

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 786/2015.

Rahul Kishor Chaudhary,
Aged about 30 years,
R/o at Post Kurha (D)
Tah. Chandur Bazar,
Distt. Amravati.

----- **Applicant.**

Versus

The State of Maharashtra,
Through its Secretary,
Department of Home ,
Mantralaya, Mumbai

2. The Sub-Divisional Magistrate,
Achalpur Sub-Division,
Tah. Achalpur, Distt. Amravati.

3. Poonamkumar Rajendrarao Raut,
R/o At Post Kurha, Tah. Chandur Bazar,
Distt. Amravati.

----- **Respondents.**

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1. Shri R.A. Haque, Advocate for the applicant.
 2. Smt. S.V. Kolhe, Presenting Officer for the Respondents
No. 1 and 2.
 3. Shri N.A. Gawande, Advocate for R/3.

CORAM : R.B. Malik: Member (J)
DATE : 17th February, 2017

ORDER

The applicant, an unsuccessful candidate for the post of Police Patil of village Chaudhar Khel Kurha, Tq. Chandur Bazar, Distt. Amravati hereby challenges the procedure whereby the 3rd respondent came to be so appointed by way of this O.A. under section 19 of the Administrative Tribunals Act, 1985 and seeks the unseating of the 3rd respondent.

2. I have perused the record and proceedings and heard Shri R.A. Haque, the Id. counsel for the applicant, Smt. S.V. Kolhe, the Id. P.O. for Respondent Nos. 1 and 2 and Shri N.A. Gawande, the Id. counsel for Respondent No. 3.

3. At the outset I must mention that having regard to the facts of the case, this O.A. will have to be allowed although the 3rd respondent has been functioning as a Police Patil of the said village by virtue of the order dtd. 19/1/2016 and this order shall result in him vacating the

said office. Such is the compelling judicial need to do so. I am not going to touch the merit of each candidate and therefore it is not necessary for me to discuss the principles that must inform the minds of those authorities that exercise jurisdiction of the judicial review of administrative action. However, one is more than a little surprised to find that in the score-sheet which was prepared post interview insofar as the applicant is concerned(Annexure- A-6, page 62), the President and the Member Secretary did not sign the same and the spaces above their designations are blank. Insofar as the respondent No. 3 is concerned (Annexure-A-8, page-64), the Member Secretary has not signed the said score-sheet while the President has signed it. It is inconceivable as to how and why the President could sign the score-sheet of the 3rd respondent but not the score-sheet of the applicant when all the candidates must have been interviewed on the same day. It was a tough calling for the Id. P.O. to defend such conduct of business. She tried to do it to the best of her ability by pointing out that it was through oversight that it

happened though they were present. I think this explanation needs to be stated to be rejected forthwith for the reasons which are clear and obvious. The legal effect and sanctity to the score-sheet would be completely absent and basic issue of legality will arise if the document had not even been signed by the President in one case and the Member Secretary in both. If one questions the very presence of the Member Secretary, I do not think there would be any plausible answer to the said question. In my opinion therefore, the entire process got vitiated beyond redemption whatever may be the consequences.

4. Mr. Haque, the Id. counsel for the applicant then raised the issue of bias by pointing out vide Annexure-A-17, page-19-A, that S.D.O. Achalpur appointed the Respondent No. 3 with effect from 19/1/2016 straightway for a period of 10 years. The perusal of the Rule 6 of Maharashtra Village Police Patils (Recruitment, Pay, Allowances and other conditions of Service) Order, 1968 , a copy of which is furnished by the Id. P.O., (in Marathi) clearly provides that

the initial appointment of the Police Patil would be for 5 years and if his work was found satisfactory, then the tenure could be extended to 10 years subject to the condition that the maximum age limit is 60 years. I, therefore, find substance in the submission of Mr. Haque, the Id. counsel for the applicant that the appointment for a period of 10 years right away not just an instance of curable irregularity but it was an instance of incurable illegality. It is also irredeemable so to say and therefore though the Id. P.O. and the Id. counsel for R/3 did their very best to persuade me to protect the tenure of the 3rd respondent, I do not think I can quite go along with them. The appointment of the 3rd respondent vide the order above referred will therefore have to be cancelled and as a consequence a fresh process of appointment will have to be made. The order of the 2nd respondent, S.D.O., selecting the 3rd respondent on 9/10/2015, which is at Annexure-A-10, page 66 will also have to be quashed and set aside.

5. The fate of the O.A. having become sealed against the respondent No. 3, I find that the submission of Mr. Gawande, the Id. counsel for the Respondent No. 3 that in any case the 3rd respondent had secured highest marks will not cut much ice. I find no reason on the basis of that argument to take any other view of the matter.

6. The order dtd. 9/10/2015 (Annexure-A-10, page-66) and the consequential order of appointment (Annexure-A-17, page 90-A) stand quashed and set aside. The appointment of the Respondent No. 3 as Police Patil of the said village is also quashed and set aside and it is declared that the said office has to be vacated forthwith. The authorities to take the necessary further steps in the matter. The O.A. is allowed in these terms with no order as to costs.

(R.B. Malik)
Member (J)

Skt.