

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.466 OF 2018

**DISTRICT: THANE
SUBJECT: PROMOTION**

- | | | | |
|----|--|---|-----------------------|
| 1) | Shri Mahesh Ramchandra Tambe |) | |
| | Aged 52 Yrs, Working as |) | |
| | Sub Inspector, State Excise |) | |
| | Having office at Opera House Excise |) | |
| | Station, Mathew Road Girgaon, Mumbai-7 |) | |
| | R/o G-4/28, Prima Rose CHS Ltd., |) | |
| | Spagetti Complex, Sector-15, |) | |
| | Kharghar, Navi Mumbai, Dist Thane. |) | |
| 2) | Shri Jackie Rocky Karbhari |) | |
| | Age 54 Yrs, working as |) | |
| | Sub Inspector, State Excise |) | |
| | Having office at G-2, Opera House, |) | |
| | Charni Road, Mumbai-4. |) | |
| 3) | Shri Ganesh Suryakant Pawar |) | |
| | Aged 52 Yrs, Working as |) | |
| | Sub Inspector State Excise, |) | |
| | Having office at SAB-Miller, |) | |
| | Waluj, MIDC, Aurangabad, |) | |
| | R/o Vasant Nagar, Plot No.58/A, |) | |
| | Jawahar Colony, Aurangabad. |) | ... Applicants |

Versus

- | | | | |
|----|---|---|------------------------|
| 1) | The State of Maharashtra, |) | |
| | Through Principal Secretary (Excise) |) | |
| | Home Department, |) | |
| | Having Office at Mantralaya, Mumbai-32. |) | |
| 2) | The Commissioner, |) | |
| | State Excise, (M.S.), Mumbai, |) | |
| | Having office at Old Customs House, |) | |
| | 2 nd Floor, Fort, Mumbai 23. |) | ... Respondents |

**Shri Bhushan A. Bandiwadekar, learned Advocate for the Applicant.
Ms. S.P. Manchekar, learned Chief Presenting Officer for the
Respondents.**

**CORAM : M.A. LOVEKAR, VICE-CHAIRMAN
DEBASHISH CHAKRABARTY, MEMBER (A)**

P.C. :

DATE : 01.04.2025

J U D G M E N T

Factual Matrix

The Applicants joined the State Excise Department as Clerk/Constable. Because promotion to the post of Sub-inspector, Excise in the year 1997 was denied to them on the ground of less than the prescribed height, they approached this Tribunal. They had furnished certificates issued by the Competent Authority which showed that they fulfilled criterion of height of 165 cm. They were asked to appear before the Medical Board. This Tribunal directed the Respondents to rely on the certificates produced by the Applicants and held that it was not necessary to refer them to the Medical Board. This view of the Tribunal was not interfered with by the Hon'ble Bombay High Court. The Applicants were then promoted to the post of Sub-inspector, Excise. In this Original Application grievance of the Applicants is that they have been unjustly denied further promotion to the post of Inspector, Excise.

Sanjeev Deore and others filed Writ Petition no.6757 of 2002 in the Hon'ble Bombay High Court alleging that the Applicants and some others were guilty of producing false medical certificates in respect of height, and suppression of material facts. This Writ Petition was decided by judgment dated 11-9-2003. The High Court observed –

1. Some employees (including the Applicants herein) were allowed to appear for written examination for the post of Sub-inspector, Excise though their height fell short of prescribed minimum, only after obtaining an undertaking from them that they would be considered eligible if by amending the Rules provision relating to minimum height was relaxed. The Rules were not amended.

2. In the year 1997 process to fill up the posts of Sub-inspectors, Excise by promotion was again undertaken. On this occasion the employees who had executed an undertaking earlier, furnished certificates issued by Civil Surgeon/R.M.O. showing that they did fulfill the prescribed criterion of height.

3. The Tribunal had observed-

“We are satisfied that the petitioners have produced the certificates from the competent Medical authorities concerning their height. If the certificates given by the Medical Authorities were to be set at naught, it would only have been on the basis of a review by the same Medical authority or his superior.”

4. In Writ Petition No.5981 of 1998 the High Court declined to interfere with the orders of the Tribunal, and summarily dismissed the Writ Petition by observing as under-

“We are not inclined to interfere with the impugned order of M.A.T. Promotions have been given also. In this matter there is no provision of relaxation. The matter is decided on the basis of Report of Civil Surgeon. The matter is decided on facts recorded by M.A.T. Rejected.”

5. Candidates holding the post of Constable, and who claimed to be eligible for the post of Sub-inspector, Excise by promotion, filed Writ Petition No.1389 of 2001. In this Writ Petition the High Court issued the following directions on 8-9-2001.

“3. The position, therefore, that emerges is that while the Government suspects the correctness of the certificates issued by the Resident Medical Officer/Civil Surgeon and there is material to

suspect the correctness of the certificates granted, the Government finds that it is precluded from testing the correctness of those certificates. It may be that in view of the order passed by the Tribunal and this Court, at this stage the Government may not be able to question the appointments made, but the question still remains whether the concerned Medical Officers and the Civil Surgeons acted bonafide within the scope of their authority or whether they acted dishonestly and malafide by granting false certificates on the basis of extraneous consideration. If it is found that the Resident Medical Officer/Civil Surgeon acted in a malafide manner it is always open to the Government to hold an enquiry to find out the true facts, not with a view to disturb the appointments made, but with a view to stop illegal appointments being made on the basis of false certificates. The Government can even today order an enquiry and for that purpose constitute an authority which would enquire into and submit its report, on the basis of which, the Government may take appropriate action. We appreciate the submission that the certificates having been produced from the specified authorities, the same cannot be challenged in each and every case. However, if there is material to show that the certificates have been wrongly obtained and on extraneous considerations, and further that these certificates are false, the action of the certifying officers is open to challenge, since malafide exercise of power vitiates the action taken. We would, therefore, direct the Government to consider the matter afresh and to inform this Court within four weeks as to whether Government proposes to hold an enquiry into the conduct of the R.M.O.s/Civil Surgeons concerned, who are alleged to have issued false certificates to the candidates declaring them as eligible though they are really not eligible. If the Government decides to do so even those selected candidates who have been appointed on the basis of such false certificates may be called upon by the enquiring authority for an impartial ascertainment of their height with a view to verify whether the certificates issued by the R.M.Os/Civil Surgeons were correct or incorrect.”

(Emphasis supplied)

These observations were referred to in judgment dated 11.09.2003 in Writ Petition No.6757 of 2002.

6. By judgment dated 11-9-2003 following observations were made and directions issued –

“We have already observed that the present case is a very exceptional case in which we are prime facie satisfied that the Respondent Nos. 4 to 38 (except Respondent Nos. 20 and 32) had

obtained medical certificates by fraud and obtained the orders from the M.A.T. on the basis of such fraudulent certificates. The Government wants to hold an enquiry into the allegation of fraud committed by Respondent Nos. 4 to 38 (except Respondent Nos. 20 and 32) and take appropriate action. We are of the opinion that the existence of an alternative remedy of filing an application for review to the M.A.T. available to the Petitioners is not a bar for granting prayer(s) for a direction to Respondent Nos. 1 and 2 to make an enquiry into the allegations of fraud, especially when the State itself supports the petitioners and wants to make an enquiry. We make it clear that the observations made by us in this judgment about the existence of fraud are prima facie observations and the enquiry officer who may be appointed by the Government would be entitled to reach an Independent conclusion whether Respondent Nos. 4 to 38 (excluding Respondent Nos. 20 and 32), had obtained medical certificates of their height fraudulently and had secured the appointments through the order from M.A.T. on the basis of such fraudulent certificates.

16. In the Circumstances, we pass the following order:

The Respondent Nos. 1 and 2 are permitted and directed to make an enquiry on the basis of the report of the Medical Boards as forwarded to it by the Addl. Director of Health Services, Mumbai under his letter dated 6th November 2001. If the medical certificates produced by Respondent Nos. 4 to 38 (excluding Respondent Nos. 20 and 32) are found to be false and/or fraudulent and/or procured by them by malpractices, the State Government is free to take such action against them as well as medical officers who fraudulently issued the certificates as State thinks fit. Needless to say the person against whom the action is proposed to be taken shall be given an opportunity of hearing and principles of natural Justice shall be followed. In case any orders adverse to the Respondent Nos. 4 to 38 or any of them are passed the same shall not be implemented for a period of four weeks from the date of communication of the order.”

7. By Order dated 06.02.2006 the High Court disposed of Writ Petition No.1389 of 2001, by referring to and quoting the above referred observations made in para 16 of the judgment dated 11.09.2003.

8. Pursuant to the order of the High Court dated 11.09.2003 Departmental inquiry was initiated against the Applicants.

9. The Applicants and other similarly placed persons who were aggrieved by order dated 11-9-2003 filed Civil Appeal No.5349 of 2006 in the Hon'ble Supreme Court. By order dated 19-12-2003 interim stay to order of reversion was granted. By order dated 18-3-2015 the Civil Appeal was allowed by passing the following order –

“O R D E R

1. This appeal is directed against the judgment and order passed by the High Court of Bombay in Writ Petition No.6757 of 2002, dated 11.09.2003 whereby the High Court has directed the State Government to conduct an enquiry into the certificates submitted by the Appellants and to take appropriate action against them.
2. We have heard learned counsel for the parties to the lis.
3. The learned counsel for the Appellants has produced before us an additional affidavit on behalf of the Appellants and referred to Paragraph Nos. 6 and 7 of the affidavit. He submits that most of the Appellants have either retired from the service or expired or not attending office. The rest of the Appellants are going to retire from their service soon.
4. We have gone through the additional affidavit filed on behalf of the Appellants. After going through paragraph Nos. 6 and 7, we are of the opinion that no purpose would be served by implementing the directions issued by the High Court at this belated stage and the interim order granted by us on 19.12.2003 granting interim stay of the reversion order requires to be made absolute and is hereby made absolute.
5. In view of the above and in the peculiar facts and circumstances of the case, we allow this appeal and set aside that portion of the impugned judgment and order passed by the High Court wherein the High Court had directed the State Government to make enquiries with regard to the so called fraud committed by the Appellants.

Ordered accordingly."

(Emphasis supplied)

10. In view of order of the Supreme Court dated 18-3-2015 departmental inquiries initiated against the Applicants (and similarly placed persons) were dropped.

11. Stand of respondent no.2 is as follows. The grievance raised by the Applicants in this O.A. i.e. promotion to the post of Inspector, Excise was not part of the subject matter dealt with and decided by the Hon'ble Supreme Court by judgment dated 18-3-2015. This judgment has been fully implemented. By order dated 18-3-2015 orders of reversion of the Applicants (and other similarly placed persons) were not set aside. There are no observations in this judgment regarding the Applicants (and other similarly placed persons) being eligible for promotion to the post of Sub-inspector, Excise and for further promotion to the post of Inspector, Excise. The relief was granted by the Supreme Court on the basis of affidavit, and on humanitarian ground.

12. It is a matter of record that in the meeting of the D.P.C. held on 11-9-2014 cases of the Applicants and 9 others were considered and it was decided not to include their names in the Select List for the promotional post of Inspector, Excise. It may be stated that at this point of time departmental proceeding were pending against the Applicants pursuant to the judgment of the High Court dated 11-9-2003. Part of this judgment relating to making an enquiry about genuineness of medical certificates was set aside by judgment dated 18.03.2015 as a result of which departmental proceedings initiated against the Applicants (and other similarly placed persons) were also dropped.

Reiteration, Discussion and Conclusion

13. The 'Hon'ble Bombay High Court' by 'Judgment' dated 11.09.2003 in Writ Petition No. 6757/2002 had granted permission with directions to 'Home Department (State Excise)' and 'Commissioner State Excise, Maharashtra State' to 'Make an Enquiry' based on report of the Medical Board and if Medical Certificates of such 'Sub Inspectors State Excise' were found to have been obtained fraudulently or by mal practices; then appropriate action could be taken against these 'Sub Inspectors State Excise' as well as concerned Medical Officers. The present Applicants who were amongst such 'Sub Inspectors; State Excise' soon thereafter were reverted back to their earlier posts of 'Constable' & 'Clerk' on 03.12.2003 but their reversions were in effect for short period of time as 'Interim Relief' was granted such 'Sub Inspector State Excise' including present Applicants on 19.12.2003 by 'Hon'ble Supreme Court of India' in 'Special Leave to Appeal (Civil) No. 19371/2003'.

14. The 'Hon'ble Supreme Court of India' by 'Judgment' dated 18.03.2015 in 'Civil Appeal No. 5349/2006' upon consideration based on appreciation of cited grounds that most of the Appellants therein had either retired or expired or going to retire soon abrogated all the enquiries which had been initiated by 'Home Department (State Excise)' against such 'Sub Inspectors State Excise' with regard to alleged fraud committed by them to obtain 'Medical Certificates'.

15. The 'Hon'ble Supreme Court of India' by 'Judgment' dated 18.03.2015 in 'Civil Appeal No. 5349/2006' has set to rest all allegations surrounding the 'Medical Certificates' which according to the department, had ostensibly been used by Applicants to conceal their real 'Height' when they came to be appointed initially on posts of 'Constable' & 'Clerk' in establishment of 'Commissioner State Excise, Maharashtra State'.

16. The present Applicants continued to serve in cadre of "Sub Inspector; State Excise" when they filed O.A No. 466/2018 on 22.05.2018 to seek promotion to cadre of 'Inspector State Excise'. However even after 'Interim Relief' had been granted to Applicants and other 'Sub Inspectors State Excise' they were served with 'Charge Sheets' on 17.07.2004 for conduct of 'Departmental Enquiries' regarding allegations that 'Medical Certificates' had been fraudulently obtained by them to seek appointment on the post of 'Constable' and 'Clerk' as subsequently they were found to be of 'Height' less than 165 cm after re-measurement was conducted by 'Medical Board' of 'Sir JJ Group of Hospital' and 'Grant Medical College, Mumbai'.

17. The case of Applicants, who have since retired from posts of 'Sub Inspector State Excise' is that even though they had been placed at Sr. No. 22 and Sr. No. 32 in provisional 'Seniority List' of 'Sub Inspector State Excise' published on 13.06.2017 they were not promoted to cadre of 'Inspector State Excise' when other 'Sub Inspectors State Excise' came to be promoted on 02.12.2017 much after 'Judgment' dated 18.03.2015 of 'Hon'ble Supreme Court of India' in 'Civil Appeal No. 5349/2006'. The contention of Applicants is that although they had continued to serve in cadre of 'Sub Inspector State Excise' without any break since their reversion on 03.12.2003 was stayed on 19.12.2003 by 'Interim Orders' of 'Hon'ble Supreme Court of India' in 'Civil Appeal No. 5349/2006' and 'Departmental Enquiries' subsequently instituted on 17.07.2004 had also been closed on 30.06.2015; yet they were treated differently from other 'Sub Inspectors State Excise' at the time of consideration for promotion to cadre of 'Inspector State Excise'.

18. The grounds of discrimination cited by Applicants are substantiated by the fact that 'Commissioner State Excise, Maharashtra State' had initiated action on 19.01.2018 to obtain information relating to 'Annual Confidential Reports' for 2013-2014 and 2014-2015 from (a) 'Deputy Commissioners of State Excise' & (b) 'Superintendents of State

Excise' of all eligible 'Sub Inspectors State Excise' which would have included Applicants; as they were serving in cadre of 'Sub Inspector State Excise'. The 'Commissioner State Excise, Maharashtra State' had soon thereafter by letter dated 11.04.2018 also disclosed the 'Number of Posts' of 'Inspectors State Excise' in all 'Revenue Divisions' available for allocation to officers from cadre of 'Sub Inspector State Excise' if found eligible for promotion to cadre of 'Inspector State Excise'.

19. The contentions of Applicants when they had filed this O.A. No. 466/2018 on 22.05.2018 when they were still serving in cadre of 'Sub Inspector State Excise' was to consider them for promotion to cadre of 'Inspector State Excise' against the backdrop of entirely changed circumstances relating to allegations surrounding their 'Height' as was recorded in 'Medical Certificates' that emerged with passing of 'Judgment' dated 18.03.2015 of 'Hon'ble Supreme Court of India' in 'Civil Appeal No. 5349/2006' as their 'Seniority' and 'Merit' could not have been overlooked by 'Home Department (State Excise)' and 'Commissioner State Excise Maharashtra State'. The Applicants were undoubtedly treated as ineligible to be even considered for promotion to post of 'Inspector State Excise' and have been discriminated against within cadre of 'Sub Inspector State Excise'. No 'Intelligible Differentia' could even have been conjectured with respect to Applicants after 'Judgment' dated 18.03.2015 of 'Hon'ble Supreme Court of India' in 'Civil Appeal No. 5349/2006' without causing infringement of provisions of 'Article 14' of 'Constitution of India'.

20. The non-consideration of Government Servants for promotion amounts to infringement of 'Article 16' of 'Constitution of India' as has been concluded by **Hon'ble Supreme Court of India in *HP State Electricity Board v. Shri KR Gulati, JT 1998 (1) SC 387: (1998) 2 SCC 624: AIR 1998 SC 1445.*** Further though promotion is not a fundamental right of Government Servants the right to be considered for promotion however is fundamental right and such right brings within its

purview effective, purposeful and meaningful consideration as has been observed by **Hon'ble Supreme Court of India in *UOI v Sangram Keshari Nayak, (2007) 6 SCC 704.***

21. The rule of equality is intended to advance justice by avoiding discrimination of Government Servants in matters of promotion although promotion cannot be automatically bestowed upon Government Servants as has been observed by **Hon'ble Supreme court of India in *Mohd. Usman v. State of AP, AIR 1971 SC 1801: (1971) 2 SCC 188: 1971(2) Serv LR 584 (SC) and Rajendra Kumar Srivastava v. Samyuk Kshetriya Gramin Bank, (2010) 1 SCC 335.***

22. The expectation of Government Servants for promotion while in Government Service undoubtedly would be considered as normal but even if they stand retired without receiving them, although deserving based on 'Seniority and Merit' the earlier claims, will still constitute legitimate grievance if any of their juniors had been granted promotion prior to their own super-annuation; as is contended by Applicants. The Applicants are by no stretch of imagination seeking promotion as 'Inspector State Excise' to be given prospectively even after they stand retired from Government Service. The nuances about due consideration required to be given about claims of promotion by Government Servants even though they stand retired stands well explained by **Hon'ble Supreme Court of India in *Baij Nath Sharma v. Hon'ble Rajasthan High court at Jodhpur, (1998) 7 SCC 44.***

23. The persisting grievance of Applicants when they had filed this O.A. No. 466/2018 on 22.05.2018 has not undergone any change though they now stand retired from posts of 'Sub Inspector State Excise'. The Applicants continue to seek consideration for promotion to post of 'Inspector Sate Excise' by treating them as being placed at par with others in cadre of 'Sub Inspector State Excise' when they were overlooked deserves to be resolved at the end of long drawn legal battle

relating to now redundant allegations about use of fraudulent 'Medical Certificates'. The saga which had begun with 'Hon'ble Bombay High Court' by 'Judgment' dated 11.09.2003 in Writ Petition No. 6757/2002 has since come to conclusive end with 'Judgment' dated 18.03.2015 of 'Hon'ble Supreme Court of India' in 'Civil Appeal No. 5349/2006'. The Applicants while in service as 'Sub Inspector State Excise' had not been given promotion to post of 'Inspector State Excise' for reasons not revealed but their aspirations which never died now deserve to be considered. The Applicants who had continued to serve in cadre of 'Sub Inspector State Excise' for substantially long period till their retirement all along nurtured hope to be promoted to posts of 'Inspector State Excise'. Hence; grievance of Applicants to be granted promotion to post of 'Inspector State Excise' which has lived on even after retirement deserves redressal based on well accepted 'Principle of Legitimate Expectation'.

24. The grievance of Applicants which remains un-extinguished with passage of time since they filed this O.A. No. 466/2018, on 22.05.2018 to be granted promotion to post of 'Inspector Sate Excise' therefore deserves to be considered even now with an 'Open Mind' not only based on above enumerated backdrop but importantly to reverentially uphold the essence of 'Judgment' dated 18.03.2015 in 'Civil Appeal No.5379/2006' of 'Hon'ble Supreme Court of India'. Hence following order:-

ORDER

The O.A. is allowed in the following terms.

- (i) The 'Home Department (State Excise)' is directed to convene 'Special Meeting' of DPC within 'Four Weeks' to consider eligibility of Applicants to be granted antedate 'On Paper Promotion' to cadre of 'Inspector State Excise' based on well-established principles of 'Seniority cum Merit'; but only if other 'Sub Inspectors State Excise'

who were junior to Applicant came to be promoted to cadre of 'Inspector State Excise' when Applicants were still in 'Government Service'.

(ii) The 'Home Department (State Excise)' should accordingly come to reasoned conclusion if Applicants should have been granted promotion to cadre of 'Inspector State Excise' alongwith other Sub Inspector State Excise based on well-established principles of 'Seniority cum Merit' and extant 'Policy Guidelines' of GAD and thereupon in all fairness within next 'Four Weeks' after 'Special Meeting' of DPC issue orders for their antedate 'On Paper Promotion' alongwith notional 'Deemed Dates' so as to belatedly grant them consequent 'Service Benefits' which would have been received by Applicants in normal course had they contentedly retired while serving in cadre of 'Inspector State Excise'.

(iii) No Order as to Costs.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(M.A. Lovekar)
Vice-Chairman

Place: Mumbai

Date:

Dictation taken by: A.G. Rajeshirke.

Uploaded on:_____