

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI  
ORIGINAL APPLICATIONS NO.915, 758, 759, 799 & 1067 OF  
2017**

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**ORIGINAL APPLICATION NO.915 OF 2017**

**DISTRICT : NASHIK**

Shri Bhagwan Ranganath Ghaytad, )  
Age 55 years, ASI, R/at 2, Police Head Quarter, )  
Room No.4, New Building No.4, Gangapur Road, )  
Nashik 422002 )..Applicant

Versus

1. The Additional Chief Secretary, )  
Home Department, Mantralaya, Mumbai )
2. The Director General of Police, MS, )  
Old Vidhan Bhavan, Colaba, Mumbai )
3. Special Inspector General of Police, )  
Motor Transport, MS, Pune 411007 )..Respondents

**WITH**

**ORIGINAL APPLICATION NO.758 OF 2017**

**DISTRICT : PUNE**

Shri Prakash Kisanrao Homkar, )  
Age 52 years, ASI, R/at Flat No.1, Ganesh Garden, )  
Katraj Bypass Road, Behind Hotel Sona Garden, )  
Vadgaon Bk., Pune 411041 )..Applicant

Versus

The State of Maharashtra & Ors. )..Respondents

**WITH**

**ORIGINAL APPLICATION NO.759 OF 2017**

**DISTRICT : PUNE**

Shri Sanjay Krishnaji Borekar, )  
Age 43 years, ASI, R/at PSI Quarters, )  
3/2 Parihar Chowk, Aundh, Pune 411007 )..Applicant

Versus

The State of Maharashtra & Ors. )..Respondents

**WITH**

**ORIGINAL APPLICATION NO.799 OF 2017**

**DISTRICT : PUNE**

Shri Pramod Bapurao Jadhav, )  
Age 51 years, ASI, R/at Swapnshilp, Heaven Park, )  
S. No.47, Mohammad Wadi, Hadapsar, Pune-60 )..Applicant

Versus

The State of Maharashtra & Ors. )..Respondents

**AND**

**ORIGINAL APPLICATION NO.1067 OF 2017**

**DISTRICT : JALNA**

Shri Ramesh Rambhau Kharat, )  
Age 55 years, ASI, R/at Plot No.13, Sukhshantinagar, )  
Near SRP Gas Godown, Mantha Road, Jalna )..Applicant

Versus

The State of Maharashtra & Ors. )..Respondents

Shri G.D. Kurane – Advocate for Applicants in OAs. No.915 &  
759/2017

Smt. Savita Suryawanshi – Advocate for Applicants in OAs. No.758,  
799 & 1067/017

Miss S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson  
Shri A.M. Kulkarni, Member (A)

RESERVED ON : 8<sup>th</sup> January, 2025

PRONOUNCED ON: 20<sup>th</sup> January, 2025

PER : Shri A.M. Kulkarni, Member (A)

### **J U D G M E N T**

1. The applicants pray to hold and declare that the impugned order of reversion dated 28.7.2017 reverting the applicants to the post of Assistant Sub Inspector (Technical) is bad in law and illegal and the applicants are entitled to get the benefits of the post of P.S.I. (Technical). Further to treat the ad-hoc promotions of the Applicants as regular promotion to the post of PSI (MT) without break and as a continuous service and to grant deemed date of promotion to the post of PSI (Motor Transport) w.e.f. 10.10.2011 when juniors to the applicants were promoted. The applicants further pray that the Respondents be directed to grant deemed date of promotion to the post of Police Inspector (Motor Transport) from 29.9.2016 when juniors to the applicants were promoted.

2. The facts of the present cases are peculiar. All the applicants except Shri S.K Borekar, applicant in O.A 759/2017 have retired as Police Officers from the post of Assistant Sub-Inspector (Motor Transport) or Police Sub-Inspector (Motor Transport)

3. Details of applicants are given below:-

Sr. No.	Name of Applicant/O.A No	Post held by applicant	Date of Retirement	Deemed date of promotion to the post of P.S.I	Deemed date of promotion to the post of P.I
1.	B.R Ghaytad, O.A 915/2017	Assistant Sub Inspector	13.5.2021	10.10.2011	29.9.2016
2.	R.R Kharat O.A 1067/2017	Assistant Sub Inspector	30.11.2019	10.10.2011	29.9.2016
3.	P.K Homkar O.A 758/2017	Police Sub Inspector	31.7.2023	10.10.2011	29.9.2016
4.	S.K Borekar O.A 759/2017	Police Sub Inspector	N.A.	10.10.2011	29.9.2016
5.	P.B Jadhav O.A 799/2017	Police Sub Inspector	31.3.2024	10.10.2011	29.9.2016

4. All the applicants were promoted to the post of Police Sub-Inspector (Motor Transport) on ad hoc basis on different dates. However, they were reverted by a common order dated 28.7.2017 to the post of Assistant Sub-Inspector (Technical), Motor Transport.

5. In the beginning it is necessary to clarify that learned C.P.O has submitted that detailed affidavit in reply was filed in O.A 757/2017 through Ms Namrata Patil, Asst. I.G.P (Establishment) on 14.3.2018. However, that Original Application was subsequently withdrawn. The said reply was adopted in O.A 840/2017. Learned C.P.O has submitted that as on today O.A No. 840/2017 is de-tagged from the present group of matters for want of presence of the applicant or his counsel. She sought permission to adopt the said reply filed in O.A 840/2017 in all the matters being instantly heard. The said permission was granted.

6. Both the learned counsel for the applicants referred to the advertisement / Notice for the appointment to the post of Police Sub-Inspector. Learned counsel further submitted that all the applicants were working as Police Constables and Assistant Sub-Inspectors and pursuant to the advertisement dated 1.2.2008, they appeared for the Departmental Examination, for 17 posts of P.S.I. (Motor Transport) and cleared the examination. At this point of time no seniority list was published for the cadre of Assistant Sub-Inspector (Motor Transport). Learned counsel argued that however General Merit List of the said Departmental Examination of all the candidates was placed before the Committee comprising of 5 Senior Officers from the various branches of the Police Department including the Motor Transport Department. The General Merit List was obtained by one of the senior colleagues of the applicants under Right to Information.

7. Learned counsel further submitted that by order dated 10.10.2011, 19 persons were promoted to the post of P.S.I (Motor Transport). In the said order the names of the present applicants were not mentioned. The promotions were granted according to the abovementioned General Merit List and not as per the seniority. Learned counsel for the applicants relied on the order dated 3.8.2013 of temporary promotions to the post of Police Sub-Inspector (Motor Transport). By the said order some personnels on the post of P.S.I (Motor Transport) were promoted for a period of 364 days on ad hoc basis in which Applicant Shri R.R Kharat is at Sr No. 2, Shri S.K Borekar is at Sr No. 3 and Shri B.R Ghaytad is at Sr. No. 9. After one year, another order dated 26.8.2013 of promotion on ad hoc basis was issued in continuation of promotion of these officers.

8. Learned counsel for the applicants relied on Rule 182 of the Bombay Police Manual Rules and the Seniority Rules. It is

appropriate to reproduce the Rules which are relevant in the flow of the submissions for ready reference.

*“Rule 182. Examination for Motor Transport Personnel:*

*General:*

*(1) For promotion to the various technical posts in the Motor Transport Section of the Police Department, various tests as detailed below, will be held by the Superintendent of Police or the Superintendent of Police, Motor Transport.*

*(2) To qualify, a candidate should secure a minimum of 50 per cent, marks in each part of the test in all categories.*

*(3) In making promotions, the test qualifications will be considered along with the candidate’s previous work in the Department.”*

9. The Applicants relied on the G.R issued by Home Department dated 25.5.1964 for recruitment to the post of P.S.I in the Police Motor Transport Section. The relevant portion of this GR is extracted below:

*“(1) Appointment to the posts of Sub-Inspectors of Police in the Police Motor Transport Section shall be made either (a) by promotion of suitable departmental men in the Police Central Motor Transport Workshops or the Motor Transport Sections in the districts (including State Reserve Police Force Groups) or (b) nomination, provided that not more than 30% of the posts shall be filled by promotion, if the required numbers of such men is available.”*

All the applicants rely on the said Recruitment Rules to the post of P.S.I. (Motor Transport). Thus, two avenues in the recruitment

process for the post of PSI (1) by promotion from the feeder cadre of suitable men in various branches of the Motor Transport and (2) by nomination were made available. Hence the applicants seek deemed date of promotion. Learned counsel submitted that in September, 2011 Departmental Competitive Examination was conducted by the Respondents for promotion. The result of the said examination is not declared till today. However, without declaring the result, the department issued the promotion orders according to the merit list. The promotion orders should have been issued as per the merit and reservation and not as per the seniority. Learned counsel further submitted that the grievance of the applicants is that though they were senior, applied and have cleared the examinations, yet their juniors were promoted by order dated 10.10.2011. Therefore, some of the applicants who were promoted subsequently to the post of PSI seek deemed date as on 10.10.2011. Learned counsel further submitted that the applicants were promoted on ad hoc basis thrice and thus continued by three separate orders with first such promotion order being issued on 3.8.2013.

10. In O.A 759/2017 by order dated 28.7.2017, all the applicants who were so promoted on ad hoc basis as P.S.I were reverted by the common order dated 28.7.2017 to the post of Assistant Sub-Inspector. The said order of reversion is challenged by the applicants. Thereafter, during the pendency of the Original Application, some of the applicants retired and some were again finally promoted to the post of P.S.I. However, juniors to the applicants have been further promoted to the post of Police Inspector. By order dated 29.9.2016, juniors to the applicants were promoted to the post of Police Inspector. Therefore, all the applicants seek deemed date of promotion to the post of P.I. also from 29.9.2016. Out of 5 applicants, 3 applicants, namely, Mr Homkar, Mr Borekar and Mr

Jadhav were regularly promoted as P.S.I on 20.7.2023, while applicant Mr Ghaytad and Mr Kharat retired as A.S.I.

11. Learned counsel for the applicants relied on the judgment of the Hon'ble Supreme Court on the point of seniority-cum-merit in **Harigovind Yadav Vs. Rewa Sidhi Gramin Bank & Ors, AIR 2006 SC 3596** wherein the Supreme Court referred to the decision in the case of **B.V Sivaiah & Ors Vs. K. Addanki Babu, 1998 (6) SCC 720**.

12. Learned counsel relied on Chapter III of the Bombay Police Manual. Learned counsel for the applicants relied on Rule 71 about the general principles governing appointment and promotion, which reads as under:

*"71. Principles governing appointment and promotion:*

*The following principles should be observed in connection with the promotion of officers from a lower to a higher grade, service or post by selection:*

*(a) No officer should be so promoted unless his record shows that he possess the necessary positive qualification for the higher grade, service or post such as personality, professional qualification, initiative, strength of character and readiness to assume individual responsibility.*

*(b) No officer who has the positive qualifications referred to in (a) above, should be passed over by an officer junior to him unless the latter has, in addition, really exceptional ability or qualifications."*

13. Learned counsel relied on Rule 91, which reads as under:



*“91. Motor Transport / Wireless and Reserve Sub-Inspectors:*

*(1) Appointments by promotion to the posts of Motor Transport/Wireless and Reserve Sub-Inspectors are made by the Inspector General of Police from amongst respective Head Constables whose names are on the select list prepared on the recommendations of the Superintendents and the Range Deputy Inspector General. To be eligible for such promotion, Armed Head Constables must pass the practical test laid down in Rule 180.”*

14. Learned counsel relied on the decision of this Tribunal dated 22.2.2023 in **S.M Jadhav & Ors Vs. The State of Maharashtra & Ors** for the relevant Rules of promotion from the post of Police Constables to Police Sub-Inspector.

*“4. The Applicants are serving in the cadre of Police Constable, Head Constable etc. and desire for promotion to the post of PSI. Rule 3 of Police Sub Inspector (Recruitment) Rules, 1995 provides that appointment to the post of PSI in police force in the State of Maharashtra shall be made by promotion or selection through limited departmental examination. Rule 3(a) and (b) is here relevant which is as under:-*

*(a) by promotion of a suitable person on the basis of seniority subject to fitness from amongst the persons holding the posts of Havaldar and Assistant Police Sub-Inspector in the Police Force who have completed not less than five years continuous regular service or seven years broken service and who qualify in the departmental examination held by the Director General of Police in accordance with the rules laid down in paragraph 5 of the Government Resolution No.PSB.0390/CR-408/POL5-A, dated 5th July, 1994.*

*(b) by selection of persons working in the Police Force on the basis of the result of the limited departmental examination held by the Commission for appointment to the post of Sub-Inspector of Police for admission to which a candidate shall-*

*(i) not be more than thirty-five years of age :*

*Provided that, relaxation of age of five years may be granted to candidates of Backward Classes and –*

15. Learned counsel have submitted that Mr Ghaytad is a senior most among all the persons and others are junior to the applicants. Learned counsel relied on the last person promoted to the post of Police Inspector by order dated 29.9.2016, Exh. 'O', page 92 (Ah) (OA.759/2017). Except one person all juniors to the applicants are promoted to the post of Police Inspector by order dated 29.9.2016. Learned counsel for the applicants relied on the CRs as they have outstanding remarks. As against this, the applicants were regularly promoted as PSI (MT) by order dated 20.7.2023.

16. Learned counsel have submitted that even though there were vacancies to the post of PSI they were reverted in 2017 and therefore the applicants pray for the continuation of their services from the first time they were appointed on ad hoc basis to the post of PSI. The applicants also pray consequential pecuniary benefits, like pay & allowances and increments. Mr Homkar, applicant in O.A 758/2017 was promoted to the post of regular PSI only 11 days before his retirement though he worked on the post of Assistant Sub-Inspector for 20 years. Learned counsel have submitted that salary of PSI was not given to the applicants even when they worked on the said post. The last ad hoc order of promotion to the post of PSI was issued on 31.10.2015 for the period 18.11.2015 to 15.1.2016, whereas the

Reversion Order was issued on 20.7.2017. So the applicants continued to work on the said ad hoc post of PSI for more than one year. Further, after reversion, the applicants were given additional charge of the post of PSI till they were regularly promoted in the year 2023.

17. Learned counsel Shri Kurane, relied on Rule 6 M.C.S (Regulation of Seniority) Rule, 1982, which reads as under:

*“6. Determination of fortuitous appointment- Whenever an appointment is made to a post, cadre or service, the competent authority shall determine whether the appointment is fortuitous and record a certificate accordingly where the appointment is fortuitous:*

*Provided that, omission to record such a certificate shall not confer any right on any person to have his appointment treated as not fortuitous if on the facts of the case it is found on any subsequent date that the appointment was fortuitous.*

*Provided further that appointment shall not be deemed to be fortuitous if the authority competent to make appointment certifies while preparing the annual gradation list that the temporary appointment had to be made, as candidates for regular appointment by nomination or as the case may be, person fit for promotion from the lower cadre, were not available at all or in adequate numbers.”*

18. Learned counsel for the applicants further submitted that the juniors to the applicants who were promoted to the post of PSI were further promoted to the post of Police Inspector. Learned counsel Ms. Savita Suryavanshi for the applicants relied on the affidavit in reply dated 4.1.2023 filed by Ravindra Hingnekar, in O.A 840/2017, which has adopted the affidavit in reply dated 14.3.2018 filed by Namrata G. Patil in O.A 757/2018.

19. Learned C.P.O submitted that the juniors to the applicants were promoted on the basis of merit in the written examination and on the basis of principles of reservation in promotion. Learned C.P.O further submitted that appointment and promotion were made in the ratio of 70:30, i.e., 70% by way of nomination and 30% by way of promotion. Shri Anant Dnyaneshwar Mali, Dy. S.P, in the office of I.G.P, Motor Transport, Pune, is present. Shri Deepak B. Kale, Section Officer, Desk-3A, in the office of D.G.P, M.S, Mumbai is also present to assist the learned C.P.O.

20. Learned C.P.O produced copy of letter dated 19.10.2011 sent by Dr B.K Upadhyay, Spl I.G (Estt), in the office of D.G.P, M.S, Mumbai to Secretary, Home Department, wherein it is stated that the result of the written examination referred in Para 7 above was declared on 5.10.2011. Learned C.P.O further submitted that after 2011 till 20.7.2023 nobody was given promotion for want of Recruitment Rules.

21. Learned C.P.O has relied on the affidavit in reply dated 14.3.2018 filed by Ms Namrata Patil, Assistant I.G.P (Establishment), M.S, Mumbai, to explain as to why the applicants were not promoted and juniors to the applicants were promoted on different dates. She has submitted that the Department has not promoted the applicants because they were appointed on ad hoc basis and their services were fortuitous considering the quota available for promotees and direct recruits. She therefore submits that the relief claimed by the applicants be rejected. However, learned C.P.O has fairly answered our query based on the affidavit in reply filed by Ms Namrata Patil, Assistant I.G.P (Establishment), M.S, Mumbai, wherein we came across the clear admission on behalf of the Respondent-State which led us to arrive at a conclusion that though the quota for the

promotees were available with the Respondent-State, for no justifiable reasons the Respondent-State did not promote any officer.

22. We rely on the ratio laid down in the case of **Harigovind Yadav (supra)**, wherein the Hon'ble Supreme Court observed as under:-

*"13. As both parties have relied on the decision in Sivaiah (supra), we may start by referring to the relevant observations therein. The decision in SIVAIAH was a common judgment which considered the meaning of the criterion 'seniority-cum- merit' for promotion. The decision dealt with several distinct batches of cases relating to different Regional Rural Banks, which had different promotion policies, that is Rayalaseema Grameena Bank, Pinakini Grameena Bank, Bastar Kshetriya Gramin Bank, Rewa Sidhi Gramin Bank (respondent herein) and Chhindwara-Seoni Kshetriya Gramin Bank.*

*The High Courts had taken the view that if "seniority-cum- merit" criterion is adopted for the purpose of promotion, then first the senior most eligible employee has to be tested to find out whether he possesses the minimum required merit for holding the higher post and only if he is not found suitable or fit, his immediate junior may be tested for the purpose of promotion. The said view was assailed before this Court by the various regional rural banks as well as the promoted officers whose promotions had been set aside by the impugned judgments of the High Court.*

*This Court noted that in the matter of formulation of a policy for promotion to a higher post, the two competing principles which may be taken into account are inter-se seniority and comparative merit of employees who are eligible for promotion. This Court observed:*

*"In Sant Ram Sharma vs. State of Rajasthan (AIR 1967 SC 1910), this Court has pointed out that the principle of seniority*

*ensures absolute objectivity by requiring all promotions to be made entirely on grounds of seniority and that if a post falls vacant, it is filled by the person who had served longest in the post immediately below. But the seniority system is so objective that it fails to take any account of personal merit. It is fair to every official except the best ones. An official has nothing to win or lose provided he does not actually become so inefficient that disciplinary action has to be taken against him. The criterion of merit, on the other hand, lays stress on meritorious performance irrespective of seniority and even a person, though junior but much more meritorious than his seniors, is selected for promotion. The Court has expressed the view that there should be a correct balance between seniority and merit in a proper promotion policy. The criteria of "seniority-cum-merit" and "merit-cum-seniority" which take into account seniority as well as merit seek to achieve such a balance."*

*This Court also noted that while the principle 'seniority-cum-merit' lays greater emphasis on seniority, 'merit-cum-seniority' laid greater emphasis on merit and ability and seniority plays a less significant role, becoming relevant only when merit is approximately equal. After referring to several decisions bearing on the issue, this Court enunciated the following general principle in regard to promotions by seniority cum merit (at para 18) which is relied on by the Appellant :*

*"We thus arrive at the conclusion that the criterion of "seniority-cum-merit" in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration, the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for*

*consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit."*

23. We rely on the Annexure-M (Ae of OA.759/2017) which is a Tabular Form revealing the seniority and promotion of the applicants and their juniors. It was demonstrated as follows:-

**माहिती अधिकार २००५ अन्वये मागविण्यात आलेली माहिती**

अ.क्र.	नाव	परिक्षेला बसतानाचे पद	दिनांक	भरती होतानाचे पद	भरती दिनांक
१	शशिकांत धनपाल सुतार	मोवाजो वर्ग १	०१/०५/२०००	पोलीस शिपाई तांत्रिक	०६/०६/१९९०
२	राजेंद्र वसंत शिंदे	मोवाजो वर्ग १	२८/०३/१९९८	मोवाजो वर्ग २	२७/०१/१९९४
३	गजानन हरिभाऊ वानखेडे	मोवाजो वर्ग १	०३/०३/१९९८	मोवाजो वर्ग २	२४/०१/१९९४
४	दिपक अनंत सावंत	मोवाजो वर्ग १	२३/०१/१९९६	पो.शि तां.	०६/०८/१९८२
५	सजिद अकबर पठाण	मोवाजो वर्ग १	१४/०६/२००४	एचसीडीएम वर्ग २	३०/०३/१९९८
६	महेंद्र मुरलीधर मोहोड	मोवाजो वर्ग १	०१/०८/१९९७	मोवाजो वर्ग २	१७/०९/१९९४
७	संजय गोरख कांबळे	मोवाजो वर्ग १	०८/०५/२०००	पो.शि तां.	०८/०६/१९९०
८	सोमनाथ दत्तात्रय झेंडे	मोवाजो वर्ग १	१५/०५/२०००	पो.शि तां.	१०/११/१९८९
९	अनिल गोपाळराव घाडगे	मोवाजो वर्ग १	२२/०४/२०००	पो.शि तां.	०९/१२/१९९२
१०	सुरेश लहानुजी आस्कर	मोवाजो वर्ग १	२८/१०/१९९७	मोवाजो वर्ग २	२०/०८/१९९३
११	संजय पंजाबराव पवार	मोवाजो वर्ग १	११/०५/२०००	मोवाजो वर्ग ३	३०/०८/१९९३
१२	दिपक कृष्णा साळवी	मोवाजो वर्ग १	०१/१२/२००३	पो.शि तां.	०२/०५/१९९४
१३	राजेंद्र भुजंगराव तावरे	मोवाजो वर्ग १	०२/०४/१९९९	पो.शि तां.	०२/०४/१९९०
१४	भाऊसाहेब विठ्ठलराव	मोवाजो वर्ग १	१४/०७/१९९८	मोवाजो वर्ग २	२६/०४/१९९४

	पाटील				
१५	अब्रार नियामतुल्ला सय्यद	मोवाजो वर्ग १	०१/०७/२००४	पो.शि तां.	२५/०२/१९९१
१६	देवानंद नारायण पाटील	मोवाजो वर्ग १	०१/०८/२००१	मोवाजो वर्ग ३	३०/०८/१९९३
१७	रमाकांत नारायणराव बनसोडे	मोवाजो वर्ग १	१५/०७/२००३	मोवाजो वर्ग ३	१२/०४/१९९४
१८	दिपक काळू साबळे	मोवाजो वर्ग १	०१/०१/२००४	पो.शि तां.	१५/०२/१९९६
१९	विठ्ठल हरिभाऊ बढे	मोवाजो वर्ग १	०१/०१/२००४	पो.शि तां.	१५/०२/१९९६
२०	राजेंद्र रामदास कुमावत	मोवाजो वर्ग १	०१/०१/२००४	पो.शि तां.	१५/०२/१९९६
२१	मोहम्मद आरीफ अब्दुल वारुणकर	मोवाजो वर्ग १	२९/०८/२००५	मोवाजो वर्ग ३	३१/१०/१९९६

Sr No. 5: Sajid Akbar Pathan was promoted to the post of A.S.I on 14.6.2004 and is junior to the applicant Mr Homkar who was promoted to the post of A.S.I on 1.10.2003.

Sr No. 12: Deepak K. Salvi was promoted to the post of A.S.I on 1.12.2003 and is junior to the applicant who was promoted on 1.10.2023. However, he was promoted to the post of P.S.I on 10.10.2011.

Sr No. 15: Abbar N. Sayad and the candidates from Sr. No 18 to 21 were junior to the applicants and all these persons were promoted by order dated 10.10.2011 to the post of P.S.I and applicants were promoted to the post of P.S.I on 20.7.2023.

24. We came across the admission on behalf of the Respondents that 13 vacancies were to be filled. 28 posts in promotee quota were vacant and available in the year 2017 for the post of PSI (Motor Transport).



25. Para 2.5 of the affidavit filed by Namrata Patil states as follows:

*“The following is the Chart of in all 109 posts of P.S.I of Motor Transport sanctioned till date by the State of Maharashtra viz.*

Year	70% posts for direct nominees			30% promotees			Remarks
	Sanctioned	Present	Vacant	Sanctioned	Present	Vacant	
2011	54	45	09	24	19	05	
2012	55+21	45	31	24+09	21	12	
							30 new posts created by the State Government vide G.R dated (Exhibit R-1)
2017	76	12	64	33	05	28	

The affidavit further states as follows:

*Para 2.6 : The information given above for the year 2012 is inclusive of the P.S.I M.T posts created by the State Government in H.D vide its order dated 2.5.2012. It is submitted that the State Government vide the said G.R has created in all 62 posts for the Motor Transport Section of the Police Department. This includes two posts of Dy I.G.P (Technical), two posts of Addl. S.P (Technical), 06 Dy. S.P/A.C.P (Technical), 20 posts of P.I (Technical) and 30 posts of P.S.I (Technical). Hereto annexed and marked as Exhibit ‘R-2’ is the copy of Govt. G.R H.D dated 2.5.2012. In it the State Government directed to fill the said posts as per the Recruitment Rules for the said posts and if there are no recruitment rules, then they should get the same framed by the State Government and then only that posts should be filled. As matter of fact, this office has submitted draft Recruitment Rules for the post of P.S.I (Technical) to the State Government on 17.4.2017, in modification of the Recruitment Rules as mentioned /clarified hereinabove I n para nos 2.2 to 2.4. The said proposal is still under correspondence between the State Government and this office. In that case, the State Government vide its letter dated 9.8.2017 has called for some information on points, which are raised by G.A.D in Govt. of Maharashtra. It is submitted that the same is yet to be replied to*

*the State Government by this office, as the information on the same has been called for by this office from the Spl I.G of Police, M.T., M.S, Pune. The draft Recruitment Rules for the post of P.S.I Group-B (Non-gazetted) in M.T Section of the Police Department, which underway of taking decision is also are annexed hereto and marked as Exhibit 'R-3'.*

*2.7. In the year 2012, total 43 posts of P.S.I, M.T were vacant. 31 from the 70% quota of direct nominees and 12 from the quota of 30% from the promotees. The vacancies from the 70% posts of direct nominees could not be filled in without the getting existing Rules modified., i.e., on the basis of existing Recruitment Rules, the action was taken. At the same time, wheels of the administration have to be kept running, i.e., there were exigencies of the services of the said posts of P.S.I, M.T. Hence, Respondent No. 3 herein had submitted a proposal to the Respondent No. 2 (i.e. D.G.P., M.S, Mumbai) for seeking permission to fill the said posts of direct nominees and promotees purely on ad hoc and fortuitous basis till the regular appointments are made on these vacant posts. (Purely stop gap and local and temporary administrative action)."*

26. The rules for PSI (Motor Transport) were earlier framed by G.R dated 25.5.1964 by way of executive action under Article 166 of the Constitution of India and proposal to modify these Recruitment Rules was submitted on 17.4.2017 and the same is pending since 2017 and till dates no Recruitment Rules are framed. So, essentially, the Rules of 1964 continue to be in operation.

27. During the course of arguments it is found that the Draft Recruitment Rules of 2017 which were submitted by the office of DGP to the Respondent-Government are yet to be finalized and are pending before the Home Department.

28. The applicants are claiming deemed date of promotion to the post of PSI from 2011 onwards. Learned counsel for the applicants relied on the affidavit in reply dated 4.1.2023 filed by Ravindra B.

Hingnekar, Dy. S.P, Motor Transport along with the said affidavit he has filed affidavit in reply of Ms Namrata G. Patil, Assistant I.G.P (Estt) M.S, Mumbai dated 14.3.2018, in O.A 757/2018, which is the affidavit in reply adopted by the present Respondents as it was filed in similar group matters.

29. In para 3.2 of the affidavit in reply filed by Ms Namrata Patil reveals that the same is factually incorrect as on the point the juniors to the applicants were promoted and the name of applicant Mr P.K Homkar was not in the said list. The juniors to the applicant is shown at Sr. No. 5, Mr Pathan. He was appointed as ASI on 14.6.2004, whereas applicant was appointed as ASI on 1.10.2003, i.e., before Mr Pathan. Similarly, Sr. No. 12 Mr Deepak Salvi was appointed to the post of ASI on 1.12.2003 and person at Sr. No. 15 was appointed on 1.7.2004. Person at Sr. Nos 18, 19 & 20 were appointed as ASI on 1.1.2004. The applicants cleared the Departmental Examination in the year 2011. The date is not mentioned when the result of the examination was declared.

30. In para 2.7 of the affidavit in reply filed by Ms Namrata Patil, it is mentioned that 5 posts were vacant in the year 2011 and 19 posts were filled up in the year 2011 and thereafter in the year 2012, 12 posts, i.e., 30% of the promotees were vacant. It is mentioned in the affidavit in reply that the State of Maharashtra, in Home Department, issued G.R dated 2.5.2012 creating additional posts in MT. Clause 'C' of the said G.R is reproduced below:-

“क) विवरणपत्र 'अ' मध्ये दर्शविण्यात आलेली नवनिर्मित तांत्रिक पदे, त्या त्या पदांसाठी केलेल्या सेवाप्रवेश नियमांनुसार भरण्यात यावीत. ज्या नवनिर्मित तांत्रिक पदांचे सेवाप्रवेश नियम तयार करण्यात आलेले नाहीत, त्या त्या पदांचे सेवाप्रवेश नियम विशेष पोलीस महानिरीक्षक, मोटार परिवहन, महाराष्ट्र राज्य, पुणे यांनी तात्काळ तयार करून पोलीस महासंचालकीमार्फत शासनास तात्काळ सादर करून, शासनांकडून

मान्य करून घ्यावेत. सेवाप्रवेश नियम मान्य झाल्यानंतर ती नवनिर्मित पदे नवीन सेवाप्रवेश नियमातील तरतूदीनुसार भरण्याची कार्यवाही करावी.”

31. Translated this would mean:

It is informed that the new technical posts which are created, though are to be filled up as per Recruitment Rules and if the Recruitment Rules of the newly created technical posts are not available, then Home Department directed that the Recruitment Rules of these posts are to be prepared by Spl I.G.P, Motor Transport, M.S, Mumbai and that is to be sent through D.G.P to the Government and as and when those Recruitment Rules are approved these newly created technical posts are to be filled in.

32. Pursuant to the said G.R, the Recruitment Rules were prepared in the year 2017 and were forwarded to Home Department but Home Department did not bother till today to approve the said Rules, though they themselves have issued abovementioned G.R dated 2.5.2012. Because of the said G.R and the directions given in the G.R, the vacant posts could not be filled up from 2011 till 2023.

33. Curiously in the year 2023, the posts were filled up in absence of approved Recruitment Rules. We specifically state that the Recruitment Rules of the year 1964 were in the field and therefore the same should have been adopted by the Respondents. But Government has no time to approve and look into framing of the Recruitment Rules of the said posts, though the proposal was pending since 2017.

34. Right to promotion is not a fundamental right but it is a statutory right. In the present cases the recruitment rules of 1964

were in existence and in the year 2012 department has submitted proposal for the draft Recruitment Rules. The process of draft Recruitment Rules were pending and therefore the applicants were not promoted. It is a settled position of law that Government servant does not have fundamental right to be promoted, but to be considered for promotion has fundamental right. Article 16(1) of the Constitution of India states as follows:-

“16. Equality of opportunity in matters of public employment-

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.”

Right to be considered for promotion was denied to the applicants arbitrarily, unfairly on account of inaction on the part of the Respondent-State. To remove stagnation and give effective working the promotions are granted.

35. Mr Pratap Madkar, Section Officer, Home Department, Mantralaya, Mumbai present before us, stated that the Recruitment Rules will be approved by the State Government within six weeks.

36. In the light of the detailed submissions as mentioned above by both the sides, we are of the opinion that a grave injustice has not only been committed but it has been continued and compounded. While in 2011, 5 vacancies were not filled up from the promotion quota, 12 more vacancies got created in 2012 because of fresh creation of post. All the applicants could have been accommodated in 2011/2012 itself. However, while such appointments by promotion from amongst the applicants were not done, they were promoted on adhoc/temporary basis from 3.8.2013. They continued to be

appointed on ad hoc basis with small gaps for the next four years i.e. till 28.7.2017.

37. The compounding of the error continued till 2023. After this Tribunal started hearing the instant OAs, the respondent no.3 granted regular promotions to few of the applicants on 20.7.2023 based on select list of 2011. Meanwhile the juniors to the applicants were not only given regular promotion to the rank of PSI (MT) but few of the juniors were also promoted to the rank of PI. The injustice meted out to the applicants thus came to be aggravated.

38. We appreciate the efforts taken by Ms Swati Manchekar learned C.P.O for the Respondents in assisting the Tribunal during the course of the arguments bringing the true facts on record with the assistance of Shri Anant Dnyaneshwar Mali, Dy. S.P, in the office of I.G.P, Motor Transport, Pune, Shri Deepak B. Kale, Section Officer, Desk-3A, in the office of D.G.P, M.S, Mumbai. We also appreciate the efforts of Ms Namrata Patil in filing affidavit in reply dated 14.3.2018 in O.A 757/2018.

39. In the light of the aforesaid discussion, we pass the following order:

### **ORDER**

- a) All the Original Applications are allowed.
- b) The Respondents are directed to grant deemed date of promotion to the Applicants to the rank of Police Sub-Inspector (Motor Transport) w.e.f. 10.10.2011 i.e. the date on which the Applicants were eligible for the promotion, with all consequential

service benefits including pay and increments etc as applicable, as they were actually working as Police Sub-Inspector (Motor Transport) up to 28.7.2017.

c) The Respondents are further directed to give deemed date of promotion to the eligible Applicants to the rank of Police Inspector (Motor Transport) w.e.f. 29.9.2016 and subsequent promotions, if any, with consequential pay fixation etc.

d) The Respondents are directed to comply with above order within a period of three months from today.

e) No order as to costs.

Sd/-  
**(A.M. Kulkarni)**  
**Member (A)**  
**20.01.2025**

Sd/-  
**(Mridula Bhatkar, J.)**  
**Chairperson**  
**20.01.2025**

Dictation taken by: AKNair & SGJawalkar.