THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.286 OF 2015

WITH

ORIGINAL APPLICATION NO.287 OF 2015

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DIST : THANE

ORIGINAL APPLICATION NO.286 OF 2015

Shri Sainath Gopal Karale,)
Aged 42 Years, Working as Police)
Head Constable, Kalyan Taluka Police)
Station, Kalyan, Dist. Thane)
R/o. Kongaon, Tal : Bhiwandi,)
Dist. Thane)

Address for Service of Notice :)
Shri A.V. Bandiwadekar, Advocate,)
Having office at 9, "Ram-kripa",)
Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016)..**APPLICANT**

VERSUS

The Superintendent of Police,)
Thane (Rural),)
Having office at Thane.)**RESPONDENT**

WITH

ORIGINAL APPLICATION NO.287 OF 2015

Shri Sanjay Narayan Gore,)
Aged : 44 years,)
Working as Police Head Constable,)
District Traffic Branch,)
Kashimira Division, Thane (R),)
R/o. Pawan Dham Complex,)
Kalyan (W), Dist. Thane.)

Address for Service of Notice :)
Shri A.V. Bandiwadekar, Advocate,)
Having office at 9, "Ram-kripa",)
Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016).. **APPLICANT**

VERSUS

The Superintendent of Police,)
Thane (Rural),)
Having office at Thane)**RESPONDENT**

Shri A.V. Bandiwadekar, learned Counsel for the Applicant in O.A.No.286 of 2015.

Shri G.A. Bandiwadekar, learned Counsel for the Applicant in O.A.No.287 of 2015.

Ms. N.G. Gohad, learned Presenting Officer for the Respondent.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

DATE : 02.03.2016

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, learned Counsel for the Applicant in O.A.No.286 of 2015, Shri G.A. Bandiwadekar, learned Counsel for the Applicant in O.A.No.287 of 2015 and Ms. N.G. Gohad, learned Presenting Officer for the Respondent.

2. These Original Applications were heard together and are being disposed of by a common order as the issues to be decided are identical.

3. The Applicants are working as Police Head Constables on the establishment of the Respondent. Seniority of the Constabulory i.e. Constables, Naiks, Head Constables and Assistant Police Sub-Inspectors is maintained, district-wise (or Commissionerate level in different Police Commissionerates). Learned Counsel for the Applicants argued that if a police personnel is transferred from one unit to another, there are instructions issued by the Director General of Police, M.S., as to how to fix seniority of such a person vis-à-vis other persons who are working in that unit. For the persons who are working in the State Reserve Police Force (S.R.P.F.) 10% posts in each District are reserved to be filled by transfer of S.R.P.F. personnel to that District. Government Circular dated 19.09.2001 prescribes conditions for transfer of S.R.P.F. personnel to District Police. Learned Counsel for the Applicant stated that as per condition no 2,

when a person from S.R.P.F. to District Police, his seniority will be fixed at the bottom of seniority list of the police personnel for the year in which such person is transferred to the District Police. Learned Counsel for the Applicant argued that this Tribunal by judgment dated 14.08.2013 in O.A.No.1495 of 2009 has directed the Director General of Police, to ensure that provisions of Government Circular dated 19.09.2001 are implemented strictly in all Districts. However, the Respondent has not fixed the seniority of S.R.P.F personnel transferred to Thane (Rural) District correctly, and as a result, the Applicants have been shown junior to transferred S.R.P.F personnel, who should have been placed below them. Learned Counsel for the Applicant stated that seniority list published on 26.12.2014 (Exhibit-C) was published by the Respondent inviting objections and suggestions. However the seniority list was finalized without acting as per the directions of this Tribunal in O.A no 1495/2009. Learned Counsel for the Applicants prayed that the reliefs in 9(a) to (c) may be granted to them.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondent that the judgment of this Tribunal in O.A no 1495/2009 is regarding seniority of Police personnel transferred from S.R.P.F to district Police and it is not applicable to the Applicants who have already been promoted as Head Constables. When the provisional seniority list was published, the Applicants had failed to raise any objections.

Now, they cannot object to the final seniority list. Learned Presenting Officer stated that as per Circular of Director General of Police and judgment in O.A no 1495/2009 is not applicable to the Applicants and no prejudice or injustice is caused to them.

5. It is instructive to note the averments made by the Respondent in his affidavit in reply dated 30.7.2015. In para 6, it is stated that:-

> "6. With reference to para 6.1, I say and submit that the contents of the para are denied by Respondent. Applicant has no concern with the decision contained in para 5 of the order, because it pertains to preparing seniority list on the basis of Caste-category and the judgment cited in O.A no 1495/2009 is in respect of the persons who have come to Thane rural police from SRPF. So to that judgment is not applicable as the applicant was already promoted to the post of Head Constable."

The judgment of this Tribunal dated 14.8.2013 in O.A no 1495/2009 has directed that while transferring Police Personnel from S.R.P.F to District Police, conditions prescribed in the Home Department Circular dated 19.9.2001 should be adhered to. Condition no. 2 is reproduced below:-

"२. राज्य राखीव पोलीस दलाचे जे कर्मचारी १० वर्षे सेवा पूर्ण झाल्यानंतर वरीलप्रमाणे जिल्हा बदलीसाठी इच्छूक असतील आणि त्यांची बदली जिल्हा पोलीस दलात करण्यात आल्यास त्यांची सेवा ज्येष्ठता ही त्यांची ज्या वर्षी बदली करण्यात येईल त्या वर्षी जिल्हा पोलीस दलात जे कर्मचारी असतील त्या सर्वांच्या सेवा ज्येष्ठतेच्या क्रमवारीत सर्वात शेवटी पुनःप्रस्थापित केली जाईल."

The contention of the Applicants is that persons transferred from S.R.P.F. have retained their rank which was given to them while working in S.R.P.F. As a result, they have become senior to persons like the Applicant's though they should have been placed below the Applicants as per condition no.2 of the aforesaid circular. The contention of the Respondent that judgment of this Tribunal in O.A no 1495/2009 does not apply to the Applicant has to be rejected. The Applicants are claiming that seniority list may be prepared as per circular dated 19.9.2001 and if any person junior to them had continued to function as Assistant P.S.I or Head Constable or Police Naik, before them, they should be given promotion / deemed date of promotion. In para 6.14 of the O.A no 286/2015 the Applicant has cited instances of persons, who have retained their rank as Head Constable, which they had acquired while working in S.R.P.F, though, as per Circular dated 19.9.2001, they would not be entitled to remain as Head Constables after transfer to Thane Police. In the affidavit in reply dated 30.7.2015, in para 14, this has not been denied by the Respondent. It is, therefore, clear that the seniority list published on 26.12.2014 has many errors, which needs to be rectified in the light of circular dated

19.9.2001 and the judgment of this Tribunal in O.A no 1495 of 2009. This is a statutory requirement, which needs to be fulfilled by the Respondent. Whether the Applicants had made any objections to the seniority list is immaterial. Once the correct seniority list is prepared, the Applicant's case for deemed date of promotion has to be examined.

6. Having regard to the aforesaid facts and circumstances the Respondent is directed to prepare the final seniority list of Police Naik and Police Head Constable in accordance with Government Circular dated 19.9.2001 and in the light of judgment of this Tribunal dated 14.8.2013 in O.A no 1495 of 2009. The objections raised by the Applicants to the seniority list dated 26.12.2014 should be duly considered. This should be done within a period of 3 months from the date of this order. The Applicant may apply for deemed date of promotion, after the publication of final seniority list and their representations shall be duly considered by the Respondent. This Original Application is allowed accordingly with no order as to costs.

Sd/-
(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 02.03.2016
Typed by : A.K Nair