

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1035 OF 2015

DISTRICT : PUNE

1. Shri Babaji Vaman Sawant.)
Age : 60 Yrs., Occu.: Retired as ASI,)
Residing at Police Line A/7, Shivajinagar,)
Pune 411 005.)

2. Shri Vasant Dagadu Bhujbal.)
Age : 60 Yrs., Occu. Retired as ASI,)
Residing at Punyai Building, Ganesh)
Nagar, Navi Sanghavi, Sr.No.70/1/2,)
Pune - 411 061.)

)...Applicants

Versus

1. The Addl. Chief Secretary.)
Home Department,)
Mantralaya, Mumbai - 400 032.)
2. The Director General of Police.)
M.S, Old Vidhan Bhavan, Colaba,)
Mumbai.)

3. The Commissioner of Police.)
Pune City, Pune - 411 001.)

)...Respondents



Mr. V.V. Joshi, Advocate for Applicants.

Ms. Savita Suryawanshi, Presenting Officer for Respondents.


P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 02.03.2017

JUDGMENT

1. This Original Application (OA) is brought by two retired Assistant Sub-Inspectors (ASIs) complaining against the wrongful denial of promotion to the post of Police Sub-Inspector (PSI) before retirement and for the relief of deemed date of promotion for the post of PSI w.e.f.01.10.2012 till 31.5.2013 which was the date of their superannuation.
2. I have perused the record and proceedings and heard Mr. V.V. Joshi, the learned Advocate for the Applicants and Ms. S. Suryawanshi, the learned Presenting Officer (PO) for the Respondents.
3. Shorn of avoidable details, the facts are that these two Applicants were initially appointed as Police Constables and gradually, they made their way up and reached upto the stage of ASI in the normal course. They

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were born on 1.6.1955 and 8.5.1955 with the result, the date of the retirement of both of them was 31.5.2013. They were promoted as PSI on 25.10.2011 but came to be reverted as ASIs by the order dated 28.9.2012 w.e.f.30.9.2012. The said order is impugned herein and it is at Exh. 'A-1' (Page 11 of the Paper Book (PB)). Some kind of a select list was issued by way of a Police Notice enlisting the names of the candidates who would be promoted as PSIs and the names of both the Applicants were there at Serial No.121 and 116 respectively. A Police Notice came to be issued thereafter containing the names of the Police Personnel who were promoted as PSIs from the cadre of ASIs. The names of the Applicants did not appear therein though it appears that undertakings were taken from them which is normally taken from the Police Personnel before their promotion which in short means that in the event of any fault, having been found in their promotion, over-payment, if any made, without demur, the said candidate would accept restoration of the *status quo ante*.

4. The above discussion must have made it quite clear that the Applicants were duly promoted and then reverted and then their names appeared in the "would be

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promotees" but were actually never promoted and in such circumstances, they retired on superannuation.

5. Ten similarly placed Applicants brought **OA 203/2015 (Shri Rama B. Lonkar and 9 others Vs. The Additional Chief Secretary, Home and 2 others)** which came to be decided by the 2nd Division Bench of this Tribunal on 19.1.2016. I was a Member of that Bench also. The following order was made thereon.

"Heard Shri V.V. Joshi, learned Advocate for the Applicants and Shri A.J. Chougule, learned Presenting Officer holding for Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. This OA is filed by 10 retired personnel who were reverted to the post of Assistant Sub Inspector from the post of Police Sub Inspector and they had challenged their reversion in OA No.1227 of 2013. However, before that OA could be disposed off they stood retired. Other persons in the OA were restored to the post of PSI while the Applicants could not get the benefit of the order dated 4.7.2014 in OA No.1227 of 2013. Later Respondents filed RA No.23 of 2014 which came to be dismissed on 1.9.2014. The Applicants filed CA No.138/14 in OA No.1227/13 and the same came to be dismissed on 19.1.2015.

3. By the present OA the Applicants are seeking deemed date of promotion in the post of PSI. During the pendency of the present OA the Respondents have published police notice dated 30.9.2015 and all the 10 Applicants have been granted deemed date of

promotion and their pay has been refixed. The matter for sending proposal to Accountant General, Maharashtra for granting them benefits accordingly is in process. Shri Joshi, Ld. Advocate for the Applicants, on instructions, seeks leave to withdraw the present OA with direction that the process of payment of benefits may be completed by the Respondents within given time frame.

4. Leave granted. OA is allowed to be withdrawn and disposed off accordingly. The Respondents are, however, directed to ensure that all the benefits due to the Applicants are paid to the Applicants within a period of three months from today. No order as to costs."

6. It becomes very clear from the above order that the Applicants therein were exactly similarly placed as the present Applicants. A copy of an earlier Judgment in the OA 1227/2013 and a Review Application therein bearing No.23/2014 was elaborately considered and decided by the 2nd Division Bench of the same composition. The Respondents had published a Police Notice on 30.9.2015 indicating therein that all the ten Applicants had been granted the deemed date of promotion and their pay had been re-fixed. It would, therefore, make it quite clear that similarly placed Police Personnel received the relief that the Applicants are claiming herein and this in my opinion is a matter of significance to decide this OA as well. That is because two similarly placed persons or group of persons cannot be so treated as to do hostile discrimination against




one person or group of persons. That would run contrary to the constitutional mandate and is a course of action which would not be adopted by anybody more so a judicial or quasi-judicial body.

7. As an instance of reason which, in my opinion, is not even an apology thereof, the Respondents have tried to justify their action in the Affidavit-in-reply filed by Mr. Kavidas S. Jambhale, PI in the office of the Commissioner of Police, Pune. Para 6.1 (Page 61 of the P.B) needs to be fully reproduced because once it was done, nothing more would be necessary to furnish anything by way of refutation of their stand.

“6.1. It is further kindly submitted that the respondent has selected only 84 candidates who were eligible for the post of Temporary PSI and the common temporary promotion order was published in Police Gazette dated 03/05/2013. It is kindly submitted that the applicants were due for retirement from the service due to superannuation on 31/05/2013. As such the respondent had not considered the names of applicants for the temporary promotion. Hence, the order passed by the respondent is not arbitrary and also not discriminated the rights of the present applicants. Hence the said order is deserves to be confirmed.”

8. The above discussion must have made it quite clear that the Applicants will have to be so similarly treated

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as their other colleagues in every respect and the resistance of the Respondents is quite untenable.

9. The order herein impugned in so far as it relates to the Applicants denying to them the promotion to the post of PSI from ASI is quashed and set aside and the Respondents are directed to favourably consider the case of the Applicants for deemed date of promotion to the post of PSI w.e.f.01.10.2012 to 31.5.2013 as per their other colleagues in OA 203/2015 and consequential benefits including the benefit in the matter of fixation of their pension and post retiral benefits be also given to the Applicants. Compliance within six weeks from today. Failure to do so would entail liability to pay interest at the rate of Rs.12% p.a. from the original date of accrual of right of the Applicants till actual payment. The Original Application is allowed in these terms with no order as to costs.


02-03-17
(R.B. Malik)
Member-J
02.03.2017

Mumbai
Date : 02.03.2017
Dictation taken by :
S.K. Wamanse.