

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 135 /2016 (S.B.)**

Smt. Kalpana W/o Vishwasrao Khandare,  
Aged about 31 years, Occ. Kotwal, R/o Thugaon Pimpri,  
Tahsil Chandur Bazar, District Amravati.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through Principal Secretary,  
Forest and Revenue Department,  
Mantralaya, Mumbai-32.
- 2) The Divisional Commissioner,  
Amravati Office of the Divisional Commissioner,  
By-pass Road, Camp, Amravati-444 602.
- 3) The District Collector Amravati  
Office of the District Collector,  
By-pass Road, Camp, Amravati.
- 4) The Tahsildar, Chandur Bazar,  
Office of the Tahsildar, Chandur Bazar,  
Tahsil Chandur Bazar, District Amravati.
- 5) Ku. Shital D/o Vinodrao Pande,  
Aged : Adult, Occ. Kotwal,  
R/o Thugaon, Tahsil, Chandur Bazar,  
District Amravati.

**Respondents.**

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**Shri C.A. Babrekar, Advocate for the applicant.**

**Shri V.A. Kulkarni, P.O. for respondent nos.1 to 4.**

**Shri S.P. Palshikar, Advocate for respondent no.5.**

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**Coram :- Hon'ble Shri A.D. Karanjkar,  
Member (J).**

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## **JUDGMENT**

**(Delivered on this 27<sup>th</sup> day of November,2018)**

Heard Shri C.A. Babrekar, learned counsel for the applicant, Shri V.A. Kulkarni, learned P.O. for respondent nos. 1 to 4 and Shri S.P. Palshikar, learned counsel for respondent no.5.

2. The applicant was appointed as Kotwal as she scored highest marks in the examination vide order dated 16/05/2013. The applicant joined her duty as Kotwal on 17/05/2013. The applicant all of a sudden received a letter / order dated 26/02/2014 by which she was informed that her appointment was cancelled and in her place respondent no.5 was appointed as Kotwal.

3. The applicant being aggrieved by this order of termination, filed O.A. No.296/2014 and challenged the order. The O.A.No.296/2014 was decided by this Tribunal on 27/04/2015 and direction was given to calculate the marks obtained by the applicant and respondent no.5 and further direction was given that the candidate who scored highest marks be appointed. In compliance of the order, the marks of the applicant and respondent no.5 were re-calculated, after examining the answer sheets and it was found that the applicant scored 48 marks in the examination and respondent no.5

scored 50 marks in the examination, consequently, the respondent no.5 was appointed as Kotwal.

4. In this application the applicant is challenging appointment of respondent no.5 after the re-calculation of marks on the ground that the re-calculation was not proper and as per the rules. It is submitted that earlier the calculation of the total marks obtained by the applicant was 54 and now it is shown 48. It is further submitted that earlier it was mentioned that there was over writing in the answer of question no.12 and now it is not mentioned this fact. On the basis of this it is contended that the re-calculation of the marks as per the answer sheet is incorrect and therefore it is wrongly held that respondent no.5 has scored highest marks. It is submitted that the order passed by respondent no.4 dated 15/09/2015 be quashed and the applicant be appointed as Kotwal after cancelling the appointment of respondent no.5.

5. The respondents have submitted reply and justified their action. It is submitted by respondent nos. 3 and 4 that as per the directions given by this Tribunal in O.A. 296/2014 the answer papers of applicant and respondent no.5 were again re-examined by the respondent no.4 and it appeared that the question no.1 was wrong therefore, no marks were allotted to that question. As the applicant

correctly answered 24 questions, therefore 48 marks were given to her. Similarly while re-accessing the answer sheet of respondent no.5 no marks were given to the questions no.1 as it was incorrect and as the respondent no.5 answered 25 questions correctly, she was given 50 marks and as she scored 50 marks and the total marks were more than the marks scored by the applicant, therefore she was appointment on the post of Kotwal was continued. It is submitted that there is no illegality committed by respondent no.4 while re-accessing and calculating the answer sheets.

6. After hearing the submissions of both sides, it appears that the question no.1 was itself wrong therefore marks are not allotted to question no.1 to any candidate. It appears that there was over writing in the answers of question nos. 14, 33 and 35 and the applicant answered 24 questions correctly, therefore she got 48 marks.

7. It appears that respondent no.5 correctly answered 25 questions and therefore she got 50 marks. It seems that no marks are allotted to the applicant or respondent no.5 to the answers where there was over writing or erasing. It is pertinent to note that as per the directions given by the Tribunal, the answer sheets were re-examined and marks are allotted, except this ground there is no other challenge to the process. Now it is contention of the applicant that the

procedure followed by respondent no.4 is illegal and his decision and allotment of marks after revaluation is wrong. In my opinion if such contentions are allowed to be raised, then there would be no end and finality to the examination process. There is a presumption that the public officers discharge their functions honestly as per the rules and unless it is shown that there was some foul play or malice it is not permissible to interfere. In the present case the respondent no. 4 who re-examined the answer papers was not in inimical terms with the applicant, similarly respondent no.4 had no reason to show favour to respondent no.5. In the absence of such allegations and evidence, I do not see any merit in the contention to interfere in this matter. Hence, I hold that the decision taken by respondent no.4 is correct and proper and no interference is required. Hence, the following order:-

**ORDER**

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

**Dated** :- 27/11/2018.

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**(A.D. Karanjkar)**  
**Member (J).**