

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 778/2016**

Mr. Gopal S/o Vyasmuni Raut,  
Aged about 40 years,  
Occupation : Agriculturist,  
R/o Borgaon, Tq. Kalmeshwar, District Nagpur.

**Applicant.**

**Versus**

- 1) State of Maharashtra through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-32.
- 2) Sub Divisional Magistrate,  
Tq. Saoner, Dist. Nagpur.
- 3) Mr. Vinod S/o Narayanrao Mankar,  
Aged : Major, Occ. Private,  
R/o Borgaon, Tq. Kalmeshwar,  
District Nagpur.

**Respondents.**

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**S/Shri S.B. Tiwari, E. Sahasrabuddhe, Advs. for the applicant.**

**Shri H.K. Pande, P.O. for respondent nos.1 and 2.**

**Shri Sunil Pande, Advocate for respondent no.3.**

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**Coram :- Hon'ble Shri A.D. Karanjkar,  
Member (J).**

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## JUDGMENT

**(Delivered on this 22<sup>nd</sup> day of November,2018)**

Heard Shri S.B. Tiwari, learned counsel for applicant, Shri H.K. Pande, learned P.O. for respondent Nos. 1 and 2 and Shri Sunil Pande, learned counsel for respondent No.3.

2. The respondent no.2 invited applications to fill the post of Police Patil, Borgaon, Tahsil Kalmeshwar, District Nagpur. The applicant submitted application as he was eligible for the post. The applicant appeared in the written test and oral interview and scored total 77 marks out of 100. The result was published and it was learnt by the applicant that he stood first in the order of merit.

3. The applicant received communication from respondent No.2, the respondent No.2 asked the applicant to appear for medical examination, accordingly the applicant was examined and he was declared medically fit to join the post of Police Patil. The applicant time to time made inquiry about his appointment and on 24/10/2016, he approached the office of respondent No.2, but he was handed over a letter wherein it was mentioned that as police verification report of the applicant was adverse, therefore, he was not suitable for the post. It is contention of the applicant that he did not suppress any details of the criminal cases pending against him. According to the applicant,

he is acquitted in all criminal matters and due to strained relations false cases were filed against him and therefore injustice is caused to him by refusing the appointment. It is contended that the respondent No.2 did not consider the special guidelines issued by the Hon'ble Supreme Court and mechanically refused to appoint the applicant in the service, therefore the impugned order be set aside and directions be given to the respondent No.2 to appoint the applicant as Police Patil of village Borgaon.

4. The applicant has joined respondent No.3 as a party to the proceeding as respondent No.3 was the second highest in the examination, because it is apprehension of the applicant that respondent No.2 would appoint the respondent No.3 as Police Patil, Borgaon.

5. The respondent Nos. 2 and 3 have filed their separate reply and justified the action of respondent No.2. It is submitted that the general reputation of the applicant was disclosing that he was trouble shooter in the village, he was not peace loving person and considering this background and the nature of the charges for which the applicant was prosecuted, in opinion of respondent No.2 the applicant was not suitable for the post of Police Patil. It is submission of the respondents that allegations in both the criminal cases against

the applicant were serious and involving moral turpitude, therefore, no injustice is caused to the applicant. Consequently, the application is liable to be dismissed.

6. The learned counsel for the applicant has submitted that the applicant is acquitted in all the criminal proceedings, he invited my attention to both the Judgments delivered by the Criminal Courts. The learned counsel for the applicant has placed reliance on the Judgment in case of **Avtar Singh Vs. Union of India & Ors. (2016) 8 SCC,471** and **Pawan Kumar Vs. State of Haryana & Ano. (1996) 4 SCC,17.** After hearing rival submissions it seems that there is no dispute that in two criminal cases the applicant was prosecuted before JMFC, Kalmeshwar and lateron after trial he is acquitted. The legal position is well explained in case of **Avtar Singh Vs. Union of India & Ors.** (*cited supra*) as under –

*“the whole idea of verification of character and antecedents is that the person suitable for the post in question is appointed. It is one of the important criteria which is necessary to be fulfilled before appointment is made. An incumbent should not have antecedents of such a nature which may adjust him unsuitable for the post. The verification of antecedents is not necessary to find out fitness of incumbent.”*

7. Thus the very object of verification is to see whether the candidate is suitable to occupy the post or not. In case of **Avtar Singh Vs. Union of India & Ors.** (*cited supra*) it is also held that the employer has to act prudently on due consideration of nature of the post and duties to be rendered. For higher official / higher posts standard has to be very high and even slightest for information or suppression may by itself rendered a person unsuitable for the post. The employer is bound to consider grounds of acquittal and various other aspects, overall conduct of employee including the acquisitions which have been levelled. If on verification, the antecedents are otherwise also not found good and in number of cases incumbents are involved, then notwithstanding acquittal in cases it would be open to the employer to give opinion as to fitness on the basis of material on record.

8. In the present case in Regular Criminal Case No.1590/2008 the JMFC, Kalmeshwar, District Nagpur acquitted the applicant on 2/1/2016 under Sections 452 and 323 of the IPC. In para-10 of the Judgment, it is observed that the evidence adduced before the Court was not reliable and therefore the learned JMFC gave benefit of doubt to the applicant. After reading the Judgment it seems that the other prosecution witnesses supported the incident that the applicant beat complainant Devakabai in that matter, but the

evidence of witnesses was disbelieved for the reason that the complainant Devkabai denied the facts.

9. The applicant was prosecuted in RCC 189/2016 for offences punishable under Sections 448,354, 294 and 506 of IPC before JMFC, Kalmeshwar. In that case total 8 witnesses were examined. The prosecutrix supported the case against the applicant that the applicant abused her and used criminal force to her and outraged her modesty after entering the house. In this case also the learned JMFC observed that the evidence of prosecutrix and her husband was not reliable, as there was no independent corroborating evidence, therefore, gave benefit of doubt to the applicant. It is specifically observed by the Id. JMFC that there was incriminating evidence brought on record by the prosecution witnesses against the applicant, but that evidence was not sufficient to establish the guilt beyond reasonable doubt. Thus it seems that in both the criminal cases the acquittal was not clean and clear and the applicant was facing the charges of criminal house trespass, causing simple hurt and outraging modesty of woman and for this reasons the respondent no.2 came to the conclusion that the applicant was not suitable to occupy the post.

10. I have already discussed the legal position laid down in case of **Avtar Singh Vs. Union of India & Ors.** (cited supra), therefore, in order to decide the suitability of the candidate the allegations against the candidate must be seen, so also in how many matters he was prosecuted and then opinion must be formed. It is contention of the applicant that due to strained relations he was implicated in false cases, in my opinion this is not a sound explanation. No married woman will put her character at stake only for causing harassment to any man. Therefore on the basis of the facts of the criminal cases it is to be said that the applicant was not peace loving person. It is reported by the members of public and the Police Patil of the village that the applicant was trouble shooter person and he was disturbing the peace in the village. The applicant applied for the post of Police Patil. As a matter of fact to maintain the peace and law and order in the village is the primary duty of the Police Patil. The Police Patil is supposed to inform the police about the criminal activities in the village and to take immediate steps to maintain the peace in the village. Considering these aspects and considering the background of the applicant, the respondent no.2 held that the applicant was not suitable for the post.

11. As a matter of fact the conclusion drawn by the respondent no.2 is very much supported by the Judgment of Division

Bench of Hon'ble High Court of Bombay in case of **Vitthal Waman Shelke Vs. High Court of Bombay, 2017 (1) Mh.L.J.,367.** The Hon'ble High Court of Bombay in this case held that the candidate in the select list / merit list has no fundamental right to be appointed, his only right is to be considered for appointment in a fair manner. It is further held that if offence is petty offence, then case is different, but if a person is involved in an offence involving a moral turpitude, then definitely it is not in the public interest to engage such person in public service. In view of this, I am not able to accept submission of the applicant that the action of respondent no.2 not issuing appointment order to the applicant is illegal or unwarranted. Similarly it cannot be said that it was actuated by malice, hence, there is no merit in the application. Hence, the following order :-

**ORDER**

The O.A. stands dismissed with no order as to costs.

**Dated** :- 22/11/2018.

**(A.D. Karanjkar)**  
**Member (J).**

\*dnk.