

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT NAGPUR.

ORIGINAL APPLICATION NO. 519 OF 2016

DIST. : AMRAVATI.

Sau. Madhuri Kishor Kharad,
Aged about 36 years, Occu. Kotwal,
(Kalamgavhan), R/o. Elichpur
Tq. Daryapur, Dist. Amravati.

--- APPLICANT.

VERSUS

- 1) State of Maharashtra through
its Secretary Revenue Department,
Mantralaya, Mumbai.
- 2) Hon'ble Divisional Commissioner,
at Amravati, Tq. & Dist. Amravati.
- 3) Hon'ble Collector, at Amravati,
Tal. & District Amravati.
- 4) Hon'ble Sub Divisional Officer,
Daryapur, Tq. Daryapur,
District Amravati.
- 5) Hon'ble Tahsildar, Daryapur,
Tq. Daryapur, Dist. Amravati.
- 6) Sau. Anjali Bhashidarrao Tanod
aged about 38 years,
Occu. Service,
R/o. Kalamgavhan, Tq. Daryapur,
District Amravati.

-- RESPONDENTS.



APPEARANCE :- Shri S.S. Patil, learned Advocate
for the Applicant.
: Shri S.A. Sainis, learned Presenting
Officer for the Respondent Nos. 1 to
5.
: None appears for respondent No. 6.

CORAM : **HON'BLE SHRI J.D. KULKARNI,
MEMBER (J)**

J U D G E M E N T
[Delivered on 7TH NOVEMBER, 2016]

Applicant viz. Sau. Madhuri Kishor Kharad was appointed as a Kotwal at village Elichpur, Tq. Daryapur, District Amravatide order dated 16.5.2013 in view of the recruitment process vide proclamation dated 8.4.2013. The said appointment was on honorarium of Rs. 5000/- per month, subject to certain conditions as mentioned in the said order.

2. In consequence of the order dated 16.05.2013 the applicant joined service on the same day i.e. on 16.05.2013.

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3. On 29.07.2016, the Tahsildar Daryapur issued the impugned order, whereby the applicant's appointment was cancelled. The said impugned order is as under: -

“ज्या अर्था मा. जिल्हाधिकारी अमरावती यांनी संदर्भीय पत्र क्रमांक ३ मध्ये मा. उपविभागीय अधिकारी दर्यापुर यांनी अहवाल सादर केला त्यानुसार व प्रचलीत नियम व शासन परिपत्रकांत नमुद नियमानुसार कार्यवाही करावी असे नमुद केले आहे.

मा. उपविभागीय अधिकारी, दर्यापुर यांनी मौजा एलीचपुर, येथिल निवडलेल्या उमेदवाराचे श्रीमती एम. के. खरड यांचे एकुण गुण ६२ व श्रीमती तानोड यांना ६४ गुण प्राप्त असल्यामुळे श्रीमती तानोड यांना नियुक्ती देणे कम प्राप्त ठरते असे नमुद केले आहे.

सबब वरील निर्देशा प्रमाणे श्रीमती एम.के. खरड कोतवाल मौजा एलीचपुर ता. दर्यापुर यांची कोतवाल पदाची नूमणुक रद्द करण्यांत येत आहे.”

4. Learned Advocate for the applicant submits that the appointment order of the applicant has been cancelled without giving an opportunity of hearing to the applicant and even show cause notice was also not issued to the applicant prior to cancellation of the order, and as such, the same is illegal, arbitrary and violative of principles of natural justice. It is, therefore, prayed that the impugned order dated 29.07.2016, which was received by the applicant on 30.07.2016 be quashed and set aside.

(Signature)

5. From the admitted fact on record, it seems that the applicant and private respondent No. 6 viz. Sau. Anjali Bhashidarrao Tanod, participated in the process of recruitment for the post of Kotwal at village Elichpur, Tq. Daryapur, and the applicant was selected and appointed as such. According to the applicant, she got 66 marks in the examination; whereas respondent No. 6 got 64 marks, and therefore, on merits the applicant was appointment on the post of Kotwal.

6. It reveals from the record that there was some complaints against the applicant and on the basis of such complaint Tahsildar Daryapur made an enquiry and both of them found that no illegality or irregularity was committed and that the selection of the applicant was made as per the merits. However, subsequently the Sub Divisional Officer, Daryapur, made further enquiry and submitted his report to the Collector, Amravati, and it seems that on the basis of the said report the impugned order of cancellation of transfer order of the applicant has been issued. It is material to note that the applicant was

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duly appointed as per the order dated 16.05.2013 and has joined her duties on the same day i.e. on 16.05.2013 and it seems that she has worked on the said post of Kotwal till her order was cancelled on 29.07.2016. In such circumstances once the applicant was appointed as Kotwal and worked there for about more than three years, there was no question of cancellation of the order of Kotwal. At the most the applicant should have been removed from the post, and therefore, prima facie the order of cancellation of appointment as Kotwal seems to be illegal.

7. Respondent No. 4, Sub Divisional Officer, Daryapur, and respondent No. 5, Tahsildar, Daryapur, have filed their separate affidavit in replies and they justified the impugned order. It is stated that one Mr. Bhushan Pilange, made a complaint against the applicant on 24.4.2014 to respondent No. 3 i.e. the Collector, Amravati, alleging malpractice in selection, as well as, written examination and answer sheet and the said complaint was investigated by the Sub Divisional Officer. In the




preliminary enquiry, no malpractice was found, and therefore, the enquiry was assigned to the Sub Divisional Officer. Sub Divisional Officer has submitted his report to the Collector on 17.2.2016 and it was noticed that the answer to question Nos. 22, 27 & 31 given by the applicant were scratched and that should not have been considered, and therefore, after deduction of the marks it was found that the applicant got 62 marks; whereas respondent No. 5 got 64 marks, and therefore, respondent No. 5 was entitled to be appointed, and as such, the appointment of the applicant was cancelled and guidance was asked from Sub Divisional Officer, Daryapur, as to whether new recruitment process shall be initiated in view of the fact that the applicant served for three years on the said post?

8. The only material point is to be considered as to whether the impugned order, whereby the applicant's appointment to the post of Kotwal at village Elichpur has been cancelled, is legal and proper?

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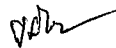
9. Heard Shri S.S. Patil, learned Advocate for the applicant and Shri S.A. Sainis, learned Presenting Officer for the respondent Nos. 1 to 5. I have perused the application, affidavit, affidavit in replies filed by the respective respondents and also various documents placed on record by the respective parties.

10. The impugned order of cancellation of appointment shows that the appointment of the applicant was cancelled, because it was noticed that Sau. Anjali Bhashidarrao Tanod (respondent No. 6) got 64 marks as against 62 marks was obtained by the applicant, and therefore, the appointment of the applicant was cancelled. There is only reference to some letters in the said order. Had it been a fact that Sau. Anjali Bhashidarrao Tanod, got 64 marks i.e. 2 marks more than the applicant, and therefore, she was entitled to be appointed on the post of Kotwal, and it was necessary for the respondents to terminate the services of the applicant and to appoint respondent No. 6 on the post of Kotwal in place of the applicant. When the applicant has worked on the said



post, though on honorarium, it was not proper on the part of the respondents to cancel her appointment order. In any case, when the applicant has worked for more than 3 years on the post of Kotwal, it was expected that the respondents should have at least issued show cause notice to the applicant calling upon her to explain as to why her appointment shall not be cancelled. Admittedly, no opportunity was given to the applicant in this case, and therefore, the principles of natural justice have been violated, prima facie, as seems from the circumstances.

11. I have perused the enquiry report-come-letter, whereby the Sub Divisional Officer, Daryapur, District Amravati, has submitted his report to the Collector, Amravati. It seems that the Sub Divisional Officer has examined the answer-sheets of the applicant, as well as, respondent No. 6 and in the answer-sheet of the applicant, he noticed that in the answer to question Nos. 22, 27 and 31 there was overwriting in the sense that 2 circles seems to have been scratched, but thereafter there was an attempt to correct the answers.



12. The exact observation of the Enquiry Officer in paragraph No. 7 is as under: -

“७) अभिप्राय :-

अ) तक्रारकर्ता यांनी उपस्थित केलेला मुद्दा म्हणजे उत्तर क्रमांक २२, २७, ३१ यात खाडाखोड केलेली आहे. ही बाब खरी आहे. सदर बाब अंतिम निकाल जाहीर करण्यापूर्वी भरती प्रक्रीया हाताळणा-या संबंधित अधिकारी यांनी गृहीत धरणे अनिवार्य होते. उत्तर पत्रिकेतील सूचना क्र. ३ अन्वये खाडाखोड केलेले ३ प्रश्नांचे ६ गुण वजा करणे अनिवार्य होते. परंतु या ठिकाणी सदर गुण बहाल केल्याचे दिसून येते.

ब) श्रीमती खरड (नियुक्त उमेदवार) यांच्या उत्तर पत्रिकेची पुन्हा तपासणी केली असता त्यांचे बरोबर उत्तरे ३४ अढळून आली. यापूर्वी जाहिर निकालामध्ये ३३ बरोबर उत्तरे गृहीत धरण्यात आली होती. अशा प्रकारे श्रीमती खरड (नियुक्त कोतवाल) यांच्या एकुण ३४ बरोबर उत्तरे व ६८ गुण यामधुन खाडाखोड केलेली ३ उत्तरे व केल्यास त्यांची अंतिम बरोबर उत्तरे ३१ व प्राप्त गुण ६२ होतात.

क) निवडलेल्या उमेदवाराचे श्रीमती एम.के. खरड यांचे एकुण गुण ६२ व श्रीमती तानोड यांना ६४ गुण प्राप्त असल्यामुळे श्रीमती तानोड यांना नियुक्त देणे कमप्राप्त ठरते-”

13. From the aforesaid observations, it seems that the complaint against the applicant was that she has made inter-pollution and scratched the answers to question Nos. 22, 27 & 31. It is material to note that the complaint filed by the complainant is placed on record at p.b. page No. 53. The complaint is filed by one Mr. Bhushan Pilange, and in his entire complaint he never alleged or referred subsequently to the answers to question Nos. 22, 27 & 31.



In such circumstances, it is surprising as to how the Sub Divisional Officer came to know that Mr. Bhushan Pilange made such complaint. It is also surprising to note as to how Mr. Bhushan Pilange was concerned with the process of recruitment and how he had an occasion to come to know about the answers written by the candidates in the written examination. This means that Mr. Bhushan Pilange, must have some extra interest to see that the applicant's order is cancelled.

14. The aforesaid submission is further cleared from the fact that earlier enquiry was made by the Naib Tahsildar, as well as, Tahsildar. The Naib Tahsildar in his report, which is placed at paper book page-23, nowhere states about the alleged scratching of circles. On the contrary, he did not find any illegality. The Tahsildar, Daryapur, has also submitted his report on 15.2.2016 to the Sub Divisional Officer that in that report also no illegality was found. In such circumstances, there is no reason as to why there was a fresh enquiry initiated against the applicant. The possibility that the enquiry made by the

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Sub Divisional Officer, Daryapur, must have been made under the influence of Mr. Bhushan Pilange, cannot be ruled out, and therefore, considering this aspect the report of the Sub Divisional Officer cannot be said to be far from doubts. On the basis of such report, the action taken by the competent authority to cancel the order of appointment without giving any opportunity to the applicant, who has worked on different post for more than 3 years, is not illegal and proper. It is material to note that there is no whisper of corrupt practices on the part of the applicant and no such finding is revealing from the enquiry report.

15. Learned Advocate for the Applicant has placed reliance on the judgment delivered by the **Hon'ble Bombay High Court Bench at Nagpur** in the case of **BHAVIKKUMAR VS. STATE OF MAHARASHTRA [2013 (2) Mh.L.J. 226]**, in which it is held that when there is no allegation of either any mal-practices or any candidate having been illegally selected and appointed with some

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ulterior motive, the decision of the Government to cancel earlier selection process held to be not sustainable in law.

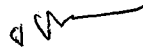
16. In the present case, there are no allegations of mala fides against the applicant and there is nothing on record to show that the applicant has pleaded any fraud or mala-fides in the selection process. The order of cancellation, therefore, without giving opportunity to the applicant is illegal.

17. In view thereof, the following order: -

ORDER

The impugned order of cancellation of applicant's appointment to the post of Kotwal, Elichpur, Tq. Daryapur, District Amravati, dated 16.05.2013 is quashed and set aside.

(ii) The respondents shall allow the applicant to work as Kotwal of village Elichpur, as per terms and conditions.



(iii) Accordingly, the present Original Application stands disposed of with no order as to costs.

sd/-

MEMBER (J)

O.A.NO. 519-2016(hdd)-2016-NAGPUR