

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO.396 OF 2016**

**DISTRICT : AHMEDNAGAR**

Surekha D/o Deoram Khemnar, )  
Occ : Household, R/o: Sakur, )  
Tal-Sangamner, Dist-Ahmednagar )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through its Secretary, )  
Home Department, Mantralaya , )  
Mumbai 400 032. )
2. Superintendent of Police, )  
Ratnagiri, Dist-Ratnagiri. )
3. Superintendent of Police, )  
Ahmednagar, Dist-Ahmednagar. )
4. Police Inspector, )  
Ghargaon Police Station, )  
Ghargaon, Tal-Sangamner, )  
Dist-Ahmednagar. )...**Respondents**

Shri S.S Dixit, learned Advocate for the Applicant.

Ms. Savita Suryavanshi, learned Presenting Officer for the Respondents.

**CORAM : Justice Shri A.H Joshi, (Chairman)**  
**Shri Rajiv Agarwal, (Vice-Chairman)**

**RESERVED ON : 13.04.2017**  
**PRONOUNCED ON : 05.06.2017**

**PER : Shri Rajiv Agarwal, (Vice-Chairman)**

### **ORDER**

1. Heard Shri S.S Dixit, learned advocate for the Applicant and Ms. Savita Suryavanshi, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 13.10.2015 issued by the Respondent no. 2 cancelling his selection for the post of Police Constable in the Maharashtra Police Recruitment, 2014. The Applicant is also seeking appointment to the post of Police Constable.

3. Learned Counsel for the Applicant argued as follows:-

The Respondent no. 2 had invited application for appointment for the post of Police Constable in Maharashtra Police Recruitment – 2014 in Ratnagiri District. The Applicant submitted his application on 17.5.2014 from NT(C) female category to the Respondent no. 2 and her name was included in the list of selected candidates. In her character verification report, the Respondent no. 4 reported that Crime no. I-69/2014 was registered against the Applicant on 10.8.2014 at Ghargaon Police Station in Sangamner Tahsil, Dist-Ahmednagar. A charge sheet was filed in the aforementioned case in the court of Judicial Magistrate, First Class no. 3, Sangamner. However, it was clarified that the name of the Applicant is not included as an accused in the final Report. Even the complainant, who filed FIR, had deposed in his statement recorded by Police on 10.9.2014 that the Applicant was not present on 10.8.2014, when the alleged incident happened. The Respondent no. 4, by two letters both dated 10.7.2015 (Annexure A-8) had informed the Applicant that during the investigation, it was found that the Applicant was not involved in the crime. The Applicant made various representations to the Respondents but to no avail. The Applicant

filed O.A no 810/2016 before Aurangabad Bench of this Tribunal. However, the Original Application was withdrawn and liberty was granted to the Applicant to file it before appropriate Bench of this Tribunal having territorial jurisdiction and accordingly, the present Original Application has been filed. No charge sheet was filed against the Applicant, as Police found no evidence against her, the decision of the Respondent no. 1, rejecting the candidature of the Applicant is perverse.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents as follows:-

The Applicant was selected for the post of Police Constable from NT(C) female category in the selection process in the year 2014. She was called for verification of documents on 6.6.2014 and for character verification on 18.7.2014. In the affidavit filed by the Applicant, the Applicant declared falsely that no criminal case was registered against her in the past. It, however, transpired that a criminal case C.R no 69/2014 was registered against her u/s 324, 143, 147, 149, 323, 504 of I.P.C and Bombay Police Act Section 37(11)(3) and 135 at Ghargaon Police Station on 10.8.2014. The matter was placed before the Committee at District level as per Government Circular dated 26.8.2014 to decide

whether the Applicant be held eligible for appointment as Police Constable. The Committee found the Applicant to be unsuitable for appointment to the post of Police Constable. The matter was, thereafter, placed before the High Powered Committee of the State Government, which also found the Applicant ineligible for appointment to the post of Police Constable. The impugned order is based on the aforesaid decision of High Powered Committee, which was communicated to the Respondent no. 2 by letter dated 1.9.2015. Learned Presenting Officer argued that there is no substance in the Original Application and it may be dismissed.

5. The Applicant had filed affidavit in rejoinder dated 16.1.2017 and appended copy of the order of Hon'ble High Court (Aurangabad Bench) dated 9.1.2017 in Criminal Application no. 6527/2016 filed by the Applicant (Exhibit ' B', page 172). This Tribunal has been asked to pass appropriate orders in this Original Application keeping in view of the observations in the order and the report of the Police Inspector, Ghargaon Police Station.

6. The Applicant has stated in para 6.7 of the Original Application as follows:-

“Further it is admitted in the said letter that, though the offence was registered against the applicant, in the investigation of the said offence, it was revealed that the applicant did not commit any offence as alleged in the complaint, therefore, her name was subsequently dropped in the Final Report of the offence. The copy of the letter dated 10.7.2014 is annexed herewith and marked as Annexure A-9.”

7. In the affidavit in reply dated 5.8.2016, the Respondent no. 2 has stated as follows regarding this assertion of the Applicant:

“7. With reference to para 6.7, I say and submit that no comments are offered because the mentioned correspondence was between Applicant and Respondent no. 4, without the knowledge of Respondent no. 2.”

The Applicant has annexed two letters dated 10.7.2015 (no. 1012/2015 and 1013/2015) from the Inspector, Ghargaon Police Station, and it is clearly mentioned in letter no. 1013/2015 that :-

“परंतु सदर गुन्ह्याचे तपासात पोहेकॉ/१८०५ के.एम.परांडे यांनी सदर गुन्ह्यातील साक्षीदार लोकांकडे विचारपुस केली असता तसेच यातील फिर्यादी यांना पुन्हा विचारपुस

केली असता आपण व अं.न.१७ गणेश ज्ञानदेव खेमनर सदर गुन्हा करतांना हजर नव्हता व आपण गुन्हा केलेला नाही बाबत सदर गुन्हाचे तपासात निष्पन्न झालेले आहे. म्हणून सदर गुन्हाचा तपास पुर्ण करून व आपले व गणेश ज्ञानदेव खेमनर यांचे नाव वगळून इतर १५ आरोपींच्या विरुद्ध मा. प्रथमवर्ग न्यायदंडाधिकारी सो. न्यायाल नं.३ संगमनेर यांचे हु. न्यायालयात दि.२६/९/२०१४ रोजी दोषारोपत्र दाखल करण्यात आले असून त्याचा आर.टी.सी.नं.२२७/१४ असा आहे व सदरचा गुन्हा न्याय प्रविष्ट आहे.”

The Respondent no. 2 is refusing to take cognizance of this important development, which has crucial bearing on the outcome of this Original Application. The correspondence was between the Applicant and the Respondent no. 4. However, copies of the correspondence were made available to the Respondent no. 2. The Respondent no. 2 was duty bound to consider that information. It appears that no cognizance of the same was taken. Respondent no. 2 has filed another affidavit in reply on 20.10.2016 as noted in the order of this Tribunal dated 29.9.2016. Para 9(c) of the aforesaid affidavit is reproduced below as it is :-

“(C) Mere the name of applicant excluded by Investigation Officer from charge sheet with help of one false (having no evidentially value) affidavit which was neither filed in court not addressed to court which was without verification and illegal as per legal position. The I.O has no concern to take as evidence on record of that affidavit which was not addressed to him. There is no material in charge sheet about dropping the name of applicant by not

taking supplementary statement in evidence. Hence applicant is not entitled to get benefit and weight on false affidavit. Hence Annexure 'A-9' to O.A is hereby not admitted.”

We are utterly at a lost to understand what the Respondent no. 2 is trying to convey. Needless to say, the language of this paragraph is confusing and makes no sense. It will, however, be instructive to reproduce the supplementary statement of the complainant recorded on 10.9.2014 which reads as follows:-

“परंतू आम्हास झालेल्या सदरच्या मारहाणीचे वेळी यातील अ.नं.११ सुरेखा देवराम खेमनर व अ.नं. १७ गणेश ज्ञानदेव खेमनर दोन्ही रा. हिरेवाडी साकुर ता. संगमेश्वर हे प्रत्यक्ष जागेवर हजर नव्हते.”

Police Inspector, Ghargaon Police Station has confirmed this in his letter to the Applicant dated 10.7.2015

8. Hon'ble High Court in the order dated 9.1.2017 in Criminal Application no. 6527 of 2016 has noted as below:-

“3. Upon careful perusal of the report submitted by the Police Inspector of the Ghargaon Police Station, it is abundantly clear that so far as the applicant is concerned, nothing transpired during investigation, neither the applicant was arrested nor charge



sheet is filed against the applicant. In short, the applicant's name is not included in the charge sheet. In that view of the matter, and in view of the report placed on record by the Police Inspector, Ghargaon Police Station, no offence, investigation or charge sheet is pending against the Applicant. In view of this, the Maharashtra Administrative Tribunal, keeping in view the observations made in this order, and the report of the Police Inspector, Ghargaon Police Station, shall pass appropriate orders in the pending original application.”

There is clear observation of Hon'ble High Court that no offence, investigation or charge sheet is pending against the Applicant. The Applicant had made a representation to the Respondent no. 2 on 8.10.2014 (Annexure A-6, page 30), much before the impugned order dated 12.10.2015 was passed by the Respondent no.2.

9. The Respondent no.2 has claimed, in paragraph 9(A) of the affidavit-in-reply of the Respondent no. 2, dated 20.10.2016, as follows :-

“..... there is no provision to call again fresh report of Character Verification from concerned Police

Station, under these circumstances there was no option before Respondent no.2 to forward this proposal for decision the before District Committee. Hence order in question, action taken by Respondent no.2 is correct and legal.”

The text quoted hereinbefore contains a tacit admission that before the matter was considered by the Committee headed by Collector and the High Powered Committee of State Government, about eligibility of the Applicant, the Respondent no.2 was made aware that no evidence was found against the Applicant in the Police inquiry.

10. The facts referred to in foregoing / paragraphs out to have been placed before the two Committees, which the Respondent no.2 has failed to do. The decision of these Committees have not been placed before us. However, on the basis of the material before us, we have to conclude that the decision of each of these Committee to hold the Applicant as ineligible for appointment to the post of Police Constable was perverse as full information was never placed before these Committees.

11. The Respondent no.2 has not placed the copy of the attestation form filed by the Applicant regarding her character. Therefore, we are unable to accept and to hold that the Applicant had given false information in the

attestation form about pendency of or registration of an offence against her.

12. Moreover, fact remains that, admittedly, Applicant was called for character verification on 18.7.2014 while FIR subject matter was filed on 10.8.2014. If on 18.7.2014 she had claimed that no case was filed against her, that information cannot at all be called to be false by any stretch of imagination whatsoever. It is evident from the statements of witnesses accompanying the final report / charge-sheet, and hence it is vivid that the Investigation Officer did not find any evidence against the Applicant during investigation. In the result the Investigation Officer has gone on record through final report filed before the Judicial Magistrate, First Class no. 3, Sangamner that applicant is not arrayed as an accused.

13. Hon'ble High Court has also observed while disposing Criminal Application No.6527 of 2016 in its order dated 09.01.2017, copy whereof is at page 172 & 173, that there is no offence, investigation or charge sheet pending against the Applicant.

14. The decision of the High Power Committee holding that the Applicant is not eligible for appointment as Police Constable because a criminal complaint was filed against her, is liable to be regarded as a product of

patent and gross non application of mind. If there be any application of mind, said conclusion is per-se, perverse, and hence it is not sustainable and it deserves to be quashed, reversed and set aside. Duty of executive to act justly in its executive business. The action impugned can even receive a label of legal mala fides.

15. In view of foregoing facts and circumstances of the case and discussion, the decision taken by Respondent no.2 on 13.10.2015, impugned deserves to be quashed and set aside and it is accordingly quashed and set aside with further direction to the Respondent no.2 to appoint the Applicant as Police Constable within four weeks from the date of this order, in the same bench in which Applicant had offered her candidature.

16. This Tribunal has to record that in routine business of affairs of the Government bona fide errors could be the matter of facts and due allowance can be given during the process of judicial review. However in the present case we have noticed that present is not the case of error due to oversight. The facts which are patent and which we have noticed, require specific mention which is done at the costs of repetition as below :-

- (a) The applicant had submitted application for appointment on 17.05.2014.

- (b) Applicant was subjected to tests for provisional eligibility where she was declared qualified sometime in June / July, 2014.
- (c) The attestation form was furnished by Applicant on 18.07.2014.
- (d) The offence was registered against various persons on 10.08.2014, in which applicant was named as an accused.
- (e) The copy of charge-sheet (which is on record) shows that statements to witness were recorded by Investigating Officer on 10.08.2014, 20.08.2014 and 10.09.2014.
- (f) In none amongst the statements recorded by the Investigation Officer, applicant's name is indicated as present in taking part in commission of offence with role whatsoever.

17. In the background of aforesaid facts, the High Power Committee was expected to call for all documents namely the FIR to all accompaniments charge-sheet and apply mind to the contents of documents. If the record is considered only conclusion can be arrived is that, the High Power Commission did exert or care to call for, read the papers and take a duly considered decision after due application of mind.

18. Had the Committee Members called, read and studied all papers, they were bound to arrive at conclusion that Applicant was in no manner or extent, involved in commission of offence, and rather was barely

named in the F.I.R. without ascribing even one sentence or role allegation against her.

19. The act of authorities to read and yet arrive at an erroneous conclusion could have been the matter of allowance to be given to Executive as a human error. But failure or refusal to call for and to advert to record cannot as has occurred in the present case, cannot and ought not be a matter of allowance or lenience of whatsoever type and extent. It is in this background, the Applicant is constrained to knock the doors of this Tribunal, as she had to remain away from employment sheerly on account of failure to High Power Committee members to call for and read of papers.

20. It has to be recorded that it is the duty of Executive to act according to law and act judiciously and thereby do justice. People knock doors of Tribunal and Courts for undoing injustice caused to them by the Executive. The act of Respondents in being indolent and indifferent in performance of their duty cannot and ought not go unchastised, and cannot be allowed to be endured as a matter of sheerly a deed of destiny and a matter of misfortune of a litigant. Hence the Respondents cannot be left without liability for payment of costs. We therefore direct the costs as mentioned in last paragraph No.19 of this order.

21. The dearer-ness of costs which people suffer for coming to Mumbai for filing the case in the Tribunal are matters of public knowledge. Increasing cost of life at Mumbai is an indicator of increasing cost of Lawyer's fees. Lawyer's fees, cannot be expected to be the matter of easy spending for any one including an unemployed person. In this situation we qualify costs, and direct that the Respondent No.1 shall pay the Applicant costs of Rs.20,000/-.

**Sd/-**  
**(Rajiv Agarwal)**  
**Vice-Chairman**

**Sd/-**  
**(A.H Joshi, J.)**  
**Chairman**

**Place : Mumbai**  
**Date : 05.06.2017**  
**Dictation taken by : A.K. Nair.**