

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NOS.180 & 181 OF 2018**

**DISTRICT : MUMBAI**

\*\*\*\*\*

**ORIGINAL APPLICATION NO.180 OF 2018**

Shri Shashikant Eknath Jadhav. )  
Age : 50 Yrs., Police Head Constable, )  
Traffic Police, Dispatch Department, )  
Worli Police Camp, Worli, Mumbai – 30 )  
and residing at 10/08, First Floor, )  
Worli Police Camp, Sir Pochkhanwala )  
Road, Worli, Mumbai – 400 030. ) **...Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Addl. Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai - 400 032. )  
2. The Commissioner of Police for )  
Greater Mumbai, having office at )  
Crawford Market, Fort, Mumbai. ) **...Respondents**

**WITH**

**ORIGINAL APPLICATION NO.181 OF 2018**

Shri Shivaji Kashiram Kadam. )  
Police Head Constable, )  
Security Branch, Mumbai and residing at )

A-102, Sai Pavitra Co-op. Hsg. Soc., )  
Sector-8A, Plot No.31, Airoli, )  
Navi Mumbai – 400 708. ) **...Applicant**

**Versus**

1. The State of Maharashtra & Anr. ) **...Respondents**

**Mr. M.D. Lonkar, Advocate for Applicant.**

**Mrs. K.S. Gaikwad, Presenting Officer for Respondents in O.A.180/2018.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondents in O.A.181/2018.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 27.09.2019**

**JUDGMENT**

1. Since both the Original Applications are arising from common facts, they have been decided by the common Judgment.

2. Shortly stated facts giving rise to these applications are as under :-

In both the OAs, the Applicants have challenged the impugned order dated 06.02.2018 issued by Respondent No.2 – Commissioner of Police, Greater Mumbai rejecting their representation for grant of deemed date of promotion. The Applicant in O.A.No.180/2018 had joined the service on the post of Police Constable on 04.03.1987. Whereas, the Applicant in O.A.181/2018 had joined the service on the post of Police Constable on 01.03.1987. Both the Applicants joined service in Unarmed Police for which separate seniority list was

maintained at the relevant time. Later, they were designated as Police Naik on 01.08.2006 and 01.06.2005 respectively. Thereafter, they were promoted to the rank of Police Head Constable on 01.09.2013. They contend that Shri Ashok G. Raigude, who joined on the post of Police Constable on 01.10.1987 in Armed Police was promoted on 01.05.1994. Whereas, they were promoted belatedly for no fault on their part. They further contend that in 1987, the decision was taken by the Government to amalgamate the cadre of Unarmed Police and Armed Police w.e.f.01.01.1987 and combined seniority list for the post of Police Constables, Head Constables and APIs were to be prepared, so that there should be parity in Unarmed Police and Armed Police for grant of promotion. The Police Personnel serving in Armed Police were getting promotion earlier as compared to their counterpart in Unarmed Police, and therefore, to obviate the discontent amongst the Police Personnel, the decision was taken to amalgamate Armed Police and Unarmed Police and to prepare common seniority list. However, the Respondent No.2 did not take any steps for longer time and it is only in 2010, the final common seniority list was prepared. The Applicants, therefore, made representation to Respondent No.2, and thereafter, filed O.A.No.543/2014 before this Tribunal. The said O.A. was disposed of by this Tribunal on 26.08.2016 with direction to Respondent No.2 to consider the representations of the Applicants within a month. As it was not decided within time given by this Tribunal, the Applicants have filed Contempt Proceedings. However, belatedly, the Respondent No.2 by order dated 06.02.2018 rejected the representations, and therefore, Contempt Proceedings were disposed of.

3. On the above background, the Applicants have challenged the impugned order dated 06.02.2018 whereby their request for grant of deemed date of promotion on the basis of promotion granted to their counterpart Ashok G. Raigude was rejected.

4. The Respondents resisted the application by filing Affidavit-in-reply inter-alia denying the entitlement of the Applicant to the deemed date of promotion that is the date on which the promotion was given to Applicants counterpart Shri A.G. Raigude. In this behalf, the Respondents contend that the Applicants joined Police Force in Unarmed Police Branch for which separate seniority list was maintained. Whereas, Shri A.G. Raigude has joined Police Force in Armed Police Branch and there being separate seniority list for Armed Police, he was promoted earlier than the promotion of Applicants. As such, it is not in dispute that, though Shri A.G. Raigude joined later, he got promotion earlier of the Applicants. The Respondents admit that the decision to amalgamate Armed Branch and Unarmed Branch was taken in 1987 and combined seniority list were to be prepared. However, till the preparation of final combined seniority list, the promotions were carried out independently on the basis of separate seniority list, and therefore, the Applicant is not entitled to the deemed date of promotion. The Respondents thus sought to justify the impugned order denying the claim of the Applicant for deemed date of promotion.

5. Shri M.D. Lonkar, learned Advocate for the Applicants pointed out that the seniority was to be reckoned with from the date of initial appointment and though the decision for amalgamation of Unarmed and Unarmed Branch were taken in 1987, it was materialized after taking long period in 2010 and thereby serious prejudice is caused to the Applicants. He referred Circular dated 27.11.1989. The relevant portion from Circular dated 27.11.1989 issued by Inspector General of Police is as follows :-

“पोलीस हवालदार आणि सहायक पोलीस उपनिरीक्षक यांची समाईक सेवा ज्येष्ठता सूची तयार करताना वर नमूद केलेल्या कार्यप्रणालीची आवश्यकता आहे. कारण अनुभव असा आहे की, सशस्त्र व निशस्त्र शाखेतील कर्मचा-यांना वेगवेगळ्या सेवा ज्येष्ठतेनुसार पदोन्नती मिळते आणि या दोन्हीची जर त्यांचे पदोन्नतीच्या दिनांकापासून सेवा ज्येष्ठता निश्चित केली, तर त्यामुळे कोणत्या तरी एका शाखेतील कर्मचा-यावर अन्याय होईल. वरील पध्दती प्रमाणे तयार करण्यात आलेल्या समाईक सेवा ज्येष्ठता सूची अन्वयेच यापुढे पदोन्नती देण्यात याव्यात.”

6. Per contra, the learned Presenting Officer reiterated the contentions raised in reply and submits that in view of separate seniority list for Armed Police and Unarmed Police, promotion was granted to Shri A.G. Raigude earlier to the Applicants, and therefore, Applicants have no right to ask for deemed date of promotion on the basis of date of promotion given to Shri A.G. Raigude.

7. Undisputedly, the Applicants joined on 01.03.1987 and 04.03.1987 respectively in Unarmed Police. Whereas, Shri A.G. Raigude had joined on 01.10.1987 in Armed Police. It is also not in dispute that Shri A.G. Raigude was given promotion on 01.05.1994. As such, there is no denying that separate seniority list was being maintained implemented and promotions were being done independently on the basis of separate seniority list for Armed Police and Unarmed Police. The Police Personnel, who were in Armed Police were getting promotions earlier than their counterpart in Unarmed Police. Therefore, to obviate the unrest in Police Personnel of Unarmed Police, the decision was taken to amalgamate Unarmed Police and Armed Police by preparing common seniority list. It is true that the seniority was to be reckoned with from the date of initial appointment of Police Personnel. However, there is no denying that the Applicants on their own volition accepted the post in Unarmed Police and joined as Police Constable in Unarmed Police. It is not a case that they were forcibly sent to Unarmed Police. As such, when the Applicants consciously joined Unarmed Police Branch for which promotions were to be made only on the basis of seniority list of Unarmed Police Branch, they cannot be equated with the promotions of Police Personnel in Armed Police Branch in which promotions were done independently on seniority list of Unarmed Police.

8. This is not a case where deemed date of promotion is sought because of superseding of the Applicants by junior in Unarmed Police Branch. The grievance of the Applicants could have been acceptable,

if junior to them in Unarmed Police Branch was promoted, but this is not so. The Government by G.R. dated 06.06.2002 had issued guidelines for considering deemed date of promotion where junior person is promoted. The Applicants' case does not fall within the parameters mentioned in G.R. dated 06.06.2002. This being the position, the Applicants' claim for deemed date of promotion on the basis of date of promotion granted to A.G. Raigude in Armed Police Branch can hardly be accepted.

9. True, the Government had taken decision in 1987 to prepare combined seniority list of Armed Police Personnel and Unarmed Police Personnel w.e.f.01.01.1987, but it could not be materialized till 2010. It is also equally true that, if combined seniority list was prepared earlier, then perhaps the Applicants could have been promoted earlier than Shri A.G. Raigude. However, the material factor is that there being separate branches of Armed Police and Unarmed Police, the promotions were carried out separately on the basis of independent seniority list. Therefore, so long as, there is no amalgamation and finality to the common seniority list which involved consideration of seniority of thousands of Police Personnel, the claim of the Applicants could not have been considered. As such, where the promotions were done on the basis of independent seniority list, the Applicants have no vested right to claim deemed date of promotion on the basis of date of promotion granted to Shri A.G. Raigude, who was promoted from independent seniority list of Armed Police Branch. It is further obvious that the promotions could not have been stalled or withheld for want of preparation of combined seniority list and during the process of completion of exercise of preparation of combined seniority list, some promotions in Armed Police Force were done, may be administrative urgency, as per the entitlement of the Police Personnel in seniority list of Armed Police Force. In such situation, in my considered opinion, the claim of the Applicants for grant of deemed date of promotion with parity to Shri A.G. Raigude, who was promoted

in Armed Police Branch is not maintainable. If such course of action is allowed, it would have much ramification and may affect hundreds of Police Personnel who are already promoted and it may open flood-gate of litigation. Be that as it may, in my considered opinion, the claim of Applicants is not maintainable as their case cannot be equated with the promotion of Shri A.G. Raigude.

10. At this juncture, it would be apposite to refer the Judgment of Hon'ble Supreme Court in **JT 1996 (3) 141 (State of Haryana & Ors. Vs. O.P. Gupta & Ors.)** wherein it held as follows :-

*“In these appeals unless the seniority list is prepared and finalized and promotions are made in accordance with the Rules on the basis of the above seniority list, the question of entitlement to work in the promotion posts does not arise. Consequently, the payment of arrears of salary does not arise since, admittedly the respondents had not worked during that period. The High Court was, therefore, wholly illegal in directing payment of arrears of salary. The order of the High Court accordingly is quashed.”*

11. True, in **O.P. Gupta's** case (cited supra), the issue was pertaining to Pay and Allowances of the promotional post from deemed date of promotion. However, it is clear from the Judgment that the real issue involved was about finalization of seniority list, as there was *inter-se* dispute regarding the promotions to the higher posts. In first round of litigation, the Hon'ble Supreme Court directed the Government to prepare the seniority list in accordance with Rule 9 of Haryana Service Engineers Class-II Public Works Department (Irrigation Branch) Rules, 1970. By following directions, the seniority list was prepared and promotions were given to 90 employees and some of whom were given deemed date of promotion. It is in that context, in second round of litigation, the employees filed Writ Petition claiming Pay and Allowances from deemed date of promotion which was granted by Hon'ble High Court. However, the matter was taken up before Hon'ble Supreme Court and Civil Appeal was allowed quashing the Judgment of Hon'ble High Court. Thus, the principle

underlying laid down is that where the seniority list is not finalized, there could be no question of promotion and consequently, there being no occasion of working on the promotional post, the question of payment of arrears of salary does not arise. Thus, the principle laid down in this Judgment is squarely attracted to the present situation.

12. The totality of aforesaid discussion leads me to sum-up that there was no infringement of right of promotion to the Applicants, they being governed by their independent seniority list of Unarmed Police Force, and therefore, cannot claim deemed date of promotion granted to another employee from different Branch i.e. Armed Police Force on the basis of its own independent seniority list. The Applicants are thus not entitled to the relief claimed and O.A. deserves to be dismissed. Hence, the following order.

### **ORDER**

Both the Original Applications are dismissed with no order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Mumbai  
Date : 27.09.2019  
Dictation taken by :  
S.K. Wamanse.