

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 481/2021(S.B.)

Sanjay Mahadev Jadhav,
Aged about 52 years, Occ.Service,
R/o 3, Forest Colony, Behind RTO,
Civil Lines, Nagpur.

Applicant.

Versus

1. State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.

2. Director General of Police,
Maharashtra State,
Having office at Police Head Quarter,
Shahid Bagatsing Marg,
Culaba, Mumbai-01.

Respondents

Shri R.V.Shiralkar,Ld. Counsel for the applicant.
Shri H.K.Pande, Ld. P.O. for the respondents.

Coram:-Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.
Dated: - 12th January, 2024.

JUDGMENT

Heard Shri R.V.Shiralkar, learned counsel for the applicant and Shri H.K.Pande, learned P.O. for the Respondents.

2. Case of the applicant in short is as under-

The applicant was appointed as a Police Constable in the year 1990. Thereafter, he was promoted from time to time. Lastly, he was promoted in the year 2011 on the post of Assistant Police Inspector. Case of the applicant is that junior of the applicant Shri Jaggannath Abaji More who was at Sr.No.38 in the seniority list was promoted on 28.07.2017. The applicant was not given promotion along with his junior i.e. Shri Jaggannath Abaji More. Therefore, he approached to the M.A.T., Principal Bench, Mumbai by filing O.A.No.210/2018. As per the direction given by the M.A.T. Principal Bench, the applicant is promoted on 06.02.2019 on the post of Police Inspector. As per the submission of learned counsel for the applicant, he is entitled to get the deemed date of promotion on which his Junior Shri Jaggannath Abaji More was promoted. Therefore, he has filed the present Original Application for the following reliefs-

A. Hold and declare that applicant is entitled for deemed date of promotion as 28.7.2017 i.e. the date on which junior to the applicant Shri Jaggannath Abaji More came to be promoted discarding the claim of the applicant, with all consequential

benefits flowing from such including seniority, arrears of salary etc., in the interest of justice.

B. Direct the respondent no. 2 to immediately consider the case of the applicant for grant of deemed date of 28.7.2017 i.e. the date when the juniors came to be promoted discarding the claim of the applicant, with all consequential benefits flowing from such, within stipulated period.

C. Allow the application with cost and grant any other relief which this Hon'ble Tribunal deems fit and proper.

C-1. Quash and set aside the order dated 8/12/2021 issued by the respondent no. 2 vide which the representation made by the applicant for deemed date of promotion came to be rejected.

D. The respondents failed to consider that the DPC was conducted in the year 2016 and employees were given promotion on 28/7/2017 and the applicant was denied promotion stating that the he was undergoing punishment and therefore the applicant cannot be promoted. But the G.R dated 02.04.1976 and 22.4.1996 which were in effect when the DPC was conducted in the year 2016 provides the provision that if an Employee is undergoing a minor punishment like stoppage of increment, then that employee can undergo the same on the promotional post. The respondents failed to consider that the provisions of the subsequent Government Resolutions of 15/8/2017 and 2021 cannot be applied to the case of the applicant. Therefore, the action of the respondents in denying

the applicant promotion in 2016 on the basis of the provisions of the subsequent Government Resolutions of 15/8/2017 and 2021 is totally arbitrary and illegal. The aforesaid govt. resolutions cannot be made applicable retrospectively to the case of the applicant. The applicant was eligible to be promoted in the year 2016 and therefore the applicant is entitled for the deemed date of promotion w.e.f. 28.7.2017 i.e. the date on which the junior of the applicant came to be promoted.

3. The O.A. is opposed by the respondents. It is submitted that the applicant was punished in the departmental enquiry. In the year 2018 one increment was stopped for one year without cumulative effect and in the year 2017 he was punished to pay fine of Rs.1000/-. Both these punishments were confirmed in appeal therefore he was not entitled to get promotion along with junior Shri Jaggannath Abaji More. Therefore, the O.A. is liable to be dismissed.

4. During the course of submission, the learned counsel for the applicant has pointed out the Government G.R. dated 22.04.1996 and submitted that in view of this G.R. the final punishment cannot be taken into consideration while granting promotion. As per his submission, the punishment imposed against the applicant is of minor in nature and, therefore, he was entitled to get promotion along with Shri Jaggannath Abaji More.

5. The learned P.O. Shri H.K.Pande has submitted that because of the punishment imposed against the applicant he is not entitled to get deemed date of promotion.

6. There is no dispute that as per the submission of the respondents, punishment of stoppage of one increment for only one year and fine of Rs.1000/- in another matter are minor punishment and therefore, as per the G.R. dated 22.04.1996 those minor punishments cannot bar to grant deemed date of promotion. The material portion of the G.R. dated 22.04.1996 is reproduced below-

(१) विभागीय चौकशी प्रलंबित असतांनाही, जाणीवपूर्वक निर्णय घेऊन तात्पुरते पदोन्नत करण्यात आलेल्या अधिकारी / कर्मचारी ह्यास चौकशीनंतरच्या, निर्णयानुसार वेतनवाढ / वाढी रोखण्याची सौम्य शिक्षा झाल्यास, शिक्षा भोगण्यासाठी, त्यास निम्न पदावर, पदावनत करण्याची आवश्यकता नाही. वेतनवाढ / वाढी रोखण्याच्या शिक्षेची अंमलबजावणी पदोन्नतीच्या उच्च पदावरच करण्यात यावी. मात्र त्यासाठी त्याची, उच्च पदावर शिक्षा भोगण्यास तयारी असल्याची लेखी पूर्वसंमती घेण्यात यावी, जर त्याने लेखी संमती देण्याचे नाकारल्यास, त्यास निम्न पदावर पदावनत करून, त्या पदावर शिक्षेची अंमलबजावणी केली जावी व शिक्षेचा कालावधी पूर्ण होईपर्यंत त्यास पदोन्नती दिली जाऊ नये.

7. The applicant has already undergone minor punishment. In view of the guidelines given in the G.R. dated 22.04.1996, the applicant is entitled for deemed date of promotion on the date from which his junior Shri Jaggannath Abaji More was promoted on the post of Police Inspector, as per order dated 28.07.2017. Hence, the following order.

ORDER

1. The O.A. is allowed.
2. The respondents are directed to give deemed date of promotion to the applicant on the date from which his junior Shri Jaggannath Abaji More was promoted i.e. 28.07.2017.
3. The impugned order denying the deemed date of promotion dated 08.12.2021 is hereby quashed and set aside.
4. The respondents are directed to give the monetary benefits by revising the pay of the applicant. However, the applicant is not entitled for arrears.
5. The order be complied **within a period of four months** from the date of receipt of this order.
6. No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated - 12/01/2024
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Vice Chairman.
Judgment signed on : 12/01/2024.
Uploaded on : 22/01/2024.
