

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.711 OF 2016
(Subject : Promotion)**

DISTRICT : PUNE

Shri Rajendra Bapurao Sutar,)
Working as Deputy Superintendent of Police,)
Residing at 15/6A, Kalpataru Colony,)
Opp. Warje Water Filter House,)
Pune 411 052.) **..APPLICANT**

VERSUS

1. Chief Secretary,)
State of Maharashtra,)
Mantralaya, Mumbai 400 032.)
2. Addl. Chief Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400 032.)
3. Addl. Chief Secretary,)
Home Department,)
Mantralaya, Mumbai 400 032.)
4. The Director General of Police,)
Maharashtra State,)
Shahid Bhagatsing Marg,)
Colaba, Mumbai 411 001.)

....RESPONDENTS

Smt. Punam Mahajan, learned Counsel for the Applicant.

Smt. Archana B.K., learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN
SHRI R.B. MALIK, MEMBER(J)

DATE : 10.11.2016.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

J U D G M E N T

1. Heard Smt. Punam Mahajan, learned Counsel for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant seeking promotion to the post of Additional Superintendent of Police (Motor Transport) [A.S.P.(M.T.)].

3. Learned Counsel for the Applicant argued that the Applicant is presently working as Deputy Superintendent of Police (Motor Transport) [D.S.P.(M.T.)]. By Government Resolution (G.R.) dated 02.05.2012, four posts of Additional Superintendent of Police (Technical) were created. These posts are lying vacant. Though the Applicant is fully eligible to be promoted as Additional Superintendent of Police (Technical), the Respondents have not considered him for promotion to that post. The Applicant has very good grading in his last 5 years in his Annual Confidential Reports (A.C.Rs.) and has completed more than three years in the post of

Deputy Superintendent of Police (M.T.). He is, therefore, fully eligible to be considered for promotion as Additional Superintendent Police. Only reason for not considering him for promotion is that the Applicant has not completed 5 years in the post of Deputy Superintendent of Police. Learned Counsel for the Applicant argued that no statutory recruitment rules for the post of Additional Superintendent of Police (Technical) have yet been framed. G.R. dated 05.10.2015, prescribe minimum service of three years before an employee can be considered for promotion to the higher post. As no statutory recruitment rules for the post of Additional Superintendent of Police (Technical) exist, the Applicant is eligible to be considered for promotion, to that post, on the basis of G.R. dated 05.10.2015.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the General Administration Department (G.A.D.) has issued two G.R.s dated 05.10.2015 and 18.06.2016 regarding minimum period in a feeder cadre before promotion. The Applicant has not completed criterion of 5 years of regular service in feeder cadre of Deputy Superintendent of Police as per G.R. dated 18.06.2016. The Applicant is, therefore, not eligible for being promoted as Additional Superintendent of Police (Technical). Deputy Superintendent of Police from the select list of 2011-12 were promoted as Superintendent of Police (M.T.). As per the select list of 2012-13, the Applicant is not eligible for promotion to the post of Superintendent of Police (M.T.) Learned P.O. argued that the Applicant is not eligible to be promotion as

Superintendent of Police (M.T.) on the basis of the Police Superintendent of Police (Motor Transport) / Deputy Commissioner of Police (Motor Transport) (Group A) Recruitment Rules, 2011. As the post of Additional Superintendent of Police (Technical) is equivalent to the post of Superintendent of Police (M.T.), the Applicant is not eligible to be promoted to that post also.

5. We find that the Recruitment Rules for the post of Superintendent of Police (Motor Transport) / Deputy Commissioner of Police (Motor Transport) [S.P.(M.T.)/D.C.P. (M.T.)] were notified on 21.04.2011. As per there rules, the post of S.P. (M.T.) has to be filled by promotion of D.S.P. (M.T.) on the basis of strict selection with due regard to seniority, provided he has completed 5 years of service in the feeder cadre of D.S.P. (M.T.). The Applicant was promoted as D.S.P. (M.T.) on 11.05.2013 and has not completed 5 years as D.S.P. (M.T.). He is not eligible for promotion to the post of S.P. (M.T.).

6. However, the Applicant is seeking promotion to the post of Additional Superintendent of Police (A.S.P.) (Technical). These posts (4 in number) of A.S.P. (Technical) were created by G.R. dated 02.05.2012. As per para 11(c) of the aforesaid G.R. recruitment rules for these posts were to be framed. However, such rules have been yet been notified, though draft rules have been sent to the Maharashtra Public Service Commission for concurrence by the State Government. The Respondents' claim is that the post of A.S.P. (Technical) is

equivalent to the post of S.P. (M.T.) and the recruitment rules applicable to the post of S.P. (M.T.) would determine the eligibility for promotion to the post of A.S.P. (Technical) till separate Recruitment Rules are finalised. The post of A.S.P. (Technical) was created by G.R. dated 02.05.2012. By the aforesaid, the G.R. Technical posts were created in the Motor Transport Wing of the Police. This G.R. creates a total of 62 posts, comprising of 25 posts of Sub-Inspectors, 25 posts of Police Inspector, 6 posts of Dy. S.P., 4 post of Addl. S.P. and 2 post of D.I.G. There is nothing in this G.R. to indicate that the feeder cadre for promotion to the post of Addl. S.P. (Technical) is Dy. S.P. (M.T.) unless it is held that the post of Dy. S.P. (M.T.) is equivalent to that of Dy. S.P. (Technical). Unless that equivalence is recognized, it is difficult to hold that the Applicant is eligible to be considered for promotion to the post of Addl. S.P. (Technical). Once equivalence of the posts of Deputy S.P. (M.T.) and Deputy S.P. (Technical) is recognized, than the claim of the Respondents that the post of Additional S.P. (Technical) is equivalent to the post of S.P. (M.T.) will also have to be accepted. In that case, the Respondents would be justified in insisting that a person must serve for at least five years in the feeder cadre before being promoted as Addl. S.P. G.R. dated 05.10.2015, no doubt prescribes that a person cannot be promoted to next higher post, unless he has served for a minimum of three years in the feeder cadre. However, it will not be possible to hold that a person who has worked in the feeder cadre for 3 years would become eligible to be promoted, without regard to the recruitment rules. If the Applicant wants to be considered

for promotion to the post of Additional S.P. (Technical), he must belong to feeder cadre of Dy. S.P. (Technical). As he does not belong to that cadre and is actually working as Dy. S.P. (M.T.), his next promotion would be to the post of S.P. (M.T.) to which he is not eligible. If he claiming promotion to the post of Additional S.P. (Technical) considering it as equivalent to the post of S.P. (M.T.), then also, he must fulfill the criterion of service of 5 years in the feeder cadre. The applicant is not eligible for promotion to the post of either S.P. (M.T.) or Additional S.P. (Technical).

7. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

Sd/-

(R.B. MALIK)
MEMBER(J)

Sd/-

(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 10.11.2016
Typed by : PRK