

Respondents No. 3 to 44 appeared for the departmental examination for promotion to the post of Excise Sub-Inspector held in March 1993. They did not pass either physical fitness test or the written examination ostensibly on account of the disturbed conditions in Mumbai at that time. The examinations were held again in Pune in June 1993. A circular was issued by the Commissioner of Prohibition & Excise on 26/04/1993 concerning second chance to be given to persons who did not pass the examination held in March 1993. The circular stated that if the persons succeed on the basis of the examination held in Pune and if they are selected for the post of Excise Sub-Inspector by Selection Committee, they would rank junior to the persons who have been brought on the select list by the Selection Committee prior to the date of the circular. The respondents were aggrieved that certain persons junior to them who had passed the examination held in March 1993 were promoted ahead of them by order dated 09/09/1993.

3. The said order was challenged before the Tribunal

and they sought direction that the respondents should be promoted on the basis of seniority in accordance with rule 4(a) of “the Inspector, Sub-Inspector, Petty Officer, Driver-cum-Constable and Constable in the State Excise Department (Recruitment) Rules 1992” notified on 01/01/1993. The Tribunal in the light of directions in OA/161/1997 and Review Application 62/1997 in OA/74/1997 was pleased to allow the Original Application. The Tribunal thus directed to treat the passing of the examinations held at Pune as adequate fulfillment of the conditions laid down in Rule 4(a)(v) of the Recruitment Rules. The Tribunal observed that the respondents who passed examination subsequently would have valid claim for a deemed date of promotion on the basis of the date on which junior was promoted subsequent to 17/07/1993 on the date when the respondents were declared as having passed the examinations subject to the other conditions of eligibility.

4. Learned Counsel for the petitioners submitted that they appeared for the examination on the scheduled date and

passed the examination. Along with petitioners, there were several others who appeared and cleared the said examination. In the submission of the learned Counsel for the petitioners, respondents appeared in the said examination but failed. They however represented to the State that in view of the disturbed conditions in Mumbai, they failed in the said examination. The State was pleased to consider their request and accordingly they were given one opportunity to appear in the examination again subject to condition that those who would rank junior of those who have already passed in March 1993 examination.

5. None appeared on behalf of the contesting respondents though served.

6. Having heard learned Counsel for the petitioners and learned AGP we are of opinion that the order passed by the Tribunal calls for interference. It is not in dispute that for the selection to be held in March 1993, petitioners and other successful candidates appeared for the written test and passed.

153 candidates who were declared successful included some lady candidates also. Respondents No. 3 to 44 also appeared for the qualifying tests but were not successful and eliminated at the stage of physical fitness test and ineligible to appear for the written examination. Respondents No. 3 to 44 approached the State Government with a request that they could not succeed in the physical standard test and/or the written examination because City of Mumbai was rocked by serial bomb blasts on 12/03/1993. Respondent No.2, as a very special case, on humanitarian ground adopted a sympathetic approach and decided to afford the unsuccessful candidates a second chance to appear at a second test on the condition that they would rank junior to those who passed in March 1993 and issued a circular dated 26/04/1993 making this very clear. In our opinion once the conditions set out in circular dated 26/04/1993 were accepted by respondents No.3 to 44 without demur and had at no point of time raised any objection to the circular dated 26/04/1993, having appeared in the physical fitness and written examinations which were held in Pune on 14 & 15th June 1993,

in view of concession given in the circular by the State Government cannot turn back and contend that conditions mentioned in the circular are arbitrary. Respondents No.3 to 44 were well aware of the condition that they would rank junior to all those who passed in March 1993. Only as a special case second chance was given to the respondents to appear at the second test held. We find that there is nothing unreasonable in the condition imposed by the respondents - State in the said circular.

7. Present Petition therefore succeeds. The impugned order passed by the Tribunal is quashed and set aside. Rule is made absolute with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)