

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.951/2022 (D.B.)

Ashok Sanjayrao Bhapkar,
Aged 36 years, Occ. Service,
R/o Officers Quarters, Police Station Mulchera,
Taluka Mulchera, District Gadchiroli.

... **APPLICANT**

// V E R S U S //

- 1] State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.
- 2] Director General of Police,
Office of Director General of Police,
Shahid Bhagatsingh Marg, Colaba,
Maharashtra State, Mumbai-01.
- 3] Additional Director General of Police (Establishment),
Office of Director General of Police,
Maharashtra State, Mumbai.
- 4] Special Inspector General of Police,
Anti-Naxal Operations, Maharashtra State,
Mouze Suraburdi, Amravati Road, Nagpur.

... **RESPONDENTS**

Shri R.V. Shiralkar, Advocate for the Applicant.

Shri S.A. Sainis, learned P.O. for Respondents.

**Coram :- Hon'ble Shri M. A. Lovekar,
Member (J) and
Hon'ble Shri Nitin Gadre,
Member (A).**

J U D G M E N T**Judgment is reserved on 14/10/2024.****Judgment is pronounced on 19/12/2024.****Per : Member (J).**

Heard Shri R.V. Shiralkar, learned counsel for the applicant and Shri S.A. Sainis, learned P.O. for the respondents.

2. Case of the applicant is as follows. G.R. dated 20/05/2014 (Annexure A-2) issued by the Home Department, Government of Maharashtra provides for giving accelerated promotion to Police Personnel for doing excellent work in Naxal affected area. The applicant was posted at Police Help Centre, Kotami, District Gadchiroli. During this period he had done exceptional work to combat Naxal menace. By order dated 20/06/2016 (Annexure A-3) respondent No.4 recommended grant of accelerated promotion to the applicant and two others. By order dated 21/11/2016 (Annexure A-4) accelerated promotion was given to one of these three Police Sub Inspectors, and four others. The applicant was unjustly deprived of the same. To his representation dated 26/10/2018 (Annexure A-5) he received a reply dated 16/11/2018 (Annexure A-6) that the Committee in its

meeting held on 07/09/2016 had concluded that his performance did not merit extension of accelerated promotion. This reply further stated:

“तरी अप्पर पोलीस महासंचालक यांना विनंती करण्यात येते की, श्री. अशोक भापकर यांना वेगवर्धित पदोन्नती संदर्भात त्यांनी उपरोक्त कालावधीमध्ये नलक्षग्रस्त भागात अतिउत्कृष्ट केलेल्या कामगिरीबाबत पुन्हा आढावा घेऊन सविस्तर व स्वयंस्पष्ट अभिप्राय या कार्यालयास सादर करावेत.”

3. On 09/04/2019 fresh proposal was forwarded to Respondent No.3 (Annexure A-8) to grant accelerated promotion to the applicant. Again, in the meeting of the Committee held on 09/05/2019 the applicant was found to be not eligible for accelerated promotion (Annexure A-10). On 24/01/2020 the applicant submitted a detailed representation (Annexure A-11) to Respondent No.1 ventilating his grievance that he was unjustly not considered for accelerated promotion. By order dated 04/02/2022 (Annexure A-12) accelerated promotion was given to the applicant and five others.

It is the prayer of the applicant that the date of grant of accelerated promotion be notionally preponed to 21/11/2016, and the respondents be directed to pay to him consequential benefits. Hence, this O.A.

4. Stand of respondents 2 to 4 is as follows. While recommending name of the applicant for the first time for grant of accelerated promotion his performance from 12/08/2014 to 11/04/2016 was considered. The Committee, in its meeting dated 07/11/2016 found the applicant to be unfit for accelerated promotion. On the second occasion identical recommendation was made by letter dated 02/05/2019 by ADG, Special Operations Mumbai. While making this recommendation performance of the applicant from 12/08/2014 to 21/08/2017 was considered. The Committee, in its meeting dated 09/05/2019 again found the applicant to be unfit for accelerated promotion. Lastly, in meeting dated 28/01/2022 the applicant was found to be fit and order of accelerated promotion was issued on 04/02/2022. Earlier rejections and ultimate grant of accelerated promotion were based on objective assessment of performance of the applicant. There is no provision in G.R. dated 20/05/2014 to grant deemed date of promotion as prayed for by the applicant.

5. In his rejoinder the applicant has pleaded that when ultimately accelerated promotion was given to him his performance from 12/08/2014 to 11/04/2016 was considered and

by considering the performance during the same period, on earlier two occasions, accelerated promotion was denied to him. This assertion is not specifically traversed by the respondents.

6. According to the respondents, on the second occasion performance of the applicant from 12/08/2014 to 21/08/2017 was considered. Thus, contention of the applicant regarding consideration of performance from 12/08/2014 to 11/04/2016 on all three occasions appears to have gone uncontroverted. Specific case of the applicant is that throughout i.e. so long as he was serving in Naxal affected area his performance was not only flawless but excellent. This assertion, too has gone unchallenged.

7. The applicant has relied on the Judgment of the Hon'ble High Court of Madhya Pradesh in the case of ***“Niranjan Sharma Versus State of Madhya Pradesh and Others, 2016 SCC Online MP 8474”***. In this case it is held :

“ In the absence of any glaring discrepancy or bias in the decision- making process, ordinarily the Court does not normally take upon itself the task of making a subjective assessment of an officer's performance in relation to matters of promotion and that too of the nature contemplated in the present case. However, at the same time, the Court is also entitled to consider the materials placed before it in order to arrive at a

conclusion as to whether an injustice has been caused to the concerned officer.”

The applicant has placed on record order dated 25/05/2017 passed by Special D.G. (establishment) transferring the applicant and 190 others. This order shows that the applicant, whose name is at Serial No.23 in the list, was transferred from Gadachiroli to Kolhapur. Thus, it can be gathered that till this order was issued the applicant was working in Naxal affected area.

8. In view of aforequoted guidelines contained in the Judgment of Madhya Pradesh High Court we have perused the materials available on record to ascertain whether the decision making in the matter of accelerated promotion to the applicant was biased. If contention of the applicant that the period under assessment of his performance on all three occasions was the same, or the major portion of this period overlapped, case can be said to have been *prima facie* made out to infer that on the first such occasion accelerated promotion ought to have been given to the applicant and there was no ground to defer the same. It is inconceivable that what was ultimately found to be sufficient for

granting accelerated promotion was found to be insufficient when the assessment was made for the first time. Since the entire material which is needed to assess the question of accelerated promotion is not before us, it would not be appropriate to proceed to pass order of granting deemed date of promotion to the applicant. Proper course under the circumstances would be to direct the respondents to re-consider case of the applicant for grant of accelerated promotion with retrospective effect as prayed for by him.

9. It is the contention of the respondents that in G.R. dated 20/05/2014 there is no provision to grant deemed date of accelerated promotion. Want of enabling provision cannot be equated with bar to do so.

10. For the reasons discussed hereinabove, the O.A. is allowed in the following terms. The respondents are directed to consider afresh case of the applicant for grant of accelerated promotion w.e.f. 21/11/2016 in the light of observations made in this Judgment. This exercise shall be completed within three months from today and the decision taken in that behalf shall be

communicated to the applicant forthwith. If the applicant is aggrieved by said decision, he would be at liberty to approach this Tribunal in accordance with law. No order as to costs.

(Nitin Gadre)
Member (A).

(M.A. Lovekar)
Member (J).

Dated :-19/12/2024.
PRM

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Piyush R. Mahajan.

Court Name : Court of Hon'ble Vice Chairman
& Member (A).

Judgment signed on : 19/12/2024