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STATE OF NEW JERSEY

In the Matter of B, Police Lieutenant
(PM1436U), Paterson

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-1109

Examination Appeal

ISSUED: MAY 11 2017 (JH)

Appellant B appeals the determination of the Division of Agency Services, which found that the appellant was ineligible for the promotional examination for Police Lieutenant (PM1436U), Paterson.¹

The subject examination was open to employees in the competitive division who had an aggregate of one year of continuous permanent service and were serving in the Police Sergeant title as of the September 30, 2016 closing date. A review of the appellant's employment record finds that the appellant received a regular appointment to the Police Sergeant title effective October 13, 2015. Thus, the Division of Agency Services concluded that the appellant did not possess the

¹ In January 2010, the United States Department of Justice (USDOJ) filed a complaint against the State of New Jersey and the Civil Service Commission (Commission), alleging that the selection process utilized by the State to test and appoint candidates to the Police Sergeant title between 2000 and 2008 had a disparate impact on African-American and Hispanic candidates in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.*, as amended. During the pendency of this litigation, the parties agreed to the terms of a settlement which was formulated into a Consent Decree. The terms of the Consent Decree provided, in pertinent part, that the State, in consultation with USDOJ, develop a new Police Sergeant examination and scoring process. In addition, in thirteen specific jurisdictions, including Paterson, priority is to be given to minority candidates who sit for and achieve a passing score on the new examination for promotions. Paragraph 65 of the Consent Decree provides, in pertinent part, that the designation as a priority promotion pursuant to the Consent Decree will remain confidential and will not be disclosed by the State or a local jurisdiction. Accordingly, this individual, who appeared on the Police Sergeant (PM0619X), Paterson, priority promotion list, shall be designated herein by the letter B.

requisite year in grade. Consequently, the appellant was found ineligible for the subject promotional examination.

On appeal, Appellant B explains that “on both April 1, 2015 and May 1, 2015, position for [P]olice [S]ergeant became vacant due to retirements . . . It appears that the appointing authority only submitted a single request in September 2015 . . . A recap concludes that though the appointing [authority] waited 5½ months to request the approval from the DCA, it was approved on September 15, 2015. My acceptance offer by the business administrator was dated September 29, 2015; therefore my certification for [P]olice [S]ergeant was valid for September 2015. There appeared to be no stimulations/documentations [sic] from the DCA to prolong these appointments for [S]ergeant until October 13, 2015. On September 5, 2014[,] Paterson Police Director Spe[ziale] documented an opinion in Matter of Docket numbers 2014-2686-2864-5687 and 2685. These were appeals to be credited for acting sergeants in 2013, to take the Lieutenant’s exam on September 26[,] 2013. Its closing date for this test was August 31, 2013. He is quoted as stating ‘bureaucratic delays in obtaining authorization for proper appointments.’ These sergeants were denied the request by Civil Service to take the Lieutenant[’]s exam.”² In support of the appellant’s appeal, the appellant provides additional documentation including: a letter dated October 3, 2016 from Sonia L. Gordon, Acting City Clerk, City of Paterson to Appellant B “in full and final satisfaction of [Appellant B’s] OPRA request submitted to the City Clerk’s Office;” a State of New Jersey Department of Community Affairs Division of Local Government Services (DLGS) Request for Employment Approval regarding the appellants which indicates DLGS approval to hire two Police Sergeants, dated September 15, 2015, and the Chief Financial Officer for Paterson indicates adequate funding availability for the hires, dated September 17, 2015; a copy of the Police Sergeant Priority Promotion Job Offer Form signed by the appellant on September 29, 2015.³

It is noted that the appointing authority was contacted regarding this matter and did not provide any additional information.

² Appellant B appears to be referring to *In the Matter of Dean Barone, et al.*, Police Lieutenant (PM1494R), Paterson (CSC, decided April 1, 2015) in which the appellants requested that they be permitted to use their experience as “acting” Sergeants to establish eligibility for the subject test.

³ Priority promotions are subject to those conditions outlined in the Consent Decree. In this regard, pursuant to paragraph 65, eligible candidates will receive a written offer of priority promotion pursuant to the Consent Decree setting forth the terms of the appointment including the appointment date, starting salary, salary after the completion of the probationary or working test period, and upon completion of the working test period, retroactive seniority as of the candidate’s presumptive appointment date. Priority promotion candidates must accept or reject the offer of priority promotion in writing.

CONCLUSION

N.J.A.C. 4A:4-2.6(a)1 provides that applicants for promotional examinations must have one year of continuous permanent service for an aggregate of one year preceding the closing date in a title or titles to which the examination is open.

A review of the record finds that the priority promotion list for Police Sergeant (PM0619X), Paterson, promulgated on August 14, 2014 and expired on October 23, 2015. It is noted that Appellant B's name appears at rank one on the PM0619X list. The first and only certification of the PM0619X list, which issued on September 21, 2015 (Certification No. PL151041), contained the names of two individuals, including the appellant. In disposing of Certification No. PL151041, the appointing authority appointed the appellant effective October 13, 2015.

The Commission notes that generally, an award of a retroactive appointment date "for seniority purposes only" is limited to situations in which an appellant could have been appointed on the subject date, but through administrative error or administrative delay, received a later appointment date, or for other good cause. *See N.J.A.C. 4A:4-1.10(c)*. In the present matter, the appellant argues that Paterson delayed the appellant's promotion by one month. However, the record does not demonstrate that an administrative error or administrative delay occurred. In this regard, there is nothing in the record that indicates Paterson erred in failing to permanently appoint the appellant prior to October 13, 2015. Moreover, the record does not evidence bad faith or some invidious reason for the October 13, 2015 regular appointment date.

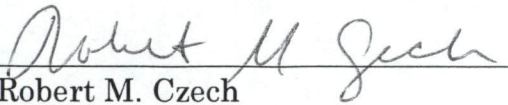
Accordingly, based on the foregoing, the appellant has not met the appellant's burden of proof, and has not provided a basis to disturb the determination of the Division of Agency Services.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 3RD DAY OF MAY, 2017



Robert M. Czech
Chairperson
Civil Service Commission

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and
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