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**NOTIFY**

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**SUPERIOR COURT  
No. 1984-CV01427-F**

**JOSEPH MCGUNIGLE,**

**Plaintiff,**

**vs.**

**CIVIL SERVICE COMMISSION, et al.,**

**Defendants.**

**MEMORANDUM AND ORDER  
ON PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS  
AND DEFENDANTS' CROSS-MOTION FOR JUDGMENT ON THE PLEADINGS**

After a hearing where all parties were present on Zoom, and after careful review of the parties' written submissions, including the administrative record, the Defendants' Cross-Motion For Judgment On The Pleadings is **ALLOWED**; and Plaintiff's Motion For Judgment On The Pleadings is **DENIED** for the reasons that follow.

This matter is before the court on plaintiff Joseph McGunigle's ("McGunigle") motion for judgment on the pleadings arguing that defendant Civil Service Commission's (the "Commission") erred in its April 11, 2019, denial of his appeal of the Human Resource Division's ("HRD") denial of his request for a preferential position on the civil service employment eligibility list for the Quincy Fire Department. The procedural and factual history of this case is straightforward insofar as there is no *material* dispute between the parties about the facts or procedural history. Insofar as this matter is before the court on a narrow legal question relating to statutory interpretation, the court adopts by reference the factual and procedural

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background contained in the parties' submissions, and sets forth herein only those facts material to deciding the instant motion.

This court's review of the Commission's decision is strictly limited by statute and legal precedent. Pursuant to G. L. c. 30A, § 14, the court must affirm the Commission's decision unless it was unsupported by substantial evidence, arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with the law. *Registrar of Motor Vehicles v. Bd. of Appeal on Motor Vehicle Liability Policies and Bonds*, 382 Mass. 580, 591 (1981). The court must give substantial deference to the Commission's interpretation of those statutes with which it is charged with enforcing. "Deference is particularly appropriate when the statute in question explicitly grants broad-rule making authority to the agency, contains an ambiguity or gap, or broadly sets out a legislative policy that must be interpreted by the agency." *Souza v. Registrar of Motor Vehicles*, 462 Mass. 227, 229 (2012) (citations omitted). In addition, "[t]he court shall give due weight to the experience, technical competence and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it." G. L. c. 30A, § 14 (7).

As the party appealing the Commission's decision, the burden falls to McGunigle to demonstrate the decision's invalidity. *Marisme v. Bd. of Appeals on Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989). The Court exercises *de novo* review of legal questions and will not affirm agency decisions or interpretations of statutory language that are "inconsistent with governing law." *Town of Plymouth v. Civil Serv. Comm'n.*, 426 Mass. 1, 5 (1997), citing cases.

Here, the parties agree that McGunigle's father, an officer of the Boston Police

Department, was injured in the line of duty. As a consequence of the injury, McGunigle's father was unable to work as a police officer, and retired with a pension of seventy-two per cent (72 %) of his annual salary. McGunigle decided to follow in his father's public service footsteps, and therefore sought to take advantage of G.L.c. 31, § 26 – a statute providing to sons and daughters of killed or permanently disabled law enforcement parents a hiring preference on the civil service lists. In order to qualify for this preference, the statute required McGunigle to verify that his father's retirement was: [1] at a yearly amount of pension equal to [100%] of the regular rate of compensation which he would have been paid had he continued in said service at the grade held at the time of retirement ... [2] pursuant to a special act of the legislature in which said ... police officer is determined to be permanently or totally disabled; [and 3, as a result of] an assault on his person sustained injuries which resulted in his being permanently and totally disabled.

It is apparent from the factual record here that McGunigle could not qualify for the civil service preference under the statute because – although his father was disabled – he did not retire with 100 % of salary, nor did he have a Special Act indicating that he was permanently and totally disabled, although his injuries were sustained as a result of an assault on his person while he was on duty. The court's reasonable inference from the Administrative Record is that because McGunigle did not qualify under G.L.c. 31, § 26, he sought a Special Act *himself* to assist in his quest to become a police officer in the city of Quincy. He was successful insofar as the Legislature passed, and the Governor signed on August 1, 1997, a Special Act of the Legislature (the "Special Act") entitling McGunigle as follows:

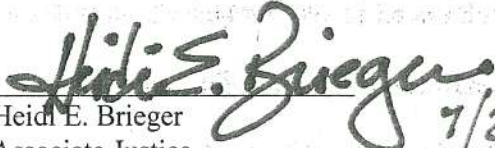
Notwithstanding the provision of any general or special law or rule of regulation to the contrary for the purpose of placement on the eligible list



for the *position of police officer in the city of Quincy*, Joseph T. McGunigle shall be considered to be the son of a police officer as provided in G.L. c. 31, § 26 of the General Laws; provided, however, that he passes the required written and physical examination for entrance to the *police service*.

A plain reading of that Special Act demonstrates that it was drafted, “[n]otwithstanding the provision of any general or special law or rule of regulation to the contrary,” which means that, even though G.L. c. 31, § 26 precludes a preference for McGunigle, this Special Act awards such a preference notwithstanding the bar. Second, the plain language of the Special Act specifically limited – twice – the preference to police service within the city of Quincy. There is no mention of a preference for the Fire Department, nor is there any mention of any other municipality. This Special Act therefore forecloses McGunigle’s argument that he was granted by the Legislature and Governor blanket coverage under G.L. c. 31, § 26.

In short, after careful review of the Commission’s decision and the factual record, the court concludes that McGunigle has not established the necessary evidence that the Commission erred in any way in its decision, and therefore the court declines to set it aside pursuant to G.L. c. 30A.

  
Heidi E. Brieger  
Associate Justice  
Superior Court

7/23/20