

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 1068 OF 2015

DISTRICT : PUNE

Shri Vasant Shravan Muthe,)
Occ : Nil, R/at : Lavhali (Kautul),)
Post-Lavhali (Otur), Tal-Akole,)
Dist-Ahmednagar.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai.)
2. The Superintendent of Police,)
Railways Head Quarter, Khadki,)
Pune.)...**Respondents**

Shri K.R Jagdale, learned advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.



CORAM : Shri Rajiv Agarwal (Vice-Chairman)
Shri R.B. Malik (Member) (J)

DATE : 27.07.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri K.R Jagdale, learned advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the communication dated 29.7.2015 from the Respondent no. 2 rejecting the Applicant's request to be given appointment as Police Constable by operationalizing the waiting list from S.T category pursuant to Maharashtra Police Recruitment 2014.

3. Learned Counsel for the Applicant argued that the Applicant has applied for the post of Police Constable in Maharashtra Police Recruitment-2014 on the establishment of the Respondent no. 2. 3 posts were reserved for Scheduled Tribe category as per the advertisement issued by the Respondent no. 2 on 29.4.2014. The select list was published on 23.6.2014

and the Applicant was 1st in the waiting list from the S.T category. One Shri S.S Madake, was also selected from S.T category. His appointment letter was issued on 29.6.2015, more than one year after the select list was published. Shri Madake joined the post on 28.7.2015 and resigned on 31.7.2015. Learned Counsel for the Applicant stated that when Shri Madake did not join immediately after the select list was published, he had made a representation on 15.12.2014 that he may be appointed from the waiting list. The Respondent no. 2 did not take any action and kept the vacancy unfilled. The Applicant made another representation on 23.6.2015. However the appointment letter in favour of Shri Madake was issued on 29.6.2015. Learned Counsel for the Applicant argued that the validity of the waiting list should be counted from 29.6.2015, when the order of appointment of Shri Madake was issued and it should be held valid for one year thereafter. The Applicant is clearly eligible for being appointed as Police Constable from S.T category by operationalizing the waiting list, as he is number 1 in that list and one post from S.T category is vacant.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the details of the select list and waiting list given by the Applicant are correct. The Applicant had admittedly scored less marks in S.T category than Shri S.S Madake. The Applicant was,

therefore, informed by the Respondent no. 2 that he could not be appointed in reply to his representation dated 15.12.2014 and when the Applicant personally met the Respondent no. 2. Learned Presenting Officer argued that the decision to appoint Shri Madake was taken on 19.6.2015, before the expiry of one year from the date of publication of the select list. Appointment order to Shri Madake was given on 29.6.2015. Learned Presenting Officer admitted that Shri Madake worked only for 3 days and resigned on 31.7.2015. Learned Presenting Officer stated that as per G.Rs dated 19.10.2007 and 27.6.2008, the post becoming vacant due to resignation of a selected candidate, cannot be filled from the waiting list. The Applicant is, therefore, not eligible to be appointed to the post of Police Constable from S.T category.

5. We find that in the affidavit in reply dated 27.1.2016, the Respondent no.2 has admitted that the select list was published on 23.6.2014 and that the Applicant was 1st in the waiting list from S.T category. It is also admitted that the Applicant had submitted representation dated 15.12.2014. This clearly shows that one vacancy from S.T category was not filled till 15.12.2014, though select list was declared on 23.6.2014. The reasons for issuing appointment letter to Shri Madake on 29.6.2015 (para 14 of the affidavit in reply) have not been explained by the Respondent no. 2. It is quite clear that the appointment letter was issued to

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Shri Madake, after expiry of one year from the date of declaration of select list. Mere assertion that decision was taken on 19.6.2015 ^{to that effect} is not enough. Even if that date is accepted, why the Respondent no. 2 has to wait for almost a year before decision to appoint Shri Madake was taken is not explained. The Applicant had stated in para 6.9 of the Original Application that Shri Madake was already working in B.M.C. The Respondent no. 2 has replied that he was not aware of this fact. One thing is, however, clear that there is much more than what meets the eyes in keeping one post from S.T. category vacant for more than a year. The Respondent no. 2 was expected to come clean on the reasons as to why he waited for a year for Shri Madake. If a candidate is not able to produce necessary Certificates/documents in time, the post is required to be filled by operationalizing the waiting list. The Applicant had a strong case, when he submitted his representation dated 15.12.2014, as more than 6 months has elapsed and no appointment order was issued in favour of Shri Madake. The failure of Respondent no. 2 to explain this issue is inexplicable, to say the least. By his own admission, the Respondent no. 2 issued the appointment letter to Shri Madake on 29.6.2016. By that time validity of select list was already over as per G.A.D. G.Rs dated 19.10.2007 and 27.6.2008. However, as the appointment of Shri Madake was issued on 29.6.2015, the validity of the select/waiting list will have to be reckoned one year from that date.

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6. As regards filling up post after a selected candidate joins and resigns during the validity of waiting list, this Tribunal by judgment dated 13.4.2016 in O.A no 690/2015 has held in para 6 that:

“6. We are rather disappointed that Learned Presenting Officer is relying on G.R dated 19.10.2007. A subsequent G.R dated 27.6.2008 has replaced para 9 of old G.R dated 19.10.2007. This Tribunal based on judgments of Hon’ble Supreme Court and Hon’ble Madras High Court has held in a few cases that even if a person, who is selected and joins, but later resigns, the resultant vacancy can be filled by operationalizing the waiting list, if it (waiting list) was valid on the date when such vacancy occurred.”

A similar view is taken by Hon’ble Bombay High Court in Writ Petition no 4257/2013 in the case of UDAYSING J. VALVI Vs. THE SECRETARY, DISTRICT SELECTION COMMITTEE & ANR. Hon’ble High Court in almost similar circumstances has held that:-

“The timely decision within a period of one year if taken by the Respondents, the Petitioner being eligible could have been appointed. They failed to do so. The advertisement in question therefore, for the next year for the same post and/or after one year

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for the same post, in our view, is in no way sufficient reason to deny the established right of the Petitioner in view of above admitted facts on record.”

G.R dated 19.10.2007 was also cited before the Hon'ble High Court. Facts are similar in the present case and the judgment of Hon'ble High Court will apply. The Applicant is eligible to be considered for appointment as he is number one in the waiting list.

7. The Respondent no. 2 is directed to appoint the Applicant from S.T category as Police Constable by operationalizing the waiting list, if he is otherwise found fit. This should be done within a period of four weeks from the date of this order. This Original Application is allowed accordingly with no order as to costs.

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Sd/-
(R.B. Malik)
Member (J)

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 27.07.2016
Dictation taken by : A.K. Nair.