

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.321 TO 323 OF 2019

DISTRICT : MUMBAI

ORIGINAL APPLICATION NO.321 OF 2019

Shri Sudhir Arjun Koyande.)
Age : 57 Yrs. Occu.: Assistant Sub Inspector)
of Police at Traffic Police Control Room,)
Worli Police Camp, R/at : 3/1, Worli Police)
Camp, Sir Pochkhanwala Road, Worli,)
Mumbai – 400 030.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai.)
2. The Commissioner of Police.)
Near Crawford Market, D.N. Road,)
Mumbai – 400 001.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.322 OF 2019

Shri Madhukar Yashwant Raorane.)
Age : 60 Yrs. Occu.: Retired from the post)
of Assistant Sub Inspector of Police.)
R/at : C/204, 2nd Floor, Amit CHS,)
Yashodhan Nagar, Thane (W) – 400 606.)...**Applicant**

Versus

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

WITH**ORIGINAL APPLICATION NO.323 OF 2019**

Shri Ashok Tukaram Rajam.)
Age : 60 Yrs. Occu.: Retired on 30.10.2016)
R/at : B24/203, Saraf Chaudhari Nagar,)
Thakur Complex, Kandivali (E),)
Mumbai – 400 101.)...**Applicant**

Versus

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

Mr. K.R. Jagdale, Advocate for Applicants.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

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

DATE : 25.02.2021

JUDGMENT

1. The Applicants have invoked jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985 claiming deemed date of promotion after their retirement challenging the communication dated 28.03.2018 whereby their request for deemed date of promotion has been rejected. Since all these O.As are arising from common facts, they are decided by common Judgment.

2. Shortly stated facts giving rise to these applications can be summarized as under :-

The Applicants were initially appointed on the post of Police Constable in the year 1979. The Applicants in O.A.Nos.321 & 322 of 2019 were initially appointed in Armed Force, but later they were transferred to Unarmed Force. Whereas, the Applicant in O.A.No.323 of 2019 since inception was appointed in Unarmed Force. During the tenure of service, the Applicants were promoted to the post of ASI and PSI. The Applicant in O.A.No.321/2019 stands retired on 30.04.2019 as ASI. Whereas, the Applicant in O.A.Nos.322 & 323/2019 stands retired on 31.05.2016 and 30.10.2016 respectively from the post of PSI. In all these O.As, they are claiming deemed date of promotion for the post of Head Constable w.e.f. 02.02.1988, the date on which one Shri Ramakant B. Parab, who joined service later i.e. on 05.03.1980 got promotion. Thus, according to Applicants, though they joined service before Shri Ramakant Parab, they were promoted to the post of Head Constable much later than Shri Ramakant Parab. The Applicant in O.A.No.321/2019 got promotion to the post of Head Constable on 01.06.2001, Applicant in O.A.No.322/2019 got promotion to the post of Head Constable on 01.03.2001 and Applicant in O.A.No.323/2019 got promotion to the post of Head Constable on 01.09.2000. Whereas, Shri Ramakant Parab, who joined service after them, he was promoted to the post of Head Constable on 02.02.1988.

3. Following chart would show the date of appointment, date of promotion, retirement, etc.

	O.A.No.321/19	O.A.No.322/19	O.A.No.323/19	Details of appointment, etc. of RAMAKANT PARAB
NAME	SUDHIR ARUN KOYANDE	MADHUKAR YASHWANT RAORANE	ASHOK TUKARAM RAJAM	RAMAKANT BHIKAJI PARAB
APPOINTMENT	01-05-1979 in Armed Force	01-07-1979 in Armed Force	01-12-1979 in Unarmed Force	05-03-1980 in Armed Force
TRANSFER	Transferred from Armed Force to Unarmed Force	Transferred from Armed Force to Unarmed Force	Continued in Unarmed Force	Continued in Armed Force

	& posted at Yellogate P.O. on 29.06.1996	& posted at Nagpada P.O. on 01.07.1989		
DATE OF RETIREMENT	30.04.2019 as ASI	31.05.2016 as PSI	31.10.2016 as PSI	31.05.2019
PROMOTION TO THE POST OF HEAD CONSTABLE	01.06.2001	01.03.2001	01.09.2000	02.02.1988

4. Shri K.R. Jagdale, learned Advocate for the Applicants sought to contend that, admittedly, the Applicants being appointed in Police Force prior to Shri Ramakant Parab, they ought to have been promoted in view of their seniority prior to Shri Ramakant Parab, but they were promoted later on, which has caused severe prejudice to them. In this behalf, he invited my attention to Rule 4 of Maharashtra Civil Services (Regulation of Seniority) Rule, 1982 (hereinafter referred to as 'Rules of 1982' for brevity) which *inter-alia* provides that the seniority of Government servant shall ordinarily be determined on the length of his continuous service in the cadre. He has further pointed out that, way back in 1989, the Government had taken decision for amalgamation of seniority list of Police Constable, Police Hawaldar and API of Armed Force and Unarmed Force and their seniority was required to be fixed in accordance to their date of appointment. In this behalf, he referred to letter issued by Government dated 27.11.1989 whereby directions were given to Director General of Police, State of Maharashtra to amalgamate Armed Force and Unarmed Force for the purpose of seniority w.e.f.01.01.1987. Thus, according to learned Advocate for the Applicant, the Respondent No.2 – Commissioner of Police was under obligation to prepare common seniority list based upon the date of joining, but having not done so, serious prejudice has been caused to the Applicants. As it is only in 2010, the common gradation list was published but in the meantime, the promotions were granted to Shri Ramakant Parab much earlier to the Applicants. On this line of submission, he submits that the representation made by the Applicants for deemed date of promotion

ought to have been granted, but it is rejected by order dated 28.03.2018, which are unsustainable in law.

5. Per contra, Smt. A.B. Kololgi, learned Presenting Officer in reference to reply filed by Respondents sought to contend that initially as per practice, the separate seniority lists were maintained for Armed Force and Unarmed Force and promotions were issued on the basis of independent seniority list. The Police Personnel appointed in Armed Force being less in number got promotion earlier as compared to their counterpart, who are serving in Unarmed Force. The learned P.O. has pointed out that the Applicants in O.A.Nos.312 & 322/2019 though initially appointed in Armed Force, later they were transferred on their own request to Unarmed Force. Whereas, the Applicant in O.A.No.323/2019 was since appointment continued in Unarmed Force. Whereas, Shri Ramakant Parab since inspection was in Armed Force for which separate seniority list was maintained, and therefore, he got promotion earlier. She, therefore, submits that the challenge to the impugned order is devoid of merit. In this behalf, reliance is also placed on the decision rendered by this Tribunal earlier in **O.A.Nos.180 & 181/2018 (Shashikant E. Jadhav & Anr. Vs. The State of Maharashtra & Anr.) decided on 27.09.2019** where in identical situation, the claim for deemed date of promotion has been rejected.

6. The factual aspects about date of appointments, promotions, retirement, etc. as set out in Chart are not in dispute. Besides, indisputably, initially independent and separate seniority lists were maintained for Armed Force and Unarmed Force and promotions were given on the basis of seniority in respective seniority lists. It appears that Police Personnel serving in Armed Force used to get promotion earlier as compared to their counterpart serving in Unarmed Force and to obviate unrest in Police Personnel in Unarmed Force, the decision was taken by the Government to amalgamate Armed Force and Unarmed Force and to prepare common seniority list w.e.f.01.01.1987 in

accordance to date of joining of Police Personnel. Accordingly, directions were given to Director General of Police by Circular dated 27.11.1989. Clause No.10 of Circular is material, which is as under :-

“सशस्त्र आणि निशस्त्र संवर्गांचे एकत्रीकरण करावयाचे असल्यामुळे दिनांक १ जानेवारी १९८७ पासून पोलीस शिपाई पोलीस, हवालदार आणि सहाय्यक पोलीस उपनिरीक्षक यांचेसाठी तीन वेगवेगळ्या एकत्रित सेवा जेष्ठता सूची (हॅन्ड रजिस्टर्स) तयार करण्यात याव्यात. पोलीस शिपायांची सेवाजेष्ठता त्यांचे नियुक्तीच्या दिनांकापासून धरण्यात यावी. जर दोन पोलीस शिपायांची नियुक्तीची तारीख एकच असेल तर त्या पोलीस शिपायाच्या जन्म तारखे प्रमाणे सेवाजेष्ठता ठरवावी. पोलीस हवालदार आणि सहाय्यक पोलीस उपनिरीक्षक यांचे बाबतीत सेवाजेष्ठता निश्चित करताना सशस्त्र आणि निशस्त्र शाखेतील जे पोलीस कर्मचारी एकाच बॅचचे आहेत, परंतु या दोन्हीपैकी कोणत्याही एका शाखेचा जो कर्मचारी अगोदर पदोन्नत झाला असेल, त्यात दुसऱ्या शाखेतील त्याच बॅच मधील शेवटचा कर्मचारी (पदोन्नती नाकारल्यामुळे व पदोन्नतीसाठी लावण्यात आलेले (सुपर सीडेड) कर्मचारी सोडून) ज्या वर्षी पदोन्नत झाला असेल, त्यावर्षी पदोन्नत झाला असे मानण्यात यावे. त्यानंतर त्यांची आंतर जेष्ठता मात्र पोलीस शिपाई पदाच्या नियुक्तीच्या दिनांकापासून निश्चित करावी.

पोलीस हवालदार आणि सहाय्यक पोलीस उपनिरीक्षक यांची समाईक सेवाजेष्ठता सूची तयार करताना वर नमूद केलेल्या कार्यप्रणालीची आवश्यकता आहे. कारण अनुभव असा आहे की, सशस्त्र व निशस्त्र शाखेतील कर्मचा-यांना वेगवेगळ्या सेवा जेष्ठतेनुसार पदोन्नती मिळते आणि या दोन्हीची जर त्यांचे पदोन्नतीच्या दिनांकापासून सेवाजेष्ठता निश्चित केली, तर त्यामुळे कोणत्या तरी एका शाखेतील कर्मचार-यांवर अन्याय होईल. वरील पद्धती प्रमाणे तयार करण्यात आलेल्या समाईक सेवा जेष्ठता सूची अन्वयेच यापुढे पदोन्नती देण्यात याव्यात.’’

7. True, in terms of Government decision and Circular dated 27.11.1989, the Respondent No.2 was required to take steps for amalgamation of Armed Force and Unarmed Force. However, admittedly, it was not materialized till 2010. It is only in 2010, the common gradation list was prepared wherein on the basis of date of joining, the seniority was considered and in the said common gradation list of 2010, the Applicants' names were at Serial Nos.138, 529 and 1094 respectively. Whereas, the name of Shri Ramakant Parab is at Serial No.1223. However, this was the position reflected in gradation list of 2010. However, till amalgamation of Armed Force and Unarmed Force and preparation of common seniority list, the promotions were continued on the basis of independent seniority list for Armed Force and Unarmed Force. In other words, when Shri Ramakant Parab was promoted in 1988, there was no amalgamation of Armed Force and Unarmed Force. As such, so long as there was no amalgamation of Armed Force and Unarmed Force and finality to the common seniority list, which involved consideration of seniority of thousands of Police Personnel, the promotion on the basis of independent seniority list could not have been stalled, and therefore, promotions were given on the basis of independent seniority list of Armed Force in which promotion to the post of Head

Constable was given to Shri Ramakant Parab on 02.02.1988 considering his seniority in the said list. As such, when the promotions were done on the basis of seniority list, the Applicants cannot be said to have any kind of vested right to claim deemed date of promotion on the basis of date of promotion granted to Shri Ramakant Parab, who was admittedly promoted on the basis of independent seniority list of Armed Force. As stated above, there is no denying that after initial appointment, the Applicants in O.A.Nos.321 & 322/2019 got transferred to Unarmed Force for which separate seniority list was maintained. Whereas, the Applicant in O.A.No.323/2019 was in Unarmed Force since inception. As such, their seniority list was separate, and therefore, they got promotion later as compared to the promotion granted to Shri Ramakant Parab, who was in Armed Force since inception.

8. True, in terms of Rule 4 of 'Rules of 1982', the seniority is ordinarily be determined on the length of continuous service in the cadre. However, in the present case, admittedly, independent seniority lists were maintained for Armed Force and Unarmed Force. It is nowhere the case of the Applicants that they were forcibly sent to Unarmed Force. Thus, when the Applicants consciously joined Unarmed Force for which promotions were to be made only on the basis of seniority list of Unarmed Force, they cannot be equated with promotions of Police Personnel in Armed Force where promotions were done independently on the basis of seniority of Armed Force.

9. Material to note that the Applicants did not raise any objection or grievance when Shri Ramakant Parab was promoted to the post of Head Constable on 02.02.1988. Neither they raised any grievance when they were promoted to the post of Head Constable later in 2000 and 2001. Indeed, thereafter also, they were promoted to the post of ASI as well as PSI and stand retired as shown in the Chart. It is only at the verge of retirement, they made representations which were turned down by the impugned orders.

10. Needless to mention, a person aggrieved by supersession must approach the Court at earliest opportunity. However, the Applicants remained silent for years together and only at the verge of retirement, they are raising grievance of deemed date of promotion, which is clearly stale claim. In such situation, if the Applicants' claim is accepted, it would have much ramification and may affect hundreds of Police Personnel, who are already promoted and stands retired and it may open floodgate of litigation. Suffice to say, the grievance regarding promotion cannot be given new lease of life of any point of time. As such, considering from this angle also, the claim is quite belated and not sustainable. Even after publication of common gradation list in 2010, the Applicants did not take any steps for deemed date of promotion and they remained silent for years together.

11. This is not a case where the deemed date of promotion is sought because of superseding of the Applicants by juniors in the same cadre from common seniority list. It is not the case of Applicants that somebody else junior to them from Unarmed Force was promoted earlier to them. Therefore, the applicability of G.R. dated 06.02.2002 is out of question. By G.R. dated 06.02.2002, the Government had issued guidelines for considering deemed date of promotion where junior persons are promoted. Therefore, the G.R. dated 06.02.2002 is of no assistance to them in present situation.

12. In this behalf, it would be apposite to refer the Judgment of Hon'ble Supreme Court **JT 1996(3) 141 (State of Haryana & Ors. Vs. O.P. Gupta & Ors.)** wherein it has been held as under :-

"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."

13. 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.

14. 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. I see no illegality in the impugned orders and O.As. deserve to be dismissed. Hence, the following order.

ORDER

All these Original Applications are dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 25.02.2021

Dictation taken by :

S.K. Wamanse.

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