. has passed the order on behalf of the Police Commissioner, Nagpur. If that order was to be cancelled, the Applicants were required to be given a notice, explaining reasons for doing so. Order dated 08.10.2007, which is impugned in this O.A., is issued in violation of the principles of natural justice and cannot be sustained. It is, accordingly quashed and set aside.

10. Once the order dated 08.10.2007 is quashed, no recovery on ground of excess payment can be made. Regardless of circumstances as held by Hon'ble Supreme Court in **Rafiq Mashi's case (supra)**, no recovery from the Applicants is permissible, who are Group 'C' employees.

11. The Applicants were working as Head Constables on the establishment of the Respondent No.3 from 01.06.1988 and 26.09.1991 respectively. They had put in more than 12 years of service on the date on which the impugned order was passed on 16.02.2006. As they had crossed the age of 45 years, the requirement of passing departmental examination would not survive. They were eligible to get the Time Bound Promotion from an earlier date. The Respondents are, therefore, required to continue to pay the pension to the

Applicants (family pension to the legal heirs of the Applicant No.2 after his death), as per order dated 16.02.2006. If any recovery has been made, the said amount will be refunded to the Applicants. The Respondent No.3 is directed to implement this order within three months from the date of this order. This O.A. is allowed accordingly with no order as to costs.

