

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 705/2015

Sau. Durga Prabhakar Khandare,
Aged about 27 years,
R/o Taroda (Kasba), Tah. Shegaon,
Post Gavhan, Distt. Buldhana. -----**Applicant.**

Versus

1. The State of Maharashtra,
Through its Secretary, Deptt.,
of Revenue,
Mantralaya, Mumbai.
2. The Sub Divisional Officer,
Khamgaon, Tah. Khamgaon,
Distt. Buldhana.
3. Suresh Subhedar Telgote,
R/o Taroda (Kasba), Tal. Shegaon,
Post Gavhan, Distt. Buldhana. ----- **Respondents.**

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1. Shri S.G.Ramteke, Advocate for the applicant.
 2. Smt. S.V. Kolhe, Presenting Officer for the Respondents 1 and 2.
 3. None for R/3.

CORAM : B. Majumdar : Vice Chairman

DATE : 30th June, 2016

ORDER

The applicant's grievance is that he has not been selected for the post of Police Patil for village Taroda (Kasba), Tah. Shegaon, Distt. Buldhana. Hence he has filed this O.A.

2. On 19/8/2015, the SDM (SDO), Khamgaon (R/2) issued a proclamation for filling up the post of Police Patil, Taroda(Kasba). The last date of filling applications was 26/8/2015. The applicant as well as Smt. Sukeshani w/o Subhedar Telgote (R/3) applied for the post .

3. In the written and oral tests, the applicant scored 57 while R/3's score was 65. In the list of fit/un-fit candidates published on 28/8/2015, the applicant is shown as fit, and R/3 is shown as 'unfit' for the stated reason that her domicile certificate is not of Taroda (Kasba). On 2/9/2015, a revised list was published in which the applicant and R/3 are shown as 'fit'. In the select list R/3 was shown as selected. The applicant has challenged the selection of R/3. She submits that as per the proclamation a candidate was required to

submit a domicile certificate issued by the Tahsildar showing that he/she is a resident of Taroda (Kasba). The applicant's certificate is dtd. 28/8/2015 whereas the cut-off date of receiving applications was 26/8/2015. Thus on that date the applicant was not eligible for applying for the post and yet she was declared 'fit'. She further submits that the respondents had manipulated to replace her answer sheet due to which she was shown as having scored lesser marks. She also refers to the case of one Shri Gopal Sarju Phalke, who had produced the marks sheet of 10th standard after the last date over and yet he was selected. Thus according to the applicant, the entire process of selection was manipulated.

4. The SDM, Khamgaon (R/2) in his reply submits as follows :-

Para 7: “ ...on 28/8/2015 the answering Respondent has published list of eligible and ineligible candidates after scrutiny of application submitted by the candidates. In which the Respondent No. 3 was shown as ineligible only on ground that the Respondent No. 3 has not



produced the Domicile Certificate. As per Schedule the candidates are required to submit objection if any, till 31/8/2015. In view of that, the applicant has submitted Domicile Certificate before answering Respondent. Therefore, the Respondent No. 3 was eligible to appear in Written Examination. The copy of said Domicile Certificate is annexed herewith as Annexure R-5.

Para 8 : *After taking into consideration of all objections, the answering Respondent has published final list of eligible and ineligible candidates on 2/9/2015 in which the Respondent No. 3 is shown as eligible for appearing the Written Examination.*

Para 9 : *It is pertinent to note here that, the contentions of the applicant that, her Answer Sheet (Page No.66) was manipulated by the answering Respondent and the said Answer Sheet is not her Answer Sheet. To this regard it is submitted that, at the time of Written Examination, the Supervisory Officer was present and in his presence, the applicant has put signature on Answer Sheet. The*

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Supervisory Officer also signed it before the applicant. Therefore, the contentions of the applicant to this regard are false and frivolous.”

5. He further submits that even though R/3 had submitted the domicile certificate after the last date was over, R/2, as per Clause 4 of the proclamation had an authority to modify the time table and other conditions of recruitment. R/2 as well as other members of the Selection Committee had unanimously decided to accept the certificates and other documents required to be filed along with the form till the date of the scrutiny. Pending this, only a provisional list of eligible/ineligible candidates was prepared. He also submits that during the entire selection process the applicant at no stage had complained ~~about~~ that R/3 had submitted the domicile certificate late. Having been unsuccessful in the selection process, she is now belatedly raising objections against R/3. According to the respondent, a number of other

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candidates were also permitted to file their certificates after the last date of receiving the applications.

6. Shri S.G. Ramteke, Id. Counsel for the applicant reiterated the submissions of the applicant in the O.A. He relied on Jenany J.R. vs S. Rajeevan and others [(2010) 5 SCC 798], in which hon'ble the Supreme Court had held that for purpose of promotion qualification and the eligibility conditions the date when the vacancy arose is relevant. According to him, the law laid down as above will also apply in the case of recruitment by treating the ~~relevant~~ date of receiving applications, *as relevant.*

7. Smt. S.V. Kolhe, Id. P.O. for the respondents reiterated the submissions of R/2 in his reply. She relied on the order of hon'ble the High Court in Dilip Punjaji Kharat vs State of Maharashtra and others [2011 (1)Mh.L.J.888] wherein their Lordships had categorically held that a candidate, who participated in the selection process is barred from challenging the same. Thus the applicant having at no

stage protested against inclusion of R/3 in the list of eligible candidates cannot now raise the same by filing the present O.A.

8. I find that the applicant has challenged the selection of R/3 on two grounds, mainly, that R/3 submitted her domicile certificate after the last date of receipt of the applications was over and the certificate itself was issued after this cut-off date. Secondly, the applicant's answer sheet was manipulated resulting in her score getting lesser than that of R/3.

9. As regards the answer sheet, the applicant relies on the document (page 65 of the PB) she had obtained under RTI from the office of R/2, which is a copy of the answer sheet of the applicant. According to the applicant, it does not bear her signature as well as that of the Supervising Officer and hence this is not the one that she had filled during the examination. She has also filed a copy of another answer sheet (page 66) which she had received and it contains her

signature as well as of the Supervising Officer. According to the applicant, it is the genuine answer sheet that she had filled during the examination.

10. The R/2 in his reply at para 9 (supra) had stated that the applicant had put her signature in presence of the Supervisor. The applicant has not contested this and I have no reason to doubt this averment.

11. As regards the domicile certificate of R/3 dtd. 28/8/2015, undisputedly it was issued after the last date of submission of application was over. The question therefore that requires to be answered is whether for this reason the applicant cannot be deemed to have fulfilled the condition no. 3 of the proclamation. The said condition states as below :-

“ अर्जदार हा संबंधीत गावाचा कायमचा रहिवासी असावा यासाठी तहसिलदारांच्या स्वाक्षरीचे अधिवास प्रमाणपत्र जोडणे अनिवार्य राहिल. अर्जदाराने या व्यतिरिक्त राशनकार्ड, निवडणुक ओळखपत्र, आधार कार्ड, बँकेचे पासबुक (फोटोसह) ईत्यादी फोटो ओळखपत्राचा पुरावा जोडणे आवश्यक आहे. ”

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12. Thus as per the above condition along with the domicile certificate, a candidate is also required to produce a number of other documents in support of his claim that he is a resident of the village. R/2 in his reply at para 5 has stated that R/3 had submitted her application form along with various documents including Adhar Card, Voter ID Card towards identity and proof of residence. In this background, I am of the view that as R/3 possesses a certificate of domicile for Taroda (Kasba), the fact that it was issued after the last date of submission of application forms cannot preclude her from fulfilling the requirements of the above condition no. 3. Thus, in my view, R/2 has committed no illegality in accepting the domicile certificate of R/3 before the list of eligible candidate was finalized. It is also not disputed that the applicant at no stage of conduct of the recruitment process had raised any objections against the candidature of R/3. When R/3 was shown as 'fit' as per the second list published on 2/9/2015, the applicant could have raised an objection. However, the applicant took no steps in this regard. In Dilip Punjaji

Kharat, hon'ble the High Court had categorically held that a candidate who participated in the selection process is barred from challenging the same. However, the rider is that the bar applied only in the case where the candidate has participated in the selection process without protest. Thus, the applicant is clearly estopped from challenging the selection of R/3.

13. The applicant has relied on the judgment in **Jenany J.R.-vs Rajeevan** (supra), wherein hon'ble the Supreme Court had held that as per the relevant rule, a candidate, in order to be eligible for appointment, should possess requisite qualification " at the time of occurrence of vacancy". The said judgment is therefore in a different context and is not applicable to the present case.

14. Thus on the basis of the above, I find that the O.A. is without any merit and hence stands rejected with no order as to costs.

sd/-

(B.Majumdar)
Vice-Chairman.

Skt.