

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI  
ORIGINAL APPLICATION NO.521 OF 2018**

**DISTRICT : NASHIK**

Pravin Ambadas Thakare, )  
Age 47 years, occ. Jawan (Assistant Sub Inspector), )  
R/o H.No.1760, Om Shanti Nagar, Dastgir Baba Road, )  
Lam Road, Deolali Camp 422401 )..Applicant

Versus

1. The State of Maharashtra, )  
Through Secretary, Home Department (Excise), )  
Mantralaya, Mumbai 400032 )
2. The Secretary, )  
General Administration Department, )  
Mantralaya, Mumbai 400032 )
3. The Commissioner of State Excise, )  
M.S., Old Custom House, Fort, Mumbai 400023 )
4. The Superintendent, )  
State Excise, Opp. Police Parade Ground, )  
Sharanpur Road, Nashik 422002 )..Respondents

Shri C.T. Chandratre – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula R. Bhatkar (Chairperson)  
Smt. Medha A. Gadgil, Member (A)

DATE : 21<sup>st</sup> May, 2021

PER : Smt. Medha A. Gadgil, Member (A)

### **J U D G M E N T**

1. Heard Shri C.T. Chandratre, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. The applicant is a Constable working in the State Excise Department, Government of Maharashtra. He prays for granting him deemed date of appointment of 29.2.1992 for the post of Constable since his appointment was delayed due to Court case and further by ban on recruitment by the Government of Maharashtra.

3. The brief facts of the case are as follows:

On 5.9.1990 the State Excise Department issued an advertisement for the post of Constable in which the applicant appeared and the name of the applicant was recommended on 13.1.1992. At that time height requirement for Constable was 162 cm while there was no prescribed height for the post of Sub Inspector.

4. The process of recruitment was stalled as a result of the interim order passed by this Tribunal on 15.10.1993 in OA No.111 of 1992. However, on the very same day the Government of Maharashtra imposed a

ban on recruitment which was lifted only on 25.3.1998. On 23.7.1998 the appointment order was issued and the applicant joined his duty.

5. The applicant states that he is working continuously since 23.7.1998 and was thus entitled to his next promotional post i.e. Sub Inspector of State Excise. When the applicant has applied for the post of Constable as per rules notified on 20.12.1958 specific height for the post of Constable was 162 cm. No physical criteria were prescribed for the post of Sub Inspector.

6. However, the Recruitment Rules of 1958 were replaced by “Inspector, Sub Inspector, Petty Officer, Driver cum Constable and Constable in the State Excise Department (Recruitment) Rules, 1992”, which came into force on 1.1.1993. By these rules the requirement of height was prescribed as 165 cm. for the post of Sub Inspector for the first time. These rules were superseded by Rules of 2004 but no change was made in the requirement of height which was continued to be 165 cm. These rules were superseded in 2009 notified on 17.7.2009. In these rules the requirement of height for Sub Inspector was 165 cm.

7. Ld. Advocate for the applicant pointed out that Rules of 2009 came to be amended by Amendment Rules of 2016, which came to be notified on 12.7.2016. By this amendment after clause 3(a)(iii) a proviso came to be added. By this proviso the height came to be relaxed up to 162 cm. in case of employees in the constabulary who were appointed prior to 1.1.1993 as per the notification dated 12.7.2016. The applicant states that he was entitled to get appointment order on or before 29.2.1992. He was appointed only on 23.7.1998. This was because the Government of Maharashtra imposed a ban on recruitment on 15.10.1993 which was lifted only on 25.3.1998.

8. Consequent to two reasons, first of interim order dated 15.10.1993 passed by this Tribunal in OA No.111 of 1992 and second of imposing ban on recruitment by Government, there was a delay in his appointment. The applicant was therefore deprived from getting the benefit of Amended Rules of 2016 for no fault of his.

9. The applicant states that during intervening period he made several representations through proper channel. However, by letter dated 6.12.2017 he was informed that he has been barred from promotion in his entire service and by letter dated 5.7.2018 his representation for deemed date of appointment was rejected. The applicant has therefore prayed to quash and set aside the impugned letter dated 5.7.2018 and order dated 6.12.2017 and to grant him deemed date of entry in service w.e.f. 29.2.1992.

10. Ld. PO agreed that there was delay in appointment of the applicant to the post of Constable on account of OA No.111 of 1992 which was pending before this Tribunal and the applicant could not get appointment order up to 15.10.1993. He also admitted that the Government has imposed ban on recruitment on 15.10.1993 which was lifted only on 25.3.1998, after which the applicant was given appointment order on 23.7.1998. He also admitted that as per rules notified on 20.12.1958 the physical requirement and specific height for the post of Constabulary was prescribed as 162 cm. He further states that the case of Constables who were recommended before 31.12.1992 by the Regional Subordinate Selection Board were appointed by 31.12.1992 were recommended for giving benefit of Government notification dated 12.7.2016 for relaxation of height for promotion. However, the Government by its letter dated 27.11.2017 rejected the proposal as the Law and Judiciary Department have given remarks that employees who were recommended by Regional Subordination Selection Board before 1.1.1993 but appointed after that

are not entitled to the benefit of relaxation in the condition of minimum height as provide under Rule 3 of Amended Rules of 2016. The Ld. PO therefore submits that the applicant is not entitled for deemed date of entry in service due to the reasons given above. While they accept that there was no fault on the part of the applicant for the delay in appointment but the applicant is not entitled for deemed date of entry in service as he did not actually perform his Government duty from 1992 to 1998.

11. After hearing both the sides the important factor here is whether the applicant is entitled to get the benefit of Government notification dated 12.7.2016 which was about relaxation in height of Constables for promotion.

12. We have carefully considered the arguments made both the sides. The important point here is whether the applicant is entitled to get benefit of amended Rules of 2016 notified on 12.7.2016. In clause 3(a)(iii) of the amended rules a proviso was added that the height of Constables appointed prior to 1.1.1993 i.e. date of commencement of Recruitment Rules 1992 working at present came to be relaxed up to 162 cm.

13. It is admitted fact that applicant's appointment was delayed for not fault of his. When the applicant joined there was no prescribed minimum height of 165 cm. for the post of Sub Inspector. Admittedly the applicant fitted in the criteria of 162 cm. which was the height prescribed for Constables. The main plank of the applicant is that he should not suffer for no fault of his. Had the OA No.111 of 1992 not been filed in this Tribunal the applicant could have been appointed before the cut-off date of 1.1.1993. Moreover, there was ban on recruitment from 15.10.1993 to 25.3.1998. Thus the facts of the applicant are squarely covered under the

principle *actus curiae neminem gravabit* i.e. nobody suffers for an act of the Court.

14. Hence, we allow the Original Application with following directions:

**ORDER**

(a) The communications dated 6.12.2017 and 5.7.2018 issued by respondent no.3 to the applicant is hereby quashed and set aside.

(b) The applicant is hereby entitled to promotion to the post of Sub Inspector, State Excise as per rules and seniority along with all other consequential service benefits.

Sd/-

**(Medha A. Gadgil)**  
**Member (A)**  
**21.5.2021**

Sd/-

**(Mridula R. Bhatkar, J.)**  
**Chairperson**  
**21.5.2021**

Dictation taken by: S.G. Jawalkar.