

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 890 / 2017 (S.B.)**

Shri Vitthal S/o Sambhaji Deshmukh,  
Aged about 59 years, Occ. Retired,  
R/o Chandrapur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Secretary,  
Home Department,  
Mantralaya, Mumbai- 32.
- 2) The Director General of Police,  
(Maharashtra State) Mumbai.
- 3) The Superintendent of Police,  
Chandrapur.

**Respondents**

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**Shri G.G.Bade, Id. Advocate for the applicant.**

**Shri A.M.Khadatkar, Id. P.O. for the Respondents.**

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**Coram :- Hon'ble Shri M.A.Lovekar, Member (J).**

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**JUDGMENT**

**Judgment is reserved on 28<sup>th</sup> July, 2022.**

**Judgment is pronounced on 02<sup>nd</sup> August, 2022.**

Heard Shri G.G.Bade, Id. counsel for the applicant and Shri  
A.M.Khadatkar, Id. P.O. for the Respondents.

2. Case of the applicant is as follows. The applicant was  
promoted to the post of Hawaldar by order dated 17.09.2013 (A-1 (a)).

In seniority list dated 01.01.2016 (A-3) the applicant stood at Sr. No. 8. He was due for promotion to the post of Assistant Sub Inspector. He made a representation (A-2) dated 29.03.2016. Respondent no. 3, by letter dated 15.09.2016 (A-4) declared the applicant to be conditionally fit for promotion because of pendency of a criminal case against him, but promotion was denied on the ground that no-one from the category of O.B.C. to which the applicant belongs was promoted to the post of Assistant Sub Inspector. On 11.09.2016 the applicant again made a representation (A-5). By order dated 29.10.2016 several persons junior to the applicant who belong to O.B.C. category were promoted to the post of A.S.I. In seniority list dated 01.01.2017 (A-6) the applicant stood at Sr. No. 4. Because promotion was again denied to him, the applicant made representations dated 28.04.2017 and 15.05.2017 (A-7 collectively). Similarly placed persons were promoted to the post. The applicant retired on superannuation on 30.06.2017. He is entitled to get deemed date of promotion to the post of A.S.I. on par with those junior to him who were promoted to the post on 29.10.2016, with consequential benefits. Hence, this application.

3. Reply of respondent no. 3 is at pages 23 to 27. According to him, in D.P.C. dated 28.10.2016 cases of the applicant and other Hawaldars against whom criminal cases, departmental enquiries were pending were considered, they were declared to be provisionally/ conditionally fit as per Gazette notification dated 22.04.1996 and final decision about fitness for promotion was to be taken by the competent authority. The applicant who was initially held to be conditionally fit for promotion was later on declared unfit for promotion on account of pendency of a criminal case against him. This was communicated to the applicant by letter dated 02.06.2017 (A-R-1) which he has suppressed. For all these reasons the application is liable to be dismissed.

4. In his rejoinder at pages 29 to 32 the applicant has categorically averred as follows:-

*“The department vide order dated 29/10/2016 promoted various junior persons to the post of ASI, the said persons are at serial no. 6, 7, 10 to 13, 14, 15, 16, 17, 18, 19, 23, 24, 25 & 26 in order dated 29/10/2016 whereas applicant is at serial no. 8 in seniority list of 01/01/2016 and therefore above noted persons are junior to the applicant. That, the respondent department in letter dated 15/09/2016, though stated that applicant is conditionally fit on account of registration of the offence vide crime No. 220/2009 and further observe that no person from the applicant’s category has been promoted to the post of ASI who is junior to applicant. It is pertinent to note here the persons at serial No.6, 7, 10 to 19 and from 23 to 25 of order dated 29/10/2016 are from OBC category like applicant’s category and are junior to the applicant therefore the letter dated 15/09/2016 (annexure-A-4) falsifies the statement of the department that OBC category has not been promoted. Thus applicant was legally deprived from being promoted specially when applicant has been declared conditionally fit.*

*On bare perusal of the chart it clearly reveals that said persons have been promoted prior to applicant’s claim. The Chart to that effect is as follows:-*

| <i>Hawalder Promoted to ASI vide order dated 29/10/2016</i> | <i>Position in Seniority list of 2016</i> |
|---|---|
| <i>Sudhakar Mahadeo Butke (6)</i>                           | <i>Sr. No. 11</i>                         |
| <i>Haridas Bijaram Nikode (7)</i>                           | <i>Sr. No. 12</i>                         |

|                                     |                   |
|-------------------------------------|-------------------|
| <i>Ramakant V. Retkule (10)</i>     | <i>Sr. No. 17</i> |
| <i>Vilas Bhaiyyaji Bhoskar (11)</i> | <i>Sr. No. 18</i> |
| <i>Bandu Sadhuji Jibhtode (12)</i>  | <i>Sr. No. 19</i> |
| <i>Sudhakar G. Dakare (13)</i>      | <i>Sr. No. 21</i> |
| <i>Sudhir M. Buratkar (14)</i>      | <i>Sr. No. 22</i> |
| <i>Maroti S. Bodhe (15)</i>         | <i>Sr. No. 23</i> |
| <i>Padmakar V. Bhoyar (16)</i>      | <i>Sr. No. 24</i> |
| <i>Kishor S. Pirke (17)</i>         | <i>Sr. No. 25</i> |
| <i>Keshao M. Tapare (18)</i>        | <i>Sr. No. 26</i> |
| <i>Ashok K. Rane (19)</i>           | <i>Sr. No. 27</i> |
| <i>Santosh P. Upare (23)</i>        | <i>Sr. No. 32</i> |
| <i>Dilip C. Khangar (24)</i>        | <i>Sr. No. 34</i> |
| <i>Suresh M. Mendhe(25)</i>         | <i>Sr. No. 35</i> |

*In the reply it is stated that the applicant was not promoted on account of registration of crime no. 220/2009. It is pertinent to note here in the similarly situated position one Devidas Girde (Sr. No. 1) came to be promoted to the post of ASI vide order dated 05/03/2014 & Shrikant Rathor(at Sr. No. 27) came to be promoted to the post of Nayak Police Constable in spite of the fact that criminal case under the provisions of Prevention of Corruption is pending therefore there was no reason for the department to deny the promotion to the applicant in view or the registration of the offence, specially when applicant has been declared conditionally fit therefore on the basis of the above submission it can safely be said that applicant has been deliberately denied promotion to the post of ASI. The copy of the order dated 05/03/2014 is annexed herewith as **Annexure A-8**"*

5. It was submitted by Shri G.G.Bade, Id. Counsel for the applicant that number of Hawaldars Junior to the applicant against whom criminal cases were pending and who belong to the category of O.B.C. were promoted to the post of Assistant Sub Inspector by order dated 29.10.2016 and this circumstance would show that promotion was arbitrarily and unjustly denied to the applicant. It was further submitted by Advocate Shri Bade that the applicant may be permitted to make a representation to respondent no. 3 for redressal of his grievances set out in the application as well as rejoinder, with a direction to respondent no. 3 to decide the same within the stipulated period. In the facts and circumstances of the case this submission deserves to be accepted. Hence, the order:-

### **ORDER**

Original Application is allowed in the following terms:-

1. The applicant is at liberty to make a representation to respondent no. 3 for redressal of his grievances raised in this application.
2. On such representation being made respondent no. 3 shall decide the same **within two months from the date of its receipt.**
3. No order as to costs.

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

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 Member (J).

Judgment signed on : 02/08/2022.  
and pronounced on

Uploaded on : 03/08/2022.