

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 913 OF 2012

DISTRICT : - AHMEDNAGAR.

Mr. Bapusaheb S/o Datterya Mane,
Age major, Occu. Service,
R/o. Shrirampur, Tq. Shrirampur,
Ahmednagar,
Dist. Ahmednagar.

.. APPLICANT.

V E R S U S

1. The State of Maharashtra
The Addl. Chief Secretary,
Home Department,
Mantralaya, Mumbai-32.
(Copy to be served on P.O.
M.A.T. Aurangabad)
2. The Director General of Police
Maharashtra State, Mumbai.
3. The Special Inspector General
of Police, Nashik, Old Mumbai
Agra Road, Near Gadkari Chowk,
Nashik, Tq. Dist. Nashik. .. RESPONDENTS

APPEARANCE : Shri L.M. Kulkarni – learned
Advocate for the Applicant.

: Mrs. Deepali Shripad Deshpande –
learned Presenting Officer for the
respondents.

CORAM : **HON'BLE SHRI RAJIV AGARWAR,**
VICE CHAIRMAN (A).
AND
: **HON'BLE SHRI J.D. KULKARNI,**
MEMBER (J)

PER : **HON'BLE SHRI RAJIV AGARWAR,**
VICE CHAIRMAN (A).

J U D G M E N T

[Delivered on this 15TH day of December, 2016]

1. Heard Shri L.M. Kulkarni – learned Advocate for the Applicant and Mrs. Deepali Shripad Deshpande – learned Presenting Officer (P.O.) for the respondents.
2. This Original Application has been filed by the Applicant challenging the order dated 17.10.2012, promoting 20 officers to the post of Police Inspector (P.I.) though the Applicant claims that he is senior to them. The Applicant is also seeking deemed date of promotion as P.I. from 17.10.2012.
3. Learned Advocate for the Applicant argued that the Applicant was selected for the post of Police Sub-Inspector (P.S.I.) by Maharashtra Public Service Commission

(M.P.S.C.) from Ex-servicemen category in the year 1993. He joined as P.S.I. on 15.9.1993. He was promoted as Assistant Police Inspector (A.P.I.) on 12.6.2008. The Applicant was eligible to be promoted as P.I. when persons junior to him were promoted as P.I. on 17.10.2012. The Applicant made a representation against his supersession on 19.10.2012. As no reply to his representation was received, the Applicant applied under the Right to Information Act, regarding reasons for not promoting him. He was informed that his ACRs for last five years were B- and he was, therefore, not considered eligible for promotion to the post of P.I. Learned Advocate for the Applicant argued that the Respondent's claim is not correct. The ACR gradings of the Applicant for some of the years are given below:

2006-07 - 'B-'

2010-11 - 'C'

However, adverse entries in ACRs of 2006-07 were expunged by letter dated 8.1.2008 issued by the Superintendent of Police, Raigad. Similarly, for the year

2010-11, by letter dated 20.6.2012, Special I.G.P. Nasik has expunged grading of Reviewing Officer of 'C' and grading of "B" (Good) was accepted. The Applicant's case was considered in the D.P.C. held on the basis of select - list of 2011-12. His ACRs for the years 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11 were relevant. Except for the years 2006-07 and 2010-11, no other adverse remarks were communicated to the Applicant. He must have got grading of 'B' or above. As such, he was definitely eligible to be promoted. Learned Advocate for the Applicant argued that though the Applicant retired on superannuation on 30.6.2013, he is eligible for deemed date of promotion as P.I., when his juniors were promoted by order dated 17.10.2012 and he is eligible to get revised pension accordingly.

4. Learned Presenting Officer (P.O.) argued that the Applicant was considered for promotion to the post of P.I. in the meeting of the Departmental Promotion Committee (D.P.C.) on the basis of select list of 2011-12. His last five years' ACRs were found to be "B-" and he was found unfit

for promotion. His case was placed before Review D.P.C. in the month of April, 2013. He was, however, again found unfit for promotion. Learned Presenting Officer argued that there is no merit in this Original Application and it may be dismissed.

5. We find that the Applicant was considered for promotion for the post of P.I. based on the select list of 2011-12. His ACRs from 2006-07 to 2010-11 would have been considered by D.P.C. It is seen that adverse remarks in the ACRs of the Applicant for 2006-07 and 2010-11 were expunged. In paragraph 'K' of the Original Application the Applicant claims that his ACR was "B+". In para 'L' he claims that ACR for 2009-10 was also positively good. He claims that for last 5 years none of the ACRs was "B-" or "C" and adverse entries in ACRs of 2006-07 and 2010-11 were expunged. As per G.R. dated 23.12.2002, the required grading for promotion to first stage in Group 'A' is 'B'. The post of P.I. is first post in Group 'A', and the requirement appears to be 'B' for promotion to that cadre. The Respondent No. 2 in his

affidavit in reply dated 19.3.2013 in paragraph No. 6 has stated that :

“6. With reference to para nos. J to L, I say and submit that the averments raised by the Applicant in these paras are not tenable and hence denied by the Respondent.”

6. We are unable to comprehend the meaning of this averment. The Applicant has claimed that adverse remarks in his ACR for 2006-07 were expunged and he must be reckoned to have been given grading ‘B’. This is stated in para J of O.A. The respondent No. 2 has not stated as to how this is not tenable. In fact, the claim of the Applicant appears to be quite reasonable in the light of letter dated 12.4.2012 at Exhibit ‘D’. In para ‘K’ the Applicant has claimed that for 2007-08 his ACR grading was ‘B+’. The respondent No. 2 has not denied it. If the grading was not B+, the Respondent No. 2 should have stated the correct grading enclosing copy of relevant ACR. Similarly, in para ‘L’, the Applicant has claimed that his grading for 2009-10 was B+. This is not denied by the

Respondent No. 2. On the basis of material on record, it appears that the average ACR grading for the Applicant for the years 2006-07 to 2010-11 could not have been 'B-', as adverse entries in the ACRs of 2006-07 and 2010-11 were expunged and the Respondent No. 2 has not denied the contention that in the year 2007-08 and 2009-10, his grading was 'B+'. He was never given any other 'B-' or 'C' grading. We, therefore, reject the contention of the Respondents that even after adverse remarks in the ACR of the Applicant for the year 2006-07 and 2010-11 were expunged, his overall grading would remain 'B-'. That is against common sense and making a mockery of the system of expunging adverse entries in ACR if that would not improve the overall grading of a Government servant.

7. We are of the opinion, that the Applicant has made out a case that his overall grading based on ACRs of 2006-07 to 2010-11 was 'B' or above and he was eligible to be promoted to the post of P.I. when his juniors were promoted by order dated 17.10.2012. As the Applicant has retired from service during the pendency of this

Original Application, he is entitled to be given deemed date of promotion in the cadre of P.I. from 17.10.2012. The Respondents are directed to take action accordingly and fix his pension on the basis of his deemed date of promotion as P.I. from 17.10.2012, within one month from the date of this order. The Applicant will be eligible for full financial benefits from 17.10.2012.

8. This Original Application is allowed accordingly with no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)

O.A.NO.913-2012(hdd)-2016(DB) (Promotion)