

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

COMMON ORDER IN O.A. NOS. 347/2015 AND 802/2015

1) Original Application No. 347/2015

DIST. : NANDED

1. Shri Dipak s/o Dnyanoba Edke,)
Age : 22 years, Occu. : Nil,)
R/o Shevadi (B), Tq. Loha,)
District Nanded.)
2. Shri Mainoddin Usman Shaikh)
s/o Usman Sarwar Shaikh,)
Age : 36 years, Occu. : Nil,)
R/o Adgaon, Tq. Loha,)
District Nanded.)
3. Shri Ram s/o Anant Bandewad,)
Age : 36 years, Occu. : Nil,)
R/o Sunegaon, Tq. Loha,)
District - Nanded.)

.. **APPLICANTS**

V E R S U S

1. The State of Maharashtra,)
(Copy to be served on the office of)
C.P.O., M.A.T. at Aurangabad.)
2. The District Collector, Nanded,)
District - Nanded.)
3. The Tahsildar,)
Tahsil Office, Loha, Tq. Loha,)
District - Nanded.)

.. **RESPONDENTS**

A N D

2) Original Application No. 802/2015

DIST. : NANDED

- Shri Raosaheb s/o Jairam Mhaske,)
Age : 38 years, Occu. : Nil,)
R/o Malkoli, Tq. Loha,)
District Nanded.)

.. **APPLICANT**

VERSUS

1. The State of Maharashtra,)
Through Secretary,)
Revenue Department, Mantralaya,)
Mumbai – 32.)
2. The District Collector,)
Nanded, District - Nanded.)
3. The Tahsildar,)
Tahsil Office, Loha, Tq. Loha,)
District – Nanded.) .. **RESPONDENTS**

 APPEARANCE :- Shri Pavan P. Uttarwar, learned Advocate
 for the applicants in both the matters.
 : Shri D.R. Patil, learned Presenting Officer
 for the respondents in both the matters.

CORAM : **Hon'ble Shri B.P. Patil, Member (J)**

DATE : **12.4.2019**

COMMON JUDGMENT

1. Facts and issues involved in both these Original Applications are identical & similar hence I have decided both the Original Applications by common this order.

2. The applicants have challenged the advertisement dated 11.3.2015 issued by the respondent no. 2 for appointment on the post of Koitwal of Loha Taluka and prayed to quash and set aside the same and also prayed to direct the respondents to issue

appointment order in their favour on the basis of G.R. 28.1.1974, by filing the present Original Application.

3. Applicant no. 1 Shri Dipak s/o Dnyanoba Edke in O.A. no. 347/2015 has passed 12th standard and also MS-CIT course. He belongs to S.C. category. His father namely Shri Dnyanoba Ghanshyam Edke was working as Kotwal of village Shevadi. He retired w.e.f. 30.4.2013 on attaining the age of superannuation. After his retirement the applicant no. 1 Dipak Edke filed representation to the res. nos. 2 & 3 seeking appointment on the post of Kotwal on retirement of his father. The District Collector, Nanded i.e. the res. no. 2 directed the Tahsildar, Tq. Loha, Dist. Nanded i.e. the res. no. 3 by the letter dtd. 29.1.2015 to take decision at his level as per rules and accordingly informed the applicant no. 1.

4. The applicant no. 2 Shri Mainoddin Usman Shaikh s/o Usman Sarwar Shaikh in O.A. no. 347/2015 has passed 9th standard. His father namely Shri Usman Sarwar Shaikh was working as Kotwal of village Borgaon (A), Tq. Loha. His father expired on 31.8.2006. Since from the date of death of his father applicant no. 2 Shri Mainoddin Usman Shaikh worked as Kotwal of village Borgaon (A), Tq. Loha and certificates to that effect are issued by the Tahsildar and by the Police Patil of the village. The

applicant no. 2 Shri Mainoddin Usman Shaikh in O.A. no. 347/2015 requested the res. no. 2 for appointing him on the post of Kotwal on compassionate ground vide letter dtd. 29.1.2015.

5. The applicant no. 3 Shri Ram s/o Anant Bandewad in O.A. no. 347/2015 has passed S.S.C. His father namely Shri Anant Bandewad was working as Kotwal of village Sunegaon, Tq. Loha and he died on 30.6.2006. After death of his father, applicant no. 3 Shri Ram Bandewad worked as Kotwal of village Sunegaon and certificates to that effect are also issued by the Talathi and Village Sarpanch and the Circle Officer, Loha. The applicant no. 3 therefore submitted representation to the res. no. 2 the District Collector, Nanded for appointment on compassionate ground on the post of Kotwal.

6. Applicant Shri Raosaheb s/o Jairam Mhaske in O.A. no. 802/2015 has passed 9th standard. He belongs to S.C. category. The father of applicant namely Shri Jairam Narba Mhaske was working as Kotwal of village Malkoli and he died on 23.11.2000 while working as Kotwal. After death of his father the applicant Shri Raosaheb Mhaske submitted representations on 5.12.2000, 27.11.2007, 12.4.2012, 6.6.2013 and 4.8.2015 to the res. no. 2 the Collector, Dist. Nanded seeking appointment on the post of Kotwal on compassionate ground. The res. no. 2 vide his letter

dtd. 30.4.2015 informed the applicant to apply for the post of Kotwal as per the advertisement. It is his contention that he worked and performed the duty of the post of Kotwal of village Malkoli since the date of death of his father.

7. The res. no. 3 the Tahsildar, Tq. Loha informed the applicants that he had not received any orders from the Government for appointing the wards of deceased Kotwals and therefore informed them to submit applications in pursuance of the advertisement issued by the res. no. 2 the Collector, Nanded. The res. no. 2 the Collector published advertisement inviting applications for the post of Kotwals on different villages situated in Loha Taluka. In all 32 posts were to be filled in. The eligibility criteria for appointment to the post of Kotwal was that the candidate must be above 18 years and below 40 years of age. He should be resident of Taluka for which he has applied. He has to appear for written examination to be held for 75 marks and 25 marks were prescribed for oral interview. The minimum qualification for calling the candidate for oral interview was that the candidate shall secure 45% marks in the written examination.

8. The applicants applied for the post of Kotwal in pursuance of the advertisement as per directions given by the res. nos. 2 & 3. They appeared for written examination. In the written

examination, the applicant no. 1 Shri Dipak s/o Dnyanoba Edke in O.A. no. 347/2015 has secured 32 marks. The applicant no. 2 Shri Mainoddin Usman Shaikh s/o Usman Sarwar Shaikh in O.A. no. 347/2015 has secured 26 marks in the written examination. The applicant no. 3 Shri Ram s/o Anant Bandewad in O.A. no. 347/2015 has secured 39 marks in the written examination. The applicant Shri Raosaheb s/o Jairam Mhaske in O.A. no. 802/2015 has secured 01 (one) mark in the written examination.

9. After written examination, the res. no. 3 published list of 92 candidates, who were eligible for oral interview to be held on 2.5.2015. The applicants were not called for oral interview as the respondents eliminated the applicants from the zone of consideration. As per G.R. dtd. 28.1.1974 issued by the Government a preference has to be given to the heirs of Kotwals while making appointments on the post of Kotwal. But the respondents had not considered the provisions of the said G.R. and eliminated the names of the applicants after written examination. It is their contention that the res. nos. 2 & 3 eliminated them from recruitment process illegally and in violation of G.R. dtd. 28.1.1974. It is their contention that Shri Raju s/o Uttam Hanawate & others in O.A. no. 449/2015 and 6 others have approached this Tribunal challenging the advertisement dtd.

11.3.2015. The said O.A. was heard and disposed of by the Tribunal vide order dtd. 16.10.2015 on the basis of submissions made by the respondents in the affidavit in reply, wherein the respondents stated that they were ready to appoint that applicants on the post of Kotwals as per advertisement issued by them and accordingly the respondents appointed the applicants in that case on the post of Kotwal. It is the contention of the applicants that their cases are also similar to the cases of applicants in O.A. no. 449/2015 but the respondents have not considered their cases while selecting the candidates for the post of Kotwals.

10. It is contention of the applicants that they worked as Kotwals after death / retirement of their respective fathers, but they have not been considered by the respondents. Therefore, they approached the Tribunal with a request to quash the advertisement dtd. 11.3.2015 and direct the respondents to issue appointment orders in their favour on the basis of G.R. dtd. 28.1.1974.

11. The res. nos. 2 & 3 in O.A. nos. 347/2015 filed affidavit in reply and resisted the contentions of the applicants. They have not disputed the fact that the applicants are legal heirs of the deceased / retired Kotwals. They have not disputed the fact that

applicants filed applications for their appointment on the post of Kotwal after death / retirement of their fathers. They have admitted the fact that respondents issued advertisement and invited applications for appointment on the post of Kotwal in different villages. They have admitted the fact that applicants filed applications accordingly and participated in the recruitment process. They have admitted the fact that the applicants appeared for the written examination and applicant no. 1 Shri Dipak s/o Dnyanoba Edke in O.A. no. 347/2015 has secured 32 marks, the applicant no. 2 Shri Mainoddin Usman Shaikh s/o Usman Sarwar Shaikh in O.A. no. 347/2015 has secured 26 marks and the applicant no. 3 Shri Ram s/o Anant Bandewad in O.A. no. 347/2015 has secured 39 marks in the written examination. It is their contention that minimum qualification for calling the candidate for oral interview is 45 % marks in the written examinations. The applicant nos. 1 & 2 in O.A. no. 347/2015 have not secured marks as per minimum qualification and therefore they were not called for oral interview. The applicant no. 3 Shri Ram Bandewad in O.A. no. 347/2015 has secured 39 marks in the written examination and therefore he was called for oral interview. After conclusion of the oral interview other candidates secured more marks in aggregate than the

applicant no. 3 Shri Ram Bandewad in O.A. no. 347/2015 and therefore he was not declared as selected candidate.

12. It is their contention that as per G.R. dtd. 28.1.1974 preference has to be given to the legal heirs of the retired / expired Kotwals in case they secure equal marks with other candidates and the G.R. does not provide to give employment to the legal heirs of retired / expired Kotwals, if they failed to fulfill the requisite criteria. It is their contention that the applicants participated in the selection process, but they secured less marks and therefore they are declared as unsuccessful candidates. It is their further contention that the applicants made representations to the res. no. 2 seeking appointment on the post of Kotwal. The res. no. 2 the District Collector, Nanded directed the res. no. 3 the Tahsildar, Tq. Loha, Dist. Nanded by the letter dtd. 29.1.2015 to take decision at his level on the representations of the applicants. The res. no. 3 informed the applicants that there is no provision to appoint the applicants on compassionate ground. Hence he rejected the representations of the applicants and informed them to file applications in view of advertisement dtd. 11.3.2015. The applicants accordingly applied for appointment on the post of Kotwal and participated in the recruitment process, but they are

not succeeded as they secured less marks in the written examination.

13. It is their contention that case of applicants in the present O.As. is not similar to that of the case of applicants in O.A. no. 449/2015 and the said applicants are appointed on merits and therefore applicants in the present O.A. cannot claim the relief on the principal of parity. On these grounds they prayed to reject both the Original Applications.

14. Res. no. 3 in O.A. no. 802/2015 has filed affidavit in reply and resisted the contentions of the applicant. He has raised similar contentions to that of the contentions raised by the respondents in O.A. no. 347/2015. It is his contention that applicant in O.A. no. 802/2015 participated in the recruitment process and participated in written examination. He secured only one (1) mark in the written examination. He secured lowest marks amongst the other aspiring candidates in the said recruitment process and therefore he was not called for oral interview as he has not secured minimum 45% marks in the written examination. It is his contention that as the applicant was not eligible to call for oral interview, he was not called for oral interview and consequently he was not considered for appointment on the post of Kotwal. He has contended that

recruitment process has been conducted as per terms and conditions of the advertisement and therefore he prayed to reject the O.A.

15. The applicants in O.A. no. 347/2015 filed affidavit in rejoinder and reiterated their contentions raised in the O.A. It is their contention that respondents had not considered their case in view of order passed by the Tribunal in O.A. no. 449/2015, though their cases were similar to that of applicants in O.A. no. 449/2015. Therefore, they prayed to allow the O.A. no. 347/2015.

16. I have heard Shri Pavan P. Uttarwar, learned Advocate for the applicants in both the matters and Shri D.R. Patil, learned Presenting Officer for the respondents in both the matters and perused the documents filed on record by both the parties.

17. Admittedly the applicant no. 1 Shri Dipak s/o Dnyanoba Edke in O.A. no. 347/2015 passed 12th standard and also MS-CIT course. He belongs to S.C. category. His father namely Shri Dnyanoba Ghanshyam Edke was working as Kotwal of village Shevadi. He retired w.e.f. 30.4.2013 on attaining the age of superannuation. Admittedly, the applicant no. 2 Shri Mainoddin Usman Shaikh s/o Usman Sarwar Shaikh in O.A. no. 347/2015

has passed 9th standard. Admittedly, his father namely Shri Usman Sarwar Shaikh was working as Kotwal of village Borgaon (A), Tq. Loha and died on 31.8.2006. Admittedly, the applicant no. 3 Shri Ram s/o Anant Bandewad in O.A. no. 347/2015 has passed S.S.C. His father namely Shri Anant Bandewad was working as Kotwal of village Sunegaon, Tq. Loha and he died on 30.6.2006. Admittedly, the applicant Shri Raosaheb s/o Jairam Mhaske in O.A. no. 802/2015 has passed 9th standard and he belongs to S.C. category. Admittedly his father namely Shri Jairam Narba Mhaske was working as Kotwal of village Malkoli and he died on 23.11.2000 while working as Kotwal. Admittedly after retirement / death of their respective fathers, the applicants worked as Kotwarls. Admittedly they made several representations to the respondents claiming appointment on the post of Kotwal as they being legal heirs of deceased / retired Kotwals. Admittedly the res. no. 2 directed the res. no. 3 to decide their representations as per rules. Admittedly, the res. no. 3 decided their representations on 30.4.2015 and rejected their representations on the ground that there is no provision to appoint the applicants on compassionate grounds and there are no orders from the Government to appoint the legal heirs of deceased / retired Kotwals on compassionate ground and accordingly informed the applicants to file applications in

pursuance to the advertisement. Admittedly the res. no. 2 published advertisement on 11.3.2015 inviting applications of aspiring candidates for appointment on the post of Kotwal of different villages including villages of Loha Taluka. Admittedly the applicants filed their applications and participated in the recruitment process. Admittedly they appeared for written examination held on 19.4.2015. In the written examination the applicant no. 1 Shri Dipak s/o Dnyanoba Edke in O.A. no. 347/2015 has secured 32 marks, the applicant no. 2 Shri Mainoddin Usman Shaikh s/o Usman Sarwar Shaikh in O.A. no. 347/2015 has secured 26 marks, the applicant no. 3 Shri Ram s/o Anant Bandewad in O.A. no. 347/2015 has secured 39 marks and the applicant Shri Raosaheb s/o Jairam Mhaske in O.A. no. 802/2015 has secured 01 (one) one mark. Admittedly, the applicant no. 3 Shri Ram s/o Anant Bandewad in O.A. no. 347/2015 was called for oral interview as he fulfilled the eligibility criteria by securing 45% marks in the written examination. He appeared for the oral interview but secured less marks than the other candidates and therefore he was not declared as selected candidate. Admittedly all other candidates who secured highest marks were declared as selected candidates. Admittedly one O.A. no. 449/2015 has been filed by Shri Raju s/o Uttam Hanawate & others before this Tribunal challenging the advertisement dtd.

11.3.2015. In that O.A. the respondents filed affidavit in reply stating that they are ready to appoint the applicants therein on the post of Kotwal as per the advertisement. Accordingly that O.A. was disposed of by the Tribunal vide order dtd. 16.10.2015. Admittedly, some of the candidates filed writ petition no. 7182/2014 with C.A. no. 3929/2015 in writ petition No. 7182/2014 before the Hon'ble High Court of Judicature at Bombay, Aurangabad Bench challenging the advertisement dtd. 11.3.2015, but the Hon'ble High Court rejected the said writ petition observing that the petitioners would be entitled to participate in the new recruitment process; and if the procedure of recruitment prescribes that weightage to be given to the experience, the concerned authority will consider the same, taking into account the experience possessed by the petitioners in the said petition.

18. Learned Advocate for the applicants has submitted that the applicants are not pressing the prayer clause (B) challenging the advertisement dtd. 11.3.2015 and he restricted his arguments so far as other reliefs sought by the applicants in the present O.A.

19. Learned Advocate for the applicants has submitted that all the applicants are legal heirs of deceased / expired Kotwals. He has submitted that the Government issued G.R. dtd. 28.1.1974

and decided to give preference to the heirs of Kotwals for appointment on the post of Kotwal. He has submitted that in view of the said G.R. the res. no. 3 ought to have given preference to the applicants while giving appointment on the post of Kotwal, but respondents had not considered the cases of the applicants accordingly and therefore he prayed to issue appropriate directions to the respondents to consider the cases of the applicants and to appoint them on the vacant post of Kotwals.

20. Leaned Advocate for the applicants has further submitted that the applicants worked as Kotwal since the date of retirement / death of their respective fathers but the said aspect has not been considered by the res. no. 3 while making appointment on the post of Kotwal. He has submitted that the res. no. 3 has not considered the fact that the cases of applicants in the present O.As. are similar to that of the cases of applicants in O.A. no. 449/2015. He has argued that the res. no. 3 has given appointment to the applicants in O.A. no. 449/2015 on the ground that they are heirs of the deceased Kotwals, but the same criteria has not been applied to the present applicants and therefore the res. no. 3 has made discrimination and therefore he has prayed to quash the impugned communication and direct the

res. no. 3 to issue appointment to the present applicants on the post of Kotwals, by allowing the present O.As.

21. Learned Presenting Officer has submitted that the applicants in O.A. nos. 347/2015 and 802/2015 had participated in the recruitment process and appeared for the written examination. All the applicants except the applicant no. 3 Shri Ram s/o Anant Bandewad in O.A. no. 347/2015 secured less marks than the eligibility criteria for calling them for oral interview. As they have not secured minimum 45% marks in the written examination they were not called for oral interview. Only the applicant no. 3 Shri Ram Bandewad in O.A. no. 347/2015 secured 39 marks in the written examination and therefore he was qualified for oral interview. Rest of the applicants i.e. the applicant no. 1 Shri Dipak s/o Dnyanoba Edke, the applicant no. 2 Shri Mainoddin Usman Shaikh s/o Usman Sarwar Shaikh in O.A. no. 347/2015 and the applicant Shri Raosaheb s/o Jairam Mhaske in O.A. no. 802/2015 secured 32, 26 & 01 marks respectively in the written examination and therefore they were not called for oral interview. In oral interview the applicant no. 3 Shri Ram s/o Anant Bandewad in O.A. no. 347/2015 secured less marks than other candidates and therefore he was not declared as successful candidate. He has submitted that as per G.R. dtd.

28.1.1974 a preference to the legal heirs of the Ex-Kotwals has to be given if other things are equal with other candidates. He has submitted that as the applicants secured less marks than other candidates, who had appeared for written examination / oral interview, no question of giving preference to the applicants who are legal heirs of Ex-Kotwals in the recruitment process, arises and therefore the res. no. 3 has rightly declared the applicants as unsuccessful candidates and therefore there is no illegality in the impugned order. Therefore, he prayed to reject the Original Applications.

22. On perusal of documents it reveals that the res. no. 2 issued advertisement on 11.3.2015 inviting applications from aspiring candidates for appointment on the post of Kotwals of different villages of Dist. Nanded. The said advertisement has been challenged by some of candidates before the Hon'ble High Court by filing writ petition No. 7182/2014, which was rejected by the Hon'ble High Court on 7.4.2015. It has been observed by the Hon'ble High Court as follows :-

“3. It is needless to observe that the petitioners would be entitled to participate in the new recruitment process; and if the procedure of recruitment prescribes that weightage to be given to the experience, the concerned authority will

consider the same, taking into account the experience possessed by the petitioners.

23. The applicants filed their applications in pursuance of the advertisement dtd. 11.3.2015. On going through the advertisement placed on record at pages 27 to 37, it reveals that reference of G.R. dtd. 28.1.1974 has been given in the said advertisement. It has been specifically mentioned that the written examination of 75 marks and oral interview of 25 marks will be held. It has been mentioned therein that the candidates securing 45% marks in the written examination will be eligible for oral interview. As per the advertisement the applicants filed their applications and participated in the recruitment process. They appeared for written examination. Except the applicant no. 3 Shri Ram s/o Anant Bandewad in O.A. no. 347/2015, rest of the applicants secured less marks in the written examination and therefore they were not eligible for oral interview. The applicant no. 1 Shri Dipak s/o Dnyanoba Edke in O.A. no. 347/2015 has secured 32 marks, the applicant no. 2 Shri Mainoddin Usman Shaikh s/o Usman Sarwar Shaikh in O.A. no. 347/2015 has secured 26 marks, the applicant no. 3 Shri Ram s/o Anant Bandewad in O.A. no. 347/2015 has secured 39 marks and the applicant Shri Raosaheb s/o Jairam Mhaske in O.A. no. 802/2015 has secured 01 (one) mark, in the written examination.

The applicant no. 3 Shri Ram s/o Anant Bandewad in O.A. no. 347/2015 was called for oral interview, but he has secured less marks in oral interview & in aggregate and therefore he was not declared as successful candidate. These facts are sufficient to show that applicants were not successful in the recruitment process as they had not fulfilled the eligibility criteria and therefore they are not declared as successful candidates. The other candidates secured more marks than the applicants in the written examination and oral interview and therefore they were declared as selected candidates. Therefore, in my view, there is no illegality in the impugned order. All the applicants, except the applicant no. 3 Shri Ram s/o Anant Bandewad in O.A. no. 347/2015, have not secured minimum 45% marks in the written examination as per the eligibility criteria and therefore they were not called for oral interview. The applicant no. 3 Shri Ram s/o Anant Bandewad in O.A. no. 347/2015 was called for oral interview but he secured less marks in oral interview & in aggregate and therefore he was declared as unsuccessful candidate. Therefore no question of considering the provisions of G.R. dated 28.1.1974 in the case of present applicants arises. The provisions of G.R. dtd. 28.1.1974 provides that preference should be given to the legal heirs of Ex-Kotwals in case where all other things are equal with the other candidates who have participated

in the recruitment process. Preference should be given to the heirs of Ex-Kotwal only when all the candidates including the legal heirs of Ex-Kotwals secure equal marks. But facts in these cases are different. All the applicants secured less marks than other candidates. Therefore, the applicants cannot take benefit of the said G.R.

24. The applicants in O.A. no. 449/2015 were called for oral interview and they secured more marks than other candidates and therefore they were declared as selected candidates and were appointed on the post of Kotwals. The facts in the present cases are not identical with the facts in O.A. no. 449/2015 and therefore the decision in that case is not much useful to the present applicants. There is no discrimination on the part of res. nos. 2 & 3 while conducting the selection process. Therefore, I find no substance in the submissions advanced in that regard by the learned Advocate of the applicants.

25. It is material to note here that the res. no. 3 by communication dated 30.4.2015 i.e. prior to filing of present Original Applications rejected the applications of the applicants claiming appointment on the post of Kotwals on the ground that they are legal heirs of the deceased / retired Kotwals, but they have not challenged the said communication dtd. 30.4.2015 and

without challenging the said communication the applicants approached the Tribunal, therefore relief claimed by the applicants cannot be considered on that ground.

26. In view of above facts, in my view, there is no illegality in the impugned order issued by the res. no. 3 rejecting the claim of the applicants. The res. no. 3 has conducted the recruitment process in view of the advertisement and G.Rs. issued by the Government from time to time. Therefore no interference is called for in the impugned order. There is no merit in the Original Applications and therefore the same deserve to be dismissed.

27. In view of discussion in foregoing paragraphs the Original Application nos. 347/2015 and 802/2015 stand dismissed with no order as to costs.

MEMBER (J)