

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 620 of 2016**

Mr. Sandeep S/o Rajendra Wankhede,  
Aged about 44 years,  
Occ. Agriculturist, R/o Kohali,  
Tah. Kalmeshwar, District Nagpur.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-32.
- 2) Sub Divisional Magistrate,  
Tahsil Saoner,  
District Nagpur.
- 3) Mr. Pravin S/o Digamberrao Wankhede,  
Aged Major, Occupation : Private,  
R/o Kohali, Tahsil : Kalmeshwar,  
District Nagpur.

**Respondents**

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**Shri S.B.Tiwari, E. Sahasrabuddhe, Advocates for the applicant.**

**Shri V.A. Kulkarni, Id. P.O. for the respondent nos. 1&2.**

**None for respondent no.3.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

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## **JUDGEMENT**

**(Delivered on this 11<sup>th</sup> day of September,2017)**

Heard Shri S.B.Tiwari, learned counsel for the applicant and Shri V.A. Kulkarni, learned P.O. for respondent nos. 1&2. None for respondent no.3.

2. The applicant has claimed a direction to respondent nos. 1&2 to appoint him as Police Patil for village Kohali, Tq. Kalmeshwar, District Nagpur. He has also claimed that respondent nos. 1&2 be restrained from issuing appointment order for the post of Police Patil of village Kohali in favour of respondent no.3.

3. From the facts on record it seems that the applicant as well as respondent no.3, in response to the advertisement issued by respondent no.2 for the post of Police Patil for village Kohali, Tq. Kalmeshwar, District Nagpur applied for the said post. The applicant belongs to OBC (Male) category. The written test was conducted for 80 marks and the oral test was for 20 marks. The applicant got 59 marks out of 80 in the written test and 12 out of 20 in the oral test. Thus he scored total 71 marks out of 100. The name of the applicant was featured in the merit list at sr.no.160 and at sr.no.50 in the final list. Admittedly, the applicant stood high on the merit list and was expecting appointment order. However, he came to know that the appointment order was being issued in the name of respondent no.3

though the respondent no.3 got less marks than the applicant. The applicant has therefore approached this Tribunal.

4. In the reply-affidavit the respondent no.2 submitted that the names of the selected candidates including the applicant were sent to the Police Department for verification of the character at Police Station, Kalmeshwar. The Police Station Officer intimated the respondent no.2 on 28/12/2015 that offences were registered against the applicant and that the applicant was convicted in Crime no.3076/2009 under Section 12 of the Mumbai Gambling Act. A fine of Rs.300/- was imposed on him and another Crime No. 132/2001 under Sections 147,148,149 & 324 of the IPC was registered against the applicant, but he was acquitted in that crime.

5. According to the respondent no.2 after getting character verification report, the respondent no.2 submitted the case of the applicant to the Collector, Nagpur for guidance and the Collector directed respondent no.2 to take appropriate action as per rules. It is stated that though the applicant stood first in the selection list, he become ineligible for appointment since he was convicted. The respondent no.2 therefore appointed respondent no.3 as Police Patil of the village being the second meritorious candidate vide order dated 2/9/2016 and there is no malafide in appointing respondent no.3. A

person assuming the post of Police Patil is required to hold good moral character and therefore the applicant was not appointed.

6. The learned counsel for the applicant submits that the applicant has not denied the fact that he was convicted in criminal case under Mumbai Gambling Act. However, this fact has been brought on record only after reply-affidavit is filed. In other words, it reveals only from the reply-affidavit and the documents placed on record by the respondent no.2 that the applicant was convicted under Mumbai Gambling Act.

7. The learned counsel for the applicant further invited my attention to Annex-VI, the information he received under RTI Act dated 16/12/2016 from SDPO, Saoner. Vide said information it is stated that no crime is registered against the applicant under Sections 147,148,149 & 324 of IPC in Crime no.132/2001. However, it is mentioned that a crime under Section 12 of the Mumbai Gambling Act was registered against the applicant bearing crime no.3067/2009.

8. Considering the aforesaid circumstances, it appears that the applicant was convicted under Section 12 of the Mumbai Gambling Act and he was sentenced to pay fine of Rs.300/- which he deposited.

9. The learned counsel for the applicant also invited my attention to the rejoinder affidavit filed by the applicant in which it is admitted that the applicant was convicted in Crime no.3067/2009. However, it is stated that applicant had not participated in gambling but was only present and was watching the persons gambling. Such a plea for the first time cannot be accepted and the fact remains that the applicant was convicted under section 12 of the Mumbai Gambling Act.

10. The learned counsel for the applicant invited my attention to the Judgment reported in **(1996) 4 SCC, 17 Pawan Kumar Vs. State of Haryana & Ano.** In the said case the accused was convicted under section 294 of the IPC and was fined for Rs.20/-. The Hon'ble Apex Court held that conviction of the appellant under Section 294 of the IPC per se would not establish moral turpitude unless the tests laid down in the policy decision are satisfied and also emphasis the need for making provision that punishment of fine up to a certain limit, say up to Rs.200/- or so, on a summary / ordinary conviction shall not be treated as conviction at all for any purpose, especially entering government service. I have carefully gone through the said citation. The applicant was convicted for offence under Section 12 of the Mumbai Gambling Act which means gaming in a public place. A

person holding the post of Police Patil is not expected to indulge in such offence.

11. The learned counsel for the applicant also placed reliance on the Judgment report in **(2016) 8 SCC 471 Avtar Singh Vs. Union of India & Ors.** It is a case of suppression of relevant information or submission on false information in verification form in regards to criminal prosecution, arrests or pendency of criminal cases against the candidates. In the present case the applicant has been convicted and it is not the case that he has suppressed the information.

12. It is admitted that the appointment of the candidates to the post of Police Patil is subject to verification of their character. When the character was verified in respect of candidates who were successful in written and oral test as per merits, it was noticed that the applicant was convicted under Section 12 of the Mumbai Gambling Act and the competent authority thought it proper not to appoint him and to choose the next candidate in merit whose character was unblemished. There is nothing on the record to show that the respondent no.2 was having any malafides against the applicant. In such circumstances, if the respondent no.2 thought it proper to appoint respondent no.3 having unblemished character, I do not find any illegality in such appointment. The respondent no.3 has already been appointed and has taken charge of the post of Police Patil and

therefore in such circumstances, I do not find any reason to interfere in the appointment order issued in favour of respondent no.3. Hence the following order :-

**ORDER**

The O.A. stands dismissed with no order as to costs.

**(J.D. Kulkarni)**  
**Vice-Chairman (J).**

dnk.