

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURABGABAD**

ORIGINAL APPLICATION NO.426 OF 2017

DISTRICT : JALGAON

Shri Sudhakar E. Patil.)
Age : 41 Years, Occu.: Agriculturist,)
R/o. Bhandgure, Tq. Muktai Nagar,)
District : Jalgaon.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
(Copy to be served on C.P.O, Bench)
at Aurangabad.)
2. The Collector.)
Collector Office, Jalgaon.)
3. The Sub Divisional Officer,)
Bhusawal, Tal. : Bhusawal,)
District : Jalgaon.)...**Respondents**

Mr. C.T. Jadhav, Advocate for the Applicant.

Mr. N.U. Yadav, Presenting Officer for Respondents.

CORAM : SHRI B.P. PATIL (MEMBER-J)

Closed on : 07.04.2018

Pronounced on : 17.04.2018

J U D G M E N T

1. The Applicant has challenged the order dated 18.04.2017 passed by the Respondent No.3 – Sub Division Officer, Bhusawal, Taluka Bhusawal, Dist : Jalgaon rejecting his claim for appointment as Police Patil on the vacancy arose because of the death of Police Patil appointed earlier by filing the present Original Application (OA).

2. The Home Department of Government of Maharashtra issued directions and guidelines and the Government issued the G.Rs. and Circulars from time to time for effective selection procedure, transparency in recruitment process and appointment procedure for the post of Police Patil in the State of Maharashtra. Accordingly, the Government issued G.R. dated 22.08.2014. In view of Para No.4 of the G.R, the select list prepared for appointment of the Police Patil would be valid for the period of one year and the select list has to be prepared in the ratio of “one person for one vacancy”.

3. The Respondent No.3 issued a publication / Notification for recruitment of Police Patil in different villages within sub Division Bhusawal, District Jalgaon and invited the

applications from eligible candidates. The S.D.O, has also invited the applications for appointment of Police Patil at Bhandgure from the eligible candidates and the post was kept reserved for Open Category candidates. The Applicant along with others applied for the said post. Accordingly, he participated in the recruitment process. He appeared for the written examination and passed the same successfully. Thereafter, he along with two other candidates was called for oral interview. On conclusion of the oral interview, the merit list of the three candidates appeared for oral interview has been published on 06.04.2016. One R.M. Patil secured highest marks and he stood first in the merit list. The Applicant was second in the merit list. The Respondent No.3 – S.D.O, Bhusawal published the select list as well as the waiting list of the successful candidates for the appointment on the said post. Name of R.M. Patil was figured in the select list while the name of the Applicant has been maintained in the waiting list. Since, R.M. Patil was a selected candidate, he was appointed as Police Patil at the village Bhandgure by the Respondent No.3. He joined the duty. While he was in service, he died on 19.08.2016, and therefore, the post of Police Patil of village Bhandgure became vacant.

4. After the death of R.M. Patil, the Applicant filed the applications dated 27.09.2016 and 23.11.2016 with the Respondent No.3 and requested them to appoint him on the vacant post of Police Patil of village Bhandgure, as his name

has been maintained in the waiting list. But the Respondent No.3 has not considered his request, and therefore, the Applicant approached this Tribunal by filing O.A.No.919/2016. The said O.A. came to be disposed of on 30.03.2017 with a direction to the Respondent to decide the representations of the Applicant within two weeks from the receipt of the order. The Applicant served the order of this Tribunal on the Respondent No.3 on 05.04.2017 along with his application. The Respondent then heard the Applicant, and thereafter, passed the impugned order dated 18.04.2017 rejecting the applications filed by the Applicant on the ground that there is no provision to maintain the waiting list and to appoint a person on the waiting list on the vacant post of Police Patil.

5. It is the contention of the Applicant that the Respondent No.3 had appointed similarly placed persons on the vacant post of Police Patil which became vacant on account of resignation tendered by the Police Patil. But the Respondent No.3 has not followed the said criteria while considering the applications filed by the Applicant. It is his contention that the Respondent No.3 has passed the impugned order with bias mind, and therefore, it is illegal. Therefore, he challenged the said order dated 18.04.2017 passed by the Respondent No.3 and prayed to appoint him as Police Patil of village Bhandgure, District Jalgaon.

6. The Respondent Nos. 2 and 3 have filed their Affidavit-in-reply and resisted the contention of the Applicant. It is their contention that the Applicant has suppressed the material facts while approaching this Tribunal. It is their contention that the Applicant moved an application dated 27.09.2016 with the same request to the Respondent No.3 and it has been disposed of by the Respondent No.3 by the order dated 14.10.2016. The Applicant suppressed the said fact and approached this Tribunal by filing the O.A. No.919/2016. Therefore this Tribunal passed the order on 30.03.2017 and directed the Respondent No.3 to decide the applications of the Applicant filed on 27.09.2016 and 23.11.2016 within two weeks. It is their contention that the Applicant has also suppressed that fact that R.M. Patil was already appointed as Police Patil of village Bhandgure on 30.04.2016 by the order issued by Respondent No.3 and he joined the post of Police Patil on 01.05.2016 and he was working on the said post till his demise i.e. on 19.08.2016.

7. It is the contention of the Respondents that the G.R. dated 22.08.2014 provides that the selection list prepared by the Recruitment Committee would be valid for one year. While preparing the selection list, it should be prepared in the manner "one candidate for one vacancy". It is their contention that the Applicant has misinterpreted the said provision and stated that his name was listed in the waiting list and not in the list of the selected candidates. It is the contention of the

Respondents that the candidate selected for the post of Police Patil had already joined the post and served. Once the candidate joins the post, the post is filled up. The vacancy may arise thereafter due to any unforeseen reasons such as death or resignation, and thereafter, the vacant post can be filled up by following due process of recruitment. It is their contention that the Respondent No.3 has rejected the application of the Applicant on the ground that, there is no provision to fill up the vacancy once the person was selected and appointed on the post and the vacancy arises because of the death of the said person. It is their contention that the Respondent No.3 has rightly rejected the application of the Applicant, and therefore, they prayed for rejection of the O.A.

8. The Applicant filed the Affidavit-in-Rejoinder to the reply of the Respondents contending that, he has no knowledge regarding the rejection of his earlier application dated 19.08.2016 by the Respondent No.3 on 14.10.2016. The order dated 14.10.2016 has not been communicated and served on him, and therefore, no question of suppression of material fact by him arises. He prayed to allow the application.

9. I have heard Mr. C.T. Jadhav, learned Counsel for the Applicant and Mr. N.U. Yadav, learned Presenting Officer (P.O.) for the Respondents and perused the documents produced by the parties on record.

10. Admittedly, the Applicant and deceased R.M. Patil and other aspiring candidates filled-in Online applications for the appointment on the post of Police Patil of village Bhandgure, District Jalgaon in response to the Notification / Advertisement No.1/2015, dated 2.11.2015 issued by the Respondent No.3. Admittedly, the eligible candidates including the Applicant and R.M. Patil appeared for the written examination held on 13.12.2015 and they passed the written examination. The Applicant R.M. Patil and one more successful candidate has been called for oral interview by the Respondent No.3. Their oral interview had been conducted by the Recruitment Committee and thereafter, the final result has been declared. A merit list has been declared on 06.04.2016. R.M. Patil secured highest marks amongst the three candidates called for oral interview, and therefore, he stood first in the merit list. The Applicant stood second in the merit list. Accordingly, R.M. Patil was declared as a selected candidate for the appointment on the post of Police Patil of village Bhandgure. Admittedly, R.M. Patil was appointed on the post of Police Patil of village Bhandgure by the Respondent No.3 by order dated 30.04.2016. He joined the post of Police Patil on 01.05.2016 and started discharging work as a Police Patil. He worked there till his death i.e. till 19.08.2016. After the death of R.M. Patil on 19.08.2016, the post of Police Patil of village Bhandgure became vacant.

11. Admittedly, on 27.09.2016, the Applicant filed an application for appointing him on the vacant post of Police Patil of village Bhandgure on account of death of R.M. Patil, as his name was incorporated in the waiting list prepared by the Respondent No.3. The said application came to be rejected by the Respondent No.3 by a communication dated 14.10.2016. Thereafter again, the Applicant moved one more application dated 23.11.2016. But the Respondent had not taken decision thereon. Therefore, the Applicant approached this Tribunal by filing the O.A.No.919/2016 which came to be disposed of on 30.03.2016 with a direction to the Respondent No.3 to decide the applications of the Applicant within two weeks. In view of the directions given by this Tribunal in O.A.No.919/2016, the Respondent No.3 decided the application of the Applicant and rejected it by an order dated 18.04.2017.

12. Learned Advocate for the Applicant has submitted that the Respondent No.3 has not considered the provisions of the G.R. dated 22.08.2014 with proper perspective. He has submitted that the Applicant stood second in the merit list and one R.M. Patil stood first in the merit list. He has submitted that the Respondent No.3 prepared the final select list and declared R.M. Patil as selected candidate and at the same time, he prepared a waiting list and mentioned the name of the Applicant at Serial No.1 in the waiting list. He has submitted that the waiting list has been prepared by the Respondent No.3 and it was valid for one year in view of the provisions of the

above said G.R. After the death of R.M. Patil, the Applicant who is placed in waiting list is eligible for the appointment on the post of Police Patil of village Bhandgure.

14. He has submitted that the Respondent No.3 has appointed the candidate at Serial No.2 in the merit list in other similar cases, but he has not considered the applications of the Applicant, and therefore, impugned order is not legal and it has been passed with bias mind. Therefore, he prayed to allow the O.A. and to direct the Respondent NO.3 to appoint the Applicant on the vacant post of Police Patil of village Bhandgure.

15. Learned P.O. for the Respondents submitted that the Applicant has misinterpreted the provisions of the G.R. dated 22.08.2014. There is no provision in the said G.R. as well as in the Recruitment Rules of the village Police Patil to maintain a waiting list. He has submitted that, as per the G.R. and guidelines issued by the Government from time to time and the Recruitment Rules, the select list shall have to be prepared in the manner "one candidate for one vacancy" and there is no provision to prepare the waiting list. He has submitted that in the Advertisement / Notification issued by the Respondent No.3 in the year 2015, there is no mention in that regard, and therefore, the Applicant who stood second in the merit list, has no right to claim his appointment on the post of Police Patil which has been already filled up but become vacant due to

demise of the Police Patil selected and appointed on the post. He has submitted that, on completion of the recruitment process of the Police Patil of village Bhandgure, one R.M. Patil was appointed as Police Patil as he was declared as selected candidate. He joined the duties but thereafter he died, and therefore, the post of Police Patil of village Bhandgure become vacant. He has submitted that, since there is no provision to appoint the candidate who stood second in the merit list to appoint on the vacant post, the Applicant's application cannot be considered, and therefore, the Respondent No.3 has rightly rejected the application of the Applicant.

16. He has submitted that the Applicant has suppressed the material fact before this Tribunal when he filed earlier O.A.No.919/2016. He has submitted that the Applicant made an application with the Respondent No.3 on 27.09.2016 and prayed to appoint him as Police Patil on the vacant post of R.M. Patil. The said application has been rejected by the Respondent No.3 on 14.10.2016 by recording reasons. But the Applicant suppressed the said material fact in the O.A.919/2016 and obtained the directions from this Tribunal to decide his representation again. He has submitted that, thereafter again, the Respondent No.3 has decided the applications of the Applicant filed on 27.09.2016 and 23.11.2016 by giving an opportunity of hearing to the Applicant and thereafter rejected the application by recording

reasons. He has submitted that, there is no illegality in the impugned order, and therefore, he prayed to reject the O.A.

17. On perusal of the record, it reveals that the recruitment process for the appointment of Police Patil of village Bhandgure had been held by the Respondent No.3 by following the due process of law. In the said recruitment process, the Applicant participated and he appeared for the written examination and oral interview. On completion of the oral interviews, the mark-list of the candidates who appeared for the oral examination has been prepared and published by the Respondent No.3. One R.M. Patil scored highest mark while the Applicant stood second in the merit list. As R.M. Patil secured highest mark and stood first in the merit list, he was appointed as Police Patil of village Bhandgure by the Respondent No.3 by the order dated 30.04.2016. Thereafter, R.M. Patil took charge of the post of Police Patil of the village Bhandgure on 01.05.2016. He worked on the said post till his death. He died on 19.08.2016. It shows that the post of Police Patil of village Bhandgure had been filled up in view of the recruitment process conducted by the Respondent No.3. Because of the death of R.M. Patil, who was working as Police Patil of village Bhandgure, the post became vacant again. The Applicant is claiming that he is eligible to be appointed on the vacant post of Police Patil on account of death of R.M. Patil, who was working as Police Patil, as he stood second in the merit list and his name is figured in the waiting list prepared

by the Respondent No.3. On perusing the Recruitment Rules as well as the G.Rs and guidelines issued by the Government from time to time, it reveals that there is no provision in the Recruitment Rules of Police Patil to maintain a waiting list. Not only this, but there is no provision in the G.R. dated 22.08.2014 in that regard. The Applicant is relying on the provisions of Clause No.4 of the G.R. dated 22.08.2014 which runs as follows :

“पोलीस पाटील भरतीबाबत मार्गदर्शन

महाराष्ट्र शासन

गृह विभाग

शासन निर्णय क्रमांक बीव्हीपी १११३/१७६७/प्र.क्र.५९२/पोल-८

जगतिक व्यापार केंद्र, कफ परेड, मुंबई - ४०० ००५.

दिनांक: २२ ऑगस्ट, २०१४

वाचा

शासन निर्णय, गृह विभाग क्र. बीव्हीपी ०६११/प्र.क्र.४१९/पोल-८, दि. २३.०८.२०११.

प्रस्तावना :

शासन निर्णय :

१. लेखी परीक्षा :

२. तोंडी परीक्षेकरीता किमान गुण :

३. तोंडी (मुलाखत)परीक्षा उपस्थिती :

४. निवडसूची.

निवडसूची एक वर्षासाठी वैध राहिल. त्यानंतर ती व्यपगत होईल. निवडसूची तयार करताना एका पदासाठी एक उमेदवार या प्रमाणात तयार करण्यात यावी.

५. उमेदवारास समान गुण मिळाल्यास :

18. On going through the said provision, it reveals that, on completion of recruitment process, the Recruitment Committee has to prepare select list of the selected candidate

in the ratio of 'one candidate for one post'. The said select list shall be valid for one year. It means, the Recruitment Committee has to select one candidate for the appointment on the post of Police Patil and there is no provision to prepare the waiting list for the post of Police Patil. Therefore, the contention of the Applicant that as he stood second in the merit list, he is eligible to be appointed on the vacant post of Police Patil of village Bhandgure after the death of R.M. Patil, is not acceptable. Therefore, the Respondent No.3 has rightly rejected his application.

19. The Respondent No.3 has rejected the application dated 27.09.2016 by order dated 14.10.2016, but the Applicant has suppressed the said fact while filing the O.A.No.919/2016 and getting directions of this Tribunal. Even after issuing the directions by this Tribunal while disposing the O.A.No.919/2016 on 30.03.2017, the Respondent NO.3 has decided the applications of the Applicant accordingly on 18.04.2017 and again rejected the application of the Applicant by recording reasons. The Respondent No.3 has rejected the application of the Applicant on the ground that there is no provision to appoint a candidate who stood second in the merit list on the post of Police Patil, which has already been filled and which fell vacant due to death of earlier Police Patil. I find no illegality in the order passed by the Respondent No.3 in that regard. Therefore, no interference is called for in the impugned order.

20. The learned Advocate for the Applicant has relied on the earlier orders issued by the Respondent No.3 in other cases in which the Respondent No.3 appointed the candidate who stood second in the merit list on the vacant post of Police Patil. Since there is no provision to appoint such candidates, once the post of Police Patil had been filled and same become vacant due to death of Police Patil, the said orders cannot be in accordance with the provisions of the Recruitment Rules. Therefore, on the basis of said order, the Applicant cannot claim that he should be appointed on the vacant post of Police Patil due to death of earlier Police Patil duly appointed. Therefore, I do not find force in the submission of the learned Advocate for the Applicant in that regard.

21. Considering the above said discussion, there is no illegality in the impugned order passed by the Respondent No.3 on 18.04.2017. The Respondent No.3 has recorded the sound reasons while rejecting the applications of the Applicant. Since there is no provision to consider the candidature of the candidate who stood second in the merit list on the part of Police Patil after death of candidate who was selected and appointed on the post of Police Patil but subsequently he died. Therefore, the Applicant cannot claim that he may be appointed on the said post. There is no reason to interfere in the impugned order issued by the Respondent No.3 dated 18.04.2017. There is no merit in the O.A. Hence, the O.A. is deserves to be dismissed.

22. In view of the above said discussion, the Original Application stands dismissed with no order as to costs.

Sd/-

(B.P. Patil)
Member-J
17.04.2018

Mumbai

Date : 17.04.2018

Dictation taken by :

S.K. Wamanse.

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