

ORIGINAL APPLICATION NO. 1043 OF 2015

Shri Sanjeev Shankar Parkar,)
Age : 53 years, Occ: Police Inspector,))
R/at Room No.2, Dongri Police)
Station Compound, Ground Floor,)
Police Officers Quarters,)
Dr. Meisari Road, Dongri,)
Mumbai – 400 009.)...**Applicant**

1. Government of Maharashtra,)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. Director General of Police,)
Maharashtra State, having his office)
at Old Council Hall, Colaba,)
Mumbai.)....Respondents

Ms. N.G. Gohad, learned Presenting Officer holding for Shri A.J. Chougule, learned Presentation Officer for the Respondents.

DATE : 3.05.2016

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ORDER

1. Heard Shri M.D. Lonkar, learned Advocate for the Applicant and Ms. N.G. Gohad, learned Presenting Officer holding for Shri A.J. Chougule, learned Presentation Officer for the Respondents

2. This Original Application has been filed by the Applicant challenging the order dated 10.11.2015 rejecting his prayer to grant him deemed date of promotion, in the rank of Police Inspector from November, 2005, when his juniours were so promoted.

3. Learned Counsel for the Applicant argued that the Applicant was appointed as Police Sub-Inspector in 1987 on the recommendation of the Maharashtra Public Service Commission. He was promoted as Assistant Police Inspector in the year 2001. The Applicant was promoted as Police Inspector (P.I.) by order dated 10th December, 2010. As the Applicant was eligible to be promoted as P.I. in November, 2005, he submitted representation on 24th June, 2013 that he may be given deemed date of promotion as P.I. from November 2005, when his juniours were so promoted. As there was no response to this representation, and subsequent representation dated 9.9.2013, the Applicant filed O.A.No.523 of 2015. In the affidavit in reply, the Respondents stated that the representation of the Applicant was under consideration. By order dated 21.8.2015, the aforesaid O.A. was disposed of with the directions to the

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Respondents to decide the representation of the Applicant within a period of two months. Accordingly, the impugned order dated 10.11.2015 has been passed. Learned Counsel for the Applicant contended that at no point of time, any adverse remarks were communicated to him. Learned Counsel for the Applicant argued that the Applicant has obtained minutes of the meeting of D.P.C. held in 2015 under the Right to Information Act, and also his Annual Confidential Reports. The conclusion drawn by the D.P.C. about his eligibility vis-a-vis the benchmark are clearly erroneous.

4. Learned Presentation Officer (P.O.) argued on behalf of the Respondents that the Applicant was found unfit for promotion to the post of P.I. by the Departmental Promotion Committee (D.P.C.) for the year 2004. The Applicant was under suspension from 3.8.2003 to 24.8.2004 and this period was treated as such. He was given punishment of reduction in pay for 18 months. The Applicant's case for promotion was considered for promotion from D.P.C. of 2006 onwards and in 2006, 2007, 2008 and 2009 he was found unfit for promotion. He was found fit for promotion in 2010 and was promoted accordingly by order dated 10.12.2010. His case was placed below review D.P.C. in the year 2015 and he was not found fit for promotion in 2004, 2006, 2007, 2008, 2009.

5. It is seen that the Applicant in para 7.3 of O.A. has stated that no adverse remarks were even communicated to him. In the affidavit in reply dated 16.2.2016, in para 15, no

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specific denial is there. It is not mentioned that adverse remarks, giving the year, were in fact communicated to him. The contention of the Applicant that adverse remarks were not communicated to him appear to have some substance. However, this fact has to be balanced with the fact that the Applicant first time represented for deemed date in 2013 when his juniors were promoted as P.I. in 2005, why he didnot made representations earlier is not explained. May be if he had done so, his ACRs rating would have been communicated to him. Now after all these years, it is diffecult to draw any definite conclusion in this regard.

6. The Respondents have not placed on record, the minutes of Review D.P.C. held in 2015 to consider the case of the Applicant for deemed date of promotion. However, the Applicant has done so. For the year 2004, ACRs from 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004 were considered. Out of five years, the Applicant was rated B- in four years. In other years, he was rated B for full or part of the year. His overall rating was found below and he was considered ineligible.

7. In the year 2005, he was not considered, as he was under suspension, and the period of suspension was later treated as such.

In the year 2006, his ACRs were rated as follows:-

2001-2002	2002-2003	2003-2004	2004-2005	2005-2006	Average
B- (12 months)	B (3 months) Cert. (9 months)	Cerficiate 4 m under suspension (8m)	Under suspension (5 m). Not Available 7 m.	C (7 months) Cert. (5 m)	C

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He was found unfit.

For 2007:-

2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	Average
B (3 m) Cert. (9 m)	Cerficate 4 m under suspension (8m)	Under suspension 5 m. Not Available 7 m	C (7 months) Cert. 5 m	A (12 months)	C

The reason for calculating Average as 'C' is not understood, when 'C' was for 7 months while A was for 12 months and B for 3 months. For rest of the period, either certificate was there, or ACR was not available or he was under suspension. If the ACRs for a year are not available or if the ACR were not written, why they are considered is also not understood. If ACRs earlier years were considered, the Average rating for 2007 definitely appears to be above B.

For the year 2008:-

2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	Average
as above	as above	C (7 m)	A (12 m)	B+ (3m)	C

How this can be averaged as C is not clear.

For 2009:-

2004-2005	2005-2006	2007-2007	2007-2008	2008-2009	Average
(as above)	C (7 m)	A (12 m)	B+ (3m)	B (10 m)	C

The Average is again taken as 'C'. It appear that the averaging has not been done correctly and the Applicant appears to be eligible for promotion from 2007, if the ACRs of only five years are to be considered. If ACR for a particular year is not available (as against period of suspension when it might not have been writted), the Applicant cannot be held

responsible for that. On the basis on which, his case was considered by Review D.P.C. in 2015, from 2007, he appears to have average grading of B or above.

8. Having regard to the aforesaid facts and circumstances, the Respondents are directed to consider the case of the Applicant for deemed date of promotion by correctly appraising his ACRs. This should be done within a period of three months from the date of this order. This O.A. is disposed of accordingly with no order as to costs.

Sd/-

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 3.05.2016

Place : Mumbai

Dictation taken by : SBA

D. Savita 2016 May, 2016 O.A No 1043 of 2015 Vc, Deemed date of promotion doc