

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No.673 of 2023 (S.B.)

Roshan S/o. PremdasDhoke,
Age: 33 years, Occ: Nil,
R/o.-at Post Neri, Tahsil Mohadi,
District Bhandara.

Applicant.

Versus

- 1) State of Maharashtra,
Through its Secretary, Department of Home Affairs,
Mantralaya, Mumbai-32.
- 2) Police Patil Recruitment Committee 2023,
Tumsar, through its Chairman- Sub Divisional Officer,
Tumsar.
- 3) Sub Divisional Officer,
Tumsar, District Bhandara.

Respondents.

R.S. Sirpurkar, S.V. Sirpurkar, Advocates for the applicant.

Shri M.I. Khan, learned P.O. for the respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 24/01/2024.

JUDGMENT

Heard Shri M. Agrawal, learned counsel holding for Smt. R.S. Sirpurkar, learned counsel for applicant and Shri M.I. Khan, learned P.O. for respondents.

2. On last date Smt. R.S. Sirpurkar, learned counsel for applicant had completed her argument.

3. Heard Shri M.I. Khan, learned P.O. for respondents. He has pointed out the Judgment in O.A.No.795/2018, decided by the M.A.T., Bench at Aurangabad on 09/09/2019 and the Judgment of the Hon'ble Supreme Court in the case of ***Union of India & Others Vs. Methu Meda, 2022 (1) Mh.L.J.,532.***

4. The case of the applicant in short is as under –

The applicant appeared for examination of Police Patil which was held by the respondents. The respondents have taken decision dated 12/06/2023 by which the selection of the applicant on the post of Police Patil is cancelled on the ground that the applicant is facing criminal trial for the offence punishable under Section 326, 504,506 Section 34 of IPC.

5. It is submitted that the applicant had not committed any Crime. He was not arrested by the Police. He was appeared before the Court on 24/12/2022. It is submitted that the applicant had not committed any Crime and therefore the decision taken by the respondents by cancelling the selection of the applicant on the post of Police Patil is illegal and therefore he approached to this Tribunal for the following reliefs –

“(8) (a) Quash and set aside the impugned order/communication dated 12/06/2023 (Annexure-A/1) issued by the Respondent No. 2-Police Patil Recruitment Committee-2023, whereby the applicant's selection to the post of Police Patil, Neri, is cancelled.

(b) Direct the Respondent No.2-Police Patil Recruitment Committee 2023,. to consider the candidature of the applicant to the post of Police Patil, Neri for the reasons stated in the application

(C) Grant any other relief deemed fit and proper in the circumstances of the case in favour of the applicant;

(9) This Hon'ble Tribunal may be pleased to stay the effect, operation and implementation of impugned order/communication dated 12/06/2023 (Annexure-A/1) issued by the Respondent No. 2- Police Patil Recruitment Committee 2023, during the pendency of the present application; Or, in the alternative grant stay to the further recruitment process of Police Patil Recruitment 2023, with respect to Police Patil vacancy at Neri, Mohada.

Or, in the alternative make the further recruitment process of Police Patil Recruitment 2023, with respect to police Patil vacancy at Neri, Mohada subject to the result of the present original application.”

6. The O.A. is strongly opposed by the respondents. It is submitted that the applicant has committed offence punishable under Section 326, 504,506 Section 34 of IPC. It is for the employer to get it verified about the character of the employee. If the employer found that the character of the employee is not good, If the employer found that before appointment/ posting the employee is facing any criminal trial / has committed any offence, then it is for the employer to decide as to whether he should be given employment or not.

7. The applicant has committed serious offence and therefore he is not entitled for the post. Therefore, the cancellation of selection is perfectly legal and correct. Hence, the O.A. is liable to be dismissed.

8. During the course of submission, the learned counsel for applicant has submitted that the applicant was not arrested till the filing of charge sheet. This itself shows that he has not committed any offence. The applicant was not arrested by the Police that does not mean that he had not taken any part in the Crime. The offence punishable under Section 326, 504,506 Section 34 of IPC is registered against the applicant. The definition of Section 34 of IPC shows that there was a prior mitigation of mind of all the accused before commission of the Crime. Therefore, every accused though not taken actual part in the commission of Crime are liable for the conviction for the offence committed by any one of them. It is for the accused to prove before the Court that there was no prior mitigation of mind i.e. the common intention of all the accused to commit the Crime. At present, the applicant is facing the charge punishable under Section 326. The punishment provided under the IPC is upto life. The other offences are also serious.

9. During the course of submission, the learned P.O. has pointed out the decision of M.A.T., Bench at Aurangabad in the O.A.No.795/2018 and the Judgment of the Hon'ble Supreme Court in the case of ***Union of India & Others Vs. Methu Meda, 2022 (1) Mh.L.J.,532***. The M.A.T., Bench at Aurangabad in para-11 has held as under –

“ (11) As discussed above, the respondent No.2 has rightly rejected the candidature of the applicant considering the pendency of the criminal case, in which the applicant is involved. The impugned order is legal and proper and therefore, no interference is called for in it. There is no merit in the present Original Application. Consequently, the O.A. deserves to be dismissed.”

10. The Hon'ble Supreme Court has held that even though the acquittal is on the ground of benefit of doubt that does not mean that it is a clear acquittal and the accused / applicant who was selected should be appointed. It is for the employer to decide the same. The Hon'ble Supreme Court has given the guidelines in the case of **Avtar Singh Vs. Union of India & Ors.** The decision of the Division Bench of Hon'ble Bombay High Court, Bench at Nagpur in the case of **Union of India & Ors. Vs. Ganesh W. Padhal 2018 (5) ALL MR 906** is also pointed out by the Id. P.O.

11. As per the guidelines given by the Hon'ble Supreme Court in the case of **Avtar Singh Vs. Union of India & Ors.**, it is for the employer to decide whether the offence is trivial or not. In case of trivial / minor offences, it is for the employer to appoint or not the employee who is facing the charge or who had committed offence.

12. The offence punishable under Section 326 is registered against the applicant is not a minor offence. Therefore, cancellation of the selection on the post of Police Patil is legal and proper.

13. The post of Police Patil is important in the village. The character of the Police Patil should be clean. It is the duty of the Police Patil to inform the concerned Police Station about the commission of any crime in the village etc. Therefore, the character of Police Patil should be clean. The applicant is facing the trial for the offence punishable under Section 326. Hence, the cancellation of the selection on the post of Police Patil is perfectly legal and correct. Hence, the following order –

ORDER

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

Dated :- 24/01/2024.

**(Justice M.G. Giratkar)
Vice Chairman.**

dnk.

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 24/01/2024.