

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**MUMBAI**  
**ORIGINAL APPLICATION NO.774 OF 2013**  
**WITH**  
**ORIGINAL APPLICATION NO.621 OF 2015**

**DISTRICT : MUMBAI**

Shri Subhash Baburao Koravi, )  
Age 44 years, Occ. Head Constable/Wireless Operator, )  
Wireless Section, Police Communication Complex, )  
Office of the Director General of Police, )  
S.B. Marg, Colaba, Mumbai )  
R/at Building No.11, Flat No.17, Worli Police Camp, )  
Sir Pochkanwalla Road, Worli, Mumbai 400030 )..Applicant

Versus

1. The State of Maharashtra, )  
Through Additional Chief Secretary, )  
Home Department, Mantralaya, Mumbai )
2. The Director General of Police, )  
S.B. Marg, Colaba, Mumbai )
3. Additional Director General of Police, )  
Training and Special Squad, S.B. Marg, )  
Colaba, Mumbai )

4. Additional Director General of Police and )  
Director, Police Wireless, Chavan Nagar, Pune )
5. Deputy Commissioner of Police (Wireless), )  
21<sup>st</sup> Floor, New Administrative Building, )  
Nariman Point, Mumbai )..Respondents

Shri V.B. Joshi – 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 : 2<sup>nd</sup> December, 2021

PRONOUNCED ON: 4<sup>th</sup> January, 2022

PER : Smt. Medha Gadgil, Member (A)

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

1. Heard Shri V.B. Joshi, Learned Advocate for the Applicant and Ms. S.P. Manchekar, Learned Chief Presenting Officer for the Respondents.
2. The applicant has filed the above two OAs. The applicant has made the following prayer in OA No.774/2013:

“(a) By a suitable order/direction, this Hon’ble Tribunal may be pleased to call for record and proceedings and after perusal thereof quash and set aside the impugned circular dated 2.7.2013, order dated 29.6.2013, GR dated 21.4.2009 Annexure A para 2 and communications dated 23.7.2013 and 26.7.2013.

(b) By a suitable order/direction, this Hon'ble Tribunal may be pleased to direct the respondents to relax the said condition mentioned in the impugned circular dated 29.6.2013, 2.7.2013 in respect of GR dated 21.4.2009 Annexure A para 2 and allow the applicant to appear for the said departmental examination without making any discrimination as the respondents have granted the same to the similarly situated employees."

3. The applicant has made the following prayer in OA No.621/2015:

"(a) This Hon'ble Tribunal be pleased to quash and set aside GR dated 21.4.2009, which restrains the applicant from appearing in the departmental examination to the post of PSI.

(b) This Hon'ble Tribunal be pleased to hold that the personnel working in the Wireless Department are eligible in 25% quota of promotion.

(c) This Hon'ble Tribunal be pleased to direct the respondents to maintain appropriate seniority list of the post of Hawaldar and ASI, those who have fulfill eligibility criteria from wireless department as per the GR dated 5.7.1994 and the ban be lifted and count the applicant's services for promotion against 25% quota as per GR dated 21.4.2009 and the applicant be promoted to the post of PSI."

4. Since the subject matter of both the OAs is more or less the same, both are disposed off by this common judgment.

5. The applicant who is working as Head Constable/Wireless Operator in the Wireless Section is challenging circular dated 2.7.2013, communication dated 26.7.2013 issued by respondents no.4 & 5 as also

GR dated 21.4.2009. The applicant has challenged the GR dated 21.4.2009 which prohibits technical personnel working in the Police Department including those working in the Wireless Section from appearing for the Departmental Qualifying Examination for promotion to the post of PSI in the Unarmed Police Wing.

6. The applicant has submitted his application for promotion to the post of PSI through the departmental examination on 11.7.2013. However, it was communicated by respondents no.4 & 5 vide their communication dated 2.7.2013 and 26.7.2013 that persons who are working in the Wireless Department, Motor Transport Department, Bandsman and Bigular cannot appear for the said departmental examination. As per the ratio of promotion to the post of PSI by virtue of GR dated 5.7.1994 reservation by direct recruitment is 50%, 25% by MPSC from Home Department and 25% from Department amongst cadre of Constable on certain conditions. Applicant comes under the cadre of 25% through department and amongst cadre of Constable and therefore he need to be allowed to appear for the examination. He referred to issuance of GR dated 21.4.2009 by which personnel working in Technical Branch such as Wireless, Motor Transport, those working in Armed Cadre Division, Bandsman and Bigular were barred from appearing for the said examination.

7. The Ld. Advocate for the applicant argued that the provisions of GR dated 21.4.2009 are unjust and illegal and are devoid of any intelligible differentia.

8. Subsequently this Tribunal by its order dated 28.8.2013 granted interim relief to the applicant who was permitted to appear for the examination which was scheduled on 30.8.2013. However, it was made

clear that the result of the performance of the applicant shall not be declared until further orders.

9. In view of the interim relief granted by this Tribunal, Ld. Advocate for the applicant pressed that applicant's result of the said examination should be declared and if found eligible he should be considered for promotion. Ld. Advocate for the applicant stated that GR dated 2009 is not in consonance of Police Manual and it is discriminatory. The Ld. Advocate for the applicant in support of his contentions has relied on the following judgments:

(1) *Air India v. Nergesh Meerza*, (1981) 4 SCC 335, the honorable Supreme Court held that in order to determine whether employees belong to the same category and can be equated,

**Page 17 “para 37(6)** [...] the circumstances such (a) as the nature, mode and manner of recruitment of particular category from the very start;(b) the classifications of the particular category;( c) the terms and conditions of service of the members of the category; (d)the nature and character of the posts and promotional avenues; (e) the special attributes that the particular category possesses which are not to be found in other classes and the like have generally to be examined”.

(2) In *State of Kerala v. N.M Thomas* (1976) 2 SCC 310 the honorable Supreme Court held that

**Page 60 “para 24** – Discrimination is the essence of Classification is, therefore, to be founded on substantial differences which distinguish persons grouped together from those left out of the groups and such differential attributes must bear a just and rational relation to the object sought to be achieved.”

(3) In *T.R Kothandaraman v. T.N Water Supply and Drainage Board*, (1994) 6 SCC 282 .-

**Page 186** **Para 16** The Honorable Supreme Court held that, “Restriction placed cannot however go to the extent of seriously jeopardizing the chances of promotion. To decide this, the extent of restriction shall have to be looked into to ascertain whether it is reasonable” (para 16). In that case, avenues for promotion were open to diploma-holding engineers, though to a lesser extent as compared to degree holding engineers.”

(4) It is ought to have seen that the judgments delivered by the Apex Court in *State of Jammu and Kashmir V/S Triloki Nath Khosa* reported in AIR 1974 Supreme Court 1 (V 61 C 1), which reads thus :

**Page 193 Para 2** “ In this unequal world the proposition that all men are equal has working limitations, since absolute equality leads to procrustean cruelty or sanctions indolent inefficiency. Necessarily, therefore, an imaginative and constructive modus vivendi between commonness and excellence must be forged to make the equality clauses viable. This pragmatism produced the judicial gloss of ‘classification’ and ‘differentia’, with the by-products of equality amongst equals and dissimilar things having to be treated differently. The social meaning of Arts. 14 to 16 is neither dull uniformity nor specious ‘talentism’. It is a process of producing quality out of larger areas of equality extending better facilities to the latent capabilities of the lowly.

It is not a methodology of substitution of pervasive and slovenly mediocrity for activist and intelligent – but not snobbish and uncommitted – cadres. However, if the State uses classification casuistically for salvaging status and elitism, the point of no return is reached for Arts. 14 to 16 and the Court's jurisdiction awakens to deaden such maneuvers. The soul of Art. 16 is the promotion of the common man's capabilities overpowering environmental adversities and opening up full opportunities to develop in official life without succumbing to the sophistic argument of the elite that talent is the privilege of the few and they must rule, wriggling out of the democratic imperative of Arts. 14 and 6 by the theory of classified equality which at its worst degenerates into class domination.”

(5) It ought to have seen in the judgments of Apex Court, cited before the Hon`ble Tribunal, i.e. T.R.Kapur Vs. State of Haryana reported in A.I.R. 1987 SC 415. It is held by the Apex Court as a well-settled principle that the power to frame rules to regulate conditions of service under the proviso to Article 309 of the Constitution or similar provision available to the Board to amend or alter the rules with a retrospective effect. After observing this, the Apex Court has stated, -

**Page 230** "It is equally well-settled that any rule, which affects the right of a person to be considered for promotion, and is a condition of service although mere chance of promotion may not be. It may

further be stated that an authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is however subject to a well-recognized exception that the benefits or rights accrued under the existing rules cannot be taken away by amending the rule with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Art. 309 which affects or impairs vested, rights.”

(6) It is further submitted that the observation of the Constitution Bench of the Apex Court, in the case of State of Gujarat Vs. Ramanlal Keshavlal Soni- A.I.R. 1984 SC 161 and B.S.Yadav Vs. State of Punjab - A.I.R. 1984 SC 561 (Para 51 of Page 32 and Para 52 of Page 35), has also not been taken into consideration by the Hon`ble Tribunal wherein in the said case was considering the constitutional validity of proviso to Section 102(l)(a) of Gujarat Panchayat Act, 1961 as introduced by the Gujarat Panchayat (Third Amendment) Act, 1978 with retrospective effect seeking to extinguish the status of Secretaries, Officers and Servants of the Gram and Nagar 600 Panchayats, who became members of a service under the State on being allocated to the Panchayat service.

(7) It is ought to have seen that in the case of B.S. Yadav &Ors. Vs. State of Haryana & Ors. (supra): the Apex Court observed, -



**Page 317 para 76** “Since the Governor exercises the legislative power under the proviso to Art. 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that provision. But the date from which the rules are made to operate, must be shown to bear either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case.”

(8) In the judgment delivered by the Apex Court in the case of Council of Scientific and Natural Research and Anr. Vs, K.G.S.Bhat and Anr., reported in 1989 4 SCC 635 wherein it was observed :-

**Page 327 para 9** "... It is often said and indeed, adroitly, an organization, public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organization not just for a job, but for a whole career. One must, therefore, be given opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organization, It is an incentive for personnel development as well. Every management must provide realistic opportunities for promising employees to move upward. The organization that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both

non-managerial employees and their supervisors. There cannot be any modern management much less any career planning, manpower development, management development, etc., which is not related to a system of promotions...”

(9) It is also to be seen that the Petitioner have relied on the case of State of Tripura Vs. K.K.Roy, reported in A.I.R. 2004 SC 1249.

**Page 334 para 6** “ It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India.”

(10) It is further to be noted that in the case of Bannari Amman Sugers Ltd. Vs. CTO (2005) ISCC 625. No doubt, this case deals with industrial law, but none the less the same can be equally made applicable in administrative law of judicial review. It is ought to have seen that the Respondents shall be restrained from bringing new Recruitment Rules in 2004 as rules of promissory estoppels are applicable to it.

10. The ratio laid down in these cases gives us an insight understanding the laws in the said matter. However, they are not applicable to the

applicant in view of the facts of the present case and special recruitment rules. Present matter is also distinguishable in view of separate recruitment rules and promotional rules of Wireless Department.

11. Shri Suresh Mahadeo Khade, Deputy Secretary, Home Department has filed affidavit in reply dated 29.11.2016 on behalf of respondent no.1 and stated that in the police department there are certain wings such as Unarmed Police, Armed Police, Police Wireless Section. The recruitment procedure of all the above stated wings is altogether different. The wireless wing is a technical wing of the Police Department whose work and duties are different from Unarmed Police Force of the Police Department. The applicant was directly recruited and appointed as Head Constable/Wireless Operator for which recruitment rules have been published vide notification dated 6.3.2012. He pointed out that said cadre has their own promotional channels. After successful passing in Proficiency and Cipher examination the applicant is eligible for promotion as Assistant Sub-Inspector/Head Wireless Operator. The applicant is also eligible for his next promotion as PSI Wireless (Traffic) (Engineering) by appearing in the departmental examination. Furthermore the applicant also has opportunity for promotion upto Class-I as per his seniority. On the contrary Police Personnel working in regular Police Force i.e. Unarmed Police compete for promotion to the post of PSI Wireless, Traffic and Engineering. That is why contention of the applicant that he has lost his all chances for promotion is not correct. Affidavit further stated that applicant is from Police Wireless cadre and he cannot claim parity with other cadre of regular police force i.e. Unarmed Police Constabulary for which the provision vide Rule 3(a) of PSI (Recruitment) Rules, 1995 is made for promotion to the post of PSI by giving 25% quota as per Rule 4 of the said Rules.

12. Affidavit further states that decision taken by the State Government vide GR dated 21.4.2009 which prohibits these personnel from appearing in the said examination is just and proper on the basis of principles of law i.e. Intelligible Differentia, for which they made following submissions:

(a) The mandate of Article 14 is such that State was not denying any person equality before law or equal protection of law. Equality before law is provided in Article 14 of the Constitution which provides that no one is above the law of the land.

(b) Article 14 does not mean that all laws must be general in character or that some laws should apply to all the persons or that every law must have universal application.

(c) The applicant is from Police Wireless cadre which is a totally different cadre from regular Police Force. Their recruitment rules are different, nature of job is also different. In both the cadre they have opportunity to get regular promotion after passing the departmental qualifying examination subject to fitness and vacancy.

(d) It was also submitted that giving identical treatment in unequal circumstances would amount to inequality.

(e) The applicant is not appreciating that all technical staff of the police department has an opportunity to appear for appointment to the post of Unarmed PSI by way of Unlimited Departmental Examination taken as per Rule 3(b) of PSI (Recruitment) Rules, 1995.

13. Ld. CPO appeared for the State and cited two judgments:

(a) Gopal Singh Vs. State Cadre Forest Officers' Association & Ors., (2007) 9 SCC 369 wherein the Head note reads that, Promotion – Officer belonging to a different cadre of the State service cannot claim promotion to a post required to be filled by promotion of officers belonging to another cadre – Andaman & Nicobar Islands Forest Service – Promotion to the post of Dy. Conservator of Forest.

(b) Bhakra Beas Management Board Vs. Krishan Kumar Vij & Anr., (2010) 8 SCC 701.

14. Ld. CPO submitted that recruitment to the post of Wireless Operator/ Police Head Constable is totally different from Police Constable who are recruited under Maharashtra Police Constable (Recruitment) Rules, 2011. Their channel of promotion is totally separate and they cannot be permitted to appear in the departmental qualifying examination which is for Head Constable, Assistant Sub Inspector working in Unarmed Police Wing.

15. By way of rejoinder the Ld. Advocate for the applicant contends that where there are rules provided it cannot be changed on the basis of administrative orders or instructions. It is necessary to amend the rules and not merely issue a GR for the same. He further pointed out that there has been no amendment to the Police Act. He pointed out that applicant's appointment was under the Police Act and up to 2009 personnel in Wireless Section were allowed to appear for the said examination. He also pointed out that GR has no legal significance and certainly the same cannot take away the right of the applicant to appear for the Departmental Examination which right flows from the Recruitment Rules. He therefore prayed that the reliefs sought in the OA may be granted in entirety.

16. After hearing arguments of both the sides it appears that the matter revolves around the principle of intelligible differentia. In this case the Police Department consist of various wings such as Unarmed Police, Armed Police, Police Wireless, Motor Transport Section, Bandsman, Bigular etc. The recruitment procedure and qualifications required for all these wings is altogether different. The Wireless wing is a technical wing of the department and whose work and duties are different from Unarmed Police Force of the Police Department.

17. Another contention of the Ld. Advocate for the applicant is that applicant has no chances for promotion is not correct. The applicant is also eligible for his next promotion as PSI Wireless, Traffic and Engineering by appearing for the departmental examination. Moreover, he has also opportunity for promotion upto Class-I as per his seniority. He can reach upto the post of Dy. Superintendent of Police, Police Wireless.

18. We are in agreement with the stand of the department that GR dated 21.9.2009 Annexure A para 2 of the said GR by which technical staff of the Police Department, Wireless Wing, Motor Transport etc., Armed staff of the department, Bandsman, Bigular etc. have been made eligible for said qualifying examination for the post of Unarmed PSI is just and proper on the basis of principle of law of Intelligible Differentia.

19. Article 14 of the Constitution of India reads as under:

“14. Equality before law.- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

20. However, the said Article does not mean that all laws must be general in character or that some laws are applied to all persons or that

every law must have universal application. More so in this case qualification, mode of recruitment and channel of promotion are different as has been stated in the recruitment rules. Hence, the State is justified in treating them differently. In this case giving identical treatment in unequal circumstances amounts to inequality.

21. When it comes to the question of promotional avenues we are certainly of the opinion that everyone should have suitable opportunities for promotion to higher post. In this case we clearly see that promotional avenues are available to the applicant by way of regular promotion on the basis of seniority. Secondly we clearly see the technical staff of the Police Department has opportunity to appear for appointment to the post of Unarmed PSI by way of unlimited departmental examination as per Rule 3(b) of the PSI (Recruitment) Rules, 1995.

22. In view of the above, both the OAs are dismissed. No orders as to cost.

Sd/-

**(Medha Gadgil)**  
**Member (A)**  
**4.1.2022**

Sd/-

**(Mridula Bhatkar, J.)**  
**Chairperson**  
**4.1.2022**

Dictation taken by: S.G. Jawalkar.