

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9140 OF 2014

Sanjay Pandey
I.P.S., B-102, Patliputra CHS Ltd.,
Four Bungalows, Andheri (West),
Mumbai 400 053.

.. Petitioner

Vs.

1. State of Maharashtra
Through Government Pleader,
High Court, Appellate Side,
Mumbai.

2. Government of Maharashtra
Through the Chief Secretary,
State of Maharashtra,
Mantralaya, Mumbai 400 032.

3. The Additional Chief Secretary,
Ministry of Home Affairs,
Mantralaya, Mumbai 400 032.

4. Union of India,
(Through the Secretary,
Ministry of Home Affairs,
South Block, New Delhi 110 001.
and having office also at
Aayakar Bhavan, New Marine Lines,
Mumbai 400 020.

.. Respondents

.....

Mr. N.H. Seervai, Senior Advocate along with Mr. Ranbir Singh
i/by Mr. Gunratan Sadavarte for the petitioner.

Mr. Amit Borkar, Special Government Pleader along with Mr. O.M. Kulkarni, AAGP, for respondents No.1 to 3.

Mr. Vinay Shankar Masurkar along with Mr. P.S. Gunjar and Mr. S.G. Thakur for respondent No.4.

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**CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

**RESERVED ON : 16th NOVEMBER, 2017.
PRONOUNCED ON : 07th DECEMBER, 2017.**

JUDGMENT (PER M.S. KARNIK, J.) :-

1. The petitioner by this Petition under Articles 226 & 227 of the Constitution of India prayed for quashing and setting aside the order dated 03/03/2014 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai and the order dated 18/07/2014 passed by the Tribunal in the Review Petition preferred by the petitioner. The petitioner had also prayed for quashing and setting aside order dated 03/09/2014 passed by the respondents putting the petitioner on compulsory wait. The petitioner thereby claimed the relief that the respondents be directed to immediately and forthwith consider the petitioner

for promotion to the rank of ADGP effective from the date his batch-mates were promoted to the said rank and in accordance with law and to grant the petitioner all consequential benefits accruing thereof.

2. During the pendency of the Petition, the respondents issued an order dated 29/10/2016 which had the effect of revoking the G.R. dated 15/02/2007. By G.R. dated 15/02/2007, the period from 12/04/2000 to 30/06/2002 was regularized by granting extraordinary leave and his absence from 01/07/2002 to 25/09/2006 was treated as on duty. By the order dated 29/10/2016, the petitioner's absence from 12/04/2000 to 31/01/2003 was treated as dies-non. The period from 01/02/2003 to 25/09/2006 was treated as on duty. By this order dated 29/10/2016, it is further provided that as the period from 12/04/2000 to 31/01/2003 is treated as dies-non, the petitioner is eligible for grant of deemed date of promotion to the post of Additional Director General of Police ('ADGP' for short) from 04/10/2014. In view of subsequent

developments now the petitioner's grievance is limited to prayer clause (b) of the Petition viz. consider the petitioner for promotion to the rank of ADGP from the date his batchmates were promoted and for consequential benefits and also for quashing and setting aside the order dated 29/10/2016.

3. Before we proceed to state the facts, it would be material to mention that the petitioner initially succeeded in OA No. 1470 of 2003 before the Central Administrative Tribunal, Delhi Bench. In compliance of the Tribunal's order dated 01/03/2005, the Tribunal while disposing of MA No. 1649 of 2006 filed by the respondents had observed that even after filing Contempt Petitions, the petitioner's woes have not come to an end and he is still waiting for his reinstatement and for other consequential benefits. It is thereafter that by notification dated 15/02/2007, the entire period from 12/04/2000 to 30/06/2002 came to be regularized by granting extraordinary leave and the period from 01/07/2002 to 25/09/2006 was treated as on duty. It is during the pendency of the present

Petition when the issue of granting deemed date to the petitioner for promotion as ADGP arose then the respondents No.1 to 3 by the impugned order dated 29/10/2016 revoked the order dated 15/02/2007, almost after 9 years. Relying upon the decision of the Apex Court in the case of **L.Chandrakumar Versus Union of India** reported in (1997) 3 SCC 261, learned Counsel for the respondents No. 1 to 3 urged that the order dated 29/10/2016 is required to be challenged before the Tribunal in the first instance. In view of the fact that the petitioner is litigating right from 2003 and had to take recourse to so many proceedings to ventilate his grievance which was the outcome of his resignation since set aside by the Tribunal as far back as 2005, that we have examined the legality of the order dated 29/10/2016 in this Petition. We are of the opinion that once the order of the Tribunal confirmed by the High Court is complied with and that to pursuant to filing of Contempt Petition, after acting upon the order, revoking the order unilaterally after 9 years is absolutely unjust and unfair to the petitioner. The high handed manner in which the order dated

15/02/2007 passed by the respondents No.1 to 3 themselves is sought to be revoked leads us to infer that the respondents are determined to rake up and reopen concluded issues only to somehow deprive the petitioner the benefits of the Tribunal's order dated 01/03/2005. The Petition has since been amended. It is in this light of the matter that we are not inclined to accept this objection of the learned Counsel for the respondents No.1 to 3 of relegating the petitioner to the Tribunal challenging the order dated 29/10/2016.

FACTS OF THE CASE :

4. The petitioner belongs to the 1986 batch of Indian Police Service. He was initially appointed as Assistant Superintendent of Police and posted at Amravati in the year 1988. Thereafter he was posted as DCP of Zone VIII during the communal riots of 1992-93 as also DCP, Economic Offences Wing, Mumbai Police. He was promoted as Assistant Inspector General in the Special Protection Group, New Delhi and assigned with the task of providing security to the then Prime

Minister of India. The petitioner was relieved from his posting in the Special Protection Group on 12/04/2000 and was asked to join his home cadre consequent to which he submitted his resignation from service dated 12/4/2000.

5. The petitioner in the meantime submitted an application for leave dated 19/04/2000 followed by subsequent applications for leave dated 22/08/2001, 21/01/2002 and 01/04/2002.

6. Respondent No.2- State Government of Maharashtra vide its letters dated 31/05/2000, 30/08/2000 and 31/07/2001 informed the petitioner that his resignation could not be accepted for various reasons such as, his period of absence has to be regularized, alleged monies due by the petitioner to the respondents are yet to returned etc. By letter dated 22/08/2001, the petitioner expressed his inability to pay the alleged outstanding dues and also prayed for withdrawal of his resignation with immediate effect. The petitioner received a

letter/notification dated 21/06/2012 from the respondents accepting the petitioner's resignation from the Indian Police Service with retrospective effect from 12/04/2000.

7. The petitioner challenged the notification dated 21/06/2002 by filing Original Application No.1470 of 2003 (hereinafter referred to as 'OA' for short) before the Principal Bench, Central Administrative Tribunal, New Delhi ((hereinafter referred to as 'the Tribunal' for short). The Tribunal by order dated 01/03/2005 was pleased to allow the OA and thereby quashed and set aside notification dated 21/06/2002. It would be material to reproduce the operative portion of the order passed by the Tribunal in OA/1470/2003 which reads thus :-

“In the result, for the foregoing reasons, this OA is allowed. Order dated 21/6/2002 accepting the resignation of applicant as well as order dated 30/1/2003, rejecting the representation of applicant are set aside. As a consequence thereof the applicant is directed to be re-instated in service with effect from 13/4/2000 and would be entitled to all consequential benefits in accordance with rules and instructions on the subject. The respondent shall comply with the aforesaid directions within a period of two months from the date of receipt of a copy of this order. No order as to costs.”

8. At this stage it would also be material to note that

one of the contention raised by the respondents was that the petitioner was working in a private concern after submitting his resignation. It would be material to quote para 17 of the order of the Tribunal, which reads thus :-

“Para 17 :- It is also stated that request for withdrawal of resignation was not addressed to the President but keeping in fact that applicant during this interregnum was working elsewhere, Government has decided to accept his resignation while ignoring and not considering his request for withdrawal of resignation. It is stated that there is no provision in AIS (DORB) rules to withdraw the resignation.”
(emphasis supplied)

9. In Writ Petition No.12804 of 2005 which was filed by the respondents before the High Court of Delhi impugning the said order dated 1/3/2005, the respondent No.1 – State of Maharashtra raised the issue of the private employment of the petitioner. It is pointed out that specific grounds and averments in this regard were raised in the Writ Petition. The Delhi High Court by the judgment and order dated 15/12/2005 was pleased to confirm the order of the Tribunal and the Writ Petition came to be dismissed.

10. It would be material to reproduce the relevant

portion of para 4 of the order of the High Court, which reads

thus :-

“Para 4 :-It was also submitted that there was no letter of withdrawal of resignation and since the resignation of the respondent No.1 was accepted by a notification and since respondent No.1 had joined a private company against the rules of the Government, the order of the Tribunal was totally erroneous and illegal, therefore, is required to be set aside.”

(emphasis supplied)

11. It would also be material to quote the relevant portion of para 12 of the said judgment and order, which reads

thus :-

“Para 12 :- In order to appreciate the aforesaid contention, reference is required to be made to the submissions made by the petitioner before the Tribunal in their counter-affidavit. In paragraph 19 of the said counter-affidavit the only defence that was taken by the petitioner was that considering the fact that respondent No.1 was working elsewhere during his absence in violation of the rules, the government decided to accept his resignation with effect from 12.4.2000 ignoring or not considering his request for withdrawal of resignation. This indicates that not only his resignation was accepted from a retrospective date but also on the ground that the respondent No.1 was working elsewhere during his absence in violation of the rules. If in case there was any violation of the rules by respondent No.1 that could be a case of misconduct for which separate proceedings were required to be drawn up by the petitioner. They should not have short-circuited the said procedure by accepting the resignation which was withdrawn by respondent No.1 by his conduct and by writing a letter to one of the authorities.”

(emphasis supplied)

12. It is further recorded in the order of the High Court that the submission made by the respondents that the said withdrawal is inoperative is contrary to the stand taken by the respondents in the counter-affidavit filed before the Tribunal wherein it is specifically stated that since respondent No.1 was working elsewhere during his absence in violation of the rules, therefore, the Government decided to accept his resignation with effect from 12/4/2000.

13. On failure of the respondents to comply with the order of the Tribunal dated 1/3/2005, the petitioner filed Contempt Petition No.78 of 2006. During the pendency of the Contempt Petition the respondent No.1 produced the copy of the order dated 16/5/2006 whereby the petitioner was reinstated in service with effect from 12/4/2000 in compliance with the order of the Tribunal. The Contempt Petition was disposed of by observing as under :-

“Para 2 :- The Tribunal by the aforesaid order dated 1.3.2005 in OA No.1470/2003 has directed the respondents to reinstated the applicant in service w.e.f. 12.4.2000, with all consequential benefits. The applicant has been reinstated

in service w.e.f. From 12.4.2000 by an order dated 16/5/2006. He has not been paid consequential benefits. But the learned counsel for respondents has stated at the bar that the consequential monetary benefits, would be paid to him shortly as per rule in compliance with the order of the Tribunal.

Para 3 :- Considering that applicant has been reinstated in service with all consequential benefits, we are of the view that the present contempt proceedings should not proceed any further. Accordingly, we dismiss the C.P. Show cause notice issued earlier stands discharged. We allow the applicants to approach this Tribunal again, if necessary, after 3 months if consequential monetary benefits are not paid to him.”

14. The respondent No.1 filed Misc. Application ('M.A.' for short) No.1649 of 2006 in O.A.No.1470 of 2003 before the Tribunal seeking clarification of the order dated 1/3/2005. According to the respondent No.1, the petitioner had not reported for joining the duties and therefore, it is difficult for them to accord the consequential benefits. Therefore, the clarification was sought that pursuant to the reinstatement order dated 16/5/2006, the petitioner has to report to the office of DG of Police, Maharashtra and on joining the place of posting, minimum three months' time is further to be accorded for grant of consequential benefits. The Tribunal, however, recorded that whenever the petitioner had gone to report for duty, no

consequential action has been taken by the State of Maharashtra. It would be pertinent to note here the observations made by the Tribunal while disposing of the said M.A., which reads thus :-

“ However, this MA for clarification now filed before me, if without jurisdiction, I cannot take cognizance of it. However, as the matter is now lingering on for so many months and with the result even after filing CP, the applicant's woes have not come to an end and he is still waiting for his reinstatement and for other consequential benefits, on the consent of the parties, I dispose of this MA not for the purpose of clarification but to dispense the justice in accordance with Rules 25 & 27 of CAT (Procedure) Rules, 1987 with a direction to the respondents that in case the applicant reports for duty to DG of Police, Maharashtra on 25.9.2006, he would be reinstated in pursuance of the order dated 16/5/2006 and would be posted in accordance with law. I also direct that pursuant to this posting, within two weeks, applicant's consequential benefits, including back wages, consideration for promotion, etc. would have to be disbursed to him, with an intimation to the Tribunal in writing.”

(emphasis supplied)

15. The petitioner was reinstated by the respondents and posted as Joint Commissioner (Vigilance), Food and Drug Administration, Mumbai, vide order dated 25/9/2006. Learned Senior Counsel submitted that he was not paid his consequential monetary benefits and his seniority was not restored and that he was posted only as Superintendent of Police while his batch-

mates were Deputy Inspector of Police since 2003.

16. On 10/10/2006, the petitioner was served with the show cause notice by the respondent No.1 calling upon him to show cause as to why a departmental inquiry should not be initiated against him for entering into private employment without the authorization of the competent authority and why the prescribed punishment for the said acts of omission and commission should not be awarded to him.

17. The respondent No.1 by a notification dated 15th February, 2007 was pleased to regularise the entire period of the petitioner's absence. A decision was therefore taken by the Government to the following effect :

“After returning from central deputation as per Shri Sanjay Pandey's request dated 19/4/2000, 22/8/2001, 21/1/2002 and 1/4/2002 to consider this period as extraordinary leave, extraordinary leave is being granted from 12/4/2000 to 30/6/2002 and his absence from 1/7/2002 to

25/9/2006 is being treated as on duty.” The said Government Notification further provided that “An independent departmental inquiry is under process regarding Shri Pandey having joined private company after resigning from service. This regularization is being done subject to the outcome of this inquiry.”

18. The petitioner filed Contempt Petition No.1 of 2007 against the respondents before the Principal Bench, New Delhi of the Tribunal for failing to pay him consequential monetary benefits. The said Contempt Petition was disposed of as on the statement made by the Counsel for the respondents that the arrears of pay had been paid and even as regards his promotion the Screening Committee has met and the appropriate steps would be taken within two weeks. The Contempt Petition came to be disposed of. Liberty was however reserved in favour of the petitioner to agitate any grievance in case of necessity.

19. A memorandum dated 23/5/2007 was served on the petitioner instituting a departmental inquiry on the allegation of

the private employment of the petitioner between 12/4/2000 to 31/1/2003 without prior permission of the respondent No.1. By an order dated 28th February, 2008, the respondent No.1 came to the conclusion that though the petitioner had made some irregularities, but it was not with the ulterior intention. The petitioner, however, has shown his negligence. Therefore, the Disciplinary Authority i.e. Government of Maharashtra has decided that the petitioner be “Reprimanded” about his negligence instead of continuing the department proceedings against him. The Disciplinary Authority, therefore, dropped the departmental inquiry initiated vide memorandum dated 23rd May, 2007.

20. Despite the statements and assurances given by the respondents before the Tribunal in Contempt Petition No.1 of 2007, the petitioner was neither promoted nor paid his consequential monetary benefits and right from 18/6/2007 the petitioner was kept on 'compulsory wait' without any posting, promotion, salary, consequential benefits, housing, staff or any

other benefits accorded to him. Learned Senior Counsel submits that in the meanwhile his batch-mates and seniors were promoted to the rank of Inspector General.

21. It would be very pertinent to appreciate that by a communication dated 25th September, 2008 addressed by the respondent No.1 – State of Maharashtra to the respondent No.4 – Union of India as regards the suggestion of the Government of India for treating the period from 12.4.2000 to 31/1/2003 i.e. period of private employment of the petitioner as dies non and not to include the said period towards counting of service, the State of Maharashtra responded that the same will be against the decision of the Tribunal and will cause Contempt of Court and it will not be possible to defend the action of Government.

22. The petitioner approached the Central Administration Tribunal, Mumbai, by filing O.A.No.288 of 2010 seeking a direction that the respondents consider the petitioner for 'Proforma promotion' to the rank of DIG and Special IG from

the date his immediate juniors had been promoted. It would be pertinent to mention that respondent No.1 in its defence before the Tribunal raised the issue of private employment of the petitioner. The Tribunal by the order dated 9/5/2011 allowed the O.A. and directed the respondents No. 1 to 3 to give a suitable post to the petitioner at the level of D.I.G. within a period of one month from the date of receipt of the copy of the said order and also directed the respondents to convene the said review DPC to consider the promotion of the petitioner to the level of Special I.G. It would be material to reproduce that in para 4 of the order of the Tribunal, it is recorded that a charge-sheet dated 23/5/2007 was served on the petitioner for having joined M/s. Tata Consultancy Services, Mumbai, without prior permission of the State Government. Subsequently, the Government of Maharashtra set aside the charge-sheet vide order dated 28/2/2008. Even the stand of the respondent at para 7 reflects that the Government of Maharashtra dropped the disciplinary proceedings initiated against the petitioner and decided that he be reprimanded for his negligence instead of

continuing departmental proceedings against him for having accepted private employment with M/s. Tata Consultancy Services till January, 2003. It was indicated that the Government of Maharashtra had implemented the decision of the Principal Bench of the Tribunal regarding reinstatement with back-wages and promotion to the petitioner.

23. As the order dated 9th May, 2011 was not complied by the respondents, the petitioner was constrained to file Contempt Petition No.53 of 2011 before the Tribunal on 20th June, 2011.

24. In the meantime on 10th August, 2011, the respondents challenged the impugned order of the Tribunal dated 9/5/2011 before this Court by filing Writ Petition No.7026 of 2011. Even in this petition the issue of private employment of the petitioner was raised. This Court in para 11 had observed that “the competent authority had taken a decision not to accept the notice of voluntary retirement of the respondent since the

disciplinary proceedings were initiated against him, but these proceedings came to an end by the order dated 28/2/2008 passed by the Government of Maharashtra withdrawing the memorandum dated 23/5/2007.” This Court, thus, confirming the order passed by the Tribunal directed that the petitioner shall be entitled for his salary as D.I.G. and his salary from the date he has been kept on compulsory wait list shall be paid along with arrears within two weeks from 21/11/2011.

25. The petitioner had to file a Contempt Petition No. 277 of 2012 in this Court alleging the breach of the order dated 21/11/2011 passed by this court. Thereafter, by an order dated 15th December, 2011, the petitioner was posted as DIG. The respondent No.1 was also paid his salary and other arrears in March/April, 2012. In this view of the matter, the petitioner withdrew the said Contempt Petition.

26. Thereafter in compliance with the order dated 9th May, 2011 passed by the Tribunal respondents convened a

review DPC meeting on 8th February, 2012. The petitioner was found 'unfit' for promotion to the rank of Spl. IG on the ground that no Annual Confidential Reports (ACRs) were available. Learned Senior Counsel contended that this was a malicious reason as the respondents themselves had kept the petitioner on compulsory wait for more than four years. The decision declaring him 'unfit' was communicated to the petitioner by an order dated 8th May, 2012.

27. The petitioner made several representations against the decision finding him 'unfit' for promotion and the manner in which such finding was arrived at.

28. The petitioner being aggrieved by the decision dated 8th May, 2012 filed O.A.No.21 of 2013 before the Tribunal and sought Proforma Promotion on par with his batch-mates and immediate juniors, who had by now, attained the rank of ADGP.

29. The Review Screening Committee at its meeting

dated 23/12/2013 found the petitioner 'fit' for promotion to the post of Spl. IG. The respondent No.1 granted its approval to the recommendation of the Review Screening Committee and the Chief Minister granted his approval on 15/1/2014. O.A. No.21 of 2013 was heard and judgment was reserved and the matter was closed for orders on 31st January, 2014. Before the O.A. was decided the petitioner was promoted to the rank of Spl. IG as per the promotion orders issued by the respondent No.1 on 15/1/2014. The petitioner took over the charge as Spl. IG of Police at the State Human Rights Commission on 17th February, 2014. It is the petitioner's contention that even when he was promoted to the rank of Spl. IG, more of the petitioner's juniors, batch-mates were promoted to the rank of ADGP. This aspect was brought to the notice of the Registrar, CAT, by the petitioner vide communication dated 21st February, 2014.

30. O.A.No. 21 of 2013 was disposed of by the Tribunal on 3rd March, 2014 and the same was partly allowed. The Tribunal held that the finding of the DPC in concluding that the

petitioner was 'unfit' for promotion to the rank of Sp. IG was unsustainable. The Tribunal held that having kept the petitioner on compulsory wait more than 4 ½ years from 18/6/2007 to 15/12/2011 for which the petitioner was not at fault, the Government cannot hold the ground on non-availability of ACR/AOAR against the petitioner in the matter of his promotion. The Tribunal was of the opinion that if fresh review DPC considers the petitioner fit for promotion, it will take effect from the date on which his junior officers were promoted to the said post. The Tribunal also took into consideration the petitioner's letter dated 21/2/2014 about his juniors being promoted to the rank of ADGP. According to the Tribunal, the question of petitioner's promotion to the post of ADGP would arise only on his promotion to the Special IGP. Therefore, the Tribunal was not inclined to consider the petitioner's prayer for promotion to the post of ADGP. The Tribunal, therefore, directed the respondents to hold a fresh review DPC for considering the claim of the petitioner for promotion to the post of Inspector General of Police in the light of the aforesaid

observations by the Tribunal. The Review Application No.20 of 2014 filed by the petitioner came to be dismissed on 18th July, 2014.

31. The petitioner by a communication dated 20/2/2014 addressed to the respondent No.1 pointed out that for promotion to the rank of ADGP requires 25 years of regular service. The petitioner had completed 25 years of regular service and therefore, not considering him for rank of ADGP and promoting his juniors over and above him is grossly unjust.

32. Thereafter, by a representation dated 25th June, 2014, the petitioner pointed out that upon going through the Minutes of the meeting of DPC held on 14th February, 2014 and perusal of the same discloses complete fraud and manipulation in order to deny him his rightful dues. In support of his allegation of manipulations and ulterior machinations, it is stated by the petitioner in his representation dated 25th June, 2014 as under :-

a. As per the record, DPC met on 14th February. However, para 9 (C) mentions that “..Shri Pandey is promoted in rank of Spl. Inspector General of Police vide order dated 15.2.2014.” From this it is clear that the meeting took place on or after 15th February, as the facts of 15th February would not have been known to the DPC on 14th February, 2014.

b. Paragraph subsequent to this in the DPC minutes of Feb. 14th 2014, states that since I was till DIG, promoting me to the rank of ADG will amount to me directly becoming ADG without serving in the rank of IG. This reasoning, in view of the fact that the DPC already knew I was IG as on 15th February 2014, was clearly fraudulent and appears to have been incorporated to ensure that I did not get promoted and other juniors were promoted.

It is clear that the minutes have been fraudulently and maliciously ante dated to 14th February, 2014 in order to give credence to this baseless logic of double promotion. Any date after 14th February, 2014 would have made this hypothesis of DPC, baseless. Even more surprising is the fact that in pursuance of these minutes which clearly appear to be manipulated, views of departments are being sought on issue of double promotion, when today I am serving as IG. This is notwithstanding the fact that there is no such rule barring double promotion mentioned in ALL India Service rules. Rules only indicate eligibility and the DPC minutes too in para 9 (C) clearly states that I was eligible to be promoted as ADG.”

33. The petitioner thereafter was served with an order dated 3rd September, 2014 informing him that he has been kept under compulsory wait. The petitioner filed the present Petition on 29th September, 2014. On 4th October, 2014, the petitioner received an order issued by the respondents posting him as Controller, Weights and Measures in the rank of Sp. IGP. By an order dated 4th November, 2014, the respondent No.1 issued a

Government Notification dated 4th November, 2014 by virtue of which the petitioner was deemed to have been promoted to the rank of Sp.IG with effect from 18th June, 2008.

34. The DPC thereafter in its meeting dated 5th February, 2015 recommended the promotion of the petitioner to the post of ADGP. The petitioner, thereafter, was promoted to the post of ADGP with effect from 19/3/2015. This Court passed following order on 24th April, 2015 :-

“Stand over to 23 June 2015, as the statement is made by the learned AGP, on the basis of written communication dated 22 April 2015 that, the date of appointment of the Petitioner to the post of ADGP is under re-consideration, therefore, seeking further time. Written communication dated 22 April 2015 is taken on record and marked 'X' for identification.

2. By keeping all points open, at this stage, we are inclined to grant time till 23 June 2015.”

SUBMISSIONS OF LEARNED SENIOR COUNSEL FOR THE PETITIONER.

35. Learned Senior Counsel for the petitioner submits that unknown to the petitioner, a proposal for “deemed date” to the post of ADGP with respect to the petitioner was submitted to

the Government on 4/4/2015. The averments in the affidavit dated 16/11/2015 would reveal that the GAD had purportedly opined for review or extraordinary leave granted to the petitioner vide order dated 15th February, 2007. A meeting under the Chairmanship of the Chief Secretary, Government of Maharashtra, was held on 9th September, 2015 in which it was purportedly decided to proceed with as per the opinion of the GAD.

36. It appears that the issue of deemed date of promotion of the petitioner to the post of ADGP was under consideration and therefore the present Petition came to be adjourned. In the affidavit dated 16/11/2015, respondent No.1 took a stand that issue of deemed date is linked with the review of his extra ordinary leave and once the issue of review of extra ordinary leave is resolved the respondent No.1 shall process the matter of allotting him a deemed date. It was indicated that if the period of extra ordinary leave is treated as dies-non, it will have effect on the deemed date of the petitioner's appointment

as ADGP.

37. On 24/10/2016, a statement was handed over to this Court to the effect that issue of deemed date had been considered by respondent No.1 and the petitioner was granted a deemed date of promotion as ADGP from 04/10/2014 and not from 20/06/2012. By order dated 29/10/2016, the Government Resolution dated 15/02/2007 by which the petitioner's period of absence had been regularized was cancelled. The petitioner's absence from 12/04/2000 to 31/01/2003 was treated as 'dies-non' and the period from 01/02/2003 to 25/09/2006 was treated as 'on duty'. This order further holds that the petitioner is eligible to be promoted to the post of Additional Director General of Police from 04/10/2014. Thus, his deemed date for promotion to the Addition DG was fixed as 04/10/2014. The said order further provides that as the period from 12/04/2000 to 31/01/2003 is treated as dies-non, excess payment, if any, made due to the Government Order dated 15/02/2007 would be recoverable from the petitioner.

38. The petitioner filed application for amendment of the present Writ Petition on 25/11/2016 and brought on record the subsequent events and also challenged the order dated 29/10/2016. The application for amendment came to be allowed on 04/01/2017 and accordingly the Petition came to be amended.

39. In the meantime it was noticed that the DPC for promotion to the rank of the Director General of Police (DGP for short) was held on 30/12/2016. On bringing these facts to the notice of this Court, assurance was given to this Court as well as the petitioner by learned Counsel representing respondent No.1 that one vacancy (DGP) would not be filled in till next date of hearing.

40. Learned Senior Counsel appearing on behalf of the petitioner assailed the order dated 29/10/2016 as being ex-facie, illegal and bad in law. In his submission, order dated 29/10/2016 purports to review the order dated 15/02/2007. In

his submission, the said order is passed in fragrant violation of principles of natural justice as no opportunity of hearing is given to the petitioner before the impugned order was passed. Learned Senior Counsel further submits that there is no power to review the order dated 15/02/2007.

41. Learned Senior Counsel further submits that the minutes of the meeting dated 14/02/2014 are fabricated which is ex-facie evident from mere reading of minutes themselves. The minutes dated 14/02/2014 refer to the petitioner having been promoted to the rank of Special IG by an order dated 15/02/2014. In his submission, it is obvious that meeting of DPC could not have been held prior to 15/02/2014.

42. Learned Senior Counsel further submits that order dated 15/02/2007 granting extra ordinary leave to the petitioner was passed after a conscious decision was taken by respondent No.1 pursuant to the order passed by the Tribunal in Contempt Petition No. 78 of 2006 wherein it was observed by

the Tribunal that the petitioner's woes have not come to an end and he is still awaiting reinstatement and other consequential benefits. In the submission of learned Senior Counsel it is obvious that order dated 15/02/2007 was cancelled almost after 9 years only with a view to deprive him of the benefits of appropriate deemed date as ADGP to which he was otherwise entitled. In his submission, the petitioner was harassed at every stage and it is almost for every entitlement, the petitioner had to initiate appropriate legal proceedings. Learned Senior Counsel would further submit that despite the orders passed by the Tribunal and this Court on so many occasions, it is only pursuant to the filing of Contempt Petitions, the orders came to be complied with.

43. In the submission of the learned Senior Counsel, for promotion to the rank of ADGP, the only requirement is completion of 25 years of regular service. In the submission of learned Senior Counsel if the impugned order dated 29/10/2016 is quashed and set aside then automatically

petitioner is entitled for deemed date of promotion as ADGP from 20/06/2012 as per the own showing of the respondents. Learned Senior Counsel submits that it is only to deny the petitioner his rightful claim that concluded issues are raked up by respondent No.1 on one pretext or other and the petitioner is made to litigate endlessly.

SUBMISSION OF LEARNED COUNSEL FOR RESPONDENTS

44. Learned Counsel for respondents No.1 to 3 Mr.Amit Borkar contended that the impugned order dated 29/10/2016 is passed in accordance with law in as much as the respondent No.1 justified in treating the petitioner's period of absence from 12/04/2000 to 31/01/2003 as dies-non and accordingly his deemed date for promotion to ADGP came to be fixed as 04/10/2014. In his submission, as the order dated 29/10/2016 is passed during the pendency of this Petition, it affords a fresh cause of action to the petitioner and therefore, the petitioner is required to challenge this order before the appropriate forum

which is the Tribunal. He relied upon the decision of the Apex Court in the case of **L. Chandrakumar** (*supra*) and **Union of India Vs. Major General Shri Kant Sharma and anr.** (2015) 6 **Supreme Court Cases 773** in support of his contention that the petitioner has to first approach the Tribunal for getting the order dated 29/10/2016 adjudicated.

45. Shri Borkar further submits that as the notification dated 15/02/2007 regularizing the entire period of absence of the petitioner was wrong and contrary to the provisions of law, the respondent No.1 was therefore justified in exercising powers of review to revoke the said illegal order. In the submission of Mr.Borkar as excess payments have been made to the petitioner to which he is not entitled, the same are sought to be recovered by this order.

46. Mr.Borkar was at pains to point out that the petitioner was in private employment which period had to be treated as dies-non and therefore order dated 29/10/2016

cannot be said to be erroneous and contrary to law. In the submission of Mr.Borkar as the period of private employment has to be treated as dies-non, the benefit of this period cannot be given to the petitioner for counting towards 25 years of regular service.

47. Shri Borkar invited our attention to the Indian Police Service (Pay) Rules, 2007 (hereinafter referred to as the 'Pay Rules of 2007') more particularly Note 5 to Rule 3 which provides for the pay bands and grade pays admissible to a member of the service and the dates with effect from which the said pay bands and grade pays shall be deemed to have come into force. Note 5 deals with the issue of extraordinary leave with regard to eligibility period of service required for appointment to various grades provided therein.

48. In support of his contention that respondent No.1 can review its own orders, he has relied upon the decision of the Apex Court in the case of **Vinod Kumar Vs. State of Haryana**

and ors. (2013) 16 Supreme Court Cases 293.

49. Mrs.Neeta Masurkar, learned Counsel for respondent No.4 – Union of India supported the stand of Mr.Borkar and advanced similar contentions.

ANALYSIS

50. We now proceed to analyse the submissions of the learned Counsel. OA/21/2013 was filed before the Tribunal seeking promotion to the rank of ADGP with effect from the date of promotion of the petitioner's batch-mates. The petitioner was denied the promotion on the basis of DPC report dated 08/05/2012. This report was set aside by the Tribunal by the impugned order. The Tribunal had directed the respondents to consider petitioner's claim for promotion to the rank of Special IG, further holding that to consider the petitioner for the post of ADGP, the respondents would first need to appoint him as Special IG. By notification issued in November 2014, the respondents gave effect to the direction of the Tribunal stating that the petitioner stood appointed to the post of Special IG with

effect from 18/06/2008. The minutes of the meeting of DPC record that the meeting took place on 14/02/2014. However, minutes of meeting dated 14/02/2014 referred to the petitioner having been promoted in the rank of Special IG by order dated 15/02/2014.

51. We find substance in the contention of the learned Senior Counsel Mr.Seervai that meeting of the DPC could not have been held prior to 15/02/2014. DPC which met on 14/02/2014 did not recommend the petitioner for promotion to the rank of ADGP though his name was considered for such promotion along with IPS officers who were junior to him solely on the ground that as the petitioner at the point of time of consideration by DPC was holding the post of DIG and not Special IG. This was on the premise that to recommend his name for promotion to ADGP would constitute double promotion i.e. direct promotion to the post of ADGP without first having served in the rank of Special IG. Learned Senior Counsel has alleged malafide action of the respondents thereby

victimizing the petitioner. The minutes of meeting held on 14/02/2014 according to him are antedated to which there is no satisfactory explanation. We do not find a satisfactory explanation is offered by the respondents to this submission of learned Senior Counsel. In our opinion, ends of justice would be met if the DPC is reconvened to consider the case of the petitioner for recommending his promotion as ADGP along with IPS officers who were junior to him on the footing that he was holding the post of Special IG with effect from 18/6/2008. To that extent the order passed by the Tribunal calls for interference.

52. Insofar as the challenge to the order dated 29/10/2016 by which the order dated 15/02/2007 is sought to be revoked, admittedly, the impugned order has been passed without hearing the petitioner. The said order is passed in breach of principles of natural justice and without giving any opportunity to the petitioner of being heard. By the order dated 15/02/2007 period from 12/04/2000 till 30/6/2002 was

regularized by granting extraordinary leave and the period from 01/07/2002 till 25/09/2006 was considered as 'on duty'. Learned Counsel for the respondents No.1 to 3 in all fairness submitted that the order dated 29/10/2016 is passed without giving any opportunity of hearing to the petitioner. He therefore suggested that respondents No. 1 to 3 are willing to hear the petitioner and then pass a fresh order. In ordinary course, we would have considered this request as reasonable. However, looking at the facts and the history of the litigation and the opinion formed by us set out in para 3 of this order, we are of the view that it would not be in the interest of justice to adopt this course.

53. The reason mentioned in the impugned order is, the period from 12/04/2000 till 31/01/2003 is treated as dies-non as the petitioner had taken private job. In our opinion, it was too late in the day for the respondents to have revoked the order dated 15/02/2007 almost after 9 years. Secondly despite raising specific plea of private employment before the Tribunal

and this Court, reinstatement was granted from 12/04/2000 onwards with all consequential benefits. The period of private employment was regularized by granting extraordinary leave to the petitioner and regularizing rest of the period as period spent on duty. The respondents had raised the specific contention as regards private employment before the principal bench of the Tribunal in OA/1470/2003. Even before the Delhi High Court the issue of private employment of the petitioner was raised and specific averments in this regard were made despite which the Delhi High Court confirmed the order passed by the Tribunal. It is upon filing of Contempt Petition 78 of 2006 that respondents issued the order dated 16/05/2006 whereby the petitioner was reinstated in the service with effect from 12/04/2000. However he was not actually reinstated. In the application for modification of order dated 01/03/2005 filed by the respondents seeking certain clarification, the Tribunal was pleased to record that the woes of the petitioner have not come to an end and he is still waiting for his reinstatement and for other consequential benefits. The petitioner was actually

reinstated vide order dated 25/09/2006. Thereafter, show-cause notice dated 10/10/2006 was issued to the petitioner for initiating departmental enquiry for entering into private employment without authorization of the Competent Authority. Respondent No.1 by order dated 15/02/2007 [which is now sought to be cancelled by the impugned order] regularized entire period when petitioner was not on duty. The said order further provided that an independent departmental enquiry is under process against the petitioner for joining private employment after resigning from the service. Again the petitioner had to file Contempt Petition on 01/05/2007 for grant of consequential monetary benefits and for consideration of his case for promotion. By order dated 23/05/2007, the departmental enquiry was instituted on the allegation of private employment of the petitioner between 12/04/2000 to 31/01/2003 without prior permission of respondent No.1. On 28/05/2007, the said enquiry was dropped and closed by respondent No.1 with a token order of reprimand. In this light of the matter, not only period when the petitioner was not on

duty is regularized by granting extraordinary leave to the petitioner but even order of the Tribunal is categorical that he is reinstated with effect from 12/04/2000. Not only this but even the issue of private employment was concluded by dropping the enquiry after reprimanding the petitioner.

54. It would be also pertinent to note that the communication dated 25/09/2008 addressed by respondent No.1 to respondent No.4 wherein in clear terms it has been recorded thus :

“In these circumstances now as suggested by Government of India if the period from 12.04.2000 to 31.01.2003 i.e. period of private employment of Shri Pandey is treated as 'dies-non' and not included for counting of service it will be against the decision of the Hon'ble Tribunal and will cause the Contempt of Court and it will not be possible to defend the action for this Government. As Shri Pandey has completed 20 years of service in December, 2006 after counting his absence as a duty period as per Hon'ble C.A.T decision, he has given the notice for voluntary retirement. So at this stage, it will not be possible to take action under rule 7(2)(a) of A IS (leave) rules 1955 as per D.O.P T. notification dated 19.03.2017.”

55. At this juncture, it would also be material to note that in the affidavit dated 16/03/2016 filed by Shri Mukesh Sawhney on behalf of respondent No.4 - Union of India, it is

mentioned that the Government of Maharashtra by letter dated 15/12/2015 had stated if complete period from 12/04/2000 to 31/01/2003 of private employment of Sanjay Pandey is treated as dies-non, it would cause contempt of Court. It is further recorded that as the petitioner has been promoted in the grade ADGP by order dated 01/03/2015, the State of Maharashtra was considering the proposal of assigning the petitioner deemed date of promotion as ADGP. The State Government had therefore requested the respondent No.4 to confirm the view to treat the above period as dies-non so the State Government is able to decide the grade of ADGP. In paragraph 8 of the affidavit filed by respondent No.4 – Union of India, it is mentioned that though the Tribunal had granted reinstatement, no directions for regularization of the period of absence was mentioned and further, the period of private employment was not brought to the notice of the Tribunal during the proceedings before the Tribunal. Therefore, according to respondent No.4, submission of the State Government that treating the period of dies-non amounts to non-compliance of the directions of the Tribunal is

not correct. The Union of India intimated to the State Government – Respondents No. 1 to 3 by letter dated 11/02/2016 that period should be treated as dies non.

56. Thereafter, by an affidavit dated 16/03/2016 unconditional apology was tendered by respondent No.4 by pointing out - “period of private employment of the petitioner not being brought to the notice of the Tribunal” was mentioned inadvertently. It is further mentioned in the affidavit that as no directions are there as to how the period of private employment is to be treated, the said period should be treated as dies-non.

57. In our opinion, re-opening the matter almost after 9 years is unjust, unreasonable and arbitrary thereby serious prejudice is caused to the petitioner. In compliance with the directions of the Tribunal and the High Court the order dated 15/02/2007 was passed granting extraordinary leave to the petitioner treating the period as on duty. In the facts of the present case, it was not permissible for the respondents to have

reviewed the order dated 15/02/2007 after almost 9 years and that too in utter disregard to the principles of natural justice. The issue as regards treating the period of absence was already concluded by granting extraordinary leave and even the aspect regarding punishment for taking up private employment without the Competent Authority's permission was closed by reprimanding the petitioner and therefore also it was not permissible for the respondents to have at this belated juncture treated the period of private employment of the petitioner as dies-non. As indicated earlier the order dated 29/10/2016 was passed in compliance of the Tribunal & Delhi High Court's order. In the several rounds of litigation which followed after 2007, this issue was never raised and in fact as far back as in 2008 the respondents No. 1 to 3 were conscious that treating this period as dies-non will cause contempt of Court. Even in 2016, the respondents No.1 to 3 reiterated this position. It is apparent that the decision is taken by the respondents No.1 to 3 only upon the insistence of respondent No.4. The impugned order dated 29/10/2016 is therefore required to be quashed and set aside.

58. During the pendency of this Petition, the petitioner was promoted as ADGP with effect from 19/03/2015. A statement was made on behalf of the respondent No.1 that the deemed date of appointment of the petitioner to the post of ADGP was under active consideration. It is during the hearing of this Petition that the order dated 29/10/2016 came to be passed and order of 15/02/2007 by which the petitioner's period of absence has been regularized was cancelled. The order records that the period from 12/04/2000 to 31/01/2003 being treated as dies-non, deemed date for promotion as additional DG was accordingly fixed as 04/10/2014.

59. Admittedly, for promotion to the post of ADGP requirement is 25 years of regular service. The communication dated 02/12/2014 addressed by the respondent No.4 to respondent No.1 clearly mentions that as per guidelines, for the post of ADGP, the IPS officers in different grade who put in 25 years of service are eligible for consideration of promotion to the grade of ADGP. It is further mentioned that the petitioner

appears to be entitled for consideration in the rank of ADGP, however, respondents No. 1 to 3 were requested to ensure about completion of 25 years of service keeping in view the petitioner's period of private employment from 12/04/2000 to 31/01/2003. The period from 12/04/2000 to 31/01/2003 is treated as dies-non as a result thereof the petitioner was granted deemed date of promotion as ADGP with effect from 02/12/2014. As we have held that the respondents are not justified in treating the period from 12/04/2000 to 31/01/2003 as dies-non, in view of setting aside the order dated 29/10/2016, this period from 12/04/2000 to 31/01/2003 has to be counted towards regular service. It is a matter of record that respondents No.1 to 3 as far back as on 25/09/2008 clearly indicated to respondent No.4 that if the period from 12/04/2000 to 31/01/2003 i.e. period of private employment of the petitioner is treated as dies-non and not included for counting of service, it will be against the decision of the Hon'ble Tribunal and will cause the contempt of Court and it will not be possible to defend the action for this Government.

60. It has come on record that as the petitioner has completed qualifying service of 25 years, the Review Committee in its meeting dated 05/02/2015 found him fit for post of ADGP on which basis he was promoted with effect from 19/03/2015. However, as the petitioner worked in private service from 12/04/2000 to 31/01/2003, this period was treated as dies-non, he was granted deemed date as ADGP from 02/12/2014 and not 20/06/2012.

61. During the pendency of this Petition as the petitioner was due for consideration for promotion as DGP, a statement was made on behalf of the respondents no.1 to 3 that one post of DGP would be kept vacant. The petitioner's case for promotion needs to be considered accordingly.

62. In our opinion, reliance placed by Mr.Borkar on Note 5 to Rule 3 of the Pay Rules of 2007 is completely misconceived. The issue involved in the present Petition is whether the period of the petitioner's absence for having taken

private employment should be treated as period spent on duty. For the misconduct of taking private employment without permission of the Competent Authority, the petitioner was proceeded with departmentally and he has been punished with an order of reprimand. Moreover, this period was already regularized in compliance with the order of the Tribunal.

Hence, the following order.

ORDER

- i) The order dated 29/10/2016 passed by the respondent No.2 is quashed and set aside, consequently, the respondents are directed to grant to the petitioner deemed date as Additional Director General of Police from 20/06/2012.
- ii) The respondents are directed to convene a fresh DPC within a period of 4 weeks from today to consider the case of the petitioner for promotion as ADGP along with IPS Officers who were junior to him on the footing that the petitioner is appointed to the post of Special IG with effect from 18/06/2008.
- iii) Upon consideration of the petitioner's case if the petitioner is found eligible for promotion as ADGP before

20/06/2012, he may be given that date of promotion, otherwise the deemed date of promotion in the rank of ADGP as 20/06/2012 will stand.

- iv) After completion of the exercise in clauses (ii) and (iii) of the operative part, within six weeks thereafter the petitioner's case for promotion as DGP (Director General of Police) be considered in accordance with law.

63. Rule is accordingly made absolute with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)