

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 37 of 2021 (S.B.)**

Kishor Manohar Sonkusare,
Aged about 50 yrs., Occ. R/o Plot No. 15, Chakrapani Nagar,
Pipla Road, behind Vithoba lawn, Nagpur- 440034.

Applicant.

Versus

1. State of Maharashtra through its Secretary,
Home Department Mantralaya, Mumbai -32.
2. The Additional Director General of Police and
Director of Police, Wireless, Maharashtra State,
Chauhan Nagar, Pashan Road, Pune-8.
3. The Director General of Police,
Maharashtra State, Shahid Bagatsing Road, Mumbai-1.
4. The superintendent of Police Gondia,
Dist. Gondia, Amgao Road, Complex Area, Gondia.

Respondents.

Shri D.S. Sawarkar, Advocate for the applicant.
Shri M.I. Khan, learned P.O. for respondents.

Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.

Dated :- 19/11/2024.

J U D G M E N T

Heard Shri D.S. Sawarkar, learned counsel for the applicant
and Shri M.I. Khan, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was appointed on the post of Police Head
Constable in the Police Wireless Department on 01/02/1990.

Thereafter, the applicant has passed profencial promotion examination (qualifying test examination) in the year 1992 which was mandatory for further promotion. The applicant has now passed further prescribed examination.

3. The applicant has been promoted as a Police Wireless Police Sub Inspector in the year 2007 and posted to Mumbai. Before getting promotion in the year 2004, the respondent authority had asked the applicant to submit fresh caste validity certificate. The applicant has also requested the respondent authority to place him in correct order in seniority list. The caste of the applicant in S.T. (Halba) category was invalidated by the Caste Scrutiny Committee. The applicant was placed in the SBC category. As per the contention of the applicant he is not promoted in the SBC category, therefore, the applicant had filed O.A.No.305/2013. The said O.A. was decided on 11/09/2014. The Contempt Petition (St.) No.1595/2015 was filed and it was disposed of. Liberty was granted to the applicant to file separate O.A., if he is not granted promotion etc. Hence, the applicant has filed this O.A. with a prayer for grant of deemed date of promotion w.e.f. 20/05/2013.

4. The O.A. is strongly opposed by the respondents. The material contentions of the respondents in para nos.8,12,13,16,20,22 and 23 of the reply are reproduced below –

*“8. It is submitted that the applicant was promoted from WO to HWO post from ST Category on 17/05/1996 & joined as HWO on 09/07/1996. Due to the benefit of ST Category the applicant was promoted earlier to his colleagues of SBC / Open Category & he became senior to the others in the Seniority List of HWOs and subsequently he was promoted earlier to the post of PWSI(T). As the applicant submitted Caste Validity Certificate of SBC Category instead of ST Category & as he was promoted to the posts of HWO & PWSIT, it is necessary to consider the applicant from SBC Category & to fix his seniority date as 15th June 1995 instead of his appointment date i.e. 23/01/1990, as per the GR dtd. 30/06/2004. A copy of G.R dated 30.06.2004 is annexed herewith as **Annexure-R-5**.*

Accordingly the applicant's seniority date of Wireless Operator post is fixed as 15/06/1995 as per the said G.R. dtd. 30/06/2004 & due to which he automatically loses his seniority.

12. It is also submitted that the applicant misleading to the Hon'ble Tribunal that the names mentioned in this Original Application of Wireless Operators are junior to him. However as per Gradation list of the year 2015,2016 and 2018. A copy of the same is annexed herewith as **Annexure-R-6** collectively. All personnel mentioned in this para are senior to the Applicant as shown below, as his seniority has been re-fixed w.e.f. 15/06/1995 as per G.R.No. BCC 2002/ Pra Kra 93/ 04/16-B dtd. 30/06/2004 of G.A.D.

Sr. No.	Name	App. Date	Caste category
1	B.E.SALGAONKAR	07.12.1987	SBC
2	S.E.SALGAONKAR	01.04.1988	SBC
3	S.D.RAUT	01.03.1989	SBC
4	S.S.CHINTEWAR	22.12.1993	SBC
5	S.B.WASALWAR	26.02.1994	SBC
6	J.M.GANESHE	27.02.1994	SBC
7	K.M.SONKUSARE	15.06.1995 (inception)	SBC

13. *It is also submitted that, the Applicant is misleading to the Hon'ble Tribunal. The caste claim as schedule tribe/SBC of all above personnel were not rejected/ invalidated or not changed category of them. They are originally belongs to the SBC category.*

Out of above personnel Sr.No.1 & 2 was wrongly promoted on the post of HWO as their caste category shown as ST instead of SBC in the gradation list. When it noticed by Respondent No.2 the above personnel has been reverted and they are promoted from SBC category as per SBC seniority.

Another personnel on Sr.No.3 to 6 are originally belongs to the SBC category, so that there is no any question of blatant discrimination/unequal treatment given to the applicant nor any violation of Article 14, 15, 16 of constitution of India.

16. *It is also submitted that, in the para No.5 of the order passed by Hon'ble Tribunal in contempt petition No. 1595/15 along with C.A. 391/15 on Dtd.05/10/2017 which is annexed by the Applicant, it is clearly mentioned that, **"From the aforesaid affidavit it seems that the applicant's case for seniority in the list of SBC category has been considered and final seniority list is also prepared accordingly which was published on 28.06.2016. It is stated that the applicant's case cannot be considered for promotion since the applicant has been fixed at Sr.No.232 in the seniority list and other 7 other SBC category candidates are above the applicant"***

As per this Para of Judgement which is purposely hiding/ignoring by the Applicant, it is crystal clear that the Respondent considered Applicant's seniority in SBC category correctly. Now the question arises by the Applicant on the Judgement of Hon'ble Tribunal.

Sr. No.	Name	Sr.No. in gradation list of P.S.I.	Category	Dt. of appointment	Date of passing P.P.	Date of promotion with rank
1	Shri K.M.Sonkusare (reverted)	0	SBC	15/06/1955 (inception)	PP-1992 CIP.-2000 GIIP-2004	01.02.1990-WO 17.05.1996-HWO 10.08.2007-SIT (PSI) 20.05.2013 reverted as w.o.
2.	Shri S.D.Raut (retd.)	0	SBC	15/06/1955 (inception)	PP-1999 CIP.-2008	01.03.1989-WO 10.11.2002-HWO 10.11.2009-SIT (PSI) 10.02.2016-PWI (PI).

20. *It is submitted that, the applicant produce the gradation list of HWO for the year of 2006, which is previous to his reversion order dt.20.05.2013 and as per this reversion order his seniority has been fixed as on 15.06.1995 vide G.R. Dt. 30/06/2004. As per re-fixed seniority the Applicant stood on Sr.No.232 in the gradation list of Wireless Operator for the year 2015 which is hiding by the Applicant purposely.*

22. *It is submitted to the Hon'ble Tribunal that, there is no any merit in the points raised by the Applicant in this O.A., as his seniority has been fixed in SBC category as on 15.06.1995 vide G.R.Dt.30.6.2004. He is not liable for any deemed date promotion nor officiate Promotion on the post of PSI/PI from SBC category as per re-fixed seniority yet.*

23. *It is also submitted that, the names of the personnel included in this O.A. by the Applicant stating that, they are Junior to him is totally wrong as deliberated in Para No.6.11 and 6.14 and all of them belongs to originally from SBC category. The Applicant misleading to the Hon'ble Tribunal by stating this various names in the O.A. who are not any concern in this matter."*

5. Heard learned counsel for the applicant Shri D.S. Sawarkar. As per his submission, one Shri Khapekar who was junior to the applicant was promoted, but the applicant is not promoted in

SBC category. The learned counsel for the applicant has pointed out the appointment order dated 23/01/1990. The applicant has not filed any seniority list to show that Shri Khapekar was / is junior to the applicant.

6. There is no dispute that the caste of the applicant of Halba (S.T.) was invalidated. His service is protected by keeping him in SBC category. There is a clear direction / guideline of the Government of Maharashtra which shows that whose caste claim is invalidated, they cannot claim the benefit of caste, i.e., for promotion etc. The applicant's service is protected as per the order of the Hon'ble High Court and also the G.R. issued by the Government of Maharashtra. The applicant is in service in SBC category. The chart given in the reply shows that the applicant is not in the seniority of SBC category. Last person is Shri K.M. Sonkusare. The Chart is reproduced below –

Sr. No.	Name	App. Date	Caste category
1	B.E.SALGAONKAR	07.12.1987	SBC
2	S.E.SALGAONKAR	01.04.1988	SBC
3	S.D.RAUT	01.03.1989	SBC
4	S.S.CHINTEWAR	22.12.1993	SBC
5	S.B.WASALWAR	26.02.1994	SBC
6	J.M.GANESHE	27.02.1994	SBC
7	K.M.SONKUSARE	15.06.1995 (inception)	SBC

7. As per the submission of respondents, the name of applicant is at Sr.No.232 in the seniority list. The above Chart shows that the applicant is junior to the persons shown in the Chart. There is nothing on record to show that Shri Khapekar is junior to the applicant. Hence, the applicant cannot claim deemed date of promotion w.e.f. the date on which Shri Khapekar was promoted.

8. The specific order was passed in earlier O.A.No.305/2013. The Contempt Petition (St.) No.1595/2015 was filed before this Tribunal. The order of Contempt Petition (St.) is reproduced below –

“C.A.391/15 in C.P.St.1595/15

Heard Shri R.V. Shiralkar, Id. counsel for the applicant and Shri A.M. Ghogre, Id. P.O. for the respondents.

2. In this application, the applicant has claimed permission to file contempt petition for non compliance of the order passed in O.As. 615/2011 & 305/2013 on 11th September,2014 by this Tribunal at Nagpur. The compliance which was to be made as per the order in para no.16 which is as under :-

“(16) Accordingly, the O.As. stand disposed of.

(i) It is declared that the applicants are not entitled to protection so far as it relates to the promotional post which they secured on the basis that they belong to Scheduled Tribe. However, they shall be entitled to all the benefits admissible to the candidate belonging to Special Backward Class, since inception.

(ii) It is directed that the respondents shall undertake an in-depth exercise of re-fixing the seniority of the applicants by placing them in S.B.C. category and in the event they are found entitled to the promotional

post/posts from the said category, they shall be promoted by giving them suitable deemed date/dates.

(iii) This process shall be completed as expeditiously as possible and in any event within six months from the date of passing of this order.”

3. The learned counsel for the applicant submits that as per the direction, the seniority of the applicant was to be considered as he is belonging to SBC category, since inception and if the applicant is found entitled to promotional post from the said category, he was to be promoted.

4. The learned P.O. has placed on record the affidavit-in-reply on behalf of R-2&3 on 26/9/2017. In the said reply-affidavit it has been stated in para nos. 2&3 as under :-

“(2) the answering respondents had filed their reply to the C.A. on 14/10/2015, thereby categorically stated that the applicant’s seniority has been fixed in the SBC category at sr.no.232 and there are 7 other SBC category candidates above the applicant. As there were 5 SBC candidates senior to the applicant, so the applicant is not eligible for entitled to get a promotion.

(3) It is submitted that after re-fixing the seniority of the applicant in the SBC category, the department had published the seniority list on 28/6/2016. The covering letter along with the seniority list published on 28/6/2016 thereby every member of the said cadre has been intimated and having the knowledge about their placement in the seniority list. The department has not received any objection from the applicant regarding his placement in the seniority list till today. ”

5. From the aforesaid affidavit it seems that the applicant’s case for seniority in the list of SBC category has been considered and final seniority list is also prepared accordingly which was published on 28/6/2016. It is stated that the applicant’s case cannot be considered for promotion since the applicant has been fixed at sr.no.232 in the seniority list and other 7 other SBC category candidates are above the applicant.

6. It is admitted therefore that the order of the Tribunal has been complied. If the applicant is aggrieved by his placement in the seniority list

or denial of his promotion on any ground, he will be at liberty to file separate O.A. for that purpose. In view thereof, the C.A. as well as Cont. Petition (Stamp) stand disposed of. ”

9. The applicant failed to establish that any of junior in SBC category is promoted before the applicant. Therefore, the applicant cannot claim deemed date of promotion as prayed. Hence, the following order –

ORDER

The O.A. is dismissed with no order as to costs.

Dated :- 19/11/2024.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 19/11/2024.