

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 1026 OF 2019

(Subject:- Deemed Date of Promotion)

DISTRICT:-BEED

Keshav S/o Maruti Soundarmal,)	
Age - 59 years, Occu. Retired,)	
R/o. Bagpimpalgaon,)	
Tq. Georai, Dist. Beed.)	
)APPLICANT

V E R S U S

- | | | |
|---|-------|---------------------|
| 1. The State of Maharashtra, |) | |
| Through: Secretary, |) | |
| Home Department, |) | |
| Mantralaya, Mumbai-32. |) | |
|
2. The Director General of Police, |
) | |
| Shahidbagatsing Marg, Kulaba, |) | |
| State of Maharashtra, Mumbai. |) | |
|
3. The Superintendent of Police, |
) | |
| Osmanabad. |) |)RESPONDENTS |

APPEARANCE : Shri K.B. Jadhav, learned counsel for
the applicant.

:
Smt. R.S. Deshmukh, learned
Presenting Officer for the respondent
authorities.

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 03.07.2024.

ORDER

Heard Shri K.B. Jadhav, learned counsel for the applicant and Smt. R.S. Deshmukh, learned Presenting Officer for the respondent authorities.

2. By filing this Original Application though the applicant has initially sought the directions to the respondents to grant deemed date of promotion to the applicant for the post of Assistant Police Inspector from 2009 and Police Inspector from 2014 with all consequential benefits, however it appears that meanwhile the respondent No.2 has granted the deemed date of promotion to the applicant for the post of Assistant Police Inspector w.e.f. 12.01.2009 by order dated 29.12.2018. In view of same, the applicant has amended this Original Application and now seeking directions to quash and set aside the order dated 29.12.2018 issued by the respondent No.2 to the extent of denying the salary and allowances to the applicant for the period of 12.01.2009 to 28.01.2016 for the post of Assistant Police Inspector and also seeking directions to the respondents to pay the same and revise the pension of the applicant. The applicant is also seeking direction to

respondent No.1 to decide the proposal dated 14.03.2018/19 submitted by the respondent No.2 for grant of deemed date of promotion to the applicant for the post of Police Inspector w.e.f. 08.06.2014.

3. Brief facts giving rise to the Original Application are as follows:-

(i) The applicant was initially appointed in the year 1982 on the post of Constable and promoted as Police Sub-Inspector on 30.06.1999. The applicant was due for promotion on the post of Assistant Police Inspector in the year 2009. The name of the applicant was included in the promotional list in the promotion order dated 01.01.2009 with the remarks that the applicant had not produced the caste validity certificate and therefore, separate orders will be issued to the applicant and other persons. The applicant has tried to obtain caste validity certificate by approaching the Caste Scrutiny Committee at various places, however, finally the Caste Scrutiny Committee has issued caste validity certificate to the applicant on 03.01.2014.

(ii) It is the further case of the applicant that meanwhile the respondent No.2 has granted deemed date of promotion to the applicant for the post of Assistant Police Inspector w.e.f.

12.01.2009 by order dated 29.12.2018. It was granted for the purpose of seniority and pay fixation of the applicant, but salary and allowances for the period from 12.01.2009 to 28.01.2016 are denied by the respondent No.2. The applicant is challenging the order dated 29.12.2018 to that extent. However, the applicant is also seeking deemed date of promotion for the post of Police Inspector and to that extent seeking direction to the respondent No.1 to decide the proposal dated 14.03.2018/19 submitted by respondent No.2 for the deemed date of promotion to the applicant for the post of Police Inspector w.e.f. 08.06.2014.

(iii) Learned counsel for the applicant submits that till today, the respondents have not revised the pay of the applicant in view of the grant of deemed date of promotion for the post of Assistant Police Inspector to the applicant w.e.f. 12.01.2009 and the salary from 12.01.2009 to 28.01.2016 also came to be denied by the respondent No.2 without any reasons. There is a delay on the part of respondent Nos. 2 and 3 for not promoting the applicant for the post of Assistant Police Inspector as the applicant had submitted the caste validity certificate in the office of respondents on 07.11.2014 and his caste claim was pending before the competent

authority for verification. There is no fault on the part of the applicant for not producing the caste validity certificate. Thus the applicant is entitled for grant of salary and allowances for the period from 12.01.2009 to 28.01.2016. Thus the impugned order dated 29.12.2018 to that extent denying the benefits of the salary and allowance to the applicant is bad in law.

(iv) Learned counsel for the applicant submits that the respondent No.2 has submitted the proposal dated 14.03.2018/19 to respondent No.1 regarding grant of deemed date of promotion to the applicant for the post of Police Inspector w.e.f. 08.06.2014 i.e. from the date of his juniors promotion for the said post. The respondent No.2 rightly submitted the said proposal to respondent No.1. The said proposal is still pending with the respondent No.1 and therefore, the respondent No.1 be directed to consider and decide the said proposal submitted by the respondent No.2.

(v) Learned counsel for the applicant submits that till today, the respondents have not granted consequential benefits in terms of order dated 29.12.2018 nor revised the pay and pension of the applicant. The same is bad in law.

Learned counsel for the applicant submits that the Original Application deserves to be allowed.

4. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 2 and 3 submits that the applicant was promoted to the post of Assistant Police Inspector after submitting the caste validity certificate by order dated 13.01.2016. After appointment on the post of Assistant Police Inspector, the applicant took charge of the said post on 28.01.2016. The applicant has thereafter submitted an application for granting him the deemed date of promotion as Assistant Police Inspector, which was granted by the office by order dated 29.12.2018 and the deemed date was given from 12.01.2009. In the meantime the applicant came to be retired on 31.05.2017.

5. Learned Presenting Officer submits that in terms of Rule 32 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (hereinafter referred to as 'the Rules of 1981'), the applicant cannot be given the benefit of higher pay for the post of Police Inspector as the applicant has not taken the charge of the post of Police Inspector. The applicant has given the promotion on the post of Assistant

Police Inspector when he found fit and there was no issue of submission of caste validity certificate due to which the promotion was not accorded to him.

6. Learned Presenting Officer submits that pursuant to the submission of the caste validity certificate by the applicant, he was given promotion on the post of Assistant Police Inspector by order dated 13.01.2016. Thereafter his case was considered for promoting on the post of Police Inspector for the year 2015-16. However, when the procedure for giving promotions to Assistant Police Inspectors on the post of Police Inspector was to be concluded, the Government issued order dated 04.07.2016 by which all the promotions were put on hold. Thus the offices of respondent Nos. 2 & 3 by proposal dated 14.03.2019 has requested the Government regarding granting deemed date of promotion to the applicant on which the Government by letter dated 10.10.2019 has ordered these office of respondent Nos. 2 & 3 that the Hon'ble High Court by order dated 04.08.2017 in Writ Petition No. 2729/2015 has cancelled the reservation in promotion and hence the applicant cannot be granted promotion on the post of Police Inspector from Scheduled Caste category. However, if the orders are passed by the Hon'ble Supreme Court in SLP

No. 28306/2017 in which the order dated 04.08.2017 passed by the Hon'ble High Court is under challenge, the deemed date of Police Inspector can be given to the applicant. Learned Presenting Officer submits that the Original Application thus liable to be dismissed.

7. Learned counsel for the applicant in the affidavit in rejoinder submits that the Hon'ble Supreme Court has decided the issue in respect of monetary benefits of deemed date of promotions in case of **Ramesh Kumar Vs. Union of India**, reported in **AIR 2015 SC 2904**. It is observed by the Hon'ble Supreme Court that when retrospective promotions are effected, the benefits flowing therefrom including monetary benefits must be extended to an employee who had been denied promotion earlier and principles of "No work No pay" cannot be accepted as rule of thumb. Even the principal bench of this Tribunal at Mumbai was pleased to allow the **Original Application No. 318/2019** by relying the various judgments passed by the Hon'ble Supreme Court and directed the respondents to grant the deemed date of promotion to the petitioners therein with all consequential service benefits including the pay and allowances and

necessary arrears. Learned counsel for the applicant submits that the case of the applicant is similar to that.

8. Learned Presenting Officer on the basis of affidavit in sur-rejoinder filed on behalf of respondent Nos. 1 to 3 submits that the applicant belongs to S.C. category and appointed from the S.C. category on the post of Police constable on 31.01.1982. The applicant came to be selected as departmental direct nominee as per Rule 3(b) of the Police Sub-Inspector (Recruitment) Rules, 1985. Learned P.O. submits that the applicant was recruited as a Police Constable way back on 31.01.1982. It was duty of the applicant to get the Caste Certificate verified. Thus the office was not in position to give promotion to the post for want of Caste Validity Certificate as it was not permissible as per the guidelines issued by the State Government.

9. The applicant has been given the deemed date of promotion on 12.01.2009 by impugned order dated 29.12.2018. The deemed date of promotion was granted to the applicant from the date on which his junior was actually promoted on the post of Assistant Police Inspector on 12.01.2009 and the applicant was granted thereafter on 28.01.2016. Thus the deemed date of Assistant Police

Inspector to the applicant was granted w.e.f. 12.01.2009 for the purpose of seniority and pay fixation.

10. The respondent authorities claim that in terms of provisions of Rule 32 of the Rules of 1981, the applicant cannot be given the benefit of higher pay for the post of Police Inspector as the applicant has not taken the charge of the said post and not performed the duties of the said post. According to the respondents there was no issue of caste validity certificate due to which the promotion was not given. The applicant was given the promotion on the post of Assistant Police Inspector when he was found fit. Rule 32 of the Rules of 1981 prescribes as to how the date of promotion is determined. In terms of proviso to Rule 32, if the deemed date is given, then the Government servant's pay shall be fixed notionally from the date of deemed date given to him and accordingly the pay and allowance shall be drawn from the date of actual holding the charge of that post. The said Rule 32 of Rules of 1981 reads as under:-

“32. How the date of promotion is determined.- The promotion of a Government servant from a lower to a higher post, his duties remaining the same, takes effect from the date on which the vacancy occurs, unless it is otherwise ordered. But, when the promotion involves the assumption of a new post with enlarged

responsibilities, the higher pay is admissible only from the date on which the duties of the new post are taken.

[Provided that, if deemed date is given, then that Government servant's pay shall be fixed notionally from the date of deemed date given to him and accordingly pay shall be drawn from the date of actual holding the charge of that post.]”

11. It appears that the proviso to Rule 32 squarely covers the case of the applicant. The applicant has been given the deemed date of promotion in the year 2009 and his pay is directed to be fixed consequently from the deemed date given to him. However, the pay and allowances shall be required to be drawn from the date of actual holding the charge of the post. It is not disputed that the applicant held the charge of that post on 28.01.2016. Apparently the department has rightly applied the provisions of Rule 32 of the Rules of 1981 to the case of the applicant and granted him the pay and allowances from the deemed date of actual holding the charge of that post from 28.01.2016 vide order dated 29.12.2018.

12. In a case of **Rames Kumar Vs. Union of India & Ors.** reported in **2015 0 AIR (SC) 2904** relied upon by the learned counsel for the applicant the petitioner in the said case was not considered for promotion as he did not meet the

discipline criteria for promotion as per Rules. He was granted promotion with ante-dated seniority along with his batchmates. However, no direction was issued regarding any pay and allowances to him in the higher rank of Naib Subedar from the back date, but his seniority was maintained from when his batchmates have been promoted. Aggrieved by the same, the petitioner has approached to the Hon'ble High Court of Delhi and vide order dated 02.12.2004, the Hon'ble High Court dismissed the writ petition observing that the petitioner has no legitimate claim for payment of pay and allowances from a retrospective date as per the provisions of 'no work no pay'.

In paragraph No. 10 the Hon'ble Supreme Court has observed that when the case of the petitioner therein came up for consideration, the first punishment/red ink entry had already expired and only one red ink entry made was on the record, but the DPC appears to have erred in ignoring the same. As per the policy of the respondents, an individual cannot be considered for promotion to the rank of Naib Subedar, if he has earned more than three red ink entries during the entire service and more than one red ink entry in the preceding five years of service. The Hon'ble Supreme

Court has observed that why the appellant has been denied the pay and allowances for the promotional post till the date of his actual promotion. In paragraph Nos. 12 and 13 the Hon'ble Supreme Court has made the following observations.

"12. In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an employee who has been denied promotion earlier. So far as monetary benefits with regard to retrospective promotion is concerned that depends upon case to case. In [State of Kerala & Ors. vs. E.K. Bhaskaran Pillai](#), (2007) 6 SCC 524, this Court held that the principle of "no work no pay" cannot be accepted as a rule of thumb and the matter will have to be considered on a case to case basis and in para (4), it was held as under:-

"... We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, [in that case](#) the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then [in that case](#) he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle "no work no pay" cannot be

accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.”

13. We are conscious that even in the absence of statutory provision, normal rule is “no work no pay”. In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of “no work no pay” would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority alongwith his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar.

13. The Hon’ble Supreme Court has referred the case of **State of Kerala & Ors. Vs. E.K. Bhaskaran, (2007) 6 SCC 524** and given reference to the observations made by Hon’ble Supreme Court in paragraph No. (4) of the aforesaid case. It is made clear from the observations made by the Hon’ble Supreme Court that so far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered and the principle of “no work no pay” cannot be accepted as a rule of thumb and matter will have to be considered on a case to case basis.

14. In the instant case, the applicant has not submitted caste validity certificate which is the criteria to consider him in the zone of consideration for the promotional post. It is not disputed that the applicant came to be promoted from Scheduled Caste category. Admittedly, the applicant has produced the caste validity certificate in the year 2014. The department has therefore rightly given him the deemed date of promotion from the date on which the junior to the applicant came to be promoted. In the aforesaid case, the Hon'ble Supreme Court has observed that in absence of provisions, the principles of "no work no pay" cannot be accepted as rule of thumb. In the instant matter, however, there is specific Rule 32 of the Rules of 1981 which takes care of such cases.

15. In a case of **Shri Bhagwan Nivrutti Kharke Vs. the State of Maharashtra & Anr. (O.A.No. 318/2019)**, the principal bench of this Tribunal at Mumbai had an occasion to deal with the issue of ad-hoc promotion when all 54 Lecturers were promoted as Senior Lecturer by way of ad-hoc promotion for 11 months. Similarly the applicant therein also came to be promoted as an ad-hoc promotion for 11 months by order dated 10.03.2016. It is observed by the Tribunal

that despite the specific query to the learned P.O. as to why the Government has choose to promote Lecturers as an ad-hoc promotion, however, no specific satisfactory explanation has been given. It is only stated that as per the practice, ad-hoc promotions have been given.

16. In the backdrop of these facts, by relying upon the ratio laid down in a case **Rames Kumar Vs. Union of India & Ors.** reported in **2015 0 AIR (SC) 2904** and the other cases, in the similar line of the Hon'ble Supreme Court, the principal bench of this Tribunal at Mumbai has observed that the applicants have been deprived of the promotional post. All 53 others were promoted due to sheer mistake on the part of department in not maintaining seniority correctly and accordingly, not accepting the rule of "no work no pay" as rule of thumb and granted pay and allowances to the applicant from the date of deemed date of promotion along with arrears. Thus the facts of the aforesaid case are totally different. In the instate case the deemed date of promotion granted to the applicant only after compliance of the requisite criteria for which the applicant has also not raised any objection.

17. Thus in view of same I find no fault to the extent of impugned order dated 29.12.2018 to the extent of denying the salary and allowances to the applicant for the period of 12.01.2009 to 28.01.2016 for the post of Assistant Police Inspector. So far as the proposal submitted by the respondent No.2 to respondent No.1 for grant of deemed date of promotion for the post of Police Inspector w.e.f. 08.06.2014 is concerned, since the said proposal is still pending, it would be appropriate to give directions to respondent No.1 to decide the said proposal in expeditious manner. Hence, the following order:-

ORDER

- (A) The Original Application is hereby partly allowed.
- (B) The Original Application is hereby dismissed to the extent of seeking quashing and setting aside the order dated 29.12.2018 issued by the respondent No.2 to the extent of denying the salary and allowances to the applicant for the period of 12.01.2009 to 28.01.2016 for the post of Assistant Police Inspector.
- (C) It is hereby declared that the applicant is not entitled to arrears of salary and allowances for the

period of 12.01.2009 to 28.01.2016 and to claim revised pension.

- (D) The respondent No.1 is hereby directed to decide the proposal dated 14.03.2018/2019 submitted by the respondent No.2 for grant of deemed date of promotion to the applicant for the post of Police Inspector w.e.f. 08.06.2014 as expeditiously as possible.
- (E) In the circumstances, there shall be no order as to costs.
- (F) The Original Application is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad

Date : 03.07.2024

SAS O.A. 1026/2019 (S.B.)Deemed Date of Promotion