MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 499/2017 (D.B.)

Prakash Hariram Chorpagar,
Aged about 58 years,
Occupation: Retired, R/o Kamalpushpa Colony,
Nawsari, Amravati, Tah. & Dist. Amravati

Applicant.

Versus

1) The State of Maharashtra,
through its Secretary,
Ministry of Home Department,
Mantralaya, Mumbai-32.

2) The Director General of Police,
Maharashtra State, D.G. office,
Hutatma Chowk,
Near Regal Cinema, Mumbai.

3) The Superintendent of Police,
Amravati (Rural), Beside the Collector office,
Amravati, Tah. & District Amravati.

4) Special Inspector General of Police,
Amravati Region, Amravati, Near Maltekdi,
Amravati, Tah. & Dist. Amravati.

5) The Commandant, State Reserve Police Force,
Group-IX, Wadali Camp, Amravati,
Tah. & Dist. Amravati.

6) The Account General Maharashtra
(Account & Entitlement) II, Post Box No. 114,
Infront of Ravi Bhavan, Nagpur.

Respondents.

Shri S.N.Gaikwad, ld. Advocate for the applicants.
Shri A.M.Khadatkar, ld. P.O. for respondents.

Coram :- **Shri Shree Bhagwan, Vice-Chairman and**
Shri M.A.Lovekar, Member (J).
Dated :- 07/10/2022.

JUDGMENT

Per : Member (J).

Heard Shri S.N.Gaikwad, the ld. Counsel for the applicant and Shri A.M.Khadatkar, the ld. P.O. for the Respondents.

2. Undisputed facts leading to this O.A. are as follows. The applicant was appointed to the post of Police Constable in State Reserve Police Force, Group-IV, Nagpur on 13.07.1981. He was transferred to State Reserve Police Force, Group-IX, Amravati where he joined on 08.01.1989. He was given first time bound promotion on 01.01.2001. On 27.11.2001 he was given regular promotion to the post of Police Naik. On request he was transferred to the establishment to Superintendent of Police, Amravati (Rural) on 01.07.2002. Since it was a request transfer he was placed at the bottom of 1981 batch. On this establishment post of Police Naik was not vacant. Therefore, he joined on the post of Police Constable. He had given written consent and undertaking for the same. The consent/undertaking (A-R-2) stated as follows:-

"उपरोक्त संदर्भान्वये माझी रा.रा.पो.बल गट क्रमांक ९ अमरावती येथून अमरावती ग्रामीण पोलीस दलात बदली झालेली असून मी बदली बाबतच्या अटी याबाबत संमतीपत्र लिहून देत आहे.

तरी कृपया माझी अमरावती ग्रामीण पोलीस दलात बदली झाल्याने बदलीवर कार्यमुक्त करण्यास विनंती.

१. मला अमरावती ग्रामीण पोलीस दलातील तेथील कर्मचा-यांच्या सेवा जेष्टता कम्रवारी बाबत अट मान्य आहे.

२. अमरावती ग्रामीण जिल्हा पोलीस दलात बदली झाल्यानंतर मी तेथे पोलीस मुख्यालयात पांच वर्षे राहण्यास तैयार आहे.

३. म.ना.से. नियम १९८१ मधील नियम २८ प्रमाणे बदलीवर हजर होण्याकरीता पदग्रहण अवधी, स्थानांतर मला तसेच बदली प्रावास भत्ता न मिळाल्यास हरकत नाही. तसेच बाकी बदली बाबतच्या शर्ती व अटी (सर्व) मान्य आहेत."

This was in consonance with circular dated 16.02.1987 (A-R-1) which stipulated as follows:-

"*B.* *<u>Those transferred on request.</u>*

i. In the case of officiating Head Constables and Police Constables, the "Year" of enlistment should be placed below all the <u>constables</u> of that district enlisted during the particular year.

ii. In the case of confirmed Hd. Constable, he should be placed below all the Hd. Constables confirmed in the lowest grade during the "Year" in which he was confirmed."

On 16.12.2003 he was promoted to the post of Police Naik. On 01.12.2010 he was promoted to the post of Police Head Constable. On 01.05.2016 he stood retired voluntarily.

3. Limited grievance raised by the applicant at the time of final hearing is that he was unjustly denied first time bound promotion w.e.f. 01.10.1994 as per G.R. dated 08.06.1995 (A-R-4) since, on that day, he had completed 12 years.

G.R. dated 08.06.1995 *inter alia* states :-

अ) हीं योजना १ ऑक्टोबर १९९४ पासून अमलात येईल.

ब) या योजनेअंतर्गत वरिष्ठ वेतनश्रेणी मिळण्यासाठी पदोन्नतीसाठी विहित कार्यपध्दती, जयेष्ठता, पात्रता, अर्हता परीक्षा, विभागीय परीक्षा या बाबींची पूर्तता करणे आवश्यक आहे.

क) सरळ सेवेने प्रविष्ट झालेल्या अथवा पदोन्नतीने नियुक्त झालेल्या कर्मचा-यांच्याबाबतीत एकवेळ या योजनेअंतर्गत १२ वर्षानंतरच्या नियमित सेवेनंतर वरिष्ठ वेतनश्रेणी अनुज्ञेय असेल.

4. By communication dated 21.06.2013 (A-5) representation of the applicant was rejected and he was informed as follows:-

"आपण दिनांक ०९.१०.२०१२ रोजी मानिव दिनांक मंजुरीसंबंधाने पोलीस महासंचालक, म.रा.मुंबई यांना सादर केलेल्या अर्जाच्या अनुषंगाने कळविण्यात येते की, आपली दिनांक १३.०७.१९८१ रोजी सशस्त्र पोलीस शिपाई पदावर समादेशक, रा.रा.पो. बल गट क्रमांक ४, नागपूर यांचे आस्थापनेवर नेमणुक झाली असुन दिनांक २६.१२.

१९८८ रोजी समादेशक, रा.रा.पो.बल गट क्रमांक ९, अमरावती यांचे आस्थापनेवर आंतरजिल्हा बदलीवर हजर झाले आहेत. समादेशक, रा.रा.पो.बल गट क्रमांक ९, अमरावती यांचे आस्थापनेवर कार्यरत असतांना आपणांस दिनांक ०१.०१.२००१ रोजी कालबध्द पदोन्नती व दिनांक २७.११.२००१ रोजी पोलीस नाईक पदावर नियमित पदोन्नती मिळाली आहे.

त्यानंतर आपली विनंतीवरून समादेशक, रा.रा.पो.बल गट क्रमांक ९, अमरावती यांचे आस्थापनेवरून पोलीस अधीक्षक, अमरावती ग्रामीण यांचे आस्थापनेवर बदली झाली असुन बदलीवर हजर होतेवेळी पोलीस अधीक्षक, अमरावती ग्रामीण यांचे आस्थापनेवर पोलीस नाईक चे पद रिक्त नव्हते, त्यामुळे आपण पोलीस शिपाई पदावर येण्यास स्वीकृती दर्शविल्याने आपणास पोलीस नाईक या पदावरून पदावनत करून पोलीस शिपाई पदावर दिनांक ०१.०७.२००२ रोजी हजर करून घेण्यात आले आहे.

आपण विनंतीवरून पोलीस शिपाई पदावर आंतरजिल्हा बदलीवर हजर झाल्याने पोलीस महासंचालक, म.रा.मुंबई यांचे परिपत्रक क्रमांक ६/२३६/८७, दिनांक १६.०२. १९८७ नुसार अमरावती जिल्हा पोलीस दलातील सन १९८१ वर्षात भरती झालेल्या पोलीस शिपायाच्या सर्वात शेवटी आपली सेवाजेष्ठता लावण्यात येवुन सेवाजेष्ठतेनुसार दिनांक १६. १२.२००३ रोजी पोलीस नाईक पदावर व दिनांक ०१.१२.२०१० रोजी पोलीस हवालदार पदावर नियमित पदोन्नती देण्यात आली आहे. पोलीस अधीक्षक, अमरावती ग्रामीण यांनी आपणास सेवाजेष्ठतेनुसार पोलीस नाईक व पोलीस हवालदार पदावर दिलेली पदोन्नती नियमानुसार योग्य असल्यामुळे सामान्य प्रशासन विभाग क्रमांक एसआरव्ही-२००२/प्र. क्र.२/२००२/१२, दिनांक ०६.०६.२००२ च्या तरतुदीनुसार आपण मानिव दिनांकाकरीता पात्र ठरत नाही, त्यामुळे आपण पोलीस नाईक व पोलीस हवालदार पदाचा मानिव दिनांक मंजुर होणेबाबत केलेली विनंती अमान्य करण्यात येत आहे.”

5. To resist claim of the applicant Respondents 2 to 4 have averred as follows:-

> "*From the record available with the office of respondent no. 3 it clearly appears that on 18.04.1992, the applicant had applied for casual leave for four days. However, he did not come on duty till 27.06.1992. On 28.06.1992 the applicant resumed his duties and he was assigned the work of Nazal Bandobast and during that period the applicant was seen lying by the side of road under the influence of liquour on 17.07.1992 at about 19:30 hours. For the said reason the applicant was awarded punishment and he was kept on the basic pay for a period of two years. Despite the same, the applicant remained absent from duties for a period of 1506 days i.e. four years, one month and sixteen days and he was kept without pay therefore he was not eligible for getting any benefits on the basis of his seniority. However, considering the seniority of the applicant, he was promoted two times in Amravati Rural Police Force. The first promotion was effected on 16.12.2003 on the post of Police Naik and second was on the post of Police Head Constable on 01.12.2010 under the Amravati District Police Force.*"

These respondents have further averred as follows:-

"*Though the promotions of the applicant were made on the post of Police Naik as well as on the post of Police Constable but still the applicant was/is not eligible for taking benefit for deemed date of promotion as per the guidelines laid down in the Circular dated 06.06.2002.*"

G.R. dated 06.06.2002 (A-R-3) *inter alia* refers to various G.Rs. issued earlier. Annexure to this G.R. *inter alia* states that one of the reasons why matters of granting deemed date of promotion arise is non-communication of A.C.Rs.

6. It was argued by Shri S.N.Gaikwad, ld. Counsel for the applicant that the respondents have tried to justify their act of deferring grant of first time bound promotion to the applicant on the ground that his A.C.Rs. were way below par but since A.C.Rs. were never communicated to the applicant said ground cannot be accepted. We have referred to the stand of respondents 2 to 4 with regard to record of the applicant. It is not the case of the respondents that any of the relevant A.C.Rs. (which are stated to be adverse) were communicated to the applicant. In support of his aforesaid contention the applicant has relied on the following Judgments of the **Hon'ble High Court Bombay, Bench at Nagpur in W.P. No. 5625 of 2005 in case of Dr. Sabita w/o**

Chayankanti Biswas Vs. State of Maharashtra & 3 Ors. and W.P. No. 652 of 2010 in case of Dr. Sukhdeo S/o Krushnaji Chapale Vs. State of Maharashtra & 2 Ors. Following observations made by the **Hon'ble High Court Bombay, Bench at Nagpur in W.P. No. 5625 of 2005 in case of Dr. Sabita w/o Chayankanti Biswas Vs. State of Maharashtra & 3 Ors.** are quoted in **Dr. Sukhdeo S/o Krushnaji Chapale Vs. State of Maharashtra & 2 Ors.**:-

> "*Perusal of the Government Resolution dated 1st February, 1996 clearly reveals that the Government has in no uncertain terms stipulated that if adverse remarks are not communicated, the same cannot be used against the petitioner. The fact that the adverse remarks for the period from 1990-91 to 1992-93 have not been communicated to the petitioner is not in dispute. In such circumstances, in view of the requirement of the aforesaid Government Resolution, it is clear that those adverse remarks could not have been taken into account to deny benefit of time bound promotion to the petitioner from 01.10.1994. In view of this position, it is apparent that the petitioner needs to be given said benefit from 01.10.1994 instead of 01.04.1998. Therefore, the order dt. 11.09.2003 impugned by the petitioner in this petition is*

accordingly modified and dt.01.04.1998 stipulated therein is directed to be read as 01.10.1994 for all practical purposes. Rule accordingly"

7. This being the factual and legal position, we pass the following order:-

O R D E R

The O.A. is allowed in the following terms:-

1. The applicant is held entitled to first time bound promotion w.e.f. 01.10.1994, and for monetary benefits flowing therefrom.
2. The accrued monetary benefits shall be paid to the applicant **within two months from today.**
3. No order as to costs.

(M.A.Lovekar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 07/10/2022.
*aps.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 07/10/2022.

Uploaded on : 10/10/2022.