

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 321 OF 2015

DIST.: PARBHANI

Shri Ikrammodin Khiyamoddin Khatib,
 Age: 24 Years., Occu: Student,
 R/o : New Police Quarter,
 House No. A-4, Vasmata,
 Taluka-Vasmata, District-Hingoli

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APPLICANT

VERSUS

1. The State of Maharashtra,
 Through its Principal Secretary,
 Home Department, Mumbai-32.
2. The Director General of Police,
 Maharashtra State, Mumbai.
3. The Special Inspector General of Police,
 Nanded Range, Nanded.
4. The Superintendent of Police,
 Parbhani, Dist. Parbhani.
5. Ashok s/o Marotrao Dharne,
 Age : 23 years, Occupation: Student,
 Through office of the Superintendent of Police,
 Parbhani, District Parbhani.
6. The Superintendent of Police,
 Jalna, Dist. Jalna.

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RESPONDENTS

APPEARANCE : Shri Amit Deshpande, Learned
 Advocate for the Applicant.

: Smt. S.K. Deshmukh-Ghate, Learned
 Presenting Officer for Respondent nos. 1
 to 4 & 6.

: None present for Respondent no. 5

CORAM: HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN (A)
AND
HON'BLE SHRI B.P. PATIL, MEMBER (J)

DATE :

ORDER

[Per- Hon'ble Shri B.P. Patil, Member (J)]

1. The applicant has challenged the waiting list of the sports person from Open category for the post of Police Constable on the establishment of Parbhani Police force, prepared by the respondent no. 4 and sought direction to rectify the waiting list by placing his name at Sr. No. 1 above the respondent no. 5, and also sought direction to give appointment to the applicant in place of Md. Shahbaz Hussain, whose candidature/selection has been rejected from quota of sports person from Open category.

2. The applicant has applied for the post of Police Constable for Parbhani district in pursuance to the advertisement dated 29.04.2014 issued by the respondent no. 4 in the Daily Newspaper "Lokmat" dated 30.4.2014 from the quota of sports person for Open category. The

respondent no. 5 as well as Md. Shahbaz Hussain had also applied under the same quota. The applicant and other candidates participated in the recruitment process for filling 128 posts of Police Constable in the establishment of Parbhani Police Force. The result of recruitment was declared and the merit list was published on 3.7.2014. The applicant, as well as, respondent no. 5 secured 162 marks in the recruitment process. They could not get selected, but their names had been included in the waiting list prepared for the post of Police Constable from Sports quota made available for Open category. Md. Shahbaz Hussain was one of the selected candidates of the said post. As the applicant and respondent no. 4 secured equal marks i.e. 162 marks each and they are belonging to same category, the respondent no. 4 prepared wait list and placed the respondent no. 5 i.e. Shri Ashok Marotrao Dharne at Sr. No. 1 and the applicant at Sr. No. 2 by applying criteria of seniority in age, in view of the Government Resolution dated 27.06.2008. It is the contention of the applicant that he has higher qualification than the respondent no. 5. The respondent no. 5 passed H.S.C. i.e. 12th Std examination,

while he had appeared for 3rd year B.Sc. at that time, but the respondent no. 4 has not applied the criteria of higher education, while preparing the waiting list and seniority list therein and thereby published the waiting list wrongly, wherein the name of respondent no. 5 stands at Sr. No. 1.

3. It is the contention of the applicant that the selected candidate Md. Shahbaz Hussain has applied for the post of Police Constable from Open sports person quota and produced documents for scrutiny to Deputy Director, Sports and Youth Directorate, Maharashtra State, Pune. After verification of the documents, the Assistant Director, Sports and Youth Affairs, M.S. Pune, submitted report on 18.09.2014 and informed that the game shown in the certificate produced by the Md. Shahbaz Hussain has not been mentioned in the list recognized by the Maharashtra Olympic Association and All India Olympic Association, and therefore, he found that Md. Shahbaz Hussain was not fulfilling eligibility criteria for Class-C post. On the basis of report of Assistant Director, Sports and Youth Affairs, Maharashtra State, Pune, the respondent no. 4 the

Superintendent of Police, Parbhani cancelled the selection of Md. Shahbaz Hussain by letter dated 22.10.2014.

4. The applicant has filed application with the Superintendent of Police, Parbhani and challenged the waiting list prepared by him for the candidates under sports quota from Open category and prayed to rectify the same by placing him at Sr. No. 1 above the respondent no. 5 considering his higher education and also prayed to give appointment in place of Md. Shahbaz Hussain. It is his further contention that the respondent no. 5 had also applied for the post of Police Constable on the establishment of Jalna Police Force and he was selected there. Therefore, he sought direction of this Tribunal for rectification of waiting list prepared by respondent no. 4 and to issue directions to the respondent no. 4 to give him appointment in the place of Md. Shahbaz Hussain.

5. The respondents have resisted the applicant's claim by filing their affidavit in reply and contended that the respondent no. 4 conducted recruitment process for the post of Police Constable as per Rules. He prepared the wait list of

the candidates who have applied under sports quota from Open category. The applicant, as well as, respondent no. 5 scored equal marks i.e. 162 marks each. Both of them have same educational qualification i.e. both have passed 12th Std examination i.e. H.S.C. exam. Therefore, criteria of age has been applied while fixing the seniority in view of the G.R. dated 27.06.2008. The respondent no. 5 Shri Ashok s/o Marotrao Dharne was elder in age than the applicant. Therefore, he was placed at Sr. No. 1 and the applicant was placed at Sr. No. 2 in the waiting list prepared by respondent no. 4. There was no illegality in it. They have contended that one Md. Shahbaz Hussain was selected for the post from open sport person quota as per his merit but his selection has been cancelled by the respondent no. 4 by communication dated 21.10.2014 on the basis of report sent by the Assistant Director, Sports and Youth Affairs, M.S. Pune, as he did not possess requisite sports certificate. Md. Shahbaz Hussain preferred O.A. No. 27/2015 praying for cancelation of said order, but it was dismissed on 2.12.2015. The post of Md. Shahbaz Hussain has been kept vacant in view of the direction given by this Tribunal. It is

their contention that the waiting list for the Open category from sports quota was published on 3.7.2014. After one year, it has been expired and therefore, the applicant cannot claim modification of it or appointment on the basis of it.

6. We have heard Shri Amit Deshpande, learned Advocate for the applicant and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondent nos. 1 to 4 and 6. None present for respondent no. 5. We have also perused the affidavit, affidavit in reply and various documents placed on record by the respective parties.

7. The learned Advocate for the applicant argued that the applicant and respondent no. 5 Shri Ashok Marotrao Dharne, secured equal marks in the recruitment process and they were considered for the waiting list prepared by respondent no. 4 in the recruitment process for the post of Police Constable on the establishment of Parbhani Police Force. In view of the G.R. dated 27.06.2008, the candidate who has acquired higher

educational qualification shall be placed at the higher footing than the other candidate, who has less educational qualification. He has submitted that the applicant appeared for B.Sc. 3rd year at the time of recruitment process and the respondent no. 5 i.e. Shri Ashok Marotrao Dharne has passed 12th Std. only. As the applicant was holding higher educational qualification, he should have been placed at Sr. No. 1 in the waiting list and the respondent no. 5 should have been placed at Sr. No. 2. But the respondent no. 4 has not considered the said criteria and in contravention of the guidelines in the Government Resolution dated 27.06.2008, prepared waiting list. He has submitted that in view of this, the applicant was entitled to get appointment in place of Md. Shahbaz Hussain, whose selection has been cancelled and therefore, he prayed to allow the Original Application and to issue directions to the respondents accordingly.

8. Learned Presenting Officer submitted that the respondent no. 5 passed H.S.C. examination i.e. 12th Std. examination. The applicant appeared for T.Y.B.Sc. at the time of recruitment process, but he was not holding any

degree. Therefore, his qualification had been treated as 12th passed i.e. H.S.C. As the applicant and respondent no. 5 Shri Ashok Marotrao Dharne were holding same qualification, the next criteria as mentioned in Clause no. 6(6) of the G.R. dated 27.06.2008 has been applied. The said criteria relates to age criteria. The respondent no. 5 Shri Ashok Marotrao Dharne was elder and senior in age than the applicant and therefore, the respondent no. 5, Shri Ashok Marotrao Dharne was placed at Sr. No. 1 in the waiting list and the applicant was placed at Sr. No. 2. Therefore, there was no illegality in the selection process while preparing waiting list.

9. He has submitted that the selected candidate Md. Shahbaz Hussain was not eligible for the post of Police Constable under sports quota from Open category as per communication dated 18.09.2014 by the Assistant Director, Sports and Youth Affairs, Maharashtra State, Pune. Therefore, his selection has been cancelled by respondent no. 4. He challenged the order of respondent no. 4 by filing O.A. No. 27/2015 in this Tribunal and it was dismissed.

Against that, he filed W.P. No. 3759/2016 before the Hon'ble High Court, but it was also rejected on 6.6.2016. He has argued that the wait list in dispute has been declared on 3.7.2014 and it was valid for one year only i.e. till 3.7.2015. Thereafter, it was expired. Therefore, the applicant cannot claim appointment on the post of Police Constable on the basis of the said wait list which has been scraped/expired.

10. We have gone through the documents, the respondent no. 4 has rightly decided to place the respondent no. 5 Shri Ashok Marotrao Dharne at Sr. No. 1 in the waiting list prepared for the post of Police Constable from Open sports category, as the applicant and respondent no. 5 secured equal marks i.e. 162 marks each. Both have passed 12th Std i.e. HSC exam. No doubt the applicant appeared for 3rd year of B.Sc. at that time. But he had not completed graduation. Therefore, his qualification has been treated as 12th pass i.e. H.S.C. examination. As both have similar qualification, criteria as mentioned in Clause no. 6(6) in G.R. dated 27.06.2008 has been applied by respondent no. 4. The respondent no. 5 was senior/elder than the applicant as per

their birth dates as mentioned in waiting list at paper book page no. 38 (Exhibit R-1). Therefore, he has been placed at Sr. No. 1 in the waiting list and the applicant is placed at Sr. No. 2. There was no illegality or irregularity in waiting list prepared by respondent no. 4. Therefore, there is no merit in the contention raised by the applicant. Moreover the wait list, which has been prepared on 3.7.2014, has been expired on 3.7.2015 on completion of one year. Therefore, the applicant cannot claim appointment on the basis of scraped wait-list. Therefore, we find no merit in the O.A. and the contention raised by the applicant. Therefore, the Original Application must fail. Resultantly, the O.A. deserves to be dismissed. Hence, we pass the following order:-

ORDER

The Original Application stands dismissed with no order as to costs.

MEMBER (J)
Kpb/DB OA No 321 of 2015 BPP 2017

VICE CHAIRMAN (A)