

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.1052 OF 2016
WITH
MISCELLANEOUS APPLICATION NO.3 OF 2017

DISTRICT : MUMBAI

1. Devidas Prabhakar Kathale,)
2. Vaibhav Yallapa Patil,)
3. Balasaheb Ramchandra Bankar,)
4. Vaibhav Sudhakar Patil,)
5. Santosh Shankar Shejal,)
6. Rajesh Sudam Yadav,)
7. Dinesh Manohar Shende,)
8. Sachin Shivajirao Ingole,)
9. Surendra Jagannath Garad,)
10. Sameer Suryakant Gaikwad,)
11. Tanaji Mahadeo Narnavar,)
12. Sushma Vishwas Yewle,)
13. Abasaheb Anandrao Patil,)
14. Arun Shivdas Sugaonkar,)
15. Shyamal Pravin Sawant,)
16. Chandrakant Maruti Suryawanshi,)
17. Mahesh Shankarrao Bansode,)
18. Ramchandra Hari Chopade,)
19. Jagvendrasing Navasing Rajput,)
20. Abhijit Subhash Deshmukh,)
21. Abhay Chandramath Mahajan,)
22. Prafulla Hanumantrao Ankushar,)

23. Santosh Gundopant Doke,)
24. Sachin Dinkar Patil,)
25. Meena Santosh Jagtap,)
26. Rajesh Shivsing Jadhav,)
27. Yuvaraj Sambhaji Hande,)
28. Gitaram Laxman Shewale,)
29. Mansing Shrinivas Khoche,)
30. Bapu Dattatraya Dhere,)
31. Satish Hindurao Shinde,)
32. Sachin Chandrakant Kamble,)
33. Sharad Shankarrao Memane,)
34. Shrikrishna Chandrakant Pore,)
35. Sunil Vitthalrao Gade,)
36. Kundan Jotiram Jadhav,)
37. Prakash Dattatraya Rote,)
38. Ketaki Kiran Khot @ Sangeeta Bhosale,)
39. Vitthal Sadashiv Salunkhe,)
40. Pravin Nilkanth Sawant,)
41. Chandrashekhar Vitthal Sawant,)
42. Somnath Dattatray Jadhav,)
43. Harshwardhan Shankarrao Barve,)
44. Ravindra Dattatraya Patil,)
45. Santosh Shivaji Gore,)
46. Pramod Manikrao Ghonge,)
47. Udayshinh Shamrao Patil,)
48. Vaishnavi Udaysinh Patil,)
49. Raju Bhikaji Pachorkar,)
50. Tejaswini Abhijit Kadam,)
51. Girishkumar Vishwasrao Dighavkar,)
52. Amol Pandurang Chaudhari,)
53. Maruti Kedari Patil,)

54. Sarika Vitthal Ahirrao,)
55. Prabhakar Navrutti Gayakhe,)
56. Jayashri Mandar Kulikarni,)
57. Manjusha Madhukar Bhosale,)
58. Sudhakar Bapu Khot,)
59. Bipin Popatrao Shewale,)
60. Yogesh Abasaheb Deshmukh,)
61. Prakash Narayan Nikam,)
62. Prataprao Ashokrao Bhosale,)
63. Satish Bhausahab Hodgar,)
64. Priyatama Balasaheb Muthe,)
65. Saurabhi Sharadchandra Pawar (Mane),)
66. Prashant Vamanrao Kale,)
67. Dipak Laxman Dantulwar,)
68. Vishwanath Kishanrao Zunjare,)
69. Vaibhav Kantinath Shingare,)
70. Vaishali Bhiku More,)
71. Kailas Shankar Kare,)
72. Sitaram Manjaji Mehetre,)
73. Sudam Ganpati Mane,)
74. Jagdish Shivaji Mandalwar,)
75. Manik Yuvraj Patki,)
76. Santosh Hanumansingh Subalkar,)
77. Ajit Balkrishna Tripute,)
78. Santosh Ashokrao Ghatekar,)
79. Ganesh Narayan Kadam,)
80. Diparatan Gorakh Gaikwad,)
81. Amit Arun Dolas,)
82. Vaishali Raosaheb Patil,)
83. Santosh Ravindra Pailkar,)
84. Shivaji Bharamanna Naik,)

85. Pravin Shriram Chavan,)
86. Rahul Virsing Goud,)
87. Santosh Baliram Patil,)
88. Ramakant Dattatraya Kokate,)
89. Aruna Pandharinath Sugave,)
90. Ajit Totaram Rathod,)
91. Madhavi Raghunath Choudhari,)
92. Narayan Balu Gavade,)
93. Sanjay Namdeo Choudhari,)
94. Sandip Padmakar Yede,)
95. Ulhas Padmakar Bhusari,)
96. Kiran Raosaheb Wankhade,)
97. Adharsing Sondne Sardarsing)
98. Sidheshwar Dagadu Jangam,)
99. Umakant Anant Shinde,)
100. Digambar Pandurang Suryawanshi,)
101. Jyoti Balasaheb Deshmukh,)
102. Prav in Govindrao Dange,)
103. Mahesh Madhukarrao Bhortekar,)
104. Sheetalkumar Ramnath Ballal,)
105. Somnath Bajirao Nale,)
106. Meenal Dattatray Kolekar,)
107. Shyamsunder Madhukarrao Tak,)
108. Dhananjay Vitthal Pingale,)
109. Shalini Kundlik Asole,)
110. Purushottam Waman Chobe,)
111. Dinesh Vithalrao Zambre,)
112. Durgesh Ashok Shelar,)
113. Vinay Govind Sarwade,)
114. Raju Bansilal Rasede,)
115. Ashok Nivrutti Najan,)

116. Sangita Pravin Jadhav (Mohite),)
117. Yogesh Shivaji Kamale,)
118. Deepak Raghunathgiri Gosavi,)
119. Santosh Iyamsing Daberao,)
120. Sanjay Namdeo Dhonnar,)
121. Pandurang Shrirang Bhopale,)
122. Sanjay Bhika Chavan,)
123. Ravikiran Tukaram Darwade,)
124. Sachin Ramchandra Kale,)
125. Dada Somnath Gaikwad,)
126. Tapan Deoram Kolhe,)
127. Rajendra Jagannath Magar,)
128. Narayan Dnyanoba Saste,)
129. Sandeep Rangrao Koli,)
130. Sambhaji Gorakhnath Katare,)
131. Vinay Ramchandra Bahir,)
132. Dhanaji Vitthal Jalak,)
133. Vikram Ramsing Goud,)
134. Hanumant Lachmanna Unlugondawar,)
135. Mahadev Ischawarappa Todale,)
136. Bhaurao Shridhar Birajdar,)
137. Suresh Narayan Ghadge,)
138. Vishwasrao Maruti Kadam,)
139. Pradeep Ghanshyam Salunkhe,)
140. Vinod Bhalerao Patil,)
141. Chithambar Shankarrao Kamthewad,)
142. Dilip Digambar Sagar,)
143. Jotiram Ganapati Patil,)
144. Vijaysing Bhagwansing Chauhan,)
145. Amarsing Ananadrao Patil,)
146. Rahul Jayprakash Sonawane,)

147. Ujjwal Arun Vaidya,)
 148. Ranjit Narayan Yamgar,)
 149. Saroj Bhagwanrao Moklikar,)
 150. Shashikala Sudam Kakade,)
 151. Meghana Ramchandra Burande,)
 152. Vijay Maruti Kare,)
 153. Santosh Gundopant Doke,)
 154. Vijay Chintaman Chaure,)
 155. Sunil Bhauraoji Wankhede,)
 156. Mahadeo Pandurang Acharekar,)
 157. Sanjay Laxman Suryawanshi,)
 158. Sunil Dattatray Shinde,)
 159. Siddheshwar Dagadu Jangam,)
 160. Shivaji Dhondiba Bantewad,)
 161. Nitin Nanaji Uike,)
 162. Sanjay Shanraram Patil,)
 163. Abhay Prabhakar Harollikar,)
 164. Kanchan Padmakarrao Pande,)
 165. Aradhana Yeshwant Patil)
 All working in Police Department in the)
 State of Maharashtra)
 C/o Shri M.D. Lonkar, Advocate, M.A.T., Mumbai)..Applicants

Versus

1. The Government of Maharashtra,)
 Through the Additional Chief Secretary,)
 Home Department, Mantralaya, Mumbai)
 2. Director General of Police,)
 Old Council Hall, Colaba, Mumbai)

3. Maharashtra Public Service Commission,)
Through its Secretary, Bank of India Building,)
Fort, Mumbai)
4. Shri Mahesh Maruti Patankar,)
Assistant Police Inspector, Kanjurmarg Police)
Station, R/At Dange Chawl, Laxmi Chirag Nagar,))
Behind J.K. Chemical, Pokhram Road No.1,)
Thane West)
5. Shri Shrikrushna Bhagwan Harugade,)
Assistant Police Inspector, Crime Branch, Thane)
City, Police Commissionerate,)
R/at Marol Police Camp, E 9-4, Marol,)
Andheri (E), Mumbai)
6. Shri Vijay Babasaheb Dandavate,)
Assistant Police Inspector, ATS, Nagpada Unit,)
Mumbai-8, R/o 17/11A, Tardeo Police Officers)
Quarters, Tardeo, Mumbai-34)
7. Shri Sunil Ananda Waghmare,)
Assistant Police Inspector, ATS, Nagpada Unit,)
Mumbai-8, R/o PSI/20, Railway Police Quarters,))
Dadar (E), Mumbai-14)
8. Shri Harilal Namdev Jadhav,)
Police Inspector, ACB, Worli, Mumbai 18,)
R/o 302/3, Bluenile Wing, Riverdale CHS,)
Godrej Hill Road, Kalyan, District Thane)

9. Shri Manish Madhukar Awale,)
Assistant Police Inspector, Alankar Police)
Station, Pune City, R/o Officers Quarters,)
D-Bldg., Room No.1, Swargate Police Line,)
Pune-37)
10. Shri Ajay Bhimrao Waghmare,)
Assistant Police Inspector, Crime Branch, Pune)
City, R/at F-13, Sainagari CHS, Kalyaninagar,)
Yerwada, Pune 411006)
11. Shri Asaram Hirubhau Chormale,)
Assistant Police Inspector, Solapur Rural,)
R/at Flat No.12, Building No.H-8, Gate No.1,)
Sakalnagar, Baner Road, Pune)
12. Shri Sandeep Vilas Jagtap,)
Assistant Police Inspector, Warje Police Station,)
Pune City, R/at N-202, Megh Malhar, Dhayari,)
Pune)
13. Shri Sandeep Bhaurao Ghorpade,)
Assistant Police Inspector, BDDS, Pashan,)
Pune Rural, R/at Flat No.12, Sopan Baug,)
Panchavati, Pashan Road, Pune 411008)
14. Shri Rajendra Bhaurao Panhale,)
Assistant Police Inspector, Konegaon Park)
Police Station, Pune City, R/at Room No.8,)
Building No.12, Swargate Police Line, Pune-37)..Respondents

WITH**MISCELLANEOUS APPLICATION NO.3 OF 2017****IN****ORIGINAL APPLICATION NO.1052 OF 2016**

Shri Mahesh Maruti Patankar,)
Assistant Police Inspector, Kanjurmarg Police)
Station, R/At Dange Chawl, Laxmi Chirag Nagar,))
Behind J.K. Chemical, Pokhram Road No.1,)
Thane West)..Applicant
(Ori. Respondent No.4)

Versus

1. Shri Devidas Prabhakar Kathale & 164 Ors.)
2. The State of Maharashtra & 2 Ors.) ..Respondents
(No.1-Ori.Applicants
(No.2-Ori.Respondents)

Shri M.R. Patil, Learned Counsel with

Shri M.D. Lonkar – Advocate for the Applicants.

Ms. S.P. Manchekar – Chief Presenting Officer for Respondents No.1 to 3.

Shri A.V. Bandiwadekar – Advocate for Respondents No.4 to 8.

Smt. Punam Mahajan – Advocate for Respondents No.9 to 14.

Shri A.V. Bandiwadekar – Advocate for Applicant in MA No.3 of 2017.

CORAM : Shri Justice A.H. Joshi, Chairman
Shri P.N. Dixit, Member (A)

RESERVED ON : 8th April, 2019
PRONOUNCED ON : 8th May, 2019
PER : Shri Justice A.H. Joshi, Chairman

J U D G M E N T

1. Heard Shri M.R. Patil, learned Advocate with Shri M.D. Lonkar, learned Advocate for the Applicants, Ms. S.P. Manchekar, learned Chief Presenting Officer for Respondents No.1 to 3, Shri A.V. Bandiwadekar, learned Advocate for Respondents No.4 to 8 and for Applicant in MA No.3 of 2017.

2. Smt. Punam Mahajan, learned Advocate for Respondents No.9 to 14 has filed no instructions purshis dated 5.4.2019.

3. 165 Police Inspectors, who were amongst many comprising a group of selection of 2000 are Applicants in this OA. They have prayed for following reliefs:

“15 (a) *This Hon’ble Tribunal be pleased to hold and declare that the impugned order dated 27th September, 2016 issued by the Respondents no.2 as illegal and bad in law and the same be quashed and set aside with further directions directing the Respondents to accord retrospective seniority in favour of the present Petitioners w.e.f. September-October, 2002 along with all consequential service benefits.*

(b) *This Hon’ble Tribunal be further pleased to hold and declare that the Petitioners are entitled for retrospective seniority in the cadre of P.S.I. from September-October 2002 within the quota of 50% earmarked for direct recruits like the present Petitioners and the same accordingly be directed to be accorded in favour of the present Petitioners.”*

(Quoted from page 50-51 of OA)

4. The foundation of Applicants' claim can be summarized below:

- (a) *The Applicants are candidates for PSIs' post amongst those candidates, who were selected for the post of Police Sub Inspectors in the batch of recruitment session conducted in July, 2002 for common examination for Sales Tax Inspector and for PSI.*
- (b) *Writ petitions were filed before the Hon'ble High Court challenging the process of selection on account of allegations of various malpractice.*
- (c) *The Hon'ble High Court has passed interim injunction restraining the appointments.*
- (d) *During pendency of writ petitions the injunction was vacated and process of selection and appointment was allowed to proceed.*
- (e) *One group of selected candidates came to be appointed before grant of injunction by Hon'ble High Court.*
- (f) *Another group of selected candidates from the same batch remained behind and was appointed later in date to the class of promotees.*
- (g) *In the meantime a group of promotees from the class of seniority-cum-fitness quota got the promotion.*
- (h) *Much after vacation of interim order the Government accepted the position that Applicants are entitled to be appointed and did it. However, did not grant them seniority from the date of appointees in the same batch of selection to which they belong.*
- (i) *At no point of time final seniority list has been published.*
- (j) *The Applicants' claim that their promotions were delayed because of the judicial act and delay on account of judicial proceedings ought never to prejudice anyone.*

(k) *Applicants have no occasion/cause or cause of action to challenge the promotion of private Respondents or members of their class.*

5. The Ld. Advocate for the Applicants has placed reliance on the following judgments:

Sr. No.	Judgment	Purpose/Ratio
1	<i>1993 Supp (2) SCC 734 Dr. A.R. Sircar Vs. State of U.P. & Ors.</i>	<i>The University will determine the point of time when the appellant could have been appointed on the substantive post of Professor of Medicine had there been no prohibition against the implementation of the select list.</i>
2	<i>(1996) 7 SCC 759 V.P. Shrivastava & Ors. Vs. State of M.P. & Ors.</i>	<i>There was no delay in filing case before Tribunal if party had approached the Tribunal within limitation from the date of finalization of gradation list.</i>
3	<i>(1997) 6 SCC 721 K.C. Sharma & Ors. Vs. Union of India & Ors.</i>	<i>Benefit of latest judgment cannot be denied rather should be given by condoning the delay.</i>
4	<i>(2003) 8 SCC 648 South Eastern Coalfields Ltd. Vs. State of M.P. & Ors.</i>	<i>Courts do no wrong to a party. Sufferer must be restituted suitably.</i>
5	<i>2006 AIR SCW 1046 Krishnaswamy S. Pd. & Anr. Union of India & Ors.</i>	<i>Courts do no wrong to a party. Sufferer must be restituted suitably.</i>
6	<i>Civil Writ Petitions No.6104/2010 & 6113/2010 decided by Hon'ble High Court, Bombay on 10.8.2010.</i>	<i>Order dated 23.3.2010 passed in OAs No.192 & 538 of 2009 filed by Eknath R. Patil & Ors. has been challenged but it is not stayed.</i>
7	<i>Circular dated 12.6.2017 issued by office of DGP, Mumbai.</i>	-

6. According to Shri A.V. Bandiwadekar, Ld. Advocate for Respondents no.4 to 8:

(a) *The OA suffers from defect of negligence, delay and laches.*

(b) *No objection whatsoever was taken to the seniority list.*

(c) *The judgment in the case of Sales Tax Inspectors rendered by this Tribunal has no application to the present case and prayed for dismissal of the OA.*

7. For same objections Respondents No.4 to 8 have filed M.A. No.3 of 2017. It is being decided while deciding this OA.

8. The present OA is strongly opposed by Shri A.V. Bandiwadekar, learned Advocate for Respondents No.4 to 8 and he has relied upon the various judgments namely :-

Sr. No.	Judgment	Purpose/Ratio
1	<i>(2010) 1 SCC (L&S) 1126 : (2010) 2 SCC 59 Union of India & Ors. Vs. M.K. Sarkar.</i>	<i>A belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute.</i>
2	<i>2019(1) Mh.L.J. 14 Union of India Vs. Chaman Rana.</i>	<i>-do-</i>
3	<i>2007(5) Mh.L.J. 64 State of Maharashtra & Ors. Vs. Layakmiya Bademiya Shaikh & Ors.</i>	<i>The seniority has been considered from the date of their actual appointment after undergoing training.</i>
4	<i>2018(1) Bom.C.R. 27 Noreshwar Raghunathrao Shende & Anr. Vs. Sudhakar Baburao Nangnure & Ors.</i>	<i>Without challenging the promotion order dated 11.8.2011 of the petitioner, the Tribunal was not justified in proceeding on the footing that the appointment of the petitioner is a fortuitous appointment being in contravention of the Recruitment Rules.</i>
5	<i>O.As. No.918 of 2015 & 1094 of 2015 Shri Suresh Bhikaji Shingte & Ors. The Government of Maharashtra & Ors. decided by this Tribunal on 7.6.2017.</i>	<i>A person cannot be given retrospective appointment/seniority in the cadre from a date on which he was not even borne on that cadre.</i>
6	<i>Civil Writ Petitions No.6104/2010 & 6113/2010 decided by Hon'ble High Court, Bombay on 10.8.2010.</i>	<i>To show that order in OA No.918 of 2015 has been challenged, but stay has not been granted.</i>

9. The questions which arise for our consideration are :-

- (i) *Whether the act of Respondents no.2 in assigning to the Applicants the deemed dates different from the date applicable to all other candidates from batch of September-October, 2002 is legal and proper?*
- (ii) *Whether claim of Applicants in present OA is barred by limitation?*
- (iii) *What order and relief can be granted?*

10. Strength and vigour of contest does not really make the matter. The issue involved in present O.A. is very simple as noted in para 4 of the O.A.. All Applicants belong to the recruitment batch of the advertisement issued in 1999.

11. After completing the selection process, the process of making appointment order began and one lot was appointed in 2002.

12. Due to judicial intervention further appointments were restrained. The interim injunction against appointment was vacated in 2006.

13. One batch of Limited Departmental Examination of in-service candidates based on subsequent advertisement was appointed/promoted as PSI in 2003, while appointments of a group of direct recruits remained stayed. The remaining of the batch of advertisement of 1999 and appointment of 2002 had remained behind and due to judicial intervention and issue of orders was delayed further due to administrative delays. The appointments actually were effected in 2005-06.

14. By application of general principles in service jurisprudence, appointees of one batch would constitute one lot and inter-se seniority of the members of the said lot would be governed by the merit, as prescribed by the rules. Whether Rule 89 of the Bombay Police Manual applies is an

issue agitated. However, despite the fact that this Tribunal has held that the said rule has become absolute, yet it will not be wiped out from the rule book and until substituted it will continue to operate. Moreover it is not struck-down or set aside.

15. As there was injunction as regards appointments against the State relating to the part of the members of 1998 batch, the departmental candidates of 1999 batch got appointment as per their entitlement, and but were placed in provisional seniority list in higher rank than the Applicants.

16. Admittedly, final list of seniority or gradation list integrating the PSI from the batch of 1998 advertisement and from the batch of Limited Departmental Examination of 1999, is not yet finalized. Impugned order rejecting Applicants' representations does not disclose reasons of assignment of reasons for rejection of representations, particularly with reference to rule 89(3) of Bombay Police Manual or rule whatsoever.

17. From above narration it shall be evident that the reason due to which the appointment of batch of Applicants was delayed is the judicial intervention. The judgments relied upon by the Applicants that Courts do not do wrong has to be construed and understood in such fashion that if no party suffer loss, damage or injury it is entitled for restoration on the principle analogous to restitution treating it as if the impugned order which has resulted in causing any loss or damage in the status or monetary effect or otherwise, the loss of damage should be undone as if the judicial act – an interim order or judgment was not at all passed.

18. Applicants have no reason, action or cause to challenge the appointment of Limited Departmental Examination candidates of 1999 advertisement.

19. The principle that settled position should not be unsettled has no application to the facts of the present case inasmuch as grant of deemed date to the Respondents – batch mates of 1999 Limited Departmental Examination batch was – a windfall, to which they were not at all entitled. Had the intervention of court order not to occur, appointee/ promotes of 1999 batch were to take the rank at the bottom of 1998 batch, and this sure result must occur.

20. Entry of Applicants in the employment is not delayed due to any fault attributable to them,

21. The case of the Applicants is replica of the Sales Tax Inspectors' case decided by this Tribunal in OAs No.129 & 538 of 2009 on 23.3.2010 (Shri Eknath R. Patil & Ors. Vs. The State of Maharashtra & Ors) since the set of reasons and circumstances due to which the appointment of Applicants in those OAs was delayed is not barely similar but one and the same and only difference is that of the span of delay. Moreover, the Applicants in these OAs (of Sales Tax Officers) had conceded for not claiming monetary effect of restitution of loss due to delayed appointments, which issue has not been raised in the present OA.

22. The judgment in OA No.129 & 539 of 2009 is liable to be followed in present case on the principle analogous to resjudicata since the question as to whether the officers whose appointments were delayed, were delayed on account of judicial act and they cannot be made to suffer due to that nor that the beneficiaries can harvest and retain the benefit which came to them without any legal right.

23. No right whatsoever has accrued in favour of the Respondents to claim in supersession of Applicants' legitimate rights.

24. Hence, Original Application is allowed in terms of prayer paragraph 15(a) and (b) which reads as follows :-

“(a) This Hon’ble Tribunal be pleased to hold and declare that the impugned order dated 27th September, 2016 issued by the Respondent No.2 as illegal and bad in law and the same be quashed and set aside with further directions directing the Respondent to accord retrospective seniority in favour of the present Petitioners w.e.f. September – October 2002 along with all consequential service benefits.

“(b) This Hon’ble Tribunal be further pleased to hold and declare that the Petitioners are entitled for retrospective seniority in the cadre of P.S.I. from September – October 2002 within the quota of 50% earmarked for direct recruits like the present Petitioners and the same accordingly be directed to be accorded in favour of the present Petitioners.”

(Quoted from page 50 & 51 of the paper book of O.A.)

25. M.A.No.3 of 2017 does not survive and is disposed of.

26. Parties are directed to bear their own costs.

Sd/-

(P.N. Dixit)
Member (A)

Sd/-

(A.H. Joshi, J.)
Chairman

Dictation taken by: S.G. Jawalkar.