

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 983 OF 2017

DISTRICT : MUMBAI

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|----|------------------------------------|-----------------------|
| 1. | Shri Kishor J. Shinde |) |
| | Assistant Police Inspector, |) |
| | Protection & Security Branch, |) |
| | Vaju Kotak Marg, Fort, Mumbai. |) |
| | R/o: 3/12/A, Jai Trimurti CHS Ltd, |) |
| | Mumbai Pune Road, Kalwa, |) |
| | Dist-Thane. |) |
| 2. | Shri Mahendra M. Kaldoke, |) |
| | Working as Police Inspector, |) |
| | [On one step promotion], |) |
| | Office of Addl. D.G.P, C.I.D., |) |
| | M.S, University Chowk, |) |
| | Chavan Nagar, Pasan Road, |) |
| | Pune 411 008. |) |
| | R/o: Payal Terrace, Flat No. 3, |) |
| | Vidhate colony, D.P Road, |) |
| | Baner-Aundh, Pune 411 007. |)... Applicant |

Versus

- | | | |
|----|--------------------------------|---|
| 1. | The Government of Maharashtra |) |
| | Through Addl. Chief Secretary, |) |
| | Home Department, Mantralaya, |) |
| | Mumbai 400 032. |) |

2. Director General of Police,)
Maharashtra State,)
Having office at Colaba, Mumbai.)
3. Maharashtra Public Service)
Commission, through its Secretary,)
Having office at Bank of India Bldg,)
Fort, Mumbai.)...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicants.

Ms Archana B.K, learned Presenting Officer for the Respondents.

CORAM : Justice Mridula Bhatkar (Chairperson)
Shri Debashish Chakrabarty (Member) (A)

RESERVED ON : 20.08.2024

PRONOUNCED ON : 19.09.2024

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicants pray to hold and declare that the order dated 6.9.2017 passed by Respondent No. 2, is illegal and bad in law and give further directions to the Respondents to accord retrospective seniority in favour of the Applicants in the cadre of Police Sub-Inspector w.e.f 1.4.2005, the date on which the juniors to the Applicants were sent for training in accordance with the revised select list published by Respondent No. 3 with all consequential service benefits. Total 300 posts were advertised. The Applicants though from the batch of the year 2005, they were sent for training of PSI in the year 2006 therefore the limited prayer is that the seniority of the present Applicants is to be considered with effect from 01.04.2005 and not with effect from 27.12.2006. The

Applicants pray that their names can be considered at the bottom of the batch of 2005.

2. Learned counsel Mr Lonkar submits that both the Applicants have secured 286 marks in the Limited Departmental Examination. The last candidate from the open category has secured 284 marks. Despite this factual position, names of the Applicants were not recommended by Respondent No. 3, M.P.S.C. Learned counsel has further submitted that the Respondent No. 3, on 12.7.2004 published list of 300 recommended candidates. The name of the Applicants did not find place in the said list. On 7.10.2006, the Respondent No. 3 published another list of recommended candidates from the aforesaid Limited Departmental Examination. The said list contained names of 304 candidates and the names of the present Applicants figure at Sr. No. 207 & 211 respectively. Learned counsel has submitted that by letter dated 31.10.2006, the Respondent No. 3 informed the Applicants that in view of the decision rendered by this Tribunal, their names have been recommended to the post of Police Sub-Inspector. Pursuant to the aforesaid recommendations both the Applicants were sent for training during the period from 26.12.2006 to 31.8.2007. Both of them successfully completed the training course. In view of the satisfactory completion of their training period, good service they were promoted to the rank of Assistant Police Inspector w.e.f 20.11.2012. Learned counsel has submitted that Respondent No. 2, on 12.6.2017 published the provisional seniority list of the cadre of P.S.I for the period 2000 to 2009 and the objections/suggestions were invited for the same. The Applicants submitted their objections on 30.6.2017. Learned counsel further submitted that the persons selected from the same batch and have been shown junior to the Applicants in the list of recommended candidates were sent for training from 1.4.2005. However, the

present Applicants were sent for training in the year 2006. The Applicants therefore requested that both of them are entitled to deemed date of seniority in the cadre of P.S.I w.e.f 1.4.2005. Learned counsel has submitted that reference was made to Rule 89(3) of the Bombay Police Manual-1999, Part-I, however, the Applicants are of the same batch of 2005. The provisional seniority list was published for the first time on 12.6.2017. Learned counsel has submitted that the Provisional Seniority List of P.S.I for the period from 2000 to 2009 was published on 12.6.2017 (Exh-H). The objections to the same raised by the Applicants on 30.6.2017 were rejected on 6.9.2017 and hence present O.A is filed on 16.10.2017. Learned counsel has submitted that the result of the Limited Departmental Examination of the year 2002 for the 2004 Batch was declared on 12.7.2004 and the candidates selected from the said batch were sent for training on 1.4.2005. Learned counsel has submitted that after the revised seniority list of 2004, the new list was published on 7.10.2006 and the names of the Applicants are appearing at Sr No. 207 & 211 respectively.

3. Mr. Lonkar has further submitted that still if the Tribunal directs, the applicants are ready to implead the officers of the batch of 1997 as Party Respondents. Learned counsel relied on the decision of this Tribunal dated 19.6.2024 in M.A 129/2014 with O.A 631/2011. There are two streams of selection, (i) by way of direct recruitment and (ii) through Limited Departmental Competitive Examination. He has submitted that the judgment of the Tribunal laying down the ratio in O.A.No.918/2015 with O.A.No.1094/2015, Shri Suresh Bhikaji Shingte & Ors Versus State of Maharashtra, dated 07.06.2017 is altogether different and there was no issue of inter-se seniority.

4. Learned P.O submitted that preliminary objection is raised by the Respondents regarding limitation in filing the Original Application. Learned P.O relied on the affidavit in reply dated 14.3.2018, filed by Smt Namrata G. Patil, Assistant Inspector General of Police (Estt), in the office of D.G.P, M.S., Mumbai, with regard to Preliminary objection of limitation in filing the Original Application. Learned P.O submitted that the provisional seniority list was published on 6.1.2011 and the applicants have not taken objection to the same. Therefore, the Original Application is beyond limitation. The applicants have filed representation and taken objection on 20.6.2017 for the first time and after rejection of the representation, they have filed the present Original Application. Learned P.O further submitted that they have published the provisional seniority list for the year 2012, 2013, 2014 and 2015 on the website of the Department on 2017. Learned P.O. has relied on the affidavit-in-reply dated 28.03.2024 filed on behalf of Respondent No.3, through Mr. Dilip Arjun Waghe, Under Secretary in the office of Maharashtra Public Service Commission. She has submitted that both the Applicants in present O.A. have secured same 286 marks. She has relied on paragraph 9 of the said affidavit-in-reply, which reads as below:-

“9. With reference to Paragraph No.6.3, I say and submit that the result of the said examination was declared in July, 2004. There were total 206 posts for open category. The last recommended candidate for open category had secured 287 marks. Both the applicants scored 286 marks. Hence, due to non-availability of posts, applicants were not recommended. A copy of the recommendation list of 300 candidates is attached with the Original Application as Exhibit-D.”

5. Learned P.O has submitted that the applicants demand for retrospective deemed date of seniority from 1.4.2005 is not correct but illegal. As per the recommendations both the applicants were sent for training on 26.12.2006. The applicants completed their training on 31.7.2007 and the applicants accordingly were given

the date of appointment as 26.12.2006, that is the date of joining the training, as per clause 89(3) of the Bombay Police Manual. Earlier 300 candidates of 1996 Batch were sent for training on 1.4.2005, hence the claim of the Applicants for deemed date of seniority is not valid and is to be rejected. Learned P.O relying on the decision of this Tribunal dated **7.6.2017 in O.A 918/2015 with O.A 1094/2015, Shri Suresh B. Shingte & Ors Vs The Government of Maharashtra & Ors.** has argued that when the applicants were not borne in the cadre how the applicants can claim deemed date of seniority in the cadre of P.S.I. Learned P.O relied on the decision of the Hon'ble Supreme Court dated 10.11.2019 in **K. Meghachandra Singh & Ors Vs. Ningam Siro & Ors, Civil Appeal No. 8833-8835/2019, arising out of SLP (C) Nos 19565-19567/2019.** Learned P.O has further submitted that in between the candidates of 1997 Batch were sent for training on 1.7.2005, hence if the applicants claim deemed date of seniority w.e.f. 1.4.2005, is to be entertained, then the applicants will have to make all the 269 candidates of 1997 Batch who were sent for training on 1.7.2005 as Party-Respondents as they are going to be affected. So Application suffers from non-joinder of necessary parties.

6. We are of the view that the Police Personnel of the batch of 1997 who marched over the present applicants being the recruits of the earlier batch are not required to be made Party Respondents. It is a fact that non-joinder of parties is not pleaded in the affidavit-in-reply by the Respondents and first time in the arguments objection of non-joinder of parties is raised. Thus, the objection for want of necessary and appropriate parties is not sustainable. On the point of delay and laches we found that first time the list was published on 12.06.2017 of the year 2000 to 2009 and till today, it is not finally published. Thus, under such

circumstances, there was no cause of action for the applicant to approach the Tribunal earlier. In the judgment of Kaldoke, O.A.No.1260/2004 and O.A.No.1060/2004, nine candidates in the batch No. 1998 have been selected in the said batch and the two applicants Mr. Kaldoke Mahendra Madhukar and Mr. Shasikant K. Sagare in O.A.No.1060/2004 with M.A.No.128/2005 and was decided on 05.05.2006 by the Division Bench of this Tribunal. The nine candidates were not sent for training because of the litigation and they were sent for training on 1.6.2004 on the basis of their performance in the batch of 1998. Thereafter, those posts of nine candidates were vacant in the said batch and hence it was prayed that the posts must be offered to non-selected candidates of the year 2002 batch who were not selected for want of vacancies and effect was not disputed by the Respondents.

7. In the case of **A. Janardhana (supra)** the Petitioner claimed his seniority in the list of Assistant Executive Engineer. The objection was raised that the Members who have scored a march over the appellant in the 1974 seniority list have not been impleaded as Party Respondents and hence relief should not be given to the Petitioner on the ground of non-joinder of necessary parties. The Hon'ble Supreme Court held that the relief was not claimed by the Petitioner against one particular individual but against the decision taken by the Union Government and therefore, the Hon'ble Supreme Court considered it unnecessary to have all the direct recruits to be impleaded as Party-Respondent.

8. The issue in the present matter is whether there can be many batches in one and the same recruitment process. Undoubtedly, the candidates in one batch even though join on the other date, later with valid reason, they are to be treated as a part of one batch and their inter se seniority will never get disturbed.

However, if at all, there are two batches in one recruitment process, then the seniority of the member of a particular batch is always decided on the basis of their date of the recommendation and date of the appointment as per Rule 89(3)

9. The relevant Rule 89(3) of the Bombay Police Manual which is relied by the learned P.O is reproduced for ready reference as under:-

“89(3) The seniority of Sub-Inspectors recruited directly on the basis of competitive examination and Head Constables passing the Sub-Inspector’s course should be reckoned from the date of their appointment as Police Sub-Inspectors on probation, their inter-seniority being determined by the order of merit in which they pass out from the Police Training College. A Sub-Inspector who has failed in the final examination at Police Training College and is given an extension shall if he passes the next examination, be placed below those S.I’s who joined the Police Training College in his batch and above those who joined the Police Training College in the subsequent batch but passed the final examination him. In case, the period of probation is extended up to six months, the position of the officer concerned on the Gradation List of Sub-Inspectors will be below that of any Sub-Inspector, who passed out at the same time as himself and where the period of probation is extended by more than six months, the officer will be placed below all the Sub-Inspectors who complete their probation period successfully earlier than him.”

The plain reading of the Rule is that the order of merit of the recommended P.S.I in a course is determined when they pass out from the Police Training School. Thus, this Rule speaks about the seniority of the Sub-Inspectors, recruited directly and Head Constables who pass the departmental competitive examination of the Sub-Inspector’s course. The criterion for determination of the seniority depends on their order of merit which is fixed when they pass out from the Police Training School. Thus, it appears that when the candidates are recommended by MPSC there may be one

merit list of the recommended candidates. However, when merit list cannot be final unless the candidates complete their training at the Police Training School. Thus, it further means that a candidate may not perform well during the training and can be considered as an average candidate in training so his merit may go down than the such of earlier recommended candidates. Rule 89(3) of the Bombay Police Manual doesn't say anywhere about the 'Batch'. In fact, the word 'Batch' is nowhere used or defined either in the Bombay Police Act or Bombay Police Manual. However, the word 'Batch' is used in Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. Rule 5(1) states that generally actual date of appointment is different and the date which is claimed by the Government servant shall not ordinarily be altered. However, Rule 5(2) says that where the direct recruits selected in the same **batch** report for the date and the actual dates on which they are appointed are not chronologically in conformity with their inter se seniority as provided in Clause (a) of sub-rule (2) of Rule 4, the recruit higher in rank, out reporting for duty later than his junior shall be assigned, as deemed date of appointment, the date on which the recruit lower in rank reports for duty. However, the word 'batch' is mentioned in Rule 5(2) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. For the candidates in the same batch the inter-se seniority merit-wise is to be maintained. However, as the recommended candidates are sent in one group which in common parlance be called a 'Batch' they are recommended in the same recruitment process at the same time and sent by the same order and they joined the training on the same date. That is what we say a 'Batch' and they have their inter-se seniority. Sometimes, the candidates though are recommended cannot be sent for training on account of indulgence by the Court which has happened in the case of Milind M. Kathe & Ors Vs Govt. of Maharashtra & Ors, O.A 327/2016, dated

29.2.2024. The present case is distinguishable from the case of Kathe as the Applicants in Kathe's case were part of the same recommendation list, but they could not be sent on account of the judicial intervention. In the present case the Applicants were not recommended. The reason for their non-recommendation was they could not secure more marks than the cut-off marks which was 287 and they have secured 286 marks. The present Applicants were subsequently benefited and were got in due to the judicial intervention because few posts fell vacant and so Court ordered to go below to fill up those vacancies. Thus, the cut-off marks were brought down and therefore the present Applicants who have secured 286 marks were fortunate to get in and their names were recommended later on 7.10.2006 and they were sent for training in the Batch of 2006.

10. In the case of **Shri Suresh B. Shingte & Ors Vs The Government of Maharashtra & Ors, O.A 918/2015 & Ors**, the two Original Applications were filed by two sets of Applicants, i.e., by promotes who were promoted on 30.4.2001 and confirmed as per their quota in the year 2002, 2003 and 2004 challenge the seniority of the P.S.Is who have been promoted after passing out the Limited Departmental Competitive Examination and they joined on 1.6.2004, were granted deemed as 22.3.2000. In other Original Application the Applicants were appointed after selection through MPSC in the year 1998 and sent for training on 22.3.2000. Then some candidates were sent out of the said batch on 16.4.2001 and some candidates of the same batch was sent on 1.6.2004. They all were given the deemed date 22.3.2000 by order dated 31.8.2015 on account of the orders passed by the Tribunal. So the said orders were challenged by the second set of Applicants that the order of giving deemed date has adversely affected on

them. While deciding the said two Original Applications, by a detailed judgment, the Tribunal held that:-

“Deemed appointment from a date different from actual appointment can be granted only by the State Government under rule 5(1) of Seniority Rules. The Respondent No. 2, has no legal authority to pass any such order. There are various judgments of Hon’ble Supreme Court, wherein it is clearly held that a person cannot be given retrospective appointment/seniority in the cadre from a date on which he was not even borne on that cadre.”

11. In the case of **K. Meghachandra Singh & Ors. Versus Ningam Siro & Ors, Civil Appeal No.8833-8835 of 2019** the Hon’ble Supreme Court while determining seniority of direct recruits vis-a-vis promotes and inter-se seniority has held that for determination of seniority has relied on the earlier judgments of Jagdish Chandra Patnaik Vs. State of Orissa (1998) 4 SCC 456, Suraj Prakash Gupta & Ors. vs. State of J&K & Ors (2000) 7 SCC 561 and Pawan Pratap Singh and Ors. Vs. Reevan Singh & Ors 3 (2011) 3 SCC 267 and has further held that:-

“These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under Service Jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre.”

In the present case the Applicants were not even recommended when the first batch was sent for training and therefore the seniority decided by the Respondents was rightly prepared.

12. In the result, we find no merit in the Original Application and the same is hereby dismissed.

Sd/-
(Debashish Chakrabarty)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 19.09.2024
Dictation taken by : A.K. Nair.