

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 642 of 2023 (S.B.)

Shri Dipak S/o Amrutrao Vaidya,
 aged about 62 years, Occ: Retired,
 R/o. Sonal Colony, Shegaon-Rahatgaon Road, Amravati,
 Tq. & Dist. Amravati-444 603 (M.S.).

Applicant.

Versus

- 1) State of Maharashtra through its Principal Secretary,
 Home Ministry Department Mantralya, Mumbai-32.
- 2) Director of Police, Maharashtra State,
 Office at: Shahid Bhagatsingh Marg,
 Kulaba, Mumbai-400001 (Maharashtra).
- 3) The Superintendent of Police,
 Amravati Rural, Office at: Camp Road, Amravati,
 Tq. & Dist. Amravati-444602.

Respondents.

Shri G.R. Sadar, Advocate for the applicant.
Shri Aditi Warjekar, learned P.O. for respondents.

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

Dated :- 24/06/2024.

J U D G M E N T

Heard Shri G.R. Sadar, learned counsel for the applicant
 and Shri Aditi Warjekar, 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
 Constable on 16/12/1980. The applicant was given the duty of Police
 Naik w.e.f. 22/06/1994. Thereafter on 07/01/1997 the applicant was

given the duty of the post of Police Head Constable. The applicant rendered service as Police Head Constable for period of more than 12 years and came to be promoted on the post of Assistant Sub Inspector (ASI) on 29/09/2003. On 30/11/2019, the applicant came to be retired after attaining the age of superannuation.

3. It is submitted that the applicant rendered service for period of more than 16 years on the post of Assistant Sub Inspector (ASI). Considering this aspect and service record as well as the applicable service rules and guidelines, the applicant should have been exempted from passing the departmental examination. The applicant was entitled for promotion on the post of Police Sub Inspector (PSI) w.e.f. 29/09/2015, but the respondents neither considered these material aspects nor granted notional benefits of promotional post. The applicant made representation regarding his grievances on 06/02/2023. On 21/02/2023, the applicant obtained information under Right to Information (RTI) Act. On 03/05/2023, the respondent no.3, Superintendent of Police, Amravati (Rural) issued communication informing the applicant that he is not entitled for getting benefits of third promotion under the Assured Progressive Scheme, as the applicant was promoted on three occasions already. The applicant's entitlement for getting the benefits of third time promotion as per Assured Progressive Scheme came to be denied by

the respondents. Hence, the applicant approached to this Tribunal for the following reliefs –

“(9) (a) to quash and set aside the impugned Communication No. PSAR/PL-Adm/SSAPY/Promo-Vaidya/2023, dated 03/05/2023 vide Annexure: A/9 and to hold and declare that applicant is entitled for getting benefits of assured third promotion to the post of Police Sub Inspector from the post of Assistant Sub Inspector in the police department and for getting deemed date effects of promotion with notional benefits.

(b) to pass the orders or suitable directions thereby ordering non-applicants No.1 to 3 for giving benefits of promotion to the applicant against the post of Police Sub Inspector from the post of Assistant Police Sub Inspector from the date of his entitlement for promotion w.e.f. 29.09.2015 as per the norms and policy adopted in terms of assured progressive scheme for employees of police department and to pay deemed date effects with notional benefits by revising pay scale and pension payable to the applicant as per the rules.

(10) That considering the subject matter of instant original application regarding the grievance of applicant for getting the benefits of assured time bound promotion and the prayers made therein, the applicants are not seeking any interim or ad-interim relief at this juncture.”

4. The O.A. is strongly opposed by the respondents. It is submitted that the applicant was promoted on the post of Police Naik on 22/06/1994. Thereafter, he was given charge of the post of Police Head Constable on 07/01/1997. In para-4 it is submitted that the

special pay was paid to the applicant. Para-4 of reply is reproduced below –

“(4) The notification shows that when 4th pay commission was in force the pay scale of police naik is 1200-1800 and of head constable is 1320-2040 and during 5th pay commission the pay scale for both the post was same 4000-6000. However, receiving the same pay scale does not mean that the post of police naik and head constable is also same. The post of Head Constable is always a promotional post to the post of Police Naik due to which the Govt. though has kept the pay scale same for both post but granted special pay for head constable post being a promotional post to the post of police naik.

5. During the course of submission the learned counsel for applicant has submitted that though the applicant was given posting of the post of Police Naik, the Police Station was not changed and therefore it is not a promotion. The learned P.O. has submitted that special pay was paid to the applicant. Three promotions were granted to the applicant and therefore he is not entitled for time bound promotion.

6. During the course of submission the learned counsel for the applicant submitted that the applicant had crossed the age of 45 years, therefore, the exemption should be given to the applicant for passing the departmental examination.

7. In support of his claim pointed out the various decisions. The Hon'ble Bombay High Court in the case of ***the Association of***

the Sub-Ordinate Service of Engineers Maharashtra State & Ors. Vs. State of Maharashtra and & Ors. 2019 (4) Mh.L.J.,629 has held that “Upgradation in said Government Resolution does not constitute grant of non-functional pay scale and cannot be treated as first benefit”.

8. The learned counsel for the applicant has pointed out the Judgment of the Hon’ble Bombay High Court, Bench at Nagpur in the case of ***the State of Maharashtra & Ano. Vs. Pundlik Dadaji Pipare, 2023 (2) Mh.L.J.,698*** and the Judgment of this Tribunal in O.A.No.254/2020, decided on 19/06/2023 and the Judgment of this Tribunal in O.A.No.1152/2021 along with other connected matters decided on 18/04/2024. The issues in both the O.As. were in respect of the Assistant Engineers and as per the rules they were to be given exemption after completion of age of 45 years of service.

9. The learned counsel for the applicant has pointed out the decision of the Hon’ble Bombay High Court, Bench at Aurangabad in W.P. No.6212/2011 along with connected Writ Petitions. The said decision is also on the same footing for grant of exemption after completion of age of 45 years of service for passing the departmental examination.

10. The learned counsel for applicant has relied on the Judgment of this Tribunal in O.A.No.1152/2021 along with connected

matters, decided on 18/04/2024. In this Judgment, the applicant was directed to make a detailed representation to the respondents and the respondents were directed to decide the same within four months from the date of receipt of the representation. Hence, the applicant is also entitled for the same relief. Hence, the following order –

ORDER

(i) The O.A. is partly allowed.

(ii) The applicant is at liberty to file detailed representation before the concerned authority for granting them exemption and for granting time bound promotion. On such representation being made, the concerned authority shall decide the same on its own merits within a period of four months from the date of receipt, and communicate the decision to the applicant forthwith.

(iii) No order as to costs.

Dated :- 24/06/2024.

(Justice M.G. Giratkar)
Vice Chairman.

dnk.

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 24/06/2024.