

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.789/2016.

Moreshwar Vithobaji Shende
Aged about 40 yrs.,
Occ-Police Patil,
R/o At & Post- Wadsi,
Tq. Chimur, Distt. Chandrapur.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-440 032.
- 2) The Sub-Divisional Officer,
Chimur, Administrative Building, Chimur,
Distt. Chandrapur.
- 3) Damodhar Namdeo Gedam,
Aged about 42 yrs.,
Occ-Farmer,
R/o At & Post- Wadsi,
Tq. Chimur, Distt. Chandrapur.

Respondents

Shri P.J. Mehta, the Ld. Counsel for the applicant.
Smt. S.V. Kolhe, the learned P.O. for the respondents 1 and 2.
Shri B.W. Patil, learned counsel for respondent No.3.

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

JUDGMENT

(Delivered on this 10th day of August 2017.)

Heard Shri P.J. Mehta, the learned counsel for the applicant, Smt. S.V. Kolhe, the learned P.O. for the respondent Nos. 1 and 2 and Shri B.W. Patil, learned counsel for respondent No.3.

2. The applicant Moreshwar Vithobaji Shende was appointed as Police Patil of mouza Wadsi vide order dated 4.3.2016. Respondent No.3 objected for the appointment of the applicant and thereafter filed O.A.No.274/2016 before this Tribunal at Nagpur. The Honble Chairman vide order dated 10.10.2016 in O.A.No.274/2016 was pleased to dispose of the O.A. with following directions:-

That objections raised by the applicant in present O.A. have been addressed and matter is reopened from the stage prior to scrutiny of the application forms of the candidates for consideration and the appointing authority will reconsider all claims on its own merit. The learned P.O's statement meets applicant's demand to the extent applicant's candidature would be considered on its own merit. This statement by the Ld. P.O. results in substantial compliance of applicant's demand, though not fully. In the event, outcome of the action may be taken by respondents as results, if any, prejudice to the applicant in any manner, the applicant shall be free to agitate by filing appropriate application. O.A. accordingly stands disposed of.+

3. In view of the directions in the O.A. aforesaid, the respondent authority considered the merits of the case and issued impugned order dated 18.11.2016 whereby applicant's order of

appointment to the post of Police Patil has been cancelled. This order of cancellation of appointment for the post of Police Patil is the subject matter of this O.A.

4. The learned counsel for the applicant submits that the applicant has participated in the selection process for the post of Police Patil and has secured 52 marks out of 80 in written examination whereas respondent No.3 secured 45 marks only. In oral examination, the applicant secured 15 marks out of 20 whereas respondent No.3 secured 10 marks only. Since the applicant secured total 67 marks out of 100, against 56 marks secured by respondent No.3, the applicant was appointed. The order of the cancellation of the said appointment is thus illegal.

5. It is further stated that, applicant's application was cancelled by following due procedure and documents were also scrutinized. The applicant was eligible for being considered and, therefore, his appointment ought not to have been cancelled.

6. Respondent No.2 i.e. Sub-Divisional Officer, Chimur has justified the order of cancellation of the applicant. According to respondent No.2, scrutiny was done in presence of all candidates as per the directions issued by the Tribunal. The applicant did not submit character certificate which was mandatory to be produced at the time

of filing application. The applicant has produced character certificate on 18.2.2016, which in fact should have been produced on 15.2.2016.

7. Respondent No.2 i.e. S.D.O., Chimur also filed affidavit in reply. It is admitted that, he applicant was allowed to participate in the selection process, though he did not produce character certificate. It is stated that some persons who did not produce character certificate, were not considered for the post. However, the applicant was wrongly considered. Respondent No.2 justified cancellation order of the applicant. An affidavit has been filed on record by respondent No.3, wherefrom it seems that respondent No.3 had joined the duty as Police Patil on 19.11.2016.

8. From the documents placed on record, so also the arguments putforth by the learned counsel for the respective parties, it is clear that there is no dispute that, the applicant was earlier appointed since he stood first in merit. However, it is the respondent No.3 who objected for the appointment of the applicant. Objection was to the effect that the applicant has not produced the character certificate from the concerned police station which was mandatory. Annexure A-1 is the advertisement for the post of Police Patil. Condition No.7 of the said advertisement reads thus:-

अज्ञानाचे पूर्व चाखाय चांगले असण्याबाबत संबंधित पोलीस स्टेशनचे माणप जोडणे अन्याय आहे.”

Column No.7 i.e. General Instructions makes it crystal clear that the application form alongwith necessary documents were to be filed on or before 15.2.2016 and it was specifically mentioned that the application received after 15.2.2016, will not be considered.

9. Admittedly in this case, applicant has not produced character certificate from the concerned police station on the date of application. The learned P.O. as well as learned counsel for respondent No.3 have invited my attention to the list of scrutiny of applications alongwith scrutiny forms, which were declared not eligible. The said scrutiny forms and the list are at Page Nos. 67 to 71 of the O.A. (both inclusive). Perusal of the said documents clearly shows that number of candidates were denied even the participation in the selection process on the ground that they have not produced character certificates from the concerned police station, as per condition No.7 of the advertisement. There is no dispute that the applicant has not produced the character certificate alongwith an application which was mandatory. In view of this fact, applicant's application for the post of Police Patil should have been rejected and he should not have been even allowed to participate in the selection process, since he and other

candidates were denied opportunity to participate in the written test and oral test on this ground. The objection taken by respondent No.3 therefore, should have been considered by the respondent authority.

10. Even though the process of selection has been completed and after completion of process, the applicant was appointed, this Tribunal has clearly directed the competent authority that the matter be re-opened from the stage prior to scrutiny of application forms of candidates for consideration and the appointing authority will re-consider all claims on its own merit. In view of the said directions, respondent No.2 seems to have scrutinized the documents and taken objection and accordingly found that the applicant was not eligible, since he did not produce character certificate which was mandatory.

11. The learned counsel for the applicant submits that he has applied for character certificate on 15.2.2016 to the learned police station. He invited my attention to the copy of the receipt dated 15.2.2016 in this regard. This receipt does not state specifically the reason for which the amount was paid. Even for the sake of argument, if it is accepted that such receipt is for obtaining character certificate, still fact remains that on 15.2.2016, which was the last date for filing an application form for the post of Police Patil, the applicant

was not holding the character certificate as required under condition No.7 of the advertisement.

12. On a conspectus of discussion in foregoing paras, I am satisfied that respondent No.2 has not committed any illegality in cancelling the appointment order of the applicant in view of derelictions issued by this Tribunal in O.A. No. 274/2016 on 10.10.2016. Hence, I proceed to pass the following order:-

ORDER

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

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

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