

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.158 OF 2024

DISTRICT : MUMBAI

Sub.:- Selection

Shri Sachin R. Pujari.)
Age : 31 Yrs, Occu.: Nil,)
R/o. 14/30, Railway Police Vasahat,)
Pantnagar, Ghatkopar (E),)
Mumbai – 400 075.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through its Principal Secretary,)
Home Department, Mantralaya,)
Mumbai.)
2. The District General of Police.)
State of Maharashtra, Lion Gate,)
Fort, Mumbai.)
3. The Commissioner of Police.)
Railways, Area Manager Building,)
P.D'Mello Road, Wadibandar,)
Mumbai – 400 010.)
4. Recruitment President i.e.)
The Deputy Commissioner of Police,)
Railway, Belasis Road, Ghas Bazar,)
DRM, Near Western Railway Office,)
Mumbai Centra, Mumbai – 400 008.)
5. The Divisional Commissioner,)
Konkan Division, Konkan Bhavan,)
Belapur, Navi Mumbai.)
6. Vaibhav V. Gite.)
Age : Major, Occu.: Nil,)
R/o. Shelali, Tal.: Kandhar,)
District : Nanded.)...**Respondents**

Shri S.S. Jadhavar a/w Shri C. Khade, Advocate for Applicant.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents.

Shri Chaitanya Bagul a/w Shri V. Waghmare, Advocate for Respondent No.6.

**CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Debashish Chakrabarty, Member-A**

DATE : 14.02.2024

JUDGMENT

1. The Applicant who appeared for recruitment examination of Police Constable in Railway Police seeks direction to cancel selection and appointment of Respondent No.6 on the ground that Respondent No.6 is having a criminal record and he has suppressed the said fact in the 'Attestation Form'.

2. The Commissioner of Police, Railways, Mumbai had on 05.11.2022 issued Advertisement for filling up 620 posts of Police Constables. The learned Advocate for Applicant submits that at the time of filing of this OA No.158 of 2024 on 05.02.2024, no Appointment Order was issued to Respondent No.6. However, after 'Issue of Notice' returnable on 15.02.2024, the Appointment Order of Respondent No.6 was to be issued on 15.02.2024.

3. The learned Advocate for Respondent No.6 submits that he was called for handing over Appointment Order on 15.02.2024. However, it was not given to Respondent No.6 on account of 'Status Quo' granted by Order dated 15.02.2024.

4. The learned Advocate for Applicant submits that on 22.04.2023, Criminal Case was registered against Respondent No.6 for offences punishable under Sections 143, 147, 148, 149, 324, 395, 336, 452, 504

and 506 of Indian Penal Code 1860 in Cr. No.109/2023 at Kandhar Police Station, District Nanded by Complainant Smt. Jyoti B. Gite. The Respondent No.6 was shown as Accused No.1 in this Cr. No.109/2023.

5. The learned Advocate for Respondent No.6 submits that On-line Application Form was to be filled-up before 15.12.2022. The result came to be declared by Commissioner of Police Railways, Mumbai on 27.04.2023.

6. The learned Advocate for Respondent No.6 submits that when Respondent No.6 filled-up 'Attestation Form' on 09.05.2023 and at that time 'Charge-Sheet' was not filed against him. He further submits that offence in Cr. No.109/2023 was registered on 22.04.2023 and thereafter on next date itself i.e. on 23.04.2023, the Complainant Smt. Jyoti B. Gite gave 'Supplementary Statement' wherein she mentioned that she had by mistake mentioned the name of Respondent No.6. She had in the Supplementary Statement mentioned that Respondent No.6 was not present at that time on the night when offence took place. Subsequently on 08.05.2023, Smt. Jyoti B. Gite, as Complainant was called to record her statement under Section 164 of Cr.P.C. and her statement was recorded by Magistrate.

7. The learned Advocate for Respondent No.6 submits that on 18.07.2023, the Investigating Officer has submitted the report to JMFC, Kandhar, District Nanded in respect of offences registered in Cr. No.109/2023. In view of statement recorded under Section 164 of Cr.P.C. by Magistrate, no Charge-Sheet was filed against Respondent No.6.

8. The learned Advocate for Applicant points out judgment of Hon'ble Supreme Court in **Director General of Police, Tamilnadu, Mylapore Vs. J. Raghunees**. The learned Advocate for Applicant relied on Paras 9, 10, 15 & 16 of the said judgment, which are as under :-

“9. The aforesaid rule only provides for the eligibility criteria and that, apart from other things, the character and antecedents of the candidate are relevant and material factor for giving him entry in the service. Additionally, the respondent was required to disclose certain information about himself by filling the verification roll. The said verification roll is very relevant and important for the purposes of the present case, especially its column 15 and in particular the language of the said column which reads as under: -

“15 - Have you ever been concerned in any criminal case as defendant ?”

10. The aforesaid column in unequivocal terms inquires from the candidate about his involvement in any criminal case whether in past or present and unaffected by its status or result.

15. In other words, the candidate in the first instance is obliged to give correct information as to his conviction, acquittal or arrest or pendency of the criminal case and there should be no suppression or false mention of required information. Secondly, even if truthful declaration is made by him, he would not be entitled to appointment as a matter of right and that the employer still has the right to consider his antecedents.

16. In the case at hand, though the respondent may be eligible for appointment but since he has not disclosed the complete information with regard to his involvement in a criminal case, wherein he might have been acquitted earlier even before verification, he cannot escape the guilt of suppressing the material information as required by column 15 of the verification roll. Keeping in mind that the respondent was a candidate for recruitment to a disciplined force, the non-disclosure of the information of his involvement in the criminal case and subsequent acquittal therefrom cast a serious doubt upon his character and the antecedents which is sufficient enough to disentitle him from employment.”

9. The learned Advocate for Applicant submits that in **J. Raghunees** case, Hon’ble Supreme Court has taken a strict view in respect of suppression of material information regarding prosecution as an important determinant to assess the ‘Character of Candidate’. The learned Advocate for Applicant submits that this being recruitment to post of Police Constable in Railway Police from category of Police Child, it is necessary to strictly follow recruitment rules and all terms and conditions for appointment of Police Constables as per Advertisement issued by Commissioner of Railway Police, Mumbai on 05.11.2022 and verify the answers given to specific question asked in ‘Attestation Form’.

10. The learned Advocate for Applicant unfolded the chronology of the events and submitted that while 'Attestation Form' was filled-up by Respondent No.6 on 09.05.2023 and 'Charge-Sheet' came to be filed later on 06.07.2023, but offence at Cr. No.109/2023 had been registered on 22.04.2023 against Respondent No.6 in Kandhar Police Station, District Nanded. The learned Advocate of Applicant therefore submitted that there was pendency of Criminal Case against Respondent No.6 and thus while answering Sub-Questions (c) and Sub-Question (d) of Main Question 15(1) by giving negative answer, Respondent No.6 has clearly suppressed this fact and therefore in view of judgment of Hon'ble Supreme Court in **J. Raghunees's** case, Respondent No.6 is not entitled to get any appointment as Police Constable in Railway Police.

11. The learned Advocate for Applicant further submitted that Respondent No.6 had in fact not been given Appointment Order though other selected candidates were already appointed to post of Police Constable in Railway Police, Respondent No.6 had not given appointment for nearly 9 to 10 months only because the fact of lodging of Cr.No.109/2023 at Kandhar Police Station, District Nanded and the pendency of the Charge-Sheet filed on 06.07.2023. The filing of present OA No.158 of 2024 was on 05.02.2024, but it is only after 'Issue of Notice' returnable on 15.02.2024 that quick action was taken to issue 'Appointment Order' to Respondent No.6. However, it was not handed over on account of 'Status Quo' granted by Order dated 15.02.2024.

12. The learned Advocate for Respondent No.6 per contra submitted that though offence was registered in Cr.No.109/2023 against Respondent No.6, on the very next day, Complainant Smt. Jyoti B. Gite, gave Supplementary Statement on 23.04.2023 that Respondent No.6 was not present at the time of commission of offence. The learned Advocate for Respondent No.6 pointed out that while filling-up 'Attestation Form', Sub-Question (c) and Sub-Question (d) of Main Question 15(1) by stating

'No' Respondent No.6 has not suppressed any information, but he has said the truth and therefore it cannot be alleged that he has suppressed any material facts of the pendency of Criminal Case. He relied on judgment of Hon'ble Supreme Court in **State of West Bengal & Ors. Vs. Mitul Kumar Jana**. In the said judgment, Hon'ble Supreme Court held that the language in which question is asked and for what it is asked is to be considered and Respondents were not expected to furnish the information beyond what is asked.

13. The judgment in **J. Raghunees's** case focuses on moral turpitude of the candidates who aspiring to be in Government Service. Undoubtedly, the persons who are applying for posts of Police Personnel are required to have very good character and therefore, they should not suppress any fact.

14. On this background, let us examine the present case. For this, it is necessary to give chronology as follows :-

- (a) Advertisement dated 05.11.2022 and the last date of filling up the 'On-line Application Form' was 15.12.2022 and Respondent No.6 had filled-up before this date 'On-line Application Form'.
- (b) The offence was registered against Respondent No.6 at Cr.No.109/2023 on 22.04.2023. In between, Complainant Ms. Jyoti B. Gite gave supplementary statement wherein she has mentioned that she has by mistake mentioned the name of Respondent No.6 and it was a mistake of identity, and therefore, she prayed that no action should be taken against him.
- (c) It is informed that Respondent No.6 was never arrested and therefore, in the Proforma in respect of information about accused persons after registration of FIR, no details are mentioned about the arrest of Respondent No.6.
- (d) On 09.05.2023, Respondent No.6 was called after clearing the Examination. He filled-up 'Attestation Form' on 09.05.2023 and on 06.07.2023, Police filed Charge-sheet in the said case in which Respondent No.6 was not named.

- (e) On 18.07.2023, the Investigating Officer has submitted the report to JMFC, Kandhar in respect of said offence registered at Cr. No.109/2023.

15. The learned CPO submitted that case of Respondent No.6 was placed before High Level Committee on 29.01.2024 pursuant to G.R. dated 19.07.2017 and the High Level Committee has held Respondent No.6 eligible for appointment of Police Constable in Railway Police. The learned CPO relied on Affidavit-in-Reply dated 27.02.2024 filed by Commissioner of Police Railways, Mumbai through Sunil T. Bhamare, Assistant Commissioner of Police.

16. On this background, it is necessary to find out the questions which are asked in 'Attestation Form' by the Respondents. Main Question 15(1) in the 'Attestation Form' is in respect of antecedents, which are as under:-

१५.१.	अ	तुम्हाला आतापर्यंत कधीही स्थानबद्ध ठेवले होते का ?	होय/ नाही
	ब	तुम्हाला आतापर्यंत कधीही अटक करण्यात आले होते का ?	होय/ नाही
	क	तुमच्या विरुद्ध खटला दाखल करण्यात आला आहे का ? (म्हणजे कोणत्याही न्यायालयात तुमच्या विरुद्ध फौजदारी खटल्याबाबत दोषारोप पत्र दाखल करण्यात आले होते का ?	होय/ नाही
	ड	हा साक्षांकन नमुना भरतेवेळी कोणत्याही न्यायालयात, आपल्या विरुद्ध फौजदारी खटला प्रकरण प्रलंबित आहे का ?	होय/ नाही
	ई	तुम्हाला न्यायालयाकडून कोणत्याही अपराधाबद्दल आतापर्यंत सिध्द अपराधी ठरविण्यात आले आहे का ?	होय/ नाही

17. We note that disclosures sought from Candidates in 'Attestation Form' was filing of 'Charge-sheet' and pendency of 'Criminal Case' against the Candidates. Therefore, it cannot be said there was 'Suppression of Facts' by Respondent No.6 in 'Attestation Form' filled on 09.05.2023.

18. In the present case, Charge-Sheet was filed against Respondent No.6 on 06.07.2023. So, when 'Attestation Form' was filed-up on 09.05.2023, no Criminal Case was pending against Respondent No.6, as

no 'Charge-Sheet' was filed against him. Had been there any query in 'Attestation Form' about lodging of FIR, then the answer given 'No' to such question would have been directly resulted in 'Suppression of Facts'. Secondly, the Complainant Smt. Jyoti B. Gite had withdrawn her complaint against Respondent No.6 on the very next date and her statement has also been recorded under Section 164 of Cr. P.C. on 08.05.2023 by Magistrate and Respondent No.6 was never arrested. Therefore, answer 'No' to Sub-Question No.(c) and Sub-Question (d) of Main Question No.15(1) in 'Attestation Form' filed on 09.05.2023 cannot be 'Suppression of Facts' by Respondent No.6.

19. We rely on the judgment of (i) **Director General of Police, Tamilnadu, Mylapore Vs. J. Raghunees** and (ii) **State of West Bengal & Ors. Vs. Mitul Kumar Jana** and conclude that the facts of the said cases are distinguishable on the ground that the Candidates in both cases had undergone the entire trial. So those Candidates were indeed expected to mention and disclose about the prosecution they had gone through; it resulted into acquittal. It is not the case of present Respondent No.6.

20. Thus, we do not think our indulgence is required in present case. Hence, OA No.158 of 2024 stands dismissed. 'Interim Order' stands vacated. No order as to costs.

Sd/-
(DEBASHISH CHAKRABARTY)
Member-A

Sd/-
(MRIDULA BHATKAR, J.)
Chairperson

Mumbai
Date : 14.02.2024
Dictation taken by :
S.K. Wamanse.

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