

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.351 OF 2017

DISTRICT : NASHIK
Sub.:- Non-selection

Shri Mahesh Nivrutti Impal.)
Age : 29 Yrs, Residing At and Post : Peth,)
Mor-Vihir Pada, District : Nashik.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)

2. Commissioner of Police,)
Navi Mumbai, having Office at)
Sector-10, In front of RBI, CBD,)
Belapur, Navi Mumbai – 400 610.)...**Respondents**

Shri M.D. Lonkar, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J
DEBASHISH CHAKRABARTY, MEMBER-A

DATE : 19.07.2023

PER : A.P. KURHEKAR, MEMBER-J

JUDGMENT

1. The Applicant has challenged the communication dated 27.01.2017 issued by Respondent No.2 – Commissioner of Police, Navi Mumbai thereby declaring him unfit for appointment to the post of Police

Constable on the ground of suppression of material facts while submitting Attestation Form, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. In pursuance of recruitment process for 2015-2016 initiated by Respondent No.2, the Applicant participated in the process and was selected from SC category with horizontal reservation for Home Guards, as per select list dated 23.06.2016. Thereafter Applicant submitted Attestation Form on 07.06.2016 and he submitted information that no criminal case is pending against him. Thereafter, Respondent No.2 called the report from Peth Police Station about Applicant's character and antecedents. In response to it, Police Inspector, Peth Police Station by his communication dated 26.07.2016 informed that one NC case for the offences under Section 323, 504 and 506 of Indian Penal Code was registered on 16.12.2015 and Chapter Case under Section 107 of Cr.P.C. was filed before Executive Magistrate, Peth on 17.12.2015. In addition to it, he was prosecuted in Criminal Case No.105/2016 for the offences under Section 66(1), 192(A), 130(3) and 177 of Motor Vehicles Act and in both the cases, the Applicant paid fine of Rs.600/- each on 09.07.2016. On receipt of said information from Police, the Respondent No.2 by impugned communication dated 27.01.2017 declared Applicant unfit for the appointment stating that while submitting Attestation Form, he has suppressed the material fact of Criminal Cases and submitted false information which is under challenge in the present O.A.

3. Shri M.D. Lonkar, learned Advocate for the Applicant sought to assail the impugned communication dated 27.01.2017 *inter-alia* contending that the decision declaring the Applicant unfit is totally arbitrary and non-disclosure of offences under Motor Vehicles Act and Chapter Case being minor offences, it ought to have been condoned. He canvassed that it is only in case of serious offences or offences against moral turpitude and its suppression, the candidate may invite such action. In this behalf, he made reference to the decision of Hon'ble

Supreme Court in **AIR 2016 SC 3598 [Avtar Singh Vs. Union of India & Ors.]**. He further raised ground of non-placing the matter before the Committee constituted by Circular dated 26.08.2014 issued by Government. Adverting to the Appendix attached to the Circular, he submits that the offence under Motor Vehicles Act or Chapter case does not fall in Appendix 'A' and 'B' which enumerates the list of the offences in which candidate is not eligible for appointment.

4. Per contra, Smt. S.P. Manchekar, learned C.P.O. submits that this is a case of suppression of material facts about antecedents, and therefore, reference of the matter to Committee constituted by G.R. dated 26.08.2014 was not necessary. She submits that it is only in a case where there is disclosure of criminal antecedents in Attestation Form, in that event only, matter has to be referred to Committee for its recommendation in terms of Circular dated 26.08.2014. She has further pointed out that in **Avtar Singh's** case (cited supra), the Hon'ble Supreme Court made it clear that discretion vests with the employer whether to condone the antecedents. Where employer has taken decision that a candidate, who has suppressed material facts in Attestation Form though bound to disclose the same could not be held suitable for appointment, particularly appointment in uniformed force.

5. Admittedly, while submitting Attestation Form, the Applicant furnished information that he is not prosecuted or arrested in any criminal case nor any prosecution is pending against him. Clause No.11(a), (b) and (c) of the Attestation Form and the information given by the Applicant against it is as under :-

11(a) Have you ever been arrested/prosecuted/
kept under detention, or bound down/
fined/convicted by a Court of law for any
offence or debarred/disqualified by any
Public Service Commission from
appearing at its examinations/selections
or debarred from taking any examination/
rusticated by any University or any other
Educational Authority/Institution ?

... नाही

- (b) Is any case pending against you in any Court of law, University or any other Educational Authority/Institution at the time of filling up this Attestation Form ? ... नाही
- (c) Whether he/she is facing any criminal prosecution in any Court and if yes, state the details thereof such as case number, in which Court the case is pending, under which Section, etc. ... नाही

6. Notably, there is clear Warning Nos.1 to 3 in the very beginning of the Attestation Form stating that Applicant is required to submit true and correct information and in case of suppression of any factual information in Attestation Form, his service would be liable to be terminated. Thus, the Applicant was put on notice about the consequences of the suppression of facts. Warning Nos.1 to 3 are as under :-

1. Warning – The furnishing of false information or suppression of any factual information in the Attestation Form would be disqualification and is likely to render the candidate unfit for employment under the Government.

2. If detained, convicted, debarred, etc. subsequent to the completion and submission of this form, the details should be communicated, immediately, to the Maharashtra Public Service Commission or the authority to whom the Attestation Form has been sent earlier, as the case may be. Failure to do so will be deemed to be suppression of factual information.

3. If the fact that false information has been furnished or that there has been suppression of any factual information in the Attestation Form, comes to notice at any time, during the service of a person, his service would be liable to be terminated.”

7. When report from Police Station, Peth was called, it was found that NC No.507/2015 for the offences under Sections 323, 504 and 506 was filed against the Applicant on 16.12.2015 and Chapter Case under Section 107 of Criminal Procedure Code was filed against him before Executive Magistrate on 17.12.2015 which was registered as Chapter

Case No.136/2015. In addition to it, he was facing two criminal prosecutions under the provisions of Motor Vehicles Act vide Criminal Case Nos.64/2016 and 105/2016 for the offences under Section 66(1) read with 192-A and 130(3) read with 177 of Motor Vehicles Act. Notably, in Police Report dated 26.07.2016, Police Inspector further clarified that in both the offences under Motor Vehicles Act, the Applicant was convicted and fine of Rs.600/- was imposed and deposited on 09.07.2016. Thus, while Attestation Form was submitted on 07.07.2016, there was suppression of facts of pendency of these cases.

8. In view of submissions, the issue posed for consideration is whether the Applicant has suppressed material information while submitting Attestation Form rendering him unfit for appointment on the post of Police Constable and secondly, whether non-making reference of the matter to Committee constituted in terms of Circular dated 26.08.2014 rendered the impugned order arbitrary and unsustainable in law.

9. As stated above, there is no denying that Applicant has not disclosed about the institution of Chapter Case and two other criminal cases filed against him under the provisions of Motor Vehicles Act. Notably, Applicant has submitted Attestation Form on 07.06.2016. Whereas as per Police Character Verification Report dated 26.07.2016, the Applicant was subjected to imposition of penalty of Rs.600/- on 09.07.2016 each in two criminal prosecutions filed under the provisions of Motor Vehicles Act. As such, even if fine was imposed on 09.07.2016 and criminal prosecution was closed, the fact remains that while submitting Attestation Form on 07.06.2016, he was accused in two criminal cases under the provisions of Motor Vehicles Act. He was prosecuted for the offence under Section 66(1) read with 192-A which provides use of vehicle without permit punishable upto six months and fine of Rs.10,000/- and for subsequent offence for which punishment upto one year, but shall not be less than six months and fine upto

Rs.10,000/- or both. Whereas offence under Section 130(3) read with 177 provides for the punishment for non-production of Certificate of Insurance of Vehicle, which is punishable upto Rs.500/- for the first offence and fine upto Rs.1500/- for second offence.

10. At this juncture, material to note that as per Warning No.2 of Attestation Form reproduced above, if a candidate is detained, convicted, etc. subsequent to the submission of Form, it was obligatory on his part to communicate it to the authority i.e. Respondent No.2 and failure to do so will be deemed to suppression of factual information.

11. Thus, in the present case, there is suppression of material factual facts, firstly while submitting Attestation Form and secondly, non-compliance of Warning No.2 of Attestation Form. Thus, there is no denying that Applicant was convicted under the offence under Motor Vehicles Act twice and fine of Rs.600/- each was imposed, but he suppressed this material information from Respondent No.2. Needless to mention, once Attestation Form requires that the candidate should furnish correct information as regard criminal prosecution, the candidate is duty bound and under obligation to disclose it truthfully and non-doing so may lead to termination of his services or cancellation of candidature in an appropriate case. The Applicant was selected for the post of Police Constable in uniformed police force where in discharge of duties, he may require to check the vehicles for detection of offences under Motor Vehicles Act. In the present case, Applicant himself having been suppressed material facts of prosecution as well as conviction under Motor Vehicles Act, it has clear bearing on his antecedents in relation to his duties to be performed after appointment in the Department.

12. The submission advanced by learned Advocate for the Applicant that offences under Motor Vehicles Act were of trivial/minor nature and it could have been condoned by the Department is totally unpalatable.

Indeed, such issue as to whether the antecedents of a candidate if found involved in criminal case can be condoned would arise in a case where a candidate had made full and truthful disclosure of his antecedents while submitting Attestation Form. As such, withholding of material information about the pendency of criminal cases is one thing and whether it could be condoned is different thing. These are two different issues. Here is the case of suppression of important information about the pendency of criminal cases as well as institution of Chapter Case under Section 107 of Cr.P.C. which have bearing on character and antecedents of the Applicant in relation to his duties to be performed if appointed in Police Force. Hon'ble Supreme Court in **2003 (3) SCC 437 [Kendriya Vidyalaya Sanghatan Vs. Ram Ratan Yadav]** considered the question as to whether suppression of material information relating to character and antecedents can be a ground to terminate the services. In that case, Respondent had applied for the post of Teacher and offence under Sections 323, 241, 294, 506(b) and 34 of I.P.C. was pending on the date of submission of Attestation Form, but candidate suppressed it. Hon'ble Supreme Court held the requirement of filling Attestation Form was the purpose of verification of character and antecedents of candidate as on the date of filling Attestation Form and suppression of material information and making false statement has clear bearing on the character and antecedents of the Respondent in relation to his continuation in service.

13. In the present case, Applicant had applied for the post of Police Constable in uniformed service and standard expected of a person intended to serve in such service is definitely different from person who intend to serve in other services. This being the position, there is no escape from the conclusion that the Applicant has suppressed material information and made false statement in Attestation Form and non-disclosure of such information itself was enough for not appointing the Applicant in Police Force by cancelling his candidature.

14. Shri M.D. Lonkar, learned Advocate for the Applicant in reference to decision of Hon'ble Supreme Court in **AIR 2016 SC 3598 [Avtar Singh Vs. Union of India]** tried to contend that non-disclosure of information could have been condoned by taking reasonable and rational view of the matter and not doing so, rendered the impugned order of rejecting candidature unfair and arbitrary. He fairly concedes that Applicant has not disclosed the material information while submitting Attestation Form. However, according to him, the Department ought to have exercised discretion judiciously, but it failed to do so. In **Avtar Singh's** case (cited supra), Hon'ble Supreme Court has taken review of various decisions rendered earlier and laid down certain guidelines. Para Nos.22, 23, 24, 27 and 30 summarized the legal position, which are as under :-

“22. The employer is given ‘discretion’ to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer come to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service.

23. *Coming to the question whether an employee on probation can be discharged/refused appointment though he has been acquitted of the*

charge/s, if his case was not pending when form was filled, in such matters, employer is bound to consider grounds of acquittal and various other aspects, overall conduct of employee including the accusations which have been levelled. If on verification, the antecedents are otherwise also not found good, and in number of cases incumbent is involved then notwithstanding acquittals in a case/cases, it would be open to the employer to form opinion as to fitness on the basis of material on record. In case offence is petty in nature committed at young age, such as stealing a bread, shouting of slogans or is such which does not involve moral turpitude, cheating, misappropriation etc. or otherwise not a serious or heinous offence and accused has been acquitted in such a case when verification form is filled, employer may ignore lapse of suppression or submitting false information in appropriate cases on due consideration of various aspects.

24. *No doubt about it that once verification form requires certain information to be furnished, declarant is duty bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.*

27. *Suppression of 'material' information presupposes that what is suppressed that 'matters' not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.*

30. *We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:*

(1) *Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.*

(2) *While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.*

(3) *The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.*

(4) *In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted :-*

(a) *In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.*

(b) *Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.*

(c) *If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.*

(5) *In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.*

(6) *In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.*

(7) *In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.*

(8) *If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.*

(9) *In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.*

(10) For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.

We answer the reference accordingly. Let the matters be placed before an appropriate Bench for consideration on merits.”

15. It is thus explicit that Department has discretion to terminate the candidate or to condone the omissions. In Para No.24, Hon'ble Supreme Court held that once Attestation Form requires certain information to be furnished, the declarant is duty bound to furnish it correctly and any suppression of material facts or submitting false information may by itself lead to termination of his services or cancellation of candidature in an appropriate case. In the present case, what is suppressed cannot be said technical or trivial matter so as to condone the same. Hon'ble Supreme Court in Clause No.7 of Para 30 held that in a case of deliberate suppression of fact with respective multiple pending cases, such false information by itself will assume significance and employer may pass appropriate order cancelling the candidature or terminating the services and appointment of a person against whom multiple criminal cases were pending may not be proper. In the present case also, there was multiple criminal cases pending at the date of submission of Attestation Form and subsequently, Applicant was convicted and fine was imposed twice under the provisions of Motor Vehicles Act. Suffice to say, even applying the principles/guidelines laid down in **Avtar Singh's** case, the decision of Respondent No.2 cancelling the candidature of the Applicant cannot be said arbitrary or unsustainable.

16. True, Government by Circular dated 26.0-8.2014 formed one Committee for making recommendation to the appointing authority

where in Police Verification Report, character of the Applicant found doubtful. The Circular is as under :-

“शासन परिपत्रक :-

महाराष्ट्र लोकसेवा आयोग पुरस्कृत उमेदवार किंवा अन्य कोणत्याही विहित निवड प्रक्रियेद्वारे जिल्हास्तरीय व स्थानिक पातळीवरील सरळ सेवा भरतीसाठी पुरस्कृत उमेदवारांच्या नियुक्ती संदर्भात चारित्र व पूर्वचारित्र पडताळणीच्या साक्षांकन नमुन्यात उमेदवारांनी दिलेली माहिती तसेच अशा उमेदवारांच्या संदर्भात पोलीस विभागातर्फे करण्यात आलेल्या पडताळणीच्या अनुषंगाने संबंधित नियुक्ती प्राधिका-याकडे सादर करण्यात आलेले सदर उमेदवाराचे चारित्र व पूर्वचारित्र पडताळणी अहवाल याचा साकल्याने विचार करून सदर उमेदवाराची शासन सेवेत नियुक्ती करावी किंवा कसे वा ज्यांची नियुक्ती अशा चारित्र व पूर्वचारित्र पडताळणी अहवाल प्राप्त होण्याचे अधीन राहून करण्यात आलेली असेल ती पुढे चालू ठेवावी किंवा समाप्त करावी या करिता सक्षम नियुक्ती प्राधिकारी यांनी खालील निकष विचारात घ्यावेत तसेच पुढील कार्यपद्धतीचा अवलंब करावा.”

17. In the present case, admittedly, matter was not placed before the Committee constituted in terms of Circular dated 26.08.2014. However, in our considered opinion, non-referring the matter to the Committee constituted pales into insignificance, since this is a case of suppression of material facts about pendency of criminal cases in Attestation Form itself. Needless to mention, the role and jurisdiction of the Committee is restricted to make recommendations to the appointing authority. Ultimately, it is for the appointing authority to consider the recommendation and to condone the omissions, if it is condonable. The powers and jurisdiction of appointing authority are larger and wider than the powers of the Committee. Appointing Authority is the best Judge to see the suitability and in absence of *malafide*, it can hardly be questioned.

18. The learned Advocate for the Applicant could not point out any such provision or law to substantiate that non-sending the matter to Committee rendering the decision of appointing authority illegal. What one need to see is whether the decision taken by appointing authority is legal and correct and in the present case, there being clear suppression of material facts about pendency of criminal cases itself is sufficient to cancel the candidature of the Applicant. The Applicant was put on note while submitting Attestation Form in view of specific warnings mentioned in the Attestation Form. But despite it, he suppressed material facts which render his candidature not suitable for the post of Police

Constable. Suffice to say, non-reference of the matter to Committee *per se* would not invalidate the impugned order.

19. In this behalf, the learned C.P.O. rightly referred to the decision of Hon'ble High Court in **Writ Petition No.12127/2015 [Joint Director of Vocational Education and Training Vs. Ashish Lohar] decided on 24.01.2001** arising from the decision of the Tribunal. In Para Nos.8, 9 and 10, Hon'ble High Court held as under :-

“8. Heard learned Counsel. We are unable to agree with the Tribunal's view. In the attestation form, the respondent has clearly mentioned that he is not facing any criminal prosecution in any Court. The attestation form is very specific. The warning on the top of the attestation form clearly mentions that furnishing of false information or suppression of any factual information in the attestation form would be disqualification and is likely to render the candidate unfit for employment under the Government. Even terms and conditions in the order of appointment itself mentions that the respondent is liable for termination of service if it is found that the character report is unsatisfactory.

9. It is clear that the respondent has suppressed the factum of pending criminal prosecution against him. It is only after the petitioner enquired that a report came to be submitted about the criminal proceedings against the respondent. Even the criminal prosecution was compounded by an order of this Court dated 28/06/2013 which is after issuance of the show cause notice dated 15/05/2013.

10. In our opinion, this is a clear case of suppressing material information while seeking employment. The offence under sections 279 and 337 read with 34 of IPC cannot be said to be so minor that such a suppression or concealment can be ignored.”

20. The totality of aforesaid discussion leads us to sum-up that the challenge to the impugned order dated 27.01.2017 cancelling the candidature of the Applicant holds no water and O.A. liable to be dismissed. Hence, the order.

ORDER

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

Sd/-

(DEBASHISH CHAKRABARTI)
Member-A

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 19.07.2023

Dictation taken by :

S.K. Wamanse.

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