

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 835 OF 2018
(Subject – Police Patil)**

DISTRICT : DHULE

Shri Sunil Kalsing Pawara,)
Age : 39 years, Occu. : Nil,)
R/o : At Post Umarda, Taluka Shirpur,)
District : Dhule.)

.... APPLICANT

V E R S U S

1. **The State of Maharashtra,**)
Through Secretary,)
Home Department, Mantralaya, Mumbai-32.)
2. **The Divisional Commissioner,**)
Nashik Division, Nashik.)
3. **Bhaidas Rehanjya Vasave,**)
Age: Major, Occ: Nil,)
R/o: At post Umarda, Taluka Shirpur,)
Dist. Dhule
4. **The Collector,** Dhule, District Dhule.)
5. **The Sub Divisional Magistrate,**)
Shirpur Sub-Division, Shirpur,)
District Dhule.)

... RESPONDENTS

APPEARANCE : Shri C.V. Bhadane, Advocate for Applicant.

: Shri I.S. Thorat, P.O. for Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **27.02.2023**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed challenging selection and appointment order dated 30.10.2018 (Annexure A-9) of respondent No. 3 i.e. Bhaidas Rehanjya Vasave to the post of Police Patil of village Umarda (Pesa), Taluka Shirpur, District Dhule in pursuance of the advertisement No. 01/2018 dated 14.08.2018 (Annexure A-1) and seeking direction to the respondent authorities to issue appointment order in favour of the applicant on the post of Police Patil of village Umarda (Pesa), Taluka Shirpur, District Dhule.

2. The facts in brief giving rise to this Original Application can be stated as follows :-

(a) The applicant has completed education such as 12th std. and the father of the applicant has also served as Police Patil of village Umarda (Pesa), Taluka Shirpur, District Dhule as reflected in applicant's father's identity card (Annexure A-1).

(b) The applicant is permanent resident of village Umarda (Pesa), Taluka Shirpur, District Dhule. As per the advertisement of recruitment of Police Patil of village

Umarda (Pesa), Taluka Shirpur, District Dhule dated 14.08.2018 (Annexure A-2) issued by the respondent No. 3 i.e. the Sub Divisional Magistrate, Shirpur, Dist. Dhule, the said post is reserved for S.T. category. Thereby online applications were invited. The applicant, as well as, respondent No. 3 belongs to S.T. category.

(c) The applicant applied for the said post of Police Patil of village Umarda (Pesa), Taluka Shirpur, District Dhule within prescribed period. His form was accepted. Hall ticket for written examination was generated. His online application form and hall ticket are at Annexure A-3 collectively. The applicant appeared for written examination, which was held on 16.09.2018.

(d) Result of the aforesaid examination was declared and mark list (Annexure A-4) was published on the website. The applicant secured 57 marks in the said written examination, whereas the respondent No. 3 i.e. Bhaidas Rehanjya Vasave and one another candidate Shri Aakash Narsing Vasave, who also appeared for the said written examination secured 55 and 54 marks respectively.

(e) As per the prescribed procedure, the respondent authorities called the applicant and two others viz. Bhaidas Rehanjya Vasave and Shri Aakash Narsing Vasave for oral interview and documents verification as per list at Annexure A-5.

(f) Oral interview was conducted on 04.10.2018, in which the present applicant and respondent No. 3 appeared. The third candidate Shri Aakash Narsing Vasave did not remain present for the said oral interview. Amongst the applicant and respondent No. 3 i.e. Bhaidas Rehanjya Vasave, the applicant obtained highest marks in written examination. Moreover, the father of the applicant was ex-Police Patil of village Umarda (Pesa), Taluka Shirpur, District Dhule.

(g) However, surprisingly on 06.10.2018, the respondent authorities without disclosing marks secured in oral interview and without following the terms of clause Nos. 7, 20 and 21 of the advertisement directly declared the respondent No. 3 being secured highest marks and eligible candidate for appointment as Police Patil of village Umarda (Pesa), Taluka Shirpur, District Dhule.

(h) In view of above, according to the applicant the entire action on the part of respondent authorities was against the settled principles of law and recruitment process and there was lack of transparency.

(i) The applicant, therefore, filed applications / representations dated 12.10.2018 (Annexure A-6 collectively) addressed to the respondent No. 4 i.e. the District Collector, Dhule and respondent No. 5 i.e. the Sub-Divisional Magistrate, Shirpur, Dist. Dhule respectively, thereby seeking information regarding allotment of marks in oral interview on 04.10.2018. The respondent authorities responded to the said application and gave document stating details of allotment of marks of candidates for oral interview held on 04.10.2018 of Police Patil of village Umarda (Pesa), Taluka Shirpur, District Dhule, which is at Annexure A-7. The said document shows allotment of marks in oral interview being contrary to the terms and conditions of Clause Nos. 7, 20 and 21 as prescribed in advertisement No. 1/2018 published on 14.08.2018 (Annexure A-1). The said clause Nos. 7, 20 and 21 are as follows :-

- “७. पोलिस पाटील पदावरील नियुक्तिकरिता मृत / सेवानिवृत्त पोलिस पाटलाच्या वारसाने अर्ज केल्यास त्याला प्राधान्य देण्यात येईल. परंतु याचा अर्थ एकाच स्थानासाठी (Position) पोलिस पाटलाच्या वारसासह दोन किंवा अधिक उमेदवारांना समान गुण मिळाल्यास पोलिस पाटलाच्या वारसाची निवड करण्यात प्राधान्य देण्यात येईल. परंतु तो महाराष्ट्र ग्राम पोलिस पाटील (सेवा प्रवेश, पगार भत्ते आणि सेवेच्या इतर शर्ती) आदेश १९६८ व त्या मध्ये वेळोवेळी करण्यात आलेल्या सुधारणांनुसार सर्व अटी व शर्ती पूर्ण करित असला पाहिजे. तसेच तो दिनांक १८.१०.२००८ च्या शासन निर्णयानुसार त्या गावासाठी ठरविण्यात आलेल्या सामाजिक / समांतर आरक्षणाचा असला पाहिजे.
२०. लेखी परीक्षेत मुलाखतीस पात्र ठरलेल्या उमेदवारास, पोलीस पाटील भरती / निवडीसाठी घेण्यात येणा-या २० गुणांच्या तोंडी (मुलाखत) परिक्षेस उपस्थित राहणे अनिवार्य राहिल. तोंडी परिक्षेत अनुपस्थित राहणारा उमेदवार अंतिम निवडीस अपात्र ठरेल. मात्र एखादया उमेदवाराला मुलाखतीत शुन्य गुण मिळाले असले तरी लेखी परिक्षेतील गुणांच्या आधारे तो जर गुणवत्ता यादीत येत असेल तर असा उमेदवार पोलिस पाटील पदावरील निवडीकरिता पात्र राहिल.
२१. समान गुण मिळाल्यास अंतिम निवड :- शासन निर्णय क्रमांक बीव्हीपी १११३/१७६७/प्र.क्र. ५९२/पोल-८, दि. २२.०८.२०१४ अन्वये, गुणवत्ता यादीतील एकाच स्थानासाठी (Position) दोन किंवा अधिक उमेदवारांना समान गुण मिळाल्यास खालील प्राधान्य क्रमाच्या आधारे उमेदवाराची अंतिम निवड केली जाईल.
१. पोलीस पाटलांचे वारस; त्यानंतर
 २. अर्ज सादर करण्याच्या अंतिम दिनांकास उच्च शैक्षणिक अर्हता धारण करणारे उमेदवार, त्यानंतर
 ३. माजी सैनिक असलेले उमेदवारत्यानंतर,
 ४. वयाचे ज्येष्ठ असलेले उमेदवार
- # पोलीस पाटलांच्या वारसामध्ये पती, पत्नी आणि दोन मुले यांचा समावेश राहिल. त्या व्यतिरिक्त अन्य कोणत्याही नातेवाईकाचा वारस म्हणून विचार करता येणार नाही.”

(j) It is contended that the Selection Committee adhered to the process of allotment of marks, which is not prescribed in either advertisement or any of the Rules of Recruitment. As per the details of marks produced by the respondent authorities, the applicant secured 5 marks, whereas the respondent No. 3 secured 12 marks in oral

interview. Out of 12 marks secured by the respondent No. 3, 7 marks were given to the higher education, which was not prescribed criteria for allotment of marks. In view of that, in oral interview the applicant in fact secured 2 marks and respondent No. 3 secured 0 marks in communication skill, which was relevant factor. Hence, considering the marks secured in written examination and oral interview, the applicant ought to have been selected for the post of Police Patil of village Umarda (Pesa), Taluka Shirpur, District Dhule. The respondent No. 3 during pendency of the present Original Application was given appointment order by the impugned order dated 30.10.2018 (Annexure A-9). In view of this, the present Original Application is filed challenging the selection and appointment of respondent No. 3 to the post of Police Patil of village Umarda (Pesa), Taluka Shirpur, District Dhule as above and seeking appointment for himself being selected candidate. Hence, the present Original Application.

3. The affidavit in reply is filed on behalf of respondent Nos. 4 and 5 by one Shri Chandrashekhar S/o Sampatrao Deshmukh, working as Tahsildar, Shirpur, District Dhule, thereby he denied all the adverse contentions raised in the present Original

Application. It is specifically submitted that as per the provisions of Rule 5 of Government of Maharashtra's Circular No. BVP 3564-VI, if two or more candidates gets similar marks in the exam of Police Patil then the selection criteria is as per following conditions :-

1. Legal heir of Police Patil then
2. The candidate who was more educated than the other candidates at the last date of filing of application, then
3. Candidate who was ex-military man, then
4. Candidate more in age.

After calculating marks to the applicant and respondent No. 3 in written examination and oral interview, it was found that the respondent No. 3 is well educated person and he was secured 12 marks out of 20 marks in oral interview as compared to 5 marks obtained by the applicant in oral interview and as such, the respondent No. 3 was selected to the post of Police Patil of village Umarda (Pesa), Taluka Shirpur, District Dhule and was given appointment by order dated 30.10.2018 rightly. There is no merit in the present Original Application and the same is liable to be dismissed.

5. Record shows that in spite of due service of notice upon the respondent No. 3 i.e. Bhaidas Rahanjya Vasave, he failed to remain present and contest this Original Application.

6. I have heard the arguments advanced by Shri C.V. Bhadane, learned Advocate for the applicant on one hand and Shri I.S. Thorat, learned Presenting Officer for the respondents on the other hand.

7. After having considered the rival pleadings and documents on record and submissions, undisputedly the applicant and respondent No. 3 both belong to S.T. category. They secured 57 and 55 marks respectively in written examination held on 16.09.2018. As per the marks obtained in written examination, the applicant, respondent No. 3 and one another candidate Shri Aakash Narsing Vasave, who had secured 54 marks were called for oral interview and documents verification to be held on 04.10.2018. However, on 04.10.2018 the applicant and respondent No. 3 only remained present. The third candidate Shri Aakash Narsing Vasave remained absent. The oral interview of the applicant and respondent No. 3 was held on 04.10.2018. On 06.10.2018, the respondent No. 3 was declared to be selected as Police Patil of village Umarda (Pesa), Taluka Shirpur, District Dhule. The applicant made representations dated 12.10.2018 to

the respondent No. 4 and 5, to which the applicant received document (Annexure A-7) mentioning the details of oral interview marks and selection on the basis of marks obtained in oral and written examination amongst the applicant and respondent No. 3.

8. From above facts, it is clear that there was no dispute up to the stage of declaration of result of written examination, in which the applicant obtained 57 marks and the respondent No. 3 obtained 55 marks. The dispute is regarding manner of giving marks in oral interview, which is reflected in document at Annexure A-7.

9. In order to assess the selection of candidate on the basis of written examination and oral interview marks, the applicant has relied upon Clause Nos. 7, 20 and 21 mentioned in the advertisement No. 1/2018 dated 14.08.2018 (Annexure A-1), which are being again reproduced for ready reference :-

“७. पोलिस पाटील पदावरील नियुक्तिकरिता मृत / सेवानिवृत्त पोलिस पाटलाच्या वारसाने अर्ज केल्यास त्याला प्राधान्य देण्यात येईल. परंतु याचा अर्थ एकाच स्थानासाठी (Position) पोलिस पाटलाच्या वारसासह दोन किंवा अधिक उमेदवारांना समान गुण मिळाल्यास पोलिस पाटलाच्या वारसाची निवड करण्यात प्राधान्य देण्यात येईल. परंतु तो महाराष्ट्र ग्राम पोलिस पाटील (सेवा प्रवेश, पगार भत्ते आणि सेवेच्या इतर शर्ती) आदेश १९६८ व त्या मध्ये वेळोवेळी करण्यात आलेल्या सुधारणांनुसार सर्व अटी व शर्ती पूर्ण करित असला पाहिजे. तसेच तो दिनांक १८.१०.२००८ च्या शासन निर्णयानुसार त्या गावासाठी ठरविण्यात आलेल्या सामाजिक / समांतर आरक्षणाचा असला पाहिजे.

२०. लेखी परीक्षेत मुलाखतीस पात्र ठरलेल्या उमेदवारास, पोलीस पाटील भरती / निवडीसाठी घेण्यात येणा-या २० गुणांच्या तोंडी (मुलाखत) परिक्षेस उपस्थित राहणे अनिवार्य राहिल. तोंडी परिक्षेत अनुपस्थित राहणारा उमेदवार अंतिम निवडीस अपात्र ठरेल. मात्र एखादया उमेदवाराला मुलाखतीत शुन्य गुण मिळाले असले तरी लेखी परिक्षेतील गुणांच्या आधारे तो जर गुणवत्ता यादीत येत असेल तर असा उमेदवार पोलीस पाटील पदावरील निवडीकरिता पात्र राहिल.
२१. समान गुण मिळाल्यास अंतिम निवड :- शासन निर्णय क्रमांक बीव्हीपी १११३/१७६७/प्र.क. ५९२/पोल-८, दि. २२.०८.२०१४ अन्वये, गुणवत्ता यादीतील एकाच स्थानासाठी (Position) दोन किंवा अधिक उमेदवारांना समान गुण मिळाल्यास खालील प्राधान्य क्रमाच्या आधारे उमेदवाराची अंतिम निवड केली जाईल.

१. पोलीस पाटलांचे वारस; त्यानंतर
२. अर्ज सादर करण्याच्या अंतिम दिनांकास उच्च शैक्षणिक अर्हता धारण करणारे उमेदवार, त्यानंतर
३. माजी सैनिक असलेले उमेदवारत्यानंतर,
४. वयाचे ज्येष्ठ असलेले उमेदवार

पोलीस पाटलांच्या वारसामध्ये पती, पत्नी आणि दोन मुले यांचा समावेश राहिल. त्या व्यतिरिक्त अन्य कोणत्याही नातेवाईकाचा वारस म्हणून विचार करता येणार नाही.”

10. In view of above-said clauses, if the document of result sheet (Annexure A-7) is considered, it is seen that while giving marks in oral interview selection committee divided 20 marks of oral interview in 8 different categories. Amongst those 8 categories, column Nos. 2, 3 and 4 are respectively for degree certificate, post graduate degree certificate and MSCIT certificate. Minimum qualification prescribed for the post of Police Patil was Xth Std. In that category, the applicant and respondent No. 3 got 3 marks each. The respondent No. 3, however, for having degree, post graduate degree and MSCIT got respectively 4, 3 and 2 marks. For remaining 2 marks of communication skill, the applicant got 2 marks, whereas the respondent no. 3 got zero

mark. Unnumbered categories of column Nos. 5, 6 and 7 meant for sports certificate, NCC certificate and NSS/MCC/ Scout Guide Certificate respectively, the applicant and respondent No. 3 got zero mark.

11. During the course of arguments, I tried to find out from the respondent authorities through Presenting Officer as to under which provisions or guidelines 20 marks for oral interview were bifurcated in 8 categories. (1) 12th certificate / Minimum qualification - 3 marks, (2) degree certificate - 4 marks, (3) Post Graduate degree certificate- 3 marks, (4) MSCIT certificate - 2 marks, (5) sports certificate-2 marks, (6) NCC certificate-2 marks, (7) NSS/MCC/ Scout Guide Certificate- 2 marks and (8) communication skill /personality – 2 marks.

12. In view of above, if the guidelines in clause Nos. 7, 20 and 21 are considered, it would show that if the candidate secured equal marks at the time of selection, the selection should be done on the basis of following four priorities :-

1. Legal heir of Police Patil then
2. The candidate who was more educated than the other candidates at the last date of filing of application, then
3. Candidate who was ex-military man, then

4. Candidate senior in age.

13. In the case in hand, it is not the case of the respondents that after considering the result of written examination and oral interview, the applicant and the respondent No. 3 secured equal marks and therefore, they were required to follow this criteria as stated in the affidavit in reply, which is incorporated in clause No. 21 of the advertisement. In fact perusal of the document of mark sheet at Annexure A-7 would show that the marks allotted for higher educational qualification of Degree, Post Graduate Degree and MSCIT Certificate were totally misconceived and without any basis. Considering the minimum qualification of Xth Std. for which the applicant and respondent No. 3 were given 3 marks each. For communication skill the applicant was given 2 marks out of 2 marks, whereas the respondent No. 3 was given zero mark. In view of this, the applicant secured 05 and the respondent No. 3 secured 03 marks in oral interview. In view of above, total marks obtained by the applicant and respondent No. 3 in written examination and oral interview together would be $57+05=62$ marks and $55+03=58$ marks respectively.

14. In view of this, under permissible norms, the applicant ought to have been selected as against the respondent No. 3. In

view of the same, in my considered opinion, the respondent authorities have used irrelevant and misconceived formula for assessing the applicant and respondent No. 3 for selection to the post of Police of village Umarda (Pesa), Taluka Shirpur, District Dhule. The criteria applied by the respondent authorities for giving oral interview marks are not having any legal force or basis. In view of the same, in my considered opinion, the selection and appointment of respondent No. 3 to the post of Police Patil of village Umarda (Pesa), Taluka Shirpur, District Dhule by the impugned order dated 30.10.2018 (Annexure A-9) is unsustainable in the eyes of law and is liable to be quashed and set aside and to declare the applicant as being selected for the said post. I therefore, proceed to pass the following order :-

ORDER

The Original Application is allowed in following terms:-

- (A) The selection and appointment of respondent No. 3 to the post of Police Patil of village Umarda (Pesa), Taluka Shirpur, District Dhule in pursuance to the advertisement No. 1/2018 dated 14.08.2018 vide impugned order dated 30.10.2018 (Annexure A-9) is hereby quashed and set aside.

(B) The respondent authorities are directed to issue appointment order in favour of the applicant for the post of Police Patil of village Umarda (Pesa), Taluka Shirpur, District Dhule within a period of two months from the date of this order.

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

PLACE : AURANGABAD.
DATE : 27.02.2023.

(V.D. DONGRE)
MEMBER (J)

KPB S.B. O.A. No. 835 of 2018 VDD Police Patil