

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.995/2010

DISTRICT – JALNA

Ganesh s/o Jairamji Raut,
Age : 56, Occ : Service,
Presently working as Police Inspector
(Wireless), at S.R.P.F. Group-3,
Jalna, District Jalna.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
through its Secretary,
Home Department,
Mantralaya, Mumbai.
2. The Director General of Police,
Maharashtra State, Mumbai.
3. The Additional Director General of
Police and Director of Police Wireless,
Maharashtra State, Pune.
4. The Commandant,
S.R.P.F., Group-3, Jalna,
District Jalna.

...RESPONDENTS

APPEARANCE :Shri S.R.Barlinge, learned Advocate for
the applicant.

Shri M.S.Mahajan, learned Chief
Presenting Officer for the respondents.

CORAM: Hon'ble Shri Rajiv Agarwal, Vice-Chairman (A)
 A N D
 Hon'ble Shri J.D.Kulkarni, Member (J)

DATE: 20th October, 2016.

O R D E R

[PER: MEMBER (J)]

Applicant Ganesh Jairamji Raut (now retired on superannuation) was working as a Police Inspector (Wireless) at S.R.P.F., Group-3, Jalna at the time of filing of this application. He has challenged the impugned order dated 18th November, 2010 issued by respondent no.2, Director General of Police, Maharashtra State, Mumbai reducing applicant in rank from the post of Police Inspector Wireless (Traffic) to that of Police Sub Inspector Wireless (Traffic) without holding any departmental enquiry. A copy of the order is placed on record at paper book page 16 to 18 (both inclusive) and the operative part of the said order at page 18 reads as under:

“&%vkns'k%&

Jh- x.ks'k t;jketh jkÅr] iksyhl fujh{kd
 fcurkjh lans'k ¼okgrwd½ ;kauk ;k

dk;kZy;kps vkns'k dz- iksela@3@11 fc-la-
 @2002] fnukad 02@11@2009 vUo;s iksyhl
 mi fujh{kd] fcurkjh lans'k ¼okgrwd½ ;k
 inko:u iksyhl fufj{kd] fcurkjh lans'k
 ¼okgrwd½ inkoj fnysyh inksUurh oj uewn
 foospukP;k vk/kkjkoj] iz'kklfd; dkj.kkaLro] Inj
 vkns'k Jh- x.ks'k t;jke jkÅr ;kauk izklr
 >kysY;k rkj[ks iklwu jí dj.;kr ;sr vkgs-”

2. From the operative order as aforesaid, it will be thus seen that the promotion order of the applicant dated 02-11-2009 whereby he was promoted to the post of Police Inspector, Wireless (Traffic) from the post of Police Sub Inspector, Wireless (Traffic), was cancelled.

3. According to the applicant, he was appointed on 3rd May, 1976 from Open category and he belongs to Kunbi caste, which is included in OBC category. Because of mischief played by some other employee, applicant's caste was wrongly recorded as “Kunbi Gaud”. Said caste “Kunbi Gaud” belongs to S.T. category. Applicant, however, never claimed to be belonging to “Kunbi Gaud”. It is the case of the applicant that he has acquired all his promotions on merits and never claimed such promotion from reservation. During his entire service record, he has earned as many as

88 awards. He has passed the examination of Wireless Operator on merits, and therefore, was given training of the same. From 07-11-1979, he was taken in Wireless Department. He has passed proficiency examination in very first time in 1982 and has undergone cipher training in 1993. Applicant states that he never mentioned about caste and even his promotion orders nowhere mention that he was promoted on the basis of his caste. Vide promotion order dated 06-02-1992 also, he was promoted to the post of PSI on merits. On 02-11-2002, he was promoted to the post of Police Inspector Wireless (Traffic) on merits.

4. According to the applicant, earlier in 1997 also there was an attempt to revert him, and therefore, he was required to file O.A.No.279/1997 before this Tribunal and his earlier reversion order was quashed and set aside. After judgment was passed in O.A.No.279/1997 on 23-11-2000, a show cause notice was issued to the applicant in 2010 i.e. almost after 10 years and again without giving any opportunity or without holding departmental enquiry, impugned order has been passed whereby his promotion to the post of PI, Wireless (Traffic) from the post of PSI Wireless (Traffic) has been cancelled. According to the

applicant, impugned order is therefore against the principles of natural justice, illegal, arbitrary. Hence, this O.A.

5. Respondent no.2 Director General of Police, Maharashtra State, Mumbai and respondent no.3 Additional Director General of Police and Director of Police Wireless, Maharashtra State, Pune have filed separate affidavits and justified the order. Sum and substance of their defense is that the applicant was promoted on the basis of his caste which was shown as "Kunbi Gaud" and the said caste comes under S.T. category. Earlier order of reversion was cancelled because no opportunity of hearing was given to the applicant but in view of the order passed in O.A.No.279/1997, a show cause notice was issued to the applicant. His explanation for the same was not found satisfactory, and therefore, the impugned order has been passed.

6. Applicant has also filed rejoinder denying allegations that he was promoted on the basis of caste. It is stated that in fact, there is no caste like "Kunbi Gaud" in the entire

Schedule of Scheduled Tribes. He was promoted on his merit and not under ST category.

7. We have heard Shri S.R.Barlinge, learned Advocate for the applicant and Shri M.S.Mahajan, learned Chief Presenting Officer for the respondents. We have also perused memo of O.A., affidavits in reply, rejoinder and various documents placed on record by the parties.

8. Only material question to be considered in this case is whether the impugned order dated 18-11-2010 cancelling promotion of the applicant on the post of PI, Wireless (Traffic) from the post of PSI, Wireless (Traffic) is legal and proper ?

9. Learned Advocate for the applicant has invited our attention to the earlier litigation in 1997. It seems that the applicant was forced to file O.A.No.279/1997 since he was promoted to the post of Police Sub Inspector, Wireless (Traffic) and the said order came to be cancelled. However, the order of his reversion was stayed in view of the interim order passed by this Tribunal on 22-04-1997.

11. Learned Advocate for the applicant also invited our attention to order dated 23-11-2000 passed in O.A.No.279/1997. Copy of the same is at paper book page 30. From the said order, it seems that the Tribunal has taken cognizance of the fact that the applicant was appointed from Open category as Wireless Operator vide order dated 18-10-1979, and thereafter, he has passed proficiency examination. Subsequently, he was promoted to the post of Head Wireless Operator and thereafter to the post of PSI, Wireless (Traffic). Said order is reproduced as under (Page 30):

“ORDER : Heard Mr. S.R.Barlinge, Mr. S.D.Lone Ld. Adv. for applicant, ld PO for res.

The Petition has to be allowed after reading the impugned order. This applicant was appointed against the open vacancy as Wireless Operator on 18/10/79 and joined on the said post on 07/11/79. After passing proficiency examination in the year 1982 which is requirement to be fulfilled by all employees in the Wireless by all employees in the Wireless Section. He was promoted to the post of Head Wireless

Operator on 10/05/1985 and Sub-sequentially to the post of Police Wireless Sub Inspector (Traffic) on 21/03/1992. However, by impugned order of 21/03/1997, the Director of Police (Wireless) M.S. & Special I.G. Pune passed the impugned order whereby it was stated that in his punishment can be passed without holding an appropriate D.E. The impugned order is totally unsustainable and has to be set aside. The petition is allowed. It will be open for res. to take action in accordance with the rules and law afresh.”

12. From the order passed on 23-11-2000 as aforesaid, it seems that reversion order was quashed because no departmental enquiry was conducted by the respondents before cancelling his promotion order. The Tribunal has observed that punishment cannot be inflicted on the applicant without holding proper departmental enquiry.

13. We have perused the impugned order whereby the applicant's promotion has been cancelled. Said order is at page 16 and it is dated 18-11-2000. It seems that this impugned order has been issued in view of the observation made by this Tribunal in O.A.No.279/1997 on 23-11-2000.

It is not known as to why the respondents remained idle for about 10 years for taking any action against the applicant.

14. As already stated, it was observed by the Tribunal that punishment cannot be inflicted on the applicant without holding proper departmental enquiry. In spite of such observations, respondents have not conducted any departmental enquiry against the applicant. They have only issued show cause notice to the applicant and explanation of the applicant was obtained. It is simply stated that his explanation is not satisfactory, and therefore, the impugned order cancelling his promotion has been passed. Thus, without holding any departmental enquiry the respondents seem to have come to the conclusion that the order of promotion of the applicant can be cancelled. Such an attitude on the part of the respondents is most deprecated.

15. From the facts discussed above, we are satisfied that there is no evidence except allegations and denial of the same by the applicant. Respondents alleged that the applicant was promoted to various posts on the basis of his caste i.e. Kunbi Gaud, whereas it is the case of the

applicant that he was promoted on merits from Open category and not on the basis of the caste. It is not known as to what extra material was placed before the respondent authorities to show that the applicant claimed promotion on the basis of his caste. In spite of directions from this Tribunal the respondents did not initiate departmental enquiry against the applicant for the reasons best known to them. Therefore, the fact remains that no opportunity was given to the applicant before passing the impugned order.

16. Applicant has placed on record his various promotion orders. From the said promotion orders, it will be clear that there is nothing on the record to show that the applicant was promoted on the basis of caste. We are, therefore, satisfied that the impugned order passed by the respondent no.2 is illegal, and therefore, same is required to be quashed and set aside.

17. It is also material to note that the applicant was promoted to the post of Police Inspector, Wireless vide order dated 02-11-2002 and the impugned order of cancellation of said promotion has been passed on 18-11-2010. In the meantime, the applicant has retired on superannuation.

Considering the circumstances as already discussed and the fact that applicant was required to approach this Tribunal twice for same cause, we feel that costs of Rs.5000/- to the applicant may meet the ends of justice. We, therefore, pass following order:

ORDER

- (A) O.A. is allowed in terms of prayer clause (B).
- (B) Impugned order dated 18th November, 2010 passed by respondent no.2 is quashed and set aside.
- (C) It shall be presumed that the applicant got retired peacefully as Police Inspector (Wireless).
- (D) The Respondents shall pay costs of Rs.5000/- to the applicant.
- (E) There shall be no order as to costs.

(J. D. Kulkarni)
MEMBER (J)

(Rajiv Agarwal)
Vice-Chairman

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