

Ismail Abdul Latif Shaikh

Vs

State of Maharashtra and Another

Civil Appeal No. 5522 of 1994

(S. P. Bharucha, B. L. Hansaria JJ)

29.02.1996

JUDGMENT

HANSARIA J.

1. 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 the 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 shortfall 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.