

ISMAIL ABDUL LATIF SHAIKH
v.
STATE OF MAHARASHTRA AND ANR.

FEBRUARY 29, 1996

[S.P. BHARUCHA AND B.L. HANSARIA, JJ.]

Service Law :

Bombay Prohibition and Excise Department Rules of 1958 relating to promotion to the post of Sub-Inspector :

Rule 3—Constable—Promotion to the post of Sub-Inspector—Requirement of physical measurement—Appellant was rejected in 1966 on ground of chest measurement being short of required standard—Promotion given in 1970—Held, rule relating to physical requirement not applicable in case of Sub-Inspectors—Appellant would be deemed to be promoted from date of rejection in 1966—Notional promotion to be confined to benefit of seniority alone.

The appellant, a constable in the Prohibition and Excise Department of the respondent-State, was, in 1966, interviewed for promotion to the post of Sub-Inspector, but was rejected on the ground that his chest measurement was short of the required standard. He was promoted to the said post in 1970. His claim that his promotion ought to be effective from 1966 was rejected by the Maharashtra Administrative Tribunal.

In appeal to this Court, it was contended for the appellant that his rejection in 1966 was not tenable since there was no requirement as regards measurement of chest under the 1958 Rules; and that the Government had allowed some persons to hold the promotional post though they were below the required height.

Allowing the appeal, this Court

HELD : 1.1. The rule relating to physical requirement has no application in the case of Sub-Inspectors. Rule 3 of 1958 Rules has not mentioned about physical requirement as qualification for Sub-Inspectors.

[63-H; 64-A]

1.2. Besides, the Government having allowed some persons to hold

the promotional post of Sub-Inspector despite their being below the required height, the same benefit has to be made available to the appellant as the short fall of physical requirement in his case is relatable to the chest being not of required measurement. [64-B]

2. The promotion of the appellant to the post of Sub-Inspector shall be deemed to be from the date of his rejection in the year 1966. This notional promotion shall be confined to the benefit of seniority alone. [64-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5522 of 1994.

From the Judgment and Order dated 15.6.93 of the Maharashtra Administrative Tribunal, Bombay in T.A.NO. 306 of 1991.

A.M. Khanwilkar for the Appellants.

S.M. Jadhav and D.M. Nargolkar for the Respondents.

The Judgment of the Court was delivered by

HANSARIA, J. The appellant joined the Prohibition and Excise Department as a Constable in the year 1961. The next promotional post is that of Sub-Inspector. He was indeed interviewed for that post in the year 1966, but was not promoted on the ground that his chest measurement was less than the standard said to be required to hold the post. He ultimately came to be promoted as a Sub-Inspector in 1970. His grievance, however, is that the promotion has to relate back to 1966 inasmuch as his rejection in that year for the promotional post on the ground above noted was not tenable for two reasons : (1) there is no such requirement as would appear, inter alia, from the decision of the Maharashtra Administrative Tribunal itself in the case of one Shashikant Dhaku Chavan rendered in Transfer Application No.278 of 1991 on 27.8.1993, whereas his approach to the Tribunal was dismissed by an order dated 15.6.1993 on the ground of his having not fulfilled the physical requirement; and (2) the Government had allowed S/Shri S.H. Avhad and S.K. Thorat to hold the promotional post though they were below height.

2. We find merit in both the grievances inasmuch as the rule relating to physical requirement has no application in the case of Sub-Inspectors as would appear from the judgment of the Tribunal in the case of Chavan.

Chavan's case cannot be distinguished on the ground that he belonged to clerical branch whereas the appellant was in constabulary, as sought to be done by the learned counsel for the State, inasmuch as Rule 3 noted by the Tribunal in Chavan's case has not mentioned about physical requirement as qualification for Sub-Inspectors. This apart, the Government having allowed the aforesaid two persons to hold the promotional post of sub-Inspector despite their being below the required height, the same benefit has to be made available to the appellant as the short-fall of physical requirement in his case is relatable to the chest being not of required measurement.

3. The appeal is, therefore, allowed and we state that the promotion of the appellant to the post of Sub-Inspector shall be deemed to be from the date of rejection of his promotion in the year 1966. This notional promotion shall be confined to the benefit of seniority alone as was the prayer of the appellant in the writ petition filed by him before the High Court, which had come to be transferred to the Tribunal for disposal. No order as to costs.

Appeal allowed.