

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 494 of 2014 (DB)**

Gunwant S/o Ramdas Parchure,  
Aged about 48 years, Occ. Service,  
R/o Police Line Takli, Officers Quarter No.G-4/2,  
Nagpur.

**Applicant.**

**Versus**

- 1) State of Maharashtra through its  
Principal Secretary, Department of Home,  
Mantralaya, Mumbai-32.
- 2) Director General of Police,  
Police Headquarter Maharashtra,  
Shahid Bhagatsingh Marg,  
Colaba, Mumbai-39.
- 3) Commissioner of Police,  
Nagpur City, Civil Lines,  
Nagpur-440 001.

**Respondents.**

---

**S/Shri G.G. Bade, P.P. Khaparde, Advs. for the applicant.**

**Shri M.I. Khan, P.O. for respondents.**

---

**Coram :- Shri Shree Bhagwan,  
Member (A) and  
Shri Anand Karanjkar, Member (J).**

---

**JUDGMENT**

**Per : Anand Karanjkar : Member (J).**

**(Delivered on this 22<sup>nd</sup> day of March,2019)**

Heard Shri G.G. Bade, learned counsel for the applicant  
and Shri M.I. Khan, learned P.O. for the respondents.

2. The applicant is claiming that the order dated 20/04/2012 passed by the respondent no.2 reverting the applicant to the post of Police Head Constable is illegal, therefore, it be set aside.

The facts in brief are as under :-

3. The applicant was appointed in service as Police Constable. In the due course, he was promoted as Police Head Constable and later on in the year 2003 the applicant was promoted as Ad-hoc PSI. The ad-hoc promotion was extended time to time. In the meantime, on 11/07/2006 the applicant was arrested in Crime No.157/2006 under Sections 467,468,472,474,475,420,292 & 120B r/w Section 34 of the IPC. As an outcome of the arrest of the applicant in the crime he was placed under suspension vide order dated 11/07/2006.

4. When the applicant was under suspension, vide order dated 30/01/2010 the applicant was regularly promoted as PSI, but as he was under suspension effect was not given to this order. It is case of the applicant that the respondent no.2 passed the impugned order dated 20/04/2012 and reverted the applicant. It is submitted that the impugned action is apparently illegal because without giving opportunity of hearing to the applicant, the applicant was reverted to the post of Police Head Constable. It is contention of the applicant that since 2003 he was promoted as ad-hoc PSI as he passed the

departmental examination. Though the applicant was placed under suspension, but subsistence allowance was paid to him considering as he was as PSI. The competent authority after examining the entire record of the applicant promoted him as regular PSI, therefore, it was incumbent on the respondents to give opportunity of hearing before reverting him on the post of Police Head Constable. The applicant made one representation dated 23/08/2012 and requested the respondents to modify the order and again post him on the post of PSI, but it was in vain. It is submission of the applicant that now the criminal case which was pending against the applicant is decided by the Court i.e. JMFC, Court No.4, Nagpur on 15/03/2018 and the applicant is honourably acquitted, therefore, the impugned order passed by the respondent no.2 reverting the applicant is liable to be set aside by allowing this application and all the consequential reliefs be granted.

5. The application is opposed by the respondents vide reply which is at page no.76 and page no.54. It is submitted by the respondent no.2 that vide order dated 3/7/2003 the applicant was promoted as PSI on ad-hoc basis for one year and this ad-hoc basis promotion was extended time to time. In the year 2006, as the applicant was arrested and criminal case was pending against him, he was placed under suspension and this fact was informed by the respondent no.3 to the respondent no.2. It is submitted by the

respondent no.2 that though the applicant was under suspension and criminal case was pending, his name was included in the promotion order, but it was specifically mentioned in the promotion order that the Police Head Constables/ Assistant PSIs against whom criminal cases were pending in a court of law, they should not be promoted and their detailed report be submitted to the office of Special IGP (Establishment). It is submitted that the order of promotion itself was very much clear. As per the order as the criminal case was pending against the applicant and he was under suspension, consequently he was never promoted on regular basis as PSI and thereafter the respondent no.2 decided not to continue the applicant on the post of PSI on ad-hoc basis, therefore, the impugned order was passed. It is contention of the respondent nos. 2 and 3 that the impugned order is apparently legal and the applicant was never promoted regularly as PSI, therefore, there is no substance in this O.A.

6. We have heard the submissions on behalf of the applicant and on behalf of the respondents. The learned counsel for the applicant submitted that the respondent no.2 did not follow the principles of natural justice and the procedure laid down in the Bombay Police Act for reverting a Police Personnel. It is submitted that as per the provisions under the Bombay Police Act, protection is given to the Police Personnel, the Police Personnel cannot be reverted without following the prescribed procedure. It is contended

that it was incumbent on the respondent no.2 to give show cause notice and opportunity of hearing to the applicant before reverting him as he was already promoted and as these legal provisions are not followed, therefore, the impugned order dated 20/04/2012 reverting the applicant to the post of Police Head Constable is itself illegal.

7. The second contention of the learned counsel for the applicant is that now the criminal case which was pending against the applicant i.e. Regular Criminal Case no.4225/2007 is decided by the JMFC Court No.4, Nagpur on 15/03/2018 and the applicant honourably is acquitted in this case, therefore, the impugned order be set aside and direction be given to the respondent nos. 1 to 3 to reinstate the applicant on the post of PSI as per the order of promotion.

8. The learned P.O. has invited our attention to the order of promotion dated 30/01/2010. This order is at Annex-R-3 IV, there is foot note no.4 which says that if the Police Head Constable/ASI against whom crime is pending in the Court, they should not be promoted and their respective cases be reported to the Special IGP (Establishment). There is no dispute about the fact that the applicant was arrested in Crime No.157/2006, at that time the applicant was serving as PSI on ad-hoc basis. The applicant was under suspension and criminal case was pending against the applicant

when he was promoted vide order dated 30/01/2010. As per the foot note no.4 of this order it is clear that though the name of the applicant was included in the order, but by way of abundant caution, direction was given not to give promotion to the Police Head Constables/ ASI whose names were included in the order of promotion if criminal cases were pending against them in the Court. The learned P.O. has also placed reliance on the Circular issued by the Government of Maharashtra on 02/04/1996 Circular No.SRV/1075/X/Sachivalay, Bombay, dated 2/4/1976. In paragraph no.3, Clause-A it is made clear that during pendency of the proceeding the question of promoting a person under suspension does not arise such a person shall not be promoted. The relevant clause A is as under –

***“3. Interim promotion during the pendency of the proceedings -***

*(a) During the pendency of the proceedings, the question of promoting a person under suspension does not arises such a person shall not be promoted”.*

9. The learned counsel for the applicant has filed rejoinder. It is submission of the learned counsel for the applicant that the Government of Maharashtra has issued Circular dated 22/04/1996 SRV/1095/pra.kra.29/95/12. It is submitted that as per this Circular the action of the respondent no.2 is illegal. After giving through this Circular dated 22/04/1996 it seems that this circular was applicable to the cases in which departmental inquiries were pending against the

employee to be promoted or to whom punishment were awarded, but while reading Circular dated 2/4/1976 it appears that the paragraph-3 Clause A is pertaining to specific category, i.e., a government servant under suspension. In this Circular specific direction is given not to promote a person under suspension. Keeping in view this matter, we accept the submission of the learned P.O. that though name of the applicant was mentioned in the promotion order dated 30/01/2010, but as per the foot note no.4 he was never promoted and effect was not given to that the order, therefore, the fact remains that the applicant was ad-hoc PSI at the time of his suspension and after his suspension the allowances were paid to him as per pay admissible to the post of PSI, but in fact his continuation on the post as ad-hoc PSI is not supported by any specific order passed by the Police Department. It is important to note that the respondents have placed on record Annex-R-3-V it appears that vide order dated 11/03/2013 the applicant was reinstated in service on the post of Police Head Constable after revocation of the suspension.

10. Our attention is also invited to Annex-A-9,17/10/2005, it appears that the applicant was working as ad-hoc PSI on 27/10/2005 and by this order the continuation was granted to work as ad-hoc PSI for a period of one year w.e.f. 04/07/2005. Thus it seems that the applicant was promoted as ad-hoc PSI for a period of one year and that term was to expire on 03/07/2006. The applicant has not

produced before this Bench any order issued by the respondents extending his posting as PSI on ad-hoc basis after 03/07/2005. It appears that the applicant was placed under suspension vide order dated 11/07/2006 and when he was regularly promoted, he was under suspension and against him the criminal case was pending.

11. It appears from the facts that the applicant was involved in serious crime and that material was not placed before the DPC and therefore mechanically the applicant was promoted, but as there was a condition i.e. note no.4 in the promotion order that promotion was not given effect. Under these circumstances, it is not possible to accept that the applicant was reverted to the post of Police Head Constable without conducting any inquiry. It appears that the departmental appeal was preferred by the applicant and as it was not decided, therefore, the O.A.No.08/2013 was filed by the applicant and direction was given to respondent no.1 to decide the appeal. The respondent no.1 thereafter dismissed the appeal and thereafter the applicant filed the present application. We have already observed that as effect was never given to the promotion order dated 30/01/2010, therefore, the impugned order is not a order of reversion, but as the applicant was working as ad-hoc PSI at the time of his suspension and he was again brought to the post of Police Head Constable which was held by him. We do not see any illegality



committed by the respondent no.2 while passing the order dated 20/04/2012, therefore, we do not see any merit in this application.

12. It is brought to our notice that now no criminal case is pending against the applicant and he is acquitted in criminal case no.4225/2007 by the JMFC Court No.4, Nagpur vide Judgment dated 15/03/2018. In this regard we would like to point out that the applicant has a right to make representation to examine his case in view of his acquittal. In the result, we pass the following order :-

**ORDER**

The O.A. stands dismissed. The liberty is given to the applicant to make representation to the respondent nos. 1 to 3 for praying the desired relief as he is acquitted in the criminal case. No order as to costs.

**(Anand Karanjkar)**  
**Member(J).**

**(Shree Bhagwan)**  
**Member (A).**

**Dated :- 22/03/2019.**

\*dnk