

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.390 OF 2016

DISTRICT : PUNE

Shri Mahadev Khanderao Survase,)
Age 58 years, Police Inspector,)
R/at Bungalow No.13, SRPF GR-II Officers Quarters,)
Near M.T. Section, Pune 411 022)..Applicant

Versus

1. The State of Maharashtra,)
Through Chief Secretary,)
Mantralaya, Mumbai 400032)
2. Additional Chief Secretary,)
Home Department, Mantralaya, Mumbai-32)
3. The Director General of Police, MS,)
S.B. Marg, Colaba, Mumbai 400001)
4. The Additional Director General of Police,)
State Reserve Police Force,)
Western Express Highway, Group No.8,)
Goregaon (E), Mumbai 400065)..Respondents

Smt. Punam Mahajan – Advocate for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)
RESERVED ON : 25th September, 2023
PRONOUNCED ON: 3rd October, 2023
PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. In this matter the applicant challenges his non-selection to the post of Deputy Superintendent of Police/Assistant Commandant and seeks deemed promotion from 2013-2014. The applicant was working as Police Inspector in SRPF, Pune. He was due for promotion from 2013-2014 and the confidential reports of the applicant as well as other officers had been called for in order to place them before the Departmental Promotion Committee (DPC) by the Dy. Inspector General of State Reserve Police Force. This information was not sent till December, 2014. However, DPC was not held and the applicant retired on 30.4.2016.

3. Ld. Advocate for the applicant submits that grave injustice has been caused to the applicant as due to the inaction of the department in not taking the DPC he was denied promotion w.e.f. 2014 to the post of Dy. Superintendent of Police/Assistant Commandant. She further submits that it is applicant's fundamental right to be considered for promotion as per the select list of 2013-2014 and this has been violated. The applicant's service record was good and therefore he was eligible and fit for promotion. There were 59 vacancies for promotion from 2013-2014. She conceded that the applicant had not submitted a written representation to

the department but was all alone pursuing the matter orally with the respondents and was under the bonafide impression that his promotion order would be issued before retirement. Ld. Advocate for the applicant relies on the following judgments:

(1) Judgment and order dated 1.10.2018 passed by the Hon'ble Bombay High Court in W.P. No.8212 of 2017 The State of Maharashtra & Anr. Vs. Shri Sukhdeo Sadashio Naik.

(2) Judgment and order dated 11.1.2017 passed by this Tribunal in OA No.839 of 2016 Shri Sukhdeo Sadashio Naik Vs. Government of Maharashtra & Anr.

4. Ld. Advocate for the applicant therefore prays that applicant should be given deemed date of promotion.

5. Ld. CPO while refuting the contentions raised by the Ld. Advocate for the applicant, relied on the affidavit in reply dated 16.8.2016 filed by Sanjay Narendra Nikam, Desk Officer in the office of DGP, Mumbai on behalf of respondent no.3. He pointed out that no junior from the category of the applicant has been promoted to the post of Deputy Superintendent of Police/Assistant Commandant. Ld. CPO pointed out that applicant cannot claim promotion if no junior from the category has been promoted. She further pointed out that mere calling of information for making preparation for DPC does not create any enforceable right on the applicant, if no junior from his category is promoted. She relies on the judgment of the Hon'ble Supreme Court in **Baij Nath Sharma Vs. Hon'ble Rajasthan High Court at Jodhpur & Anr. (1998) 7 SCC 44.**

6. The crux of the matter in this case is whether the applicant was entitled for promotion to the post of Deputy Superintendent of

Police/Assistant Commandant after retirement because there was a delay on the part of the respondents in issuing order of promotion to the post of Deputy Superintendent of Police/Assistant Commandant till his retirement on 30.4.2016. An important factor in this case is that none of the juniors of the applicant were promoted till his retirement. It is stated that ad hoc promotion was given to some of the eligible officers vide order dated 12.5.2016 subject to final orders from the Government and as the applicant had retired on 30.4.2016 his name was rightly not considered. The regular DPC under the Chairmanship of Additional Chief Secretary, Home Department was held on 13.12.2016 for regular promotion for the select list of the year 2013-2014 and thereafter final orders of promotion were issued on 10.3.2017. In this case we rely on the ratio laid down by the Hon'ble Supreme Court in *Baij Nath Sharma* (supra) wherein the Hon'ble Supreme Court has considered the issue of whether retired employee could have a valid grievance if any of his juniors had been given promotion from a date prior to his superannuation but he cannot complain when promotions were made prospectively after his retirement. The facts of this case are squarely covered by the judgment in *Baij Nath Sharma* (supra). It would be appropriate to reproduce paras 6 and 7 of the judgment which reads as under:

“6. The appellant could certainly have a grievance if any of his juniors had been given promotion from a date prior to his superannuation. It is not the case there. From the promotional quota, four promotions were made only on December 30, 1996 i.e., after the appellant had retired. Those promoted were given promotions from the dates the orders of their promotions were issued and not from the dates the posts had fallen vacant. It is also the contention of the High Court that these four officers, who were promoted to RHJS, were senior to the appellant as per the seniority list. The question which falls for consideration is very narrow and that is if under the Rules

applicable to the appellant promotion was to be given to him from the date the post fell vacant or from the date when order for promotion is made. We have not been shown any rule which could help the appellant. No officer in RJS has been promoted to RHJS prior to May 31, 1996 who is junior to the appellant. Further decision by Rajasthan High Court has been taken to restore the imbalance between the direct recruits and the promotees which, of course, as noted above, is beyond challenge.

7. *In union of India and others vs. K.K.Vadera and others (AIR 1990 SC 442) this Court with reference to Defence Research and Development Service Rules, 1970, held that promotion would be effective from the date of the order and not from the date when promotional posts were created. Rule 8 of those Rules did not specify any date from which the promotion would be effective. This Court said as under:-*

"5. There is no statutory provision that the promotion to the post of Scientist 'B' should take effect from 1st July of the year that rightly or wrongly, for some reason or other, the promotions were granted from 1st July, but we do not find any justifying Tribunal that the promotions of the should be with effect from the date of the creation of these promotional posts. We do not know of any law or nay rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In created, promotions to those posts can be granted only after the Assessment Board has met and made its recommendations for promotions being granted. If on the

contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the Tribunal.”.”

7. Thus, in view of the fact that none of the juniors of the applicant were given promotion prior to his retirement, the applicant does not have any vested right to be given deemed date of promotion. Hence, we find no merit in the OA.

8. The Original Application is dismissed. No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
3.10.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
3.10.2023

Dictation taken by: S.G. Jawalkar.