

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

ORIGINAL APPLICATION NO.653 OF 2015

DISTRICT : MUMBAI

Shri Dhananjay B. Bagayatkar. )  
601, Nirlep House, G.D. Ambedkar Road, )  
Patel, Mumbai - 400 012. )...**Applicant**

**Versus**

1. Chief Secretary. )  
State of Maharashtra, )  
Mantralaya, Mumbai - 400 032. )
2. Principal Secretary. )  
Home Department, Mantralaya, )  
Mumbai 400 032. )
3. The Director General of Police. )  
M.S, Shahid Bhagatsingh Marg, )  
Colaba, Mumbai 400 001. )
4. Commissioner of Police. )  
Dr. D.N. Road, Fort, Mumbai - 01. )...**Respondents**

**Smt. Punam Mahajan, Advocate for Applicant.**

**Smt. K.S. Gaikwad, Presenting Officer for Respondents.**

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)**  
**R.B. MALIK (MEMBER-JUDICIAL)**



**DATE : 22.12.2016**

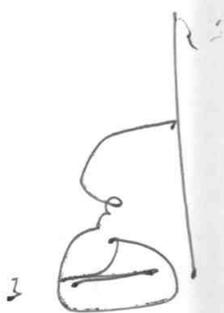
**PER : R.B. MALIK (MEMBER-JUDICIAL)**

### **JUDGMENT**

1. The Applicant having since retired on 30<sup>th</sup> September, 2015 brought this Original Application (OA) on 15.9.2015 for direction to the Respondents to grant him notional promotion in the post of Assistant Commissioner of Police / Deputy Superintendent of Police w.e.f. 23<sup>rd</sup> May, 2014 which was the date on which according to him, his junior came to be promoted. All consequential benefits are also sought. The reason why the difficulty arose in the way of the Applicant was the then pendency of a Departmental Enquiry (DE) for which ultimately, he was meted out minor punishment of deduction of an amount equal to one year's increment in installments.

2. We have heard Smt. Punam Mahajan, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

3. The Applicant was In-charge of Nehru Nagar Police Station as Senior Police Inspector, when it came about that those working under him indulged in corrupt practices. But as far as the Applicant is concerned, no

A handwritten signature and initials are present in the bottom right corner of the page. The signature appears to be 'R.B. Malik' and the initials are 'R.B.'.

direct allegations of corruption were made against him. He was allegedly slack in supervision for which a Departmental Enquiry (DE) came to be initiated against him (Annexure 'A-5', Page 25 of the Paper Book (PB)). The sum and substance of the allegations was that on 10<sup>th</sup> April, 2013, there was a TV news broadcast indicating inter-alia that in order to give protection to the illegal construction, 36 Police Personnel working under the Applicant indulged in corrupt practice and demanded illegal gratification from Mr. Mohammed Kasim Abdul Gafar Khan and ultimately accepted it. It was necessary that he should have issued guidelines warning his subordinates not to indulge in corrupt practices, but he did not apparently do so. Such a news item was carried in the TV news channels and because of the irresponsible behaviour of the Applicant, the image of the Police took a beating. The Applicant was placed under suspension on 11.4.2013. His request for revocation of the suspension was not favourably considered. He moved this Tribunal with OA 871/2013 against the said order of suspension. That OA was disposed of on 20.1.2014. Directions were given to complete the enquiry within a period of four months from the said date failing which the order of suspension would stand revoked. The said directions were not complied with resulting in the Applicant moving a

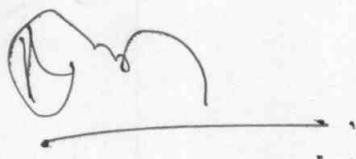


Contempt Application No.79/2014, and thereafter, the suspension was revoked and he was reinstated on 17.6.2014. In the meanwhile, the seniority list of the Police Inspectors (Un-Armed) which the Applicant belonged to, came to be published. The Applicant claims that his name was in the zone of consideration for the said promotion. Though that was so still, initially on 23.5.2014 and then in the year 2015 again, the orders of promotion came to be issued in which the Applicant was not favourably considered and at this stage itself, it will be most pertinent to mention that the 2<sup>nd</sup> Respondent – Principal Secretary, Home through a Joint Secretary Ms. Charushila C. Tambekar has filed an Affidavit-in-reply. The 1<sup>st</sup> Respondent – Chief Secretary of the State of Maharashtra, the 3<sup>rd</sup> Respondent – Director General of Police, M.S, Mumbai under whose control, the Applicant was functioning and the 4<sup>th</sup> Respondent – Commissioner of Police, Mumbai did not file their Affidavits-in-reply. In 2<sup>nd</sup> Respondent's Affidavit, the fact that certain aspect of the case of the Applicant fell within the jurisdiction and control of the Commissioner of Police, Mumbai has been emphasized. However, in Para 8 and subsequent Paragraphs also, the 2<sup>nd</sup> Respondent has categorically mentioned that the Applicant was found fit for being promoted in the select list of 2013-2014, but the



Departmental Promotion Committee (DPC) recommended that the Applicant should not be actually promoted till the final decision of the DE against him, which was then pending. It, therefore, becomes very clear that according to the Respondent No.2 and in accordance with the Rule of absence of traverse also, according to the three other Respondents, there was no hitch except the pending DE for giving functional promotion to the Applicant. In fact, in all the DPCs after 2013, he was found fit to be promoted. In fact, the charge-sheet was actually issued in the month of September, 2013, and therefore, even though the Applicant may have been suspended in April, 2013 but the disciplinary proceedings would be taken to have been started from September, 2013, and therefore, the DPC which was held earlier in point of time could not have ignored the claim of the Applicant for promotion.

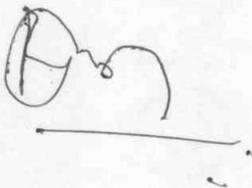
4. The Applicant apparently has relied upon a Circular of the GAD of 2<sup>nd</sup> April, 1976 and a GR of 22<sup>nd</sup> April, 1996. They deal with the procedure to be followed in the case of persons whose conduct was under investigation or against whom DE was pending. It is clear therefrom that while drawing up the select list, the case of the person whose plight was like the present Applicant would be considered in the same manner in which the cases of any



other person would be considered. His previous record of service would be taken into consideration. If he was found fit which in this case the Applicant was, his name should be included in the select list at the appropriate place, but it would be purely provisional and it would be reviewed after conclusion of the DE or investigation. It would apply to all persons irrespective of whether they were under suspension or not. In the Circular, there was provision with regard to the service record for the last 2/3 years being not available. In so far as the 1996 GR is concerned, the preface thereof was that it had come to the notice of the Government that the whole procedure took a lot of time, and therefore, if the concerned delinquent undertook to suffer the punishment imposed on him in the DE at the higher post, such a course of action can be adopted and the whole thing would depend upon the nature of the delinquency alleged and/or proved. That being the state of affairs, it is quite clear that the stand of the Respondents that although the Applicant was fit for being promoted, he could not be promoted because of the pending of the DE, does not seem to be in accordance with the two instruments hereinabove discussed. When a particular aspect of the service condition is governed by a particular instrument, then the employer has, in our view, no option but to go in accordance therewith. No occasion arose for

A handwritten signature or set of initials in the bottom right corner of the page. It consists of a large, stylized letter 'E' with a horizontal line extending to the right, and a vertical line extending upwards from the top right of the 'E'.

the Applicant to be asked if he would give an undertaking just mentioned. In fact, it appears quite clearly from the record such as it is, that his choice under the Divisional Cadre Allotment Rules was sought. It is, therefore, very clear that apparently, the whole thing was mired into some kind of a mess and had the two instruments hereinabove discussed being applied in their true letter and spirit such an eventuality could have been avoided. Now, it is no doubt true that the Applicant having retired on superannuation, the question of functional promotion does no more survive. However, it was apparently for this reason that the Applicant amended the OA and incorporated the prayer for notional promotion w.e.f. 23<sup>rd</sup> May, 2014 which was the date on which the personnel junior to him came to be promoted. That, in our opinion, can safely be granted because here, as far as the fitness for promotion is concerned, on Respondents' own showing, the Applicant was fit and the only reason put forth by the Respondents for declining to give him promotion is not sustainable in view of the foregoing. Therefore, as and by way of the next best course of action, the notional promotion will have to be granted to the Applicant and the Respondents will have to be given a direction to act in accordance herewith and do the needful.

w  


5. The Respondents are hereby directed to grant notional promotion to the Applicant to the post of Assistant Commissioner of Police / Deputy Superintendent of Police w.e.f. 23<sup>rd</sup> May, 2014 along with all consequential service benefits and re-fixation of pay, arrears of pay and also revision of all pensionary benefits within a period of three months from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**22.12.2016**

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**  
**22.12.2016**

Mumbai

Date : 22.12.2016

Dictation taken by :

S.K. Wamanse.

E:\SANJAY WAMANSE\JUDGMENTS\2016\12 December, 2016\O.A.653.15.w.12.2016.Promotion.doc