

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 440 OF 2017

DISTRICT: - JALGAON.

Shri Vijay S/o. Ramchandra Gaikwad,
Age-24 years, Occu. : Nil,
R/o. House No. 7, Shivnagar Khedi (Bk),
Tq. & Dist. Jalgaon.

.. APPLICANT.

V E R S U S

- 1. The Director General of Police,**
Police Head Quarters,
Old Council Hall,
Shahid Bhagatsing Marg, Colaba,
City, Mumbai-400 001.
- 2. The Special Inspector General of Police,**
Office of Additional Director General of
Police, Training and Special Squad,
Shahid Bhagatsing Marg, Colaba,
Maharashtra State,
Mumbai-400001
- 3. The District Superintendent of Police,**
Office of Superintendent of Police,
In front of New Bus Stand,
Jalgaon, Tq. and Dist. Jalgaon. .. RESPONDENTS.

APPEARANCE : Shri. Vijay B. Patil, learned Advocate
for the applicant.

: Mrs. Deepali S. Deshpande – learned
Presenting Officer for the respondents.

CORAM : **JUSTICE A.H. JOSHI, CHAIRMAN**
AND
: **ATUL RAJ CHADHA, MEMBER (A)**

RESERVED ON : **22.02.2019.**

PRONOUNCED ON : **27.02.2019.**

ORDER**[Per : Justice A.H. Joshi, Chairman]**

1. Heard Shri Vijay B. Patil, learned Advocate for the applicant and Mrs. Deepali S. Deshpande, learned Presenting Officer for the respondents.
2. By this Original Application the applicant has challenged order, Annexure 'A-8', dated 6.3.2017, a copy of which is placed on record at page-20 of the O.A.
3. By the impugned order the provisional selection of the applicant as Police Constable has been cancelled. The impugned order discloses the reasons for its issuance. Those reasons are as follows: -

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उपरोक्त संदर्भ क्रमांक २ चे शासन राजपत्र भाग चार-ब गृह विभाग, मंत्रालय, मुंबई-३२ दिनांक १६ जुन २०११ मधील अ.क्र.६ मध्ये वैदयकीय तपासणी बाबत नमुद केले आहे की, “निवड झालेल्या उमेदवारांची वैदयकीय तपासणी संदर्भात महाराष्ट्र नागरी सेवा (सेवेच्या सर्वसाधारण शर्ती) नियम १९८१ मधील तरतुदी तसेच शासनाने वेळोवेळी विहित केलेल्या तरतुदी लागू होतील. याशिवाय वैदयकीय चाचणीत दृष्टीदोष, तिरछेपणा, रातआंधळेपणा, वर्णांधतेपणा, गुडघ्यास गुडघा लागणे, सपाट तळवे, त्वचारोग, छातीचे रोग व महासंचालकांनी वेळोवेळी विहित केलेल्या वैदयकीय चाचण्यांचा समावेश असेल. या चाचण्यांमध्ये उमेदवारांत दोष आढळल्यास अथवा उमेदवार अपात्र ठरल्यास त्यास नियुक्ती देण्यात येणार नाही.

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वरील नमुद केल्याप्रमाणे आपली वैद्यकीय तपासणी ही अनुक्रमे, १) सामान्य रुग्णालय, जळगांव २) वैद्यकीय मंडळ, धुळे ३) निर्देशी वैद्यकीय मंडळ, ससुन सर्वोपचार रुग्णालय, पुणे ४) जे.जे. रुग्णालय, मुंबई येथे करण्यात आली असता सर्व ठिकाणी आपणास नेत्रदोष असल्याचे नमुद केलेले आहे. यास्तव आपली पोलीस भरती २०१५-१६ अनुशंगाने पोलीस शिपाई पदावर प्रोव्हीजनल लिस्टद्वारे झालेली निवड रद्द करण्यात येत आहे.”

(Quoted from page Nos. 20 & 21 of O.A.)

4. In the present O.A. the applicant has challenged the impugned order with averments contained in the paragraph No. 11, and also by submissions contained in the paragraph No. 6 of the rejoinder. Relevant paragraphs are quoted below for ready reference.

“11. That, apart from this, the Board of Referees of Sir J.J. Group of Hospital, Mumbai has clearly stated that the applicant is fit for performing duties of Police Constable and giving an exception as a partial colour blindness. That, this partial colour blindness does not disqualify the applicant for appointment on the post of Police Constable. That, there is no any statutory provision to disqualify the applicant on the post of Police Constable, on the ground of partial colour blindness, hence the impugned order is illegal, bad in law.”

(Quoted from page-5 of O.A.)

*“6. That, in this fact, the applicant herewith producing the information received under the Right to Information Act as per letter dated 16.11.2018, in the similar facts, the respondent No. 3 have issued an appointment in favor of Ravindra Harish Suradkar. That, on perusal at page No. 45, the name of the Ravindra Harish Suradkar is appeared at St. No. 22. Similarly he was also referred at Jalgaon, Dhule, Pune and J.J. Hospital at Mumbai and the applicant is similar situated to him. That, while issuing an order in favour of Ravindra the respondent No. 3 has considered the order passed by the Hon’ble M.A.T. at Bombay in O.A. No. 270 of 2015. Hence in this fact that, when the respondent No. 3 has appointed similar situated like applicant, then it is expected that the applicant is also entitled to get an appointment. Here to annexed and marked as **Annexure R-1** is the copy of letter dated 16.11.2018 and appointment order.”*

(Quoted from page Nos. 54 & 55 of O.A.)

5. The contents of paragraph No. 11 of the O.A. are replied by the respondents in paragraph 19 of affidavit in reply, which reads as follows: -

“19. So far as contentions made at para No. VI(11)(12) are concerned, I say and submit that, in Maharashtra Police Constable (Service) Rules, rule No. 6, it is clearly mentioned that,

“..... वैद्यकिय चाचणीत दृष्टीदोष, तिरडेपणा, रातआंधळेपणा, वर्णांधळेपणा, गुडघ्यास गुडघा लागणे, सपाट तळवे, त्वचा रोग, छातीचे रोग व महासंचालकांनी वेळोवेळी विहित केलेल्या वैद्यकिय चाचण्यांचा समावेश असेल. या चाचण्यांमध्ये उमेदवारात दोष आढळल्यास अथवा उमेदवार अपात्र ठरल्यास त्यास नियुक्ती देण्यात येणार नाही. ”

On this count alone, there is no substance in the allegations / contentions made by the applicant. Hence, the application of the applicant needs to be dismissed.”

(Quoted from page-32 of the O.A.)

6. In so far the contents of paragraph No. 6 of rejoinder are concerned, the learned Presenting Officer has argued that recruitment rules prescribed and lay down without any ambiguity that colour blindness (वर्णांधळेपणा) is ground prescribed as lack of eligibility or disqualification, and any isolated appointment cannot operate as a precedent. Moreover, a Medical Board is not competent authority to certify fitness of a candidate contrary to the recruitment rules.

7. We have examined respective submissions. Applicant's primary plea was that there is no rule of law, which could authorize rejection of candidature on account of colour blindness.

8. This argument of the applicant was in the nature of a gambling. In fact the applicant had neglected to read the text of impugned order which clearly described the deficiency. Moreover rule 6 of the recruitment very clearly lays down the colour blindness as a disqualification.

9. Moreover, it is not shown that recruitment rules or any other law provides describe or vest any power with the Medical Board to assess and gauge the degree of colour blindness to be a certifying authority for certification that a colour blind vision of a particular level could be regarded as a fit.

10. This Tribunal is of the considered view that fitness in the matters of service of Forces cannot be regarded as a compoundable.

11. The recruitment rules framed in the year 2011 prescribed the standard of fitness and rule 6 thereof pertains to medical fitness and parameters and none amongst disqualification referred therein can be condoned by the Medical Board. No authority to certify a person tagged with a disqualification by Recruitment Rules can certify a candidate to be fit in violation of mandatory eligibility laid down by

Recruitment Rules framed under Article 309 of Constitution of India. The certificate relied by the applicant, which contains an endorsement “-----Board declares him fit to perform duties of Police Constable” except he has partial colour blindness is thus illegal and violative of rule 6 of Maharashtra Police Constable (Recruitment) Rules, 2011.

12. The opinion given by the Medical Board leads to element of subjectivity, which is averred at deprecated. Medical Board as to examine the case as per the standards prescribed and without compromising. The standards has to ability of vision vary from post to post and it has to be presumed that legislative competence in the matter of prescription of standard is final and no other expert or executive body can interfere in such matters.

13. No authority including Medical Authority at any level can exercise a power “sue motu” to interfere or dabble with the prescription contained in the recruitment rules.

14. The case of Shri Suradkar relied upon by the applicant being a case of violation of the mandatory rules as regards fitness cannot operate as a precedent.

15. We have perused the judgment of this Tribunal rendered in O.A. No. 270/2015 (by Shri Rajiv Agarwal, Vice Chairman and Shri R.B. Malik, Member (J)) dated 08.05.2015 in case of Suraj Ashok Barge. We find that this Tribunal had issued direction to refer the candidate Shri Suraj Ashok Barge to medical Board in J.J. Hospital, Mumbai. This judgment does not lay down that an individual with colour blindness can be appointed. On the other hand this Tribunal in express words directed that candidate concerned be appointed if found fit which necessary means "fit as per Recruitment Rules" and nothing else.

16. Therefore, while dismissing the present O.A. being without merit, we direct that the aspect of undue interference in the matters of statutory prescription of Recruitment Rules, done by the medical board should be strictly refrained. For this purpose, copy of the judgment be sent to (i) Secretary, Medical Education and Research; (ii) Director, Medical Education and Research; (iii) The Dean of JJ Hospital and (iv) All Civil Surgeons, with a direction to bring this judgment and specifically foregoing paragraphs to the notice of Members of the Medical Board and they be directed to keep in mind direction contained in this order as a standing direction.

17. In the circumstances, the parties are directed to bear their own costs.

MEMBER (A)

CHAIRMAN

PLACE : AURANGABAD.

DATE : 27.02.2019.

O.A.NO.440-2017(DB-Selection-Appointment)-HDD-2019