

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.616/2014

DISTRICT – PARBHANI

Digambar s/o Ramrao Deshpande,
Age: 57 years, Occ : Service as
Assistant Sub Inspector,
Police Station Sailu,
R/o : Police Colony, Sailu,
Tq. Sailu, Dist. Parbhani.

...APPLICANT

V E R S U S

1. The State of Maharashtra,

(Copy to be served on the Presenting
Officer, M.A.T. Mumbai Bench at
Aurangabad)

2. The Special Inspector General of Police,
Nanded Circle, Nanded.

3. The Superintendent of Police,
Parbhani, Dist. Parbhani. ...RESPONDENTS

APPEARANCE :Shri S.D.Joshi, learned Advocate for
the applicant.

:Shri N.U.Yadav, learned Presenting
Officer for the respondents.

CORAM : Hon'ble Shri J.D.Kulkarni, Member (J)

DATE : 20th December, 2016

J U D G M E N T
[Delivered on 20th December, 2016]

Applicant Digambar s/o. Ramrao Deshpande has challenged the impugned order dated 06-09-2014 issued by the respondent no.2 thereby rejecting his case for grant of deemed date of promotion. It is prayed that said order be quashed and set aside and appropriate direction be issued to the respondents to consider the case of the applicant for grant of deemed date of promotion to the post of Police Head Constable by ignoring the confidential remarks and grant him deemed date as 22-11-1999 for promotion to the post of Police Head Constable and further deemed date of promotion to the post of Assistant Sub Inspector as 28-01-2010.

2. The applicant came to be appointed as Police Constable on 27-11-1976. He was promoted as Police Naik on 11-02-1993 and as a Head Constable on 25-01-2002. He has been further promoted as Assistant Sub Inspector from 23-02-2013. The applicant sustained accident and received head injury on 13-10-2008 and became 42% permanent disabled in between the year 13-10-2008 to 06-01-2010. Applicant had filed many representations, such as on 22-01-2010, 14-03-2012, 16-03-2012, 24-12-2013 and

13-08-2014 and requested that he was promoted on the post of Police Head Constable in 2002, but was promoted after 17 years. Therefore, he shall be granted earlier date of promotion. In the representation dated 14-03-2012 (page 16, Annexure A-5), the applicant submitted that he belongs to 1985 batch which is due for promotion of ASI but he was not promoted.

3. Finally on 06-09-2014, applicant's claim for deemed date of promotion was rejected. Said order rejecting the claim of the applicant is at paper book page 10. The order reads as under (Page 10):

“mijksDr lanfHkZ; fo”k;kl dGfo.;kr ;srs dh] liksmifu@fnxacj jkejko ns’kikaMs] us&iksLVs lsyq ft- ijHk.kh ;kaps lu 1996] lu 1997 o lu 2000 e;/s inksUurh lferhus xksiuh; ‘ksjs fopkjkR ?ksoqu R;kauk vik= BjfoY;kus R;kauk R;kaps lkscr HkjrH >kysys liksmifu@’ks-gk:u xqyke vgsen ;kaps lkscr inksUurh ns.;kr vkysyh ukgh-lu&2002 e;/s xBhr dj.;kr vkysY;k inksUurh lferhus R;kauk ik= BjfoY;kus R;kauk lu&2002 e;/s inksUurh ns.;kr vkysyh vlqu R;kuarj liksmifu inksUurhps osGh lu 2002 iqohZ ikysyh gokynkj inh inksUurh ns.;kr vkys ckcr o lu 2013 e;/s xBhr dj.;kr vkysY;k

inksUurh lehrhus liksmifu@ns'kikaMs ;kaps
ekxhy 5 o"kkZps xksiuh; 'ksjs fopkjr ?
ksowu R;kauk ik= Bjoqu fn-24-02-2013 ps
vkns'kkUo;s liksmifu inkoy inksUurh ns.;kr
vkysyh vIY;kus o R;kauh fourarh
dsY;kizek.ks R;kaps lkscrps deZpkjh ;kaps
inksUurhps osGh R;kaps xksiuh; 'ksjs
izfrdqy vIY;kus R;kauk inksUurh ns.;kr
vkysyh ulY;keqwGs o R;kauk R;kaps
lkscrps iksyhl deZpkjh liksmifu@'ks-gk:u
xqyke vgsen ;kaph ekfuo rkfj[k ns; gksr
ulY;kus R;kauh ekfuo rkjh[k feG.ks ckcr
dsysyh fourarh अमान्य dj.;kr ;sr vkgs-

Ikksyhl v/kh{kd] ;kauh ueqn vtZnkjkl
rls dGokos-”

According to the learned Advocate for the applicant ACRs of the applicant were never communicated to him, and therefore, rejection of deemed date of promotion on the ground that his confidential reports were not up to date, is illegal.

4. Respondent nos.2 and 3 have resisted claim of the applicant by filing affidavit in reply. According to the respondents while considering the applicant's case for promotion, his last 5 years ACRs i.e. for the year 1993-94 to 1998 were considered. Said ACRs were found

adverse, and therefore, the applicant was disqualified for promotion. It is admitted that communication of adverse remarks may not be in writing but as per the practice, sheet remarks were shown to the applicant and his signature was obtained in token of its communication. It, therefore, cannot be said that adverse remarks were not communicated to him. It is also stated that applicant was kept under suspension vide letter dated 27-05-1999. Said suspension was revoked vide letter dated 30-07-1999 with condition that suspension period will be considered on completion of his enquiry. Vide order dated 10-10-2001, applicant was informed that his suspension period will be treated as such and punishment of stoppage of increment for one year was awarded. Increment of the applicant was stopped but the applicant never filed any appeal against such punishment. The applicant was, therefore, not qualified for promotion till the year 2002. Therefore, he was promoted to the post of Police Head Constable on 25-01-2002 and, thereafter, on the post of ASI on 24-02-2013. Thus, considering performance of the applicant, earlier he was not promoted. It is further stated that the Superintendent of Police used to read the sheet remarks of the employee before whom entry of such remarks was taken in service book and this practice is adopted all over the State of Maharashtra.

Employee gets knowledge of his sheet remarks directly, and therefore, there is no practice or necessity to communicate the adverse remarks to the concerned employee. It is stated that the applicant has already admitted the sheet remarks vide Annexure A-9.

5. Heard Shri S.D.Joshi learned Advocate for the applicant and Shri N.U.Yadav learned Presenting Officer for the respondents. Perused memo of O.A. affidavit/s in reply and various documents placed on record by the parties.

6. Only material point to be considered is whether the impugned communication rejecting deemed date of promotion to the applicant is legal and proper ?

7. Learned Advocate for the applicant submits that the applicant was never communicated his ACRs. He placed reliance on the judgments delivered by Hon'ble the Apex Court in the case of **Sukhdev Singh V/s. Union of India & Ors.** reported in [(2013) 9 Supreme Court Cases 566] and in the case of **Dev Dutt V/s. Union of India [2008-EQ (SC)-0-898]**. In the former case, it has been observed by Hon'ble the Apex Court that, "every entry in ACR, whether poor, fair, average, good, very good or outstanding, should be communicated to employee concerned within a

reasonable period and communication of only adverse entry is not enough". Similar view has been taken in the latter case also i.e. in the case of Dev Dutt. Learned Advocate submits the applicant was never served with adverse remarks.

8. Learned P.O. pointed out that it was practice prevailing in the Police Department in State of Maharashtra. As already stated, it is mentioned in the reply affidavit that as per the practice, sheet remarks were used to be shown to the employee and his signature was taken on the same as token of its communication. It is further stated that Superintendent of Police used to read the sheet remarks of the employee before whom the entry of such remarks was to be taken in the service book. This practice is generally adopted all over the State of Maharashtra in the Police Department. Employee, therefore, gets knowledge of remarks directly, and it was the practice of communicating adverse remarks to the concerned employees. From the reply affidavit it seems that the remarks of the applicant in the year 1998 were adverse, and therefore, he was not considered for promotion till the year 2002. Similarly, his remarks were adverse in the year 1996-97 and 2000. Said ACRs were considered by the Departmental Promotion Committee in its meeting and the applicant

was not found fit for promotion. Respondents have also placed on record copies of the ACRs which are recorded in the form of sheet remarks.

9. Learned P.O. has invited my attention to the copies of sheet remarks submitted by the applicant himself, which he received from the respondents. Letter in this regard is at Annexure A-9, page 26 and the sheet remarks are placed at page no.27 to 34 (both inclusive). Said sheet remarks are also placed on record by the respondents along with their reply affidavit. From the sheet remarks, it seems that the applicant was not fit for promotion at the relevant time.

10. Respondents have come with a case that there was practice of communicating sheet remarks to employees by the Superintendent of Police. Applicant has not denied this practice prevailing in the police department by filing affidavit in rejoinder. It seems from the sheet remarks that the same were shown to the employees. In the absence of any rejoinder affidavit denying practice as pleaded by the respondent authorities, I do not find any reason to disbelieve the affidavit in reply filed by the respondent authorities as regards communication of sheet remarks to the employees, and particularly, to the applicant.

11. From the documents and the pleadings it seems that the applicant was under suspension in the year 1999 and his confidential reports were not up to the mark, and therefore, he was not considered for promotion in earlier DPC meeting/s. The applicant could not place on record any evidence to prove that the contents of the impugned communication are wrong or illegal. It also seems that the applicant was punished in the departmental action during the relevant period, and he did not file appeal against the said punishment.

12. In his representation at Annexure A-8 dated 13-08-2014, the applicant has admitted that he was kept under suspension and the said suspension was treated as suspension period only in the year 1999. He, further admits that his annual increment was stopped for one year and he undertook to undergo that punishment of stoppage of increments in the promotional post. In such circumstances, it cannot be said that the applicant did not know about his ACRs. It is also material to note that the applicant has filed this O.A. at the fag end of his service and there is no reason as to why he did not take any effective step except filing representations after representations that too in the year 2010 and onwards. Considering all

these aspects, I do not find any illegality in rejecting the applicant's claim for deemed date of promotion.

13. On conspectus of discussion in the foregoing paragraphs, I do not find merit in the O.A. Hence, following order:

ORDER

O.A. stands dismissed with no order as to costs.

(J. D. Kulkarni)
MEMBER (J)

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