

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 481 OF 2017**

DISTRICT: - AURANGABAD.

Anil S/o Madan Tambe  
Age : 24 years, Occu: Agri  
R/o Thergaon, Tq. Paithan,  
Dist. Aurangabad.

.. APPLICANT.

**V E R S U S**

1. The State of Maharashtra  
Through : Secretary  
Home Department,  
Mantralaya, Mumbai 32.

2. The Commandant  
State Reserve Police Force  
(SRPF), Group No. 3,  
SRPF Campus, Jalna.

.. RESPONDENTS

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**APPEARANCE** : Smt. Suchita A. Dhongde, learned  
Advocate holding for Shri S.D.  
Dhongde, learned Advocate for the  
applicant.

: Smt. M.S. Patni – learned  
Presenting Officer for the  
respondents.

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**CORAM** : **J.D. KULKARNI, VICE CHAIRMAN**  
**AND**  
: **SHRI ATUL RAJ CHADHA, MEMBER (A)**

**DATE** : **23<sup>rd</sup> AUGUST, 2018.**

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**J U D G M E N T****[Per : J.D. Kulkarni, Vice Chairman]**

1. Heard Smt. Suchita A. Dhongde, learned Advocate holding for Shri S.D. Dhongde, learned Advocate for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondents.

2. The applicant belongs to Mali caste, which comes under OBC category. He possesses Degree in Bachelors in Arts In response to the advertisement published by the respondents in the month of October-November 2011, the applicant applied for the post of Police Constable (SRPF), Group No. 3, Jalna. Out of 145 posts near about 35 posts were reserved for OBC category. The applicant participated in the process of recruitment and secured 88 marks in physical test and 80 marks in written test and considering his merit, he came to be selected for the post.

3. As per the procedure, respondent No. 2 called for Police Verification Report before issuing appointment order and the Superintendent of Police (Rural), Aurangabad vide letter dated 10.1.2012 informed respondent No. 2 that crime No. 1-115/2009 for the offences punishable under Sections 324, 452, 323, 504 & 506 r/w 34 of IPC was registered against the applicant and, therefore, since criminal case was pending

against the applicant his selection was cancelled. It seems that the applicant challenged the order his non-selection by filing O.A. No. 166/2012 before this Tribunal, but the said O.A. was dismissed vide judgment and order dated 29.2.2012 by this Tribunal Bench at Aurangabad.

4. In the meantime the criminal case RCC No. 10/2010, which was pending against the applicant was decided and the applicant was acquitted vide order dated 2.8.2014. The applicant, therefore, immediately filed representation on 1.12.2014 and requested that in view of his acquittal from the criminal case he be reconsidered for appointment. However, his request has not been considered and, therefore, the applicant was pleased to file the present Original Application.

5. In the present Original Application the applicant has prayed the following main reliefs : -

***“B) In view of the order passed in Original Application No. 362/2014. The impugned communication caused by the respondent No. 2 dated 19.1.2012 be quashed and set aside.***

***C) In view of the G.R. dated 27.09.2014 (the date might be 26.8.2014). The respondents be directed to appoint the applicant as constable***

***SRPF, Group No. 2, Jalna on the basis of his selection in the test and interview forthwith.***

***D) Due to acquittal in criminal case No. 1-115/2009. The impugned communication dated 19.01.2012 be quashed and set aside.”***

6. Respondent No. 2 has filed the affidavit in reply and justified the non-selection of the applicant. It is stated that on similar ground earlier O.A. No. 166/2012 was filed and it was dismissed and, therefore, merely because the applicant is acquitted, he cannot be reconsidered since it was conscious decision of the Committee not to appoint the applicant. It is further stated that G.R. on which the applicant is relying is not applicable to the present case.

7. We have perused the order passed by this Tribunal in earlier O.A. No. 166/2012. The copy of the said order is placed on record along with the reply affidavit at Exhibit 'R-1' (paper book page Nos. 35 to 49 both inclusive). In the said O.A. the relief claimed by the applicant was that the impugned letter / order dated 19.1.2012 issued by respondent No. 2 be quashed and set aside. The same relief has also been claimed in the present Original Application as has been seen from prayer clause 9 (B).

8. Learned Advocate for the applicant submits that the applicant has been acquitted in criminal case. The copy of the judgment of RCC No. 10/2010 is placed on record at Annexure 'A-2', (paper book page Nos. 11 to 16 both inclusive). The said judgment shows that the applicant was acquitted of the criminal charges on 2.8.2014. Admittedly, when the decision was taken by the Competent Authority not to appoint the applicant, the criminal case was pending against him and the entire process of recruitment must have been completed. The said decision was taken in the year 2012 and after acquittal in the year 2014 i.e. on 2.8.2014 the applicant is claiming appointment merely because he was acquitted. From paragraph No. 10 of the judgment in RCC 10/2010 it seems that there might be compromise between the applicant and complainant in the criminal case and that was the reason as to why the applicant was acquitted. The said relevant observation in paragraph 10 of the judgment is as under: -

**“10. अभियोगपक्षाचा तोंडी पुरावा व दाखल कागदोपत्री पुरावा सुलोनामा निशाणी 25 व साक्षीदार तपासणी नसल्याबाबतची पुरसीस निशाणी 26 विचारात घेता आरोपी व तक्रारदार यांच्यात तडजोड झाली आहे. त्यांच्यात काहीही वाद राहिलेला नाही. तक्रारदारास अन्य कोणतेही साक्षीदार तपासायचे नाही व केस पुढे चालविणे नाही. त्यामुळे अभियोगपक्ष आरोपी विरुद्ध कलम 452, 324, 323, 504 व 506 भारतीय दंड विधानाप्रमाणे गुन्हा सिद्ध करू शकला नाही.”**

9. The fact however, remains that when the Competent Authority was considering the applicant's case as to whether he shall be appointed or not, the criminal case was pending against the applicant and, therefore, the Committee took a conscious decision not to appoint the applicant.

10. Learned Advocate for the applicant placed reliance on the Government Resolution dated 26<sup>th</sup> August, 2014 (Annexure 'A-6', paper book Page Nos. 42 to 50 both inclusive). It is material to note that the G.R. is subsequently issued and the decision not to appoint the applicant was already taken by the Competent Authority prior to issuance of this G.R. and, therefore, this G.R. cannot help the applicant.

11. Learned Advocate for the applicant has placed on record a copy of the application form filed by the applicant at the time of recruitment, which is marked as document 'X' for the purpose of identification. Learned Advocate for the applicant submits that in answer to paragraph Nos. 10 & 11, the applicant has clearly mentioned that crime No. 115/2009 for the offences punishable under Sections 324, 452, 323, 504 & 506 r/w 34 of IPC was pending against him in the Court at Paithan and, therefore, he has not misled the authority nor he has concealed the information about pendency of the criminal

case. It is material to note that the applicant's claim has not been rejected on the ground that he has concealed the information, but it was rejected since the Competent Authority took conscious decision not to appoint him. It is material to note that recruitment process was initiated long back in the year 2011 and the applicant's claim was also rejected in January, 2012. Since the said rejection has been upheld by this Tribunal in O.A. No. 166/2012, the applicant has no *locus standi* to file the present Original Application again merely because he has been acquitted.

12. Thus, from the record it seems that the earlier decision dated 19.1.2012 was taken by the Competent Authority consciously and it was decided not to appoint the applicant because of the pendency of the criminal case against him on grievous charges and that decision was earlier challenged before this Tribunal in O.A. No. 166/2012 and it was upheld. Therefore, on the same cause of action the applicant cannot claim appointment merely because he is acquitted subsequently. The G.R. dated 26<sup>th</sup> August, 2014 is not at all applicable to the applicant's case, as his case was not under consideration for appointment at the time of issuance of the said G.R. and conscious decision was already taken in the year

2012 not to appoint him. We, therefore, do not find any merit in the present Original Application. Hence, the following order:-

**ORDER**

The present Original Application stands dismissed with no order as to costs.

**MEMBER (A)**

**VICE CHAIRMAN**

**PLACE : AURANGABAD.**

**DATE : 23<sup>rd</sup> AUGUST, 2018.**

O.A.NO.664-2013(DB)-HDD-2018-Appointment