

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 896/2019(S.B.)**

Rajendra S/o Machindra Damare,  
Aged about 52 years, Occupation : Service  
(Sub-Inspector Excise), R/o O/o Shirpur,  
Tah.Dewari, Dist. Gondia.

**Applicant.**

**Versus**

- 1) The State of Maharashtra  
through its Secretary,  
Home (Excise) Department,  
Mantralaya, Mumbai-32.
- 2) The Commissioner, State Excise (M.S.),  
Second Floor, Old Custom House,  
Shahid Bhagatsing Marg,  
Fort, Mumbai-23.
- 3) The Superintendent Excise,  
Gondia, Tah. & Dist. Gondia.

**Respondents**

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Shri S.N.Gaikwad, Ld. counsel for the applicant.  
Shri M.I.Khan, Ld. P.O. for the respondents.

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

**Dated: - 15<sup>th</sup> February 2023.**

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**JUDGMENT**

**Judgment is reserved on 6<sup>th</sup> February 2023.**

**Judgment is pronounced on 15<sup>th</sup> February, 2023.**

Heard Shri S.N.Gaikwad, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the Respondents.

2. Case of the applicant is as follows.

The applicant was appointed as Constable-cum-Driver by order dated 06.08.1992 (Annexure A-1). As per "Sub-Inspector, Petty Officer, Driver-cum-Constable and Constable in the State Excise Department (Recruitment) Rules, 1992" which came into force on 01.01.1993, for getting appointment to the post of Sub-Inspector in the State Excise the minimum height was prescribed as 165cm. The applicant and others whose height was between 162cm and 164cm filed O.As. at the Principal seat of this Tribunal which were decided by common judgment dated 07.03.2011 (Annexure A-2) and it was held-

***38. Therefore, we hold that the applicants, when they had joined there was no minimum height of 165 cms. prescribed now cannot be denied the right to be considered along with other candidates for the post of Sub-Inspector in State Excise Department. They cannot be now deprived the right of getting promoted only by inferring retrospective effect in the said 2009 Rules.***

***39. Accordingly, we direct the Respondents No.2 to consider the cases of the Applicants for being promoted to the post of***

***Sub-Inspector, though their height might be between 162 cms to 164 cms, along with other candidates, subject to their fitness and other criteria. With these directions, all the above Original Applications, stand disposed of.***

The judgment dated 07.03.2011 was challenged by the State as well as private respondents in the O.As. by filing Writ Petitions. These Writ Petitions were allowed and O.As. stood dismissed by common judgment dated 29/30.09.2011. The applicant and others then filed S.L.P.s. in the Hon'ble Supreme Court which were dismissed on 11.09.2015 (Annexure A-3) by observing thus-

***We find no reason to entertain these Special Leave Petitions, which are, accordingly, dismissed.***

***It has been submitted on behalf of the respondent-State that possibly, the issue with regard to height is being re-considered by the State Government at present.***

***If that is so, the dismissal of the petitions would not come in way of the petitioner and other similarly situated persons.***

By notification dated 17.07.2009 Rules regulating recruitment to the post of Sub-Inspector in the State Excise Department under the Home Department of the Government of Maharashtra were framed, Rule 3 of which

prescribed minimum height of 165cm for the post of Sub-Inspector in State Excise Department. By Notification dated 12.07.2016 (Annexure A-4) Rule 3 of Rules of 2009 was *inter alia* amended as follows.

**3. In rule 3 of the principal Rules,-**

**(i) in clause (a), after sub-clause (iii), the following proviso shall be added, namely :-**

***“Provided that, height shall be relaxed up to minimum 162 centimetre in case of employees in the constabulary who were appointed prior to 1<sup>st</sup> January 1993, in the State Excise Department and working at present.”***

One Shri S.K.Dalvi who was Junior to the applicant as per common seniority list of the year 2010 (Annexure A-5) was promoted to the post of Sub-Inspector by order dated 07.10.2011 (Annexure A-6). He and others who, too, were junior to the applicant were promoted to the post of Inspector by order dated 11.09.2019 (Annexure A-7). The applicant was eventually promoted to the post of Sub-Inspector by order dated 04.05.2018 (Annexure A-8). Hence, this O.A. for deemed dates of promotion viz. 07.10.2011 and 11.09.2019 for the post of Sub-Inspector and Inspector respectively, along with consequential benefits.

3. Respondents 2 and 3 have resisted the O.A. on the following grounds by filing reply (at PP.63 to 71). By Notification dated 12.07.2016 minimum height for the post of Sub-Inspector was brought down from 165cm to 162cm. When promotion order to the post of Sub-Inspector was issued on 07.10.2011 Rules of 2009 were in place which prescribed minimum height of 165cm. Thus, at this point of time the applicant was not eligible for being considered for promotion to the post of Sub-Inspector. He became eligible for such promotion by virtue of Notification dated 12.07.2016 which provided for relaxation in relation to height up to minimum 162cm. Thereafter, he was promoted to the post of Sub-Inspector by order dated 04.05.2018. For these reasons he is not entitled to get any relief.

4. It is the contention of the applicant that as per Notification dated 12.07.2016 relaxation in respect of height was given by the respondent department itself to the employees in the constabulary who were appointed prior to 1<sup>st</sup> January 1993 in the State Excise Department and working at that point of time and since the applicant was admittedly appointed prior to that date and was serving in the department, his eligibility for being considered for promotional post could not be doubted.

5. Stand of respondents 2 and 3, on the other hand, is this. The Constabulary staff who were appointed before 01.01.1993 and were below

165cm height were made eligible for the post of Sub-Inspector by relaxing height criteria to 162cm to 164cm by Notification dated 12.07.2016. Prior to this Notification the constables who were below 165cm were found ineligible for promotion to the post of Sub-Inspector and hence the avenue of promotion to the post of Sub-Inspector was permanently closed. This Hon'ble Tribunal in order dated 07.03.2011 had directed that an employee must have at least one avenue of promotion and the same could not be closed permanently. Therefore, the respondents relaxed the height criteria in the case of constables from 165cm to min 162cm as per Notification dated 12.07.2016 and thus the constable staff like the applicant who were below 165cm became eligible for promotion to the post of Sub-Inspector from 12.07.2016.

This stand of respondents 2 and 3 is fully supported by Rules of 1992, 2009 and 2016. The applicant is seeking relief of deemed date of promotion to the post of Sub-Inspector by claiming parity with one Shri S.K.Dalvi who was junior to him as per common seniority list of the year 2010, and who was promoted by order dated 07.10.2011. Admittedly, at this point of time Rules of 2009 were in place. It can be gathered that Shri S.K.Dalvi fell in the zone of consideration for promotion because he fulfilled all eligibility criteria including minimum prescribed height and the applicant was kept out of this zone of consideration though he was senior to Shri S.K.Dalvi because of height which was less than

the minimum prescribed under the Rules of 2009 which were then applicable. The applicant became eligible for being considered for the post of Sub-Inspector because of relaxation in respect of height provided by Notification dated 12.07.2016 / Rules of 2016. He was then promoted to the post of Sub-Inspector when vacancies to this post were filled up. Hence, I find no substance in the contention of the applicant that he should be given deemed date of promotion to the post of Sub-Inspector on the basis of date of promotion actually given to his junior Shri S.K.Dalvi i.e. 07.10.2011. Once this conclusion is reached the second prayer for grant of deemed date of promotion as 11.09.2019 to the post of Inspector is bound to fail. For the reasons discussed hereinabove the O.A. is dismissed with no order as to costs.

(M.A.Lovekar)  
Member (J)

Dated – 15/02/2023

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

Name of Steno : Raksha Shashikant Mankawde  
Court Name : Court of Hon'ble Member (J) .  
Judgment signed on : 15 /02/2023.  
and pronounced on