

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 343/2015 (S.B.)**

Sharad S/o Ramdas Gadling,  
Aged about 35 years, Occ. Nil,  
R/o Kapra (Method),  
Tq. and Dist. Yavatmal.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Department of Forest and Revenue,  
Mantralaya, Mumbai-32.
- 2) Chairman of Selection of Committee for  
Kotwal/ Sub Divisional Officer, Yavatmal,  
District Yavatmal.
- 3) Tahsildar,  
Yavatmal.
- 4) Umesh S/o Kawduji Shambharkar,  
Occ. Student, R/o Kapra (Method),  
Tq. and Dist. Yavatmal.

**Respondents.**

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**Shri N.R. Saboo, Mrs. K.N. Saboo, Advocates for the applicant.**

**Shri A.P. Potnis, P.O. for respondent nos. 1 to 3.**

**S/Shri P.B. Thakre, S.S. Dorle, Advocates for respondent no.4.**

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**Coram :- Hon'ble Shri Anand Karanjkar,  
Member (J).**

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**Date of Reserving for Judgment : 28<sup>th</sup> June, 2019.**

**Date of Pronouncement of Judgment : 25<sup>th</sup> July, 2019.**

## **JUDGMENT**

**(Delivered on this 25<sup>th</sup> day of July,2019)**

Heard Shri N.R. Saboo, learned counsel for the applicant and Shri A.P. Potnis, Id. P.O. for R-1 to 3. None for R-4.

2. The applicant is son of Ex-Kotwal. The advertisement was published on 11/2/2015 by the respondent no.3 for filling the post of Kotwal of village Kapra. As the applicant was eligible, therefore, he submitted his application. It is contention of the applicant that in the written examination the applicant and the respondent no.4 secured equal marks (57). As per the rules, the Selecting Authority was bound to conduct the oral interview and to allot marks out of 25.

3. It is contention of the applicant that the oral interviews were conducted by the Selecting Authority in arbitrary manner disregarding the advertisement and terms and conditions mentioned in the advertisement. The Selecting Authority decided to award marks as per the educational qualification i.e. Matriculation, Degree, MS-CIT Certificate, Typing Certificates, NCC and other activities. It is submitted that for the educational qualification marks were allotted out of 6, for the Sport career out of 4, for handling Computer out of 3, Typing out of 2, NCC/NSS out of 3 and other activities out of 2. Only 5 marks were allotted on the basis of personal interview. It is submitted that this procedure followed was invented after publication

of the advertisement and therefore it is in violation of the advertisement, consequently the recruitment process was unfair. It is submitted that the respondent no.4 secured 5 marks for his educational qualification and the applicant scored 3 marks. In personal interview the applicant scored 4 marks and the respondent no.4 scored 3 marks, but as the respondent no.4 was having Typing Certificate he scored 2 marks, but the applicant was unable to score any marks. It is submitted that this procedure followed for the recruitment is in violation. The learned counsel for the applicant has placed reliance on the Judgment in case of **K.Manjusree Vs. State of Andhra Pradesh, (2008)3 SCC,512.**

4. On the basis of the above grounds it is submitted that the recruitment process was in violation of the terms and conditions of the advertisement and consequently the appointment of the respondent no.4 is illegal, therefore, it be set aside and direction be given to the respondent nos.1 to 3 for holding fresh recruitment process.

5. The respondent nos. 2&3 have submitted reply. It is at page no.47. It is submission of the respondent nos.1 to 3 that with a view there should be transparency in the recruitment process; proper procedure was adopted by the respondent nos.1 to 3 for conducting the oral test. The decision was taken to consider merit of each candidate and therefore specific marks were given considering the

educational qualification, sport activities and other skills such as Typing, handling of Computer, NCC etc. It is contention of the respondent nos. 1 to 3 that as this procedure was followed there was no opportunity to play foul play and to allot more marks only in personal interview. It is submitted that the respondent nos.1 to 3 have not violated any statutory provisions and consequently there is no substance in the application.

6. It is contention of the respondent nos.1 to 3 that merely because the applicant is son of the deceased Kotwal, therefore, he has no preferential right in view of the G.R. dated 5<sup>th</sup> September,2013. According to the respondent nos.1 to 3 in this G.R. it is laid down that for recruitment of the Kotwal there shall be written and oral examination. The written examination shall be for 75 marks and oral for 25 marks. It is contended that the procedure followed is in accordance with the G.R. dated 5<sup>th</sup> September,2013, consequently, application is liable to be dismissed.

7. I have gone through the advertisement which is at Annex-A-7. As per the advertisement the minimum educational qualification for the post of Kotwal was 4<sup>th</sup> Standard examination. It is not mentioned in the advertisement that the persons who were possessing higher qualification, shall not apply. I have also perused Annex-A-9 the marks allotted by the Authority for the personal

interview. It seems that for educational qualification marks were allotted out of 6, for sport activities out of 4, for Computer handling out of 3 and out of 5, marks were allotted for the performance in the personal interview. On perusal of the G.R. dated 5<sup>th</sup> September, 2013 it seems that there was direction that while recruiting the Kotwal there shall be written and oral examination, the written examination shall be for 75 marks and oral examination shall be for 25 marks. In the G.R. it is not cleared in which fashion or manner the oral examination shall be conducted, therefore, merely relying on the G.R. dated 5<sup>th</sup> September, 2013 inference cannot be drawn that the procedure followed by the respondent nos. 1 to 3 is absolutely illegal.

8. It is contention of the respondent nos. 1 to 3 that in order to consider the merits of each candidate and to have a transparency in the selection process, it was decided to allot specific marks considering the educational qualification, sport activities, extracurricular activities, handling of Computer and knowledge of Typing and therefore there is no illegality in the recruitment process. After considering this approach of the respondent nos. 1 to 3 it is not possible to accept that there was any opportunity to give more marks or to show undue favour to any candidate. Had it been a case that the Authority was permitted to allot marks out of 25 only on the basis of personal interview, then there would be scope for manipulation and to

show undue favour. On the contrary, considering personal educational qualification and other qualities attempt was made by the Authority to select the meritorious candidate.

9. So far as contention of the applicant that procedure followed is in violation of law laid in case of **K.Manjusree Vs. State of Andhra Pradesh, (cited supra)** is concerned, I would like to point out that in the case before the Hon'ble Apex Court, the facts were that after commencement of the recruitment process, the allotment of qualifying marks were changed. In this case it is not done by the respondent nos. 1 to 3. In case before the Hon'ble Apex Court, the minimum qualifying marks for interview prescribed after the interviews were over and consequently it was held that the procedure followed was illegal.

10. The learned counsel for the applicant has also placed reliance on the Judgment in case of **Hemani Malhotra Vs. High Court of Delhi, (2008) 7 SCC,11**. In this case also after the written test was over, decision was taken to fix minimum marks for viva-voce and in this situation it was held that the procedure was illegal. The Hon'ble Apex Court has observed that –

*“The Authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before*

*commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process, add an additional requirement/ qualification that the candidate should also secure minimum marks in the interview”.*

11. In view of this, the Judgments on which reliance is placed are of no help to the applicant. After considering all the circumstances, I am unable to accept that the procedure followed by the respondent nos. 1 to 3 was illegal, on the contrary I will say that in order to select better and meritorious candidate, exercise was done and it was for the fairness. Hence, I hold that there is no substance in this application. Hence, the following order –

**ORDER**

The O.A. stands dismissed. No order as to costs.

**Dated** :- 25/07/2019.

**(A.D. Karanjkar)**  
**Member (J).**

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I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment pronounced : 25/07/2019.

on

Uploaded on : 29/07/2019.