

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 257 OF 2021
WITH
MISC. APPLICATION NO. 185 OF 2021

DISTRICT:- JALNA

Nanasaheb Laxmanrao Gaikwad,
Age : 48 years, Occ: Service as Head
Constable in the office of S.P. Jalna,
R/o: Sainath Nagar, Behind Nirmala
Mangal Karyala, Mantha Choufuli,
Jalna.

.. APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through: The Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) The Director General of Police,
Maharashtra State,
Shahid Bhagatsing Marg,
Mumbai.
- 3) The Additional Director General
of Police, Training & Special Squad,
Maharashtra State, Shahid Bhagatsing
Marg, Mumbai.
- 4) The Additional Director General of Police,
Establishment, Police Headquarters,
Maharashtra State, Mumbai.
- 5) The Special Inspector General of Police,
(Establishment) Maharashtra State,
Shahid Bhagatsing Marg,
Mumbai.

.. RESPONDENTS

APPEARANCE :- Shri K.B. Jadhav, learned Advocate for
the applicant.
: Smt. M.S. Patni, learned Presenting
Officer for the respondent authorities.

CORAM : **Hon'ble Shri V.D. Dongre, Member (J)**
and
Hon'ble Shri Bijay Kumar, Member (A)

RESERVED ON : 28.04.2023

PRONOUNCED ON : 23.06.2023

ORDER

(Per :- Shri V.D. Dongre, Member (J))

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed seeking direction to the respondents to include name of the applicant in the list attached to the communication dated 3.6.2021 (A-8) issued by the respondent No. 5, for and on behalf of the respondent No. 2 on the post of Reserved Police Sub Inspector (R.S.I.) by considering him for the said promotional post of R.S.I. and to promote the applicant on the post of R.S.I. as per the direction given by this Tribunal by judgment and order dated 24.3.2017 in O.A. No. 39/2016 filed by this applicant and three other OAs.

2. The facts in brief giving rise to this application are as under: -

(a) That the applicant was appointed on the post of Constable in the office of S.R.P.F., Group No. 3, Jalna on 16.4.1995. In the year 2010, he was transferred in the office of S.P. Jalna. He was promoted to the post of Head Constable in the year 2018. Presently he is working on the said post in the office of S.P. Jalna. His working is unblemished.

(b) The respondent No. 2 i.e. Director General of Police (D.G.P.) conducted departmental examination for filling 32 promotional posts of R.S.I. by issuing Circular dated 30.1.2014 (Annex A-1). The said Circular was issued as per the Mumbai Police Manual, Part-I, Rule 180(3)(e) and amended Chitthi/Rule No. 122. The Head Constables, who had completed 4 years of service in that cadre were eligible for that examination. Clause 12 thereof provided that examination shall be conducted in two parts. First part was of written examination of 100 marks. Second part was of practical test divided in two parts i.e. (i) Physical Training, Musketry and drill of all types of 100 marks; and (ii) Ability to impart instruction in (1) above of

100 marks. Clause 13 provided criteria of passing of 50% in written examination, who will be eligible for practical examination. It was mentioned that out of 300 marks the candidates had to secure/obtain 50% (150) marks will be declared passed. So criteria of passing was of obtaining aggregate 50% marks out of 300 marks.

(c) Pursuant to the said Circular dated 30.1.2014 (Annex. A-1) the applicant applied for the post of R.S.I. Thereafter by Circular dated 21.2.2014 (Annex. A-2) program for conducting written examination was declared as of 25.2.2014. Thereby it was also declared the passing criteria of 50% marks in each part and aggregate of 50% marks.

(d) The applicant secured 72 marks in written examination of part I. He secured $53 + 47 = 100$ marks in each Practical Examination of part II. Therefore he secured aggregate 172 marks out of 300 marks fulfilling requisite passing criteria. He ought to have been declared passed. However, as per final result of R.S.I. examination-2014, Centre Aurangabad (Annex. A-3), he was declared failed.

(e) Thereafter pursuant to the applications made by the applicant and other similarly situated candidates the respondent no. 3 i.e. the Additional Director General of Police, Mumbai issued letter dated 27.1.2016 (Annex. A-4) informing that it was necessary to obtain 50% marks in the written examination and also to obtain 50% marks in each part of practical examination. Therefore, the request of the applicant was rejected for grant of promotion to the post of R.S.I.

(f) Being aggrieved by the same, the applicant filed O.A. No. 39/2016 before this Tribunal challenging the said communication issued by respondent no. 3 dated 27.1.2016 (Annex. A-4) and sought directions to declare him as passed in the departmental examination for the post of R.S.I. and consider him for promotion to the post of R.S.I. This Tribunal by the common judgment and order dated 24.3.2017 (Annex. A-5 in O.A. No. 39/2016 and other connected O.As.) quashed the result of the applicant as failed and declared that the applicant is passed in the R.S.I. examination. In view of that the respondent no. 3 issued letter dated 27.7.2017 (Annex. A-6) and declared the applicant and others as passed in

Departmental Examination of year 2014. It is submitted that in spite of above, the respondents did not promote the applicant on the post of R.S.I.

(g) Some other candidates filed O.A. No. 829/2019 before the Principal Seat of this Tribunal at Mumbai seeking directions to the respondents to promote them on the post of R.S.I. in the selection process of 2014. The applicant was made respondent no. 7 in the said O.A. No. 829/2019. During pendency of O.A. No. 829/2019 controversy was referred to the Larger Bench as to whether the view taken by the earlier Division Bench in O.A. Nos. 378, 38, 39 and 40 all of 2016 by order dated 24.3.2017 by the Aurangabad Bench is in consonance with rule 180(3)(e) of the Maharashtra Police Manual, 1959 ? Accordingly, the Larger Bench (Coram : Hon'ble Chairperson, Vice Chairman (A) and Member (J)) was constituted and the said Bench gave decision vide judgment dated 25.2.2021 and gave following findings :-

“4. The Rule 180(3)(e) of Maharashtra Police Manual, 1959 states the pattern and allocation of marks in written as well as physical test for promotion to the post Reserve Sub Inspector. Hence, it is useful to reproduce the said rule.

“180. Head Constables :- (1) Departmental Examination qualifying for promotion to Sub Inspector:-.....

(e) Candidates obtaining not less than 50 per cent marks in each of the three subjects will be considered to have passed the test.”

(h) In view of the same, by the judgment and order dated 10.3.2021, O.A. No. 829/2019 was allowed based on the view taken by the Larger Bench.

(i) Thereafter respondent no. 5 issued communication dated 3.6.2021 (Annex. A-8) calling upon the information for granting the promotion from the post of Reserve Assistant Police Sub-Inspector and Head Constable to the post of Reserve Police Sub-Inspector (RSI) from the employees along with list of 125 employees. The name of the applicant, however, does not figure in that list.

(j) The applicant's claim is based on the decision dated 24.3.2017 (Annex. A-5) commonly delivered in O.A. Nos. 38, 39, 40 and 378 all of 2016. The said decision is not set aside or challenged before the higher forum. In view of the same it was incumbent upon the respondents to consider the case of the applicant for promotion to the post of R.S.I. The promotions to the post of R.S.I. were

issued under selection process of 2009, as well as, 2010 and selection was made by taking into consideration aggregate 50% marks as reflected in the Circulars dated 24.12.2009 (Annex. A-9) and 4.6.2010 (Annex. A-10). It is alleged that the respondents are unnecessarily delaying the promotions of the applicant to the post of RSI as per the directions of this Tribunal in O.A. NO. 39/2016. Hence, this Original Application.

3. Affidavit in reply is filed on behalf of respondent nos. 2, 4 & 5 by one Shri Vivek Ramchandra Saraf working as Assistant Police Commissioner in the office of Commissioner of Police, Aurangabad City, thereby he denied all the adverse contentions raised in the O.A. The selection process conducted for giving promotion to the post of RSI in the year 2014 as pleaded by the applicant is not disputed. The selection to the post of RSI is based on rule 180(3)(e) r/w Correction Slip No. 122 of the Maharashtra Police Manual, Vol. I, 1959 (in short M.P.M), which is as follows :-

“Rule 180. Head Constable :-

(3) Practical test for Armed Head Constable for promotion to the rank of Reserved Sub-Inspector/Subhedar :-

(e) Candidates obtaining not less than 50 per cent marks in each of the three subjects will be considered to have passed the test.”

4. In view of the said provision only, the applicant was declared failed as he had not obtained 50% marks in one of the practical examination, Part-(II). It is further submitted that the controversy in that regard is settled by the decision of the learned Larger Bench dated 25.2.2021, which is referred and followed in the decision dated 10.3.2021 in O.A. No. 829/2019 commonly with O.A. No. 346/2017 (Aurangabad Bench). In view of the same. the present O.A. filed by the applicant is not maintainable. There is no merit in the O.A. and it is liable to be dismissed.

5. Rejoinder Affidavit is filed by the applicant denying the adverse contentions raised in the affidavit in reply and reiterating the contentions of the O.A. Further, sur-rejoinder is filed on behalf of the respondent nos. 2 to 5, thereby denying the adverse contentions raised by the applicant in the rejoinder affidavit.

6. We have heard the arguments advanced by Shri K.B. Jadhav, learned counsel for the applicant on one hand and Smt. M.S. Patni, learned Presenting Officer on the other hand.

7. Prayers of the applicant in the O.A. are as follows :-

“A) To allow the Original Application.

B) To direct the respondents to include the name of the applicant in the list attached to the communication dated 03.06.2021 issued by the respondent Nos. 2 & 5 for promotion on the post of Reserve Police Sub-Inspector (R.S.I.) and consider him for promotion on the post of Reserve Police Sub-Inspector (R.S.I.).

C) To direct the respondents to promote the applicant on the post of Reserve Police Sub-Inspector (R.S.I.) as per the directions given in the common judgment passed in O.A. No. 39/2016 dated 24.3.2017 passed by this Hon’ble Tribunal.

D) Pending hearing and final disposal of original application, the process conducted by the respondent Nos. 2 & 5 for granting the promotions for the post of Reserve Police Sub-Inspector (R.S.I.) may kindly be stayed.

E) Pending hearing and final disposal of original application, the respondent no. 2 & 5 be directed to keep one post vacant for the post of Reserve Police Sub-Inspector (R.S.I).”

F) Any other equitable and suitable relief may kindly be granted in favour of applicant in the interest of justice.”

8. In fact the applicant has made above-said prayers based on the decision of this Tribunal in O.A. filed by the applicant bearing O.A. No. 39/2016 which was decoded together with O.A. Nos. 38, 40 and 378/2016 by order dated 24.3.2017 (Annex. A-5). The operative part of the said order dated 24.3.2017 is as follows :-

“O R D E R

- “1. The O.A. Nos. 378, 38, 39 & 40 all of 2016 are allowed.
2. The decision of the respondent no. 2 declaring the applicants as failed is quashed and set aside.
3. The applicants are passed in the departmental examination held in the year 2014.
4. The respondents are directed to act upon accordingly to consider the applicants for the promotion on the post of R.S.I.
5. There shall be no order as to costs.”

9. Pursuant to the said decision the respondent no. 3 issued letter dated 27.7.2016 (Annex. A-6) declaring the respective applicants in O.A. Nos. 378, 40, 38 & 39/2016 respectively as ‘Passed’. However, thereafter admittedly the applicant is not given posting as R.S.I. Admittedly, though the applicant has relied upon Circular dated 30.1.2014 (Annex. A-1) regarding filling in the promotional post of R.S.I. and more particularly clause 13 of the said Circular, which is as follows :-

“(१३) लेखी चाचणी ही १०० गुणांची व मैदानी चाचणी २०० गुणांची घेण्यात येईल. सदर लेखी चाचणीत किमान ५०% गुण मिळविणारे उमेदवार प्रात्यक्षिक चाचणीसाठी पात्र ठरतील. तसेच प्रात्यक्षिक चाचणीमध्ये उत्तीर्ण होण्यासाठी ५०% गुण मिळणे आवश्यक आहे. लेखी व प्रात्यक्षिक या दोन्ही चाचण्यांच्या एकूण ३०० गुणांपैकी ५०% (१५०) गुण मिळविणारे उमेदवार उत्तीर्ण म्हणून घोषित केले जातील.”

10. Clause 13 is based on rule 180(3)(c) r/w Correction Slip No. 122 of the Maharashtra Police Manual, Vol. I, 1959, which is as follows :-

“Rule 180. Head Constable :-

(3) Practical test for Armed Head Constable for promotion to the rank of Reserved Sub-Inspector/Subhedar :-

(c) Candidates obtaining not less than 50 per cent marks in each of the three subjects will be considered to have passed the test.”

11. The larger Bench in its order dated 25.2.2021 has interpreted the said provision of Police Manual taking a view that the view taken by the Division Bench on O.A. Nos. 378, 38, 39 & 40/2016 decided on 24.3.2017 by Aurangabad Bench is not in consonance with rule 180(3)(c) of Maharashtra Police Manual, 1959.

12. It is true that as contended by the learned counsel for the applicant, the decision of this Tribunal dated 24.3.2017 in O.A. Nos. 378, 38, 39 & 40/2016 was not challenged before the higher forum. That apart the applicant has filed the present O.A. independently, but with a prayer by way of implementation/execution of order dated 24.3.2017 in O.A. No.

39/2016 and other connected O.As. This is not an execution application. The present O.A. is filed u/s 19 of the Administrative Tribunals Act, 1985 cannot be treated as execution application as section 27 of the Administrative Tribunals Act, 1985 deals with execution application, which is as follows :-

*“27. **Execution of orders of a Tribunal.**— Subject to the other provisions of this Act and the rules, 2 [the order of a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any court (including a High Court) and such order] shall be executed in the same manner in which any final order of the nature referred to in clause (a) of sub-section (2) of section 20 (whether or not such final order had actually been made) in respect of the grievance to which the application relates would have been executed.”*

13. In view of above, in our considered opinion the present O.A. cannot be maintainable. Otherwise view of the larger bench of this Tribunal is negative the view taken by the Division Bench in O.A. No. 39/2016 and others (Annex. A-5) on which the applicant is placing reliance. In the circumstances, the contentions raised by the respondents in the affidavit in reply filed in the O.A. are plausible and acceptable. In view of above, we hold that present O.A. is devoid of merits and is not maintainable and is liable to be dismissed.

14. During pendency of the present O.A. Misc. Application No. 185/2021 is filed by the applicant seeking following reliefs :-

“A) To allow this Misc. Application.

B) To direct the respondent no. 2 & 5 not to issue promotion orders for the post of Reserved Police Sub-Inspectors (R.S.I.) till the final disposal of original application.

C) To direct the respondent no. 2 & 5 to keep one post of Reserved Police Sub-Inspectors (R.S.I.) vacant till the disposal of the original application.

E) Any other equitable and suitable relief may kindly be granted in favour of applicant in the interest of justice.”

15. During the pendency of this M.A. ad-interim relief was granted in favour of the applicant in terms of para 15(C) as mentioned above. This M.A. was tagged for hearing along with O.A. We have already held that the O.A. is liable to be dismissed being devoid of merits and hence Misc. Application is also liable to be dismissed. Hence, we pass the following order:-

ORDER

(i) Original Application No. 257/2021 stands dismissed.

(ii) In view of dismissal of O.A. No. 257/2021, M.A. No. 185/2021 also stands dismissed.

(iii) The interim relief granted vide order dated 13.7.2021 in M.A. No. 185/2021 hereby stands vacated.

(iv) There shall be no order as to costs.

MEMBER (A)

MEMBER (J)

Place : Aurangabad

Date : 23.06.2023

ARJ O.A. NO. 257-2021 WITH M.A. NO. 185-2021 (PROMOTION)