

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 193 OF 2015

DISTRICT : NASIK

Smt Aparna Sudhakar Gitay,)
Working as Deputy Superintendent)
of Police / Assistant Director,)
Maharashtra Police Academy, Nasik)
Add for service of notice:)
Shri A.V Bandiwadekar,)
Advocate, having office at)
“Ram Kripa”, Lt Dilip Gupte Marg,)
Mahim, Mumbai 400 016.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Addl. Chief Secretary,)
Home Department, Mantralaya)
Mumbai 400 032.)
2. The Director General &)
Inspector General of Police,)
[M.S], Mumbai, having office at)
Old Council Hall, S.B Marg,)
Mumbai 400 039.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 28.09.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging order dated 9.1.2015 passed by the Applicant to the extent of non-inclusion of the name of the Applicant in the list of promotees to the post of Deputy Commissioner of Police (D.C.P) / Superintendent of Police. The Applicant seeks inclusion of her name between Sr no. 25 and 26 in the aforesaid order. The Applicant has also challenged the order dated 28.1.2015 issued by the Respondent no. 2 that she was found unfit for promotion to the post of D.C.P.

3. Learned Counsel for the Applicant argued that the Applicant joined Government service as directly recruited Deputy Superintendent of Police / Assistant Commissioner of Police, (A.C.P) in November, 2007. The Applicant was eligible to be considered for promotion to the post of D.C.P after 7 years in the post of A.C.P. The Respondents prepared the select list for 2013-14 to consider 89 eligible Officers for promotion. For promotion, B+ (positively Good) is the benchmark. A total of 59 vacancies of D.C.P were to be filled and only 22 officers having completed 7 years of service were available. The Respondents decided to consider officers, who had not completed 7 years of service also for promotion. The Respondents prepared a list of 37 eligible officers for promotion, and the name of the Applicant was not included. The Applicant was at Sr. No. 53 between Mr Amit K. Kale (Sr. No. 52) and Smt Deepali R. Ghadge (Sr. No. 54) in the seniority list. Accordingly, her name should have been between Sr. No. 27 & 28 in the list of 37 officers. Learned Counsel for the Applicant stated that Annual Confidential Reports (ACRs) from 2008-09 to 2012-13 were considered. Promotion order dated 9.1.2015 was issued which has 42 names, 14 persons were given regular promotion and 28 persons were promoted on ad hoc basis as they had not completed 7 years of service. As the Applicant's name did not figure in this list, she made a representation to the Respondent no. 2 on 12.1.2015 and sent reminders on 21.1.2015 and

2.2.205. The Applicant also sent a representation to the Respondent no. 1 on 12.2.2015. In the meantime, the Respondent no. 2 informed the Applicant on 28.1.2015 that she was found unfit for promotion. This order is impugned in the present Original Application.

4. Learned Counsel for the Applicant stated that the gradation of her ACRs were as follows:-

- 1) 2008-09 - B+
- 2) 2009-10 - B It was communicated on 25.4.2013
- 3) 2010-11 - C Representation against adverse remarks dated 30.9.20211 is still pending.
- 4) 2011-12 - B+
- 5) 2012-13 - B+
- 6) 2013-14 - B+

Learned Counsel for the Applicant argued that ACR for 2010-11 should have been ignored as representation against adverse entry in this ACR was pending before the Respondents. As regards ACR for 2009-10, it should have been considered as upgraded as the Applicant belongs to O.B.C category and is admittedly eligible for special sympathy as per G.R dated 7.1.1961. On that basis, the Applicant was obviously eligible to be promoted. The decision of the Departmental Promotion Committee (D.P.C)/Establishment Board is wrong and

the Respondents may be directed to place the case of promotion of the Applicant before a Review D.P.C.

5. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Departmental Promotion Committee in its meeting held on 23.5.2014 has considered the case of the Applicant for promotion to the post of D.C.P from the select list of 2013-14. D.P.C did not consider adverse entries in ACRs, which were not communicated to the concerned Officers. For the backward class candidates like the Applicant, 'special sympathy' was shown in the light of G.R dated 7.1.1961, but she was found not reaching the bench mark of 'B+'. As such, she was not promoted.

6. In the affidavit in sur-rejoinder filed by the Respondent no. 1 dated 13.7.2016, it is stated in para 3 that:-

“3. With reference to Para 2 of the rejoinder, I say and submit that for the preparation of the select list 2013-14, ACRs of preceding last five years, i.e. from the year 2008-09 to 2012-13 were taken into consideration. ACR of the Applicant for the year 2012-13 was not available at the time of DPC. Therefore, ACR of previous year, i.e. for 2007-08 was considered. It is found that ACR of the Applicant for the period of 7 ½ months in the year

2007-08 was also not available. The gradation of ACR of remaining 4 ½ months in the year 2007-08 is “B+”. The gradation of ACRs for the period 2008-09 to 2011-12 are ‘B+’, ‘B’, ‘B’, ‘B+’ respectively. Thus, the average of these five years ACRs is ‘B’. As per the provisions of the Government Resolution, General Administration Department dated 7.1.1961, the sympathy was shown to the Applicant, but even after showing such sympathy, the Applicant could not reach to the bench mark of ‘B+’. It is further submitted that at the relevant time the remarks of the General Administration Department were also called. Where the General Administration Department by its remarks dated 13.8.2014 has stated that the ACRs of the Applicant are not up to the bench mark as required as per the Rules. Thus, since the ACRs of the Applicant were not up to the bench mark of the Applicant was not found ‘fit’ for promotion to the post of Superintendent of Police/Deputy Commissioner of Police (non-cadre) for the said select list.”

It is stated that ACR of 2012-13 was not available when the Applicant’s case for promotion was considered by D.P.C in its meeting held on 23.5.2014. Definitely, it was not the fault of the Applicant. The Applicant has placed on record copy of her ACR for the year 2012-13 (1.4.2012 to 31.3.2013) on pages 54-55 of the Paper Book.

Reporting Officer has given her A-very good grading. It was downgraded by the Reviewing Officer to 'B+', without giving any reasons. For the years 2008-09 to 2011-12, the following gradings were given:-

2008-09	-	'B+'
2009-10	-	B
2010-11	-	B-
2011-12	-	B+

The adverse remarks in the ACR of 2010-11 were communicated to the Applicant on 24.8.2011 (Exhibit 'C' on page 38 of the Paper Book). In para 6.17 of the Original Application, the Applicant has stated that she made a representation on 31.10.2011 against the adverse remarks, and no decision has yet been taken by the Respondents on that representation. In the affidavit in reply of the Respondent no. 1 dated 15.9.2015, in para 20, it is stated that records of the Home Department were destroyed in fire. The contention of the Applicant that her representation dated 31.10.2011 has not been decided by the Respondents has not been denied by the Respondents. The Respondents have also not denied the claim of the Applicant that such ACRs are required to be ignored by D.P.C. If ACR of 2010-11 is ignored and ACR of 2007-08 for the part, it was available, is considered, the Applicant appears to reach the bench mark of 'B+', in the light of special sympathy in terms of G.R dated 7.1.1961 as the Applicant belongs to O.B.C category and

all ACRs except for the year 2009-10 has grading of 'B+'. 2010-11 is ignored and ACR for 2009-10 will be read as 'B+' as per G.R dated 1.1.1961. ACR of 2012-13 is 'B+'. The Applicant's claim that the Respondents have not acted as per extant instructions appears to be correct.

7. Impugned order dated 28.1.2015 issued by the Respondent no. 2 is quashed and set aside. The Respondent no. 1 is directed to convene Review D.P.C to consider the case of the Applicant on the basis of select list of 2013-14 in the light of observation in the preceding paragraph. This should be done within a period of 3 months from the date of this order. This Original Application is allowed accordingly with no order as to costs.

Sd/-
(R.B. Malik)
Member (J)

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 28.09.2016
Dictation taken by : A.K. Nair.