

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.171 OF 2016**

**DISTRICT : SOLAPUR  
SUB :APPOINTMENT**

Shri Santosh Somnath Pawar, Occ. Nil, )  
A/P. Kamati (Khurd) Tal. Mohol, Dis.Solapur )... **Applicant**

**Versus**

- 1) The State of Maharashtra, through )  
Principal Secretary, Home Department, )  
Mantralaya, Mumbai 32. )
- 2) The Commissioner of Police, Mumbai )  
Having office at Mumbai Police )  
Commissionerate, L. T. Marg, opp. )  
Crawford Market, Fort, Mumbai 400 001. )...**Respondents**

Shri A. V. Bandiwadekar, learned Advocate for the Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)  
Shri Bijay Kumar, Hon'ble Member (A)

DATE : 21.02.2023

PER : A.P. Kurhekar, Hon'ble Member (J)

**ORDER**

1. The Applicant has challenged communication dated 21.06.2013 issued by Respondent No.1 and communication dated 11.07.2013 issued by the Respondent No.2 thereby rejecting candidature of the Applicant for the post of Police Constable invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunal Act, 1985.

2. Briefly stated facts giving rise to Original Application are as under:-

The Respondent No.2 -C.P. Mumbai conducted the recruitment process in 2011 to fill in the post of Police Constables. In pursuance to it, the Applicant participated and find place in final merit list. In the Attestation Form while giving details of criminal case pending, if any, the Applicant answered in affirmative but did not give further details. Since there was criminal case pending against the Applicant as informed by him, the matter was referred to the Government which in turn placed it before the High Power Committee constituted for this purpose in terms of G.R. dated 28.07.2006. However, the Committee noted as under:-

*"श्री. पवार यांची पोलीस आयुक्त, बृहन्मुंबई यांच्या आस्थापनेवर गुणवत्तेनुसार निवड झालेली असून त्यांचेविरुद्ध मोहोळ पोलीस स्टेशन भाग-५ येथे गु.र.नं.४१६/२००९ भा.दं.वि.कलम ३२५, ५०४ ३४ प्रमाणे गुन्हे दाखल झाला होता. सदर गुन्ह्यातून मा.न्यायालयाने दि.१३.०७.२०१२ रोजी उमेदवाराची निर्दोष मुक्तता केली आहे. उमेदवाराने त्यांचेविरुद्ध दाखल गुन्ह्याची माहिती साक्षांकन नमुन्यात नमुद केलेली नाही.*

**समितीची शिफारस :- अर्जदाराने साक्षांकन नमुन्यात गुन्ह्याची माहिती दिलेली नाही. त्यामुळे त्याला सेवेत सामावून घेण्यात येऊ नये."**

3. It is on the basis of minutes of Committee, the Government by order dated 21.06.2013 declined to appoint the Applicant on the post of Police Constable and the Respondent No.2-C.P. Mumbai communicated the same to him on 11.07.2013. The Applicant has challenged both these communications in present Original Application.

4. Heard Shri Arvind V. Bandiwadekar, learned Counsel for the Applicant and Shri A. J. Chougale, learned Presenting Officer for the Respondents.

5. Before making further discussion at this juncture itself, it is necessary to make it clear from perusal of Attestation form submitted by the Applicant on 04.06.2012 as well as from the perusal of original form which is tendered by learned C.P.O. for our perusal today that while filling in information, in Clause No.11(c) as to whether he is facing any

criminal prosecution in any court, the Applicant initially answered "नाही" but then he corrected it "आहे". Thus, apparently as seen from original form that initially Applicant has stated that no criminal case is pending but at next moment, he corrected it in affirmative. This was done admittedly by the Applicant before submitting it to the department. Thus, actually even if initially the Applicant seems to state negative later he realized that he should disclose truthfully and, therefore, corrected it in affirmative. Thus, this is not a case of tampering of Attestation form or suppression of material facts. The Applicant seems to have realized the mistake before submitting it to the department and corrected it.

6. Another development took place in the matter in meantime is that before placing the matter before the High Power Committee, the Applicant got acquittal in Criminal Case No.120/2010 by judgment dated 11.07.2012. He submitted Attestation Form on 04.06.2012 and after about one month got acquittal in criminal case. Notably the High Power Committee was also aware about the subsequent development of acquittal in criminal case as seen from the minutes of Committee reproduced above.

7. Despite aforesaid position, strangely the High Power Committee recommended for not appointing him on the ground that Applicant has not submitted details of criminal case. Indeed, in minutes there is no such specific mentioned that because of non-giving information in detail, his candidature was rejected. On the contrary, the Committee stated that Applicant did not give information of criminal case in Attestation Form which is factually incorrect. Notably, the Committee did not say anything about all alleged alternation/changes made by the Applicant in Attestation Form and it is not the ground for rejection. Thus, the ground of rejection for non giving information of criminal case in Attestation Form is obviously incorrect.

8. Despite aforesaid discussion, learned C.P.O. sought to contend that while giving Attestation Form the Applicant made erasers and

overwriting in Attestation Form and secondly, he has not given details of the criminal case. Insofar as alleged alteration is concerned as stated above initially though the Applicant stated in negative later, he answered in affirmative by overwriting and converted "नाही" into "आहे". Be that as it may, the Applicant himself corrected it before submitting Attestation Form since he realized that he should disclose the information faithfully. This being so, mere alleged so-called alteration cannot be the ground to reject candidature of the Applicant since it is not a case of suppression of material fact. True, he has not given details of criminal case which was required to submit in terms of Clause 11. However, that hardly matters since the details of the criminal case was before the High Power Committee. At the time of taking decision, the Committee has also found that Applicant was acquitted on 13.07.2012. The meeting of committee had taken place on 22.03.2013. Thus, having found that Applicant has already acquitted, the Committee ought to have taken cognizance of it. However, the Committee misdirected itself in stating that Applicant has not given information of crime in his attestation form which is apparently and factually incorrect. As such, there is no application of mind and Committee mechanically rejected the candidature of the Applicant.

9. Suffice to say, as borne out from the record, this is not at all a case of suppression of facts. He had already disclosed pendency of criminal prosecution against him in which he was acquitted hardly one month after submission of attestation form.

10. The perusal of judgment of criminal case also reveals that complainant Gorakh Lalu Pawar completely resiled from prosecution case and denied that the Applicant who was Accused No.3 in criminal case has assaulted him. The complainant in his report alleged that on 21.11.2009 against Accused No.1 Gorakh Lalu Pawar assaulted him with fist and Accused No.2 - Lalu Pawar, Accused No.3- Santosh Pawar (Applicant) and Accused No.4- Balu Rathod assaulted him with fist and kicks. However, he completely resiled from his complaint in court. Consequent to it, there being absolutely no evidence, the Accused as well

as Applicant were acquitted from the charges under Section 325, 504 and 34 of IPC. As such, there was no such disqualification for appointment of Applicant on the post of Police Constable.

11. Furthermore, as seen from the file noting (page no.40 of PB) that after acquittal Applicant made representation dated 31.07.2013 requesting for issuance of appointment order in view of his acquittal in criminal case. However, no final order was passed on the file by the Minister stating that the High Power Committee has already taken decision. Indeed, at least at that point of time, the Government ought to have corrected the mistake by taking remedial measures and should have appointed the Applicant on the post of Police Constable. When asked, learned P.O. on instructions from Shri Vinod Rakshe, Sr. Clerk, C.P. Office Mumbai stated that Police Constables who are recruited in 2019 recruitment process are presently being sent for training. Thus, now Applicant can be accommodated in the said training.

12. Indeed, the situation in present case is squarely covered by the decision of the Hon'ble Supreme Court in **(2013) 2 SCC (L & S) 773 Ram Kumar V/s State of Uttar Pradesh & Others**. In that case, in pursuance to an advertisement issued by the Government of Uttar Pradesh, the Appellant applied for the post of Constable and submitted affidavit dated 12.06.2006. In Affidavit, he stated that criminal case was registered against him. He was selected and deputed for training. Thereafter, department received report dated 15.01.2007 stating that Criminal Case No.275/2001 under Sections 323, 324 and 504 of IPC was registered against the Appellant and he was acquitted on 18.07.2002. Along with report, he also submitted copy of order dated 18.07.2002 of the Additional Chief Judicial Magistrate was also enclosed. On receipt of it, the Superintendent of Police, Ghaziabad by order dated 08.08.2007 cancelled the order of selection on the ground that he concealed material facts and, therefore, selection was irregular and illegal. Aggrieved by it, he filed W.P. before the Hon'ble Allahabad High Court which came to be dismissed. The Applicant filed SLP No.12091/2010. The Hon'ble Supreme

Court took note of acquittal of the Appellant which was before the date of submission of Affidavit in recruitment process and held that in fact situation, it was not at all possible for appointing authority to take a view that Appellant was not suitable for appointment to the post of Police Constable. It has been further held that instead of considering whether the Appellant was suitable for appointment to the post of Police Constable, the appointing authority has mechanically held that his selection was irregular and because he had furnished affidavit stating the fact incorrectly at the time of recruitment. Ultimately, the SLP was allowed and direction were given to take the Appellant in service within the period of two months without back-wages. In present case also there is total non-application of mind and the Committee as well as Appointing Authority failed to note that Applicant was already acquitted subsequent to filing of Attestation Form and there being no other adverse material against him, he could not have been held unsuitable for appointment to the post of Police Constable.

13. For the aforesaid reasons, we have no hesitation to conclude that impugned communications dated 21.06.2013 and 11.07.2012 refusing the Applicant appointment on the post of Police Constable is totally bad in law and liable to be quashed. The Applicant should not have been held disqualified for appointment to the post of Police Constable. The Original Application, therefore, deserves to be allowed. Hence, the following order:-

**ORDER**

- (A) The Original Application is allowed.
- (B) The impugned communications dated 21.06.2013 and 11.07.2013 are quashed and set aside.

(C) The Respondents are directed to appoint the Applicant on the post of Police Constable and to take further steps if otherwise found eligible, within three months from today and he be sent to police training in immediately next batch.

(D) No order as to costs.

Sd/-  
**(Bijay Kumar)**  
**Member (A)**

Sd/-  
**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai

Date: 21.02.2023

Dictation taken by: Vaishali Santosh Mane

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