

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 876 OF 2016

DISTRICT : AMHEDNAGAR

Anirudha Ramrao Gavane,)
Age : 21 years, Occu. : Bussiness,)
R/o : At Karkhel KH Post, Deulgaon Ghat,)
Tq. Ashti, Dist. Beed.)

.. **APPLICANT**

V E R S U S

1. **State of Maharashtra,**)
Through Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai.)
2. **The COLLECTOR, AHMEDNAGAR**)
Collector Office, Ahmednagar,)
Ahmednagar.)
3. **THE DEPUTY COLLECTOR (RESIDENTIAL,)**)
(Revenue Branch), Collector Office,)
Ahmednagar, Ahmednagar.)
4. **DISTRICT SELECTION COMMITTEE,**)
Collector Office, Ahmednagar,)
Ahmednagar.)
5. **MAHARASHTRA KNOWLEDGE**)
CORPORATION LIMITED,)
Through its Sr. General Manager,)
ICC Tower, "A" Wing, 5th Floor, Senapati)
Bapat Road, Shivaji Nagar, Pune.)

.. **RESPONDENTS**

APPEARANCE : Shri M.S. Bhosle, Advocate for Applicant.

: Shri M.S. Mahajan, C.P.O. for Respondents.

CORAM : **Shri V.D. Dongre, Member (J)**
and
Shri Bijay Kumar, Member (A)
Reserved on : **18.11.2022**
Pronounced on : **02.12.2022**

ORDER

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

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 the present Original Application is filed challenging the impugned communication / order dated 18.07.2016 (Annexure A-8) issued by the respondent No. 2 i.e. the Collector, Ahmednagar, thereby cancelling the appointment of the applicant to the post of Talathi selected in the recruitment process of the year 2015 from Open General (Project Affected) category.

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

(i) The respondents issued the advertisement dated 11.08.2015 (Annexure A-1) for the post of Talathi on the establishment of different Sub-Divisional Officer in Ahmednagar District, thereby online applications were sought. For that, services of website were to be rendered by

the respondent No. 5 i.e. the Maharashtra Knowledge Corporation Limited, Pune. Pursuant to the said advertisement dated 11.08.2015 (Annexure A-1), the applicant made online application dated 20.08.2015 (Annexure A-2). The applicant was found eligible. The respondents, therefore, issued him admit card (Annexure A-3). The applicant appeared for written examination conducted by the respondents on 13.09.2015. The admit card and attendance sheet of the written examination are at Annexure A-3 collectively. Admittedly, the applicant was successful through all the stages of selection process. The applicant got selected for the post of Talathi in Open General (Project Affected) category and accordingly his name was shown at Sr. No. 1 in the select list (Annexure A-4).

(ii) It is submitted that after publication of the said list, the persons named R.B. Gavhane, Damodhar Gajanan Ghule and two more unknown persons made separate written complaints (Annexure A-5 collectively) against the applicant alleging that the applicant himself did not appear for written examination and the said written examination was attended by real brother of the applicant named

Ganesh Ramrao Gavhane and thereby both of them played fraud. In view of that, the respondents issued show cause notice to the applicant on the basis of the so called complaints and called explanation. The applicant submitted his reply / explanation dated 15.02.2016 (Annexure A-6) to the show cause notice received by the applicant on 15.02.2016, thereby he denied the allegations and contended that he himself appeared for the written examination by producing on record Pan Card, Election Card and Aadhar Card as identity cards in addition to admit card. He also submitted that old photograph was uploaded on online application, as the recent photograph was not available and that the information given about his brother in the complaint is totally wrong. The said complaint was wrong and sought appointment. It was also submitted in the said reply that after selection of the applicant for the post of Talathi from Open General (Project Affected) category, he was called for documents verification on 18.12.2015 in the office of respondent No. 2, where he attended and his documents were verified.

(iii) It is further submitted that the respondent No. 2 issued show cause notice also to the applicant's real

brother named Ganesh Gavhane and the Principal of the college where Ganesh Gavhane was taking education. The Principal of the said college submitted necessary information in writing and the applicant's brother also submitted his say, which are at part of Annexure A-7 collectively. Moreover in the enquiry, statements of the applicant, his real brother, invigilator and supervisor, Dy. Centre Head of written examination Centre were recorded. Nothing of the material thereof is against the applicant. However, surprisingly the respondent No. 2 vide impugned order / communication dated 18.07.2018 (Annexure A-8) cancelled the selection of the applicant for the post of Talathi illegally and without any cogent material on record. The findings of the respondent No. 2 about cancellation of the selection are unsustainable. No expert opinion about the alleged document was sought. In view of the same, the impugned communication / order dated 18.07.2018 (Annexure A-8) is liable to be quashed and set aside and the applicant is entitled for appointment to the post of Talathi. Hence, the present Original Application.

3. The affidavit in reply is filed on behalf of respondent Nos. 1 to 4 by one Shri Anil Mahadeo Kawade, working as District

Collector in the office of respondent No. 2, thereby he denied all the adverse contentions raised in the O.A. It is not disputed that after completion of procedural formalities the applicant came to be selected for the post of Talathi through District Selection Committee. It is, however specifically submitted that after the said selection process, the respondent authorities received written complaints on 16.01.2016 and 22.01.2016 duly submitted by Shri R.B. Ghavane and Damodar Gajanan Ghule, whereby it was stated that the applicant never appeared for the written examination and the applicant's real brother Ganesh Gavhane appeared in it and the applicant played fraud and got selected wrongly. In view of the said serious allegations, the detailed enquiry was conducted and the documents were collected. The statements of witnesses were also recorded in the said enquiry. In the enquiry, it was revealed that there was difference between photos placed on record in online application; on admit card and other documents. Signatures on various documents were also found different. Written explanation of the applicant and his brother was not satisfactory and hence, after having been satisfied with the enquiry, the respondent No. 2 rightly issued the impugned communication dated 18.07.2016 (Annexure A-8) to the applicant cancelling his selection for the

post of Talathi. Moreover, in view of the written complaints received, further complaint in writing was made against the applicant and his brother Ganesh at Tophkhana Police Station, Ahmednagar and Crime No. I-239/2016 was being registered under Section 420, 462, 465, 471 read with Section 34 of IPC. In view of that the present Original Application is devoid of merits and the same is liable to be dismissed.

4. Record shows that in respect of Crime No. I-239/2016 as discussed above, the applicant and his brother Ganesh Gavhane faced trial in Regular Criminal Case No. 472/2017. During pendency of the present Original Application, both of them are ordered to be acquitted in the said case as per the order dated 16.01.2020, which is placed on record by the applicant.

5. We have heard the arguments advanced at length by Shri M.S. Bhosale, learned Advocate for the applicant on one hand and Shri M.S. Mahajan, learned Chief Presenting Officer on the other hand.

6. After having considered the facts and documents on record, it is evident that indisputably the applicant was selected for the post of Talathi from Open Genera (Project Affected) category as per the select list (Annexure A-4). However, thereafter the

separate written complaints dated 28.01.2016 and reminder dated 18.02.2016 (Annexure A-5) were received by the respondents alleging that the applicant himself did not appear for the written examination and in fact, the applicant's real brother Ganesh Gavhane attended the said written examination, thereby both of them played fraud and the said selection of the applicant to the post of Talathi was not in accordance with law.

7. As discussed herein above, the respondent No. 2 issued shows cause notice to the applicant and his brother. Both of them filed their written reply. The respondent No. 2 conducted the enquiry. In the said enquiry, statements of applicant and his real brother Ganesh Gavhane were recorded. Written explanation dated 06.06.2016 and 03.06.2016 of Smt. A.A. Maniyar (Observer), W.G. Gholave (Supervisor) and V.M. Chavan (Dy. Centre Head of Centre No. 24 / Dy. Executive Officer) were obtained. All these documents are at Annexure A-7 collectively. In view of the said documents (Annexure A-7 collectively), the impugned order dated 18.07.2016 (Annexure A-8) seems to have been issued by the respondent No. 2 thereby cancelling the selection of the applicant to the post of Talathi observing that the explanation given by the applicant and his real brother were not satisfactory. Visually defect in photographs of the applicant

affixed in the online application and other documents said to have been noticed. Signatures of the applicant on the online application, admit card and attendance sheet were also found to be different. In view of the same, the respondent No. 2 said to have been satisfied to the effect that the applicant got selected in the selection process by adopting illegal means and that written examination was found to be attended by the applicant's real brother Ganesh Gavhane and not by the applicant himself. The respondent No. 2 in the affidavit in reply has justified the said impugned communication / order dated 18.07.2016 (Annexure A-8) in view of the outcome of the belated enquiry conducted against the applicant and his brother.

8. Upon perusal of the documents on record at Annexure A-7 collectively as discussed above, it is evident that out of four alleged complaints names of two complainant viz. R.B. Gavhane and Damodhar Gajanan Ghule were mentioned in the complaints. However, in two other complaints and reminder, names of the complainants thereof were not mentioned. It appears that in the said enquiry conducted by the respondent No. 2, the said so called complainant Shri R.B. Gavhane and Shri D.G. Ghule did not appear. No doubt their absence may not be fatal by itself, if the allegations made in their complaints upon

enquiry were found to be true and correct. Perusal of the written explanation given by V.M. Chavan, Dy. Centre Head of Centre No. 24 / Dy. Executive Officer dated 03.06.2016, explanation of W.G. Gholave, Supervisor dated 06.06.2016 and written explanation dated 06.06.2016 given by Observer / Invigilator Smt. A.A. Maniyar, (part of Annexure A-7 collectively) would show that during conducting written examination for the post of Talathi on the given date of 13.09.2015, no any irregularity about photograph or signature or identity of the applicant was found or noticed. There is no expert opinion or evidence on record about the discrepancy in photographs or signatures of the applicant. It appears that the respondent No. 2 on visual inspection came to the conclusion that the applicant himself did not appear for written examination, but it was attended by the applicant's real brother Shri Ganesh Gavhane. Prima-facie, it appears that the findings of the respondent No. 2 are based only on strongest suspicion, which cannot be said to be admissible evidence.

9. In view of above, it appears that after issuing the impugned communication dated 18.07.2016 (Annexure A-8) the office of the respondent No. 2 through Hema Rajendra Bade, Tahasildar (Revenue), Collector Office, Ahmednagar lodged written complaint against the applicant and his brother Ganesh

Gavhane at Tophkhana Police Station, Ahmednagar. On that basis, on 08.08.2016 Crime No. I-239/2016 under Section 420, 462, 465, 471 read with Section 34 of IPC was registered against the applicant and his brother Shri Ganesh Gavhane. Copy of FIR is produced at Annexure R-1 by the respondents. In view of that, it appears that instead of waiting for outcome of the said criminal prosecution, the impugned communication dated 18.07.2016 (Annexure A-8) was issued. Out-rightly that cannot be said to be premature, but it is expected that the order / communication dated 18.07.2016 (Annexure A-8) which is having far reaching effect on the carrier of the applicant was required to be issued only by taking into consideration cogent admissible evidence. In fact, the allegations of crime of cheating and forgery were registered against the applicant. It is pertinent to note here that during pendency of the present O.A., the applicant and his brother faced criminal prosecution in that respect by way of Regular Criminal Case No. 472/2017. The applicant has placed on record a copy of judgment and order dated 16.01.2020 passed in RCC No. 472/2017 by learned Chief Judicial Magistrate, Ahmednagar, whereby the applicant and his brother both of them were acquitted of the offences punishable under Section 420, 462, 465, 471 read with Section 34 of IPC.

10. During the course of arguments, the Xerox copies of original record as regards enquiry of the applicant are placed on record by the respondents. It appears that after acquittal of the applicant and his brother in a criminal trial, the respondents are seeking to file criminal appeal against the order of acquittal. However, the said subsequent event as that of the acquittal of the applicant and his brother in a criminal trial will prima-facie, would fortify their contention that they have not committed any illegal act or offence. Otherwise also by foregoing discussions, we have analyzed and considered the documents on record relied upon by the respondents for issuing the impugned communication / order, in our considered opinion, the said material placed on record and more particularly produced under Annexure A-7 collectively would not be sufficient to hold that the applicant himself did not appear for written examination held for the selection of Talathi and that the applicant's brother Ganesh Gavhane attended it. In respect of the serious nature of the allegations against the applicant and his brother, conclusion is drawn by the respondent No. 2 against the applicant only on visual inspection of documents on record about difference in photographs and signatures, which is not proper and not in accordance with law. Moreover, the witnesses from Centre No.

24 where the written examination was conducted did not state anything adverse against the applicant, who are the most important witness. The respondent No. 2 has not taken into consideration the written explanation given by those three witnesses. In view of the same, findings of the respondent No. 2, which are reflected in the impugned communication / order dated 18.07.2016 (Annexure A-8) are not sustainable in the eyes of law and the same are liable to be quashed and set aside. Consequently, the applicant would be entitled for appointment to the post of Talathi in accordance with law. We therefore, proceed to pass the following order :-

ORDER

The Original Application No. 876/2016 is allowed in following terms :-

- (A) The impugned communication / order dated 18.07.2016 (Annexure A-8) issued by the respondent No. 2 i.e. the Collector, Ahmednagar is hereby quashed and set aside.
- (B) The respondents are directed to appoint the applicant on the post of Talathi pursuant to his selection as per

the select list (Annexure A-4) from Open General (Project Affected) category in accordance with law within a period of two months from the date of this order and if required by creating supernumerary post by giving seniority and all other service benefits w.e.f. the date of filing O.A. i.e. 08.11.2016 calculating notionally, but without any back wages as he has not actually worked for that period.

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

MEMBER (A)

MEMBER (J)

Kpb/D.B. O.A. No. 876/2016V DD & BK 2022 Selection / appointment