

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 623 OF 2021

DIST. : PARBHANI

Mehboobali s/o Yawarali Khan Pathan,)
 Age 55 years, Occu. Service)
 as Police Naik, Parbhani,)
 R/o H. No. 9, Police Govt. Quarter,)
 In front of M.T., Dist. Parbhani.).. **APPLICANT**

V E R S U S

- 1) The Director General of Police,)**
 Colaba, Mumbai,)
 Maharashtra State.)
- 2) The Special Inspector General)**
of Police)
 Nanded Range, Nanded.)
- 3) The Superintendent of Police,)**
 Parbhani.).. **RESPONDENTS**

 APPEARANCE :- Ms. Preeti R. Wankhade, Advocate for
 the applicant.
 : Shri Mahesh B. Bharaswadkar, learned
 Chief Presenting Officer for the
 respondent authorities.

CORAM : Hon'ble Shri Justice P.R. Bora,
Vice Chairman
and
Hon'ble Shri Vinay Kargaonkar,
Member (A)

DATE : 23rd July, 2024

ORAL ORDER

[Per :- Justice P.R. Bora, V.C.]

1. Heard Ms. Preeti R. Wankhade, learned counsel for the applicant and Shri Mahesh B. Bharaswadkar, learned Chief Presenting Officer for respondent authorities.

2. Applicant entered into the Police Services in the year 1986 as Police Constable. In the year 2000, he was promoted to the post of Police Naik. The material on record shows that the applicant was reverted from the post of Police Naik to the post of Police Constable. However, in the appeal filed by the applicant the appellate authority modified the said punishment and the applicant was brought at the lowest basic pay of the post of Police Naik for the period of 01 year. It is the grievance of the applicant that he has not been considered for his further promotion for certain untenable grounds. The applicant has, therefore, approached this Tribunal with the following prayers:-

“A) This Original Application may kindly be allowed thereby holding and declaring that the impugned action of the Resp. No. 3 of holding the applicant to be unfit for promotion to the post of Police Head Constable is patently bad, incorrect & unsustainable in law.

(B) This Original Application may kindly be allowed thereby directing the Resp. No. 3 to forthwith issue order of promotion of

the applicant from the cadre of Police Naiks to the cadre of Police Head Constables.”

3. Learned counsel for the applicant submitted that for certain period the applicant was required to be away from duty and the reasons therefor were his ill-health. Learned counsel submitted that because of mental illness the applicant was required to avail long leave. Learned counsel submitted that, that was the period between 2005 and 2010. Learned counsel further submitted that thereafter the applicant though has taken leaves, the same were not at a time and they were in spread-over period but are shown aggregately by the respondents. Learned counsel submitted that the applicant has placed on record the ACRs of the preceding 04 years of the date of his filing application, which demonstrate that for 02 years he has been rated as 'A+' and for other 02 years his performance is rated 'A'. Learned counsel further submitted that during the period between 2014 and 2018 the applicant has worked without obtaining any kind of extra leave. Learned counsel submitted that without considering the said aspects, the respondents have deprived the applicant from further promotion.

4. Respondents have resisted the contentions raised in the Original Application, as well as, prayers made therein. Respondent nos. 02 and 03 have filed joint affidavit in reply. Respondents have provided the particulars as about the leaves frequently obtained by the applicant. It is contended that if the total period of leave is

considered, it is of the period of more than 08 years. Learned C.P.O. reiterating the contentions raised in the affidavit in reply submitted that in the meeting of the D.P.C. all these circumstances were discussed and since the applicant was found not eligible to be promoted, decision has been taken not to promote him. Learned C.P.O. further submits that the particulars as about the leaves taken by the applicant are annexed with the affidavit in reply in the handwritten sheet. It is further contended that when the annual remarks (sheet remarks) were recorded, at that time the applicant remained absent and in the circumstances for some of the years the performance of the applicant has not been recorded. Learned C.P.O. submitted that in the disciplined Police force such type of behavior and attitude cannot be tolerated and such candidates cannot be considered for their promotion to the next higher post. Learned C.P.O. submitted that the conduct of the applicant of proceeding on leaves without obtaining prior permission even in the period of 2018-2019 is held to be serious by the respondents. Learned C.P.O. in the circumstances justified the impugned order and the act of the respondents of not promoting the applicant.

5. We have duly considered the submissions advanced by the learned counsel appearing for the applicant and the learned Chief Presenting Officer. We have also gone through the documents placed on record. There seems no dispute about the fact that in between 2005 and 2010 the applicant has availed extraordinary leave and if

the leaves availed by the applicant during the period between 1992 to 2010 are considered, as has been stated by the respondents in their affidavit in reply, the applicant has availed leave for more than 08 years. While considering the facts as aforesaid, it appears that the conduct and performance of the applicant during the period between 2015 and 2021 has been completely ignored by the respondents. For the leaves availed by the applicant during the part period his performance of the subsequent period cannot be completely lost sight of. The ACRs of the applicant of the preceding 04 years show that for 02 years the applicant has been rated as 'A+' and for remaining 02 years period his performance was rated 'A'. After year 2013 for the years 2014 to 2018 the applicant is not stated to have availed any extraordinary leave. From such conduct of the applicant it can be reasonably inferred that the applicant did not take any extra leave when it was not required. As has been submitted by the learned counsel for the applicant in the past also the applicant was because of his illness compelled to be on leave. We need not state that in the career of the Government servant the promotion assumes vital importance. Every Government employee strives for promotion.

6. In the present matter as has been contended on behalf of the applicant, because of his own problems the applicant did not qualify himself for the further promotion comparing to his colleagues, who have got due promotions and have reached to the position of PI and also above. The applicant is at the verge of retirement and will

be retiring on 31.07.2024 on attaining the age of superannuation. It appears to us that the performance of the applicant subsequent to year 2013 has to be considered which does not seem to have been considered by the respondents. For the reasons stated above, we find the prayer made by the applicant worth considering. Hence, the following order: -

ORDER

(i) Respondents shall consider the case of the applicant for grant of promotion to him by taking into account his overall performance and take a conscious decision in that regard before 30.07.2024. We need not to mention that the observations made by us in the body of the order will be given due consideration while considering the case of the applicant for his promotion.

(ii) The Original Application stands disposed of in the aforesaid terms. There shall be no order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 23rd July, 2024