

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.786/2015.

(S.B.)

Rahul Kishore Choudhary,
Aged about 30 years,
Permanent R/o At & Post Kurha (D),
Tq. Chandur Bazar,
Distt.Amravati.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-400 032.
2. The Sub-Divisional Magistrate,
Achalpur Sub-Division,
Achalpur, Distt. Amravati.
3. Poonamkumar Rajendrarao Raut,
Aged about 32 years,
R/o At & Post Kurha (D),
Tq. Chandur Bazar,
Distt.Amravati-444809.

Respondents

Shri R.A. Haque, Ld. Advocate for the applicant.

Shri P.N. Warjekar, the Ld. P.O. for respondent Nos. 1 & 2.

Miss A.S. Ahirkar, learned counsel for respondent No.3.

Coram:- Shri J.D. Kulkarni, Vice-Chairman (J)

JUDGMENT

(Delivered on this 26th day of March, 2018.)

Heard Shri R.A. Haque, the learned counsel for the applicant and Shri P.N. Warjekar, the learned P.O. for the respondent Nos. 1 and 2. Miss A.S. Ahirkar, learned counsel for respondent No.3.

2. The applicant Rahul Kishore Choudhary has claimed that the order passed by the Sub-Divisional Magistrate, Achalpur, District Amravati, appointing the respondent No.3 Poonamkumar Rajendrarao Raut as Police Patil of village Chaudhar Khel Kurha, Taluka-Chandur Bazar, District Amravati be quashed and set aside.

3. From the admitted facts on record, it seems that the applicant and respondent No.3 applied for the post of Police Patil. The applicant and respondent No.3 got 46 marks each out of 80 in the written examination. The applicant got 14 marks out of 20 whereas the respondent No.3 got 15 marks out of 20 in the oral interview. The score-sheet of the applicant and respondent No.3 shows that only one mark was granted to both the applicant and respondent No.3 in the column of personal interview. One mark was granted excess to respondent No.3 on the ground that he was possessing higher qualification. The requisite qualification for the post was S.S.C. and, therefore, merely because respondent No.3

has passed H.S.S.C. examination, more marks cannot be allotted to the respondent No.3.

4. The other grounds on which appointment of respondent No.3 has been challenged are:-

(i) The appointment order of respondent No.3 is against the provisions of the Maharashtra Village Police Patils (Recruitment, Pay, Allowances and other Conditions of Service) Order, 1968 (In short, "Recruitment Rules of 1968") for the post of village Police Patil.

(ii) All the Members of the Interview Committee were not present and have not signed the result-sheet.

(iii) Interview was not conducted as per Rule 5 and 5 (2) of the Recruitment Rules of 1968 for the post of Police Patil.

(iv) The so-called Interview Committee has discriminated the procedure in respect of appointment of the applicant and the respondent No.3 as against the procedure adopted in other cases for the same post.

5. According to the learned counsel for the applicant, interview was conducted on 9.10.2015 and there was holiday on 10th

and 11th of October, 2015. Immediately on 13.10.2015, the applicant filed objection as per Annexure A-11 and despite such objection, respondent No.3 was appointed to the post.

6. Affidavit in reply has been filed by the respondent authorities and on considering the respective claims, this Tribunal was pleased to pass the order on 17.2.2017 whereby the order dated 9.10.2015 (Annexure A-10) (Page 66 of the O.A.) and the consequential order of appointment of respondent No.3 (Annexure A-17) (Page 90-A of the O.A.) was quashed and set aside and it was declared that the office of respondent No.3 shall stand vacated forthwith.

7. Being aggrieved by the aforesaid order, the respondent No.3 filed Writ Petition No. 2033/2017 before the High Court of Judicature at Bombay, Bench at Nagpur and in the said Writ Petition, the Hon'ble High Court passed an order on 24.7.2017.

The said order needs to be reproduced and the same is as under:-

“ 1. *Prima facie*, we find that only on the strength of grounds raised in rejoinder, an inference that all Committee Members may not have been present for conducting the interview, has been drawn. The respondent No.3 could have pointed out the same in his application itself as he would have learnt about it immediately when he entered the room for interview.

2. In this situation, we find that proper scrutiny of matter on merits is essential and only on the basis of absence of signature on score sheet, an inference of absence of a particular Member cannot be drawn. Other accompanying material also needed to be verified.

3. This Court has on 5.4.2017 granted interim relief to the petitioner who was respondent No.3 before the M.A.T., Nagpur.

4. In this situation, learned for the petitioner and learned counsel for the respondent No.3 agree for rehearing of the controversy by the M.A.T. The learned counsel for the respondent No.3 submits that the scrutiny and hearing should be completed at the earliest.

5. We, therefore, quash and set aside the order dated 17.2.2017 and restore the O.A. No. 786/2015 back to the file of M.A.T., Nagpur Bench, Nagpur for its expeditious consideration.

6. Parties are directed to appear before the M.A.T., Nagpur on 16.8.2017.

7. Writ Petition is accordingly partly allowed and disposed of. No costs.”

8. In view of the aforesaid directions issued by the Hon'ble High Court, parties are before this Tribunal.

9. The respondent No.2 i.e. the Sub-Divisional Magistrate, Achalpur filed affidavit in reply on 3.2.2018 in reply to the allegations made in the rejoinder filed by the applicant. The said allegations were as regards the fact that some of the Members of

the Interview Committee were not present at the time of so-called interview and they did not sign the result-sheet. Respondent No.2 tried to justify their absence by filing this affidavit and submitted that the procedure adopted by the respondent No.2 was legal. Respondent No.3 also filed reply on 22.9.2017 and justified his order of appointment.

10. Material points to be considered in this case are:-
- (i) Whether the order of respondent No.3 as regarding his appointment as Police Patil is against the provisions of the Recruitment Rules of 1968 ?
 - (ii) Whether the respondent No.2 adopted the procedure which is in contravention of the provisions of Recruitment Rules of 1968 ?
 - (iii) Whether the appointment order of respondent No.3 for the post of Police Patil is legal and proper ?
11. The learned counsel for the applicant has invited my attention to the appointment order of respondent No.3 for the post of Police Patil of village Chaudhar Khel Kurha, Taluka-Chandur Bazar, District Amravati. The said order is at page No.90-A (Annexure A-17). From the said order, it seems that the respondent No.3 has been appointed on the post of Police Patil for a period of 10 years i.e. from 19.10.2016 to 18.10.2016. The learned counsel for the applicant submits that, this order is absolutely illegal in the

sense that the same is against the provisions of the Recruitment Rules of 1968, particularly Rule 4 and 5 (1) and (2) of the said rules which reads as under:-

“4. Term of Office.

A person may be appointed as a Police Patil for a period of 5 years in the first instance, and if this work is found satisfactory during that period, his appointment may be renewable thereafter for a further term of 5 years at a time, provided that no person who has attained the age of 60 years shall continue as a Police Patil.

5. Selection of Police Patils.

(1) Whenever a vacancy occurs in the office of Police Patil, the competent authority shall invite applications for the post by issuing a proclamation in the village by beat of drum stating the date upto which, and the place at which, applications will be received. A copy of proclamation shall also be affixed on the village chawdi. On receipt of the applications, the competent authority shall, after making such enquiries as it may deem necessary, select from amongst the applicants eligible for appointment a person who in its opinion is best suited for the appointment.

(2) In making the selection, the competent authority shall take into consideration whether the applicant is known to the villagers is acquainted with all the circumstances of the village and is possessed of landed property in the village.”

12. Perusal of the aforesaid rule clearly shows that the appointment term of the office of Police Patil is 5 years only in the first instance. Of course, same can be renewed further till a candidate attains the age of 60 years. The said renewal is subject to performance of the candidate and such performance is to be considered for extension of a term. Rule 5-A of the Recruitment Rules of 1968 clearly shows that at the time of renewal of a term of 5 years, the competent authority has to consider performance of the Police Patil and then only order is to be renewed for a further period of 5 years. This provision clearly shows that the first appointment shall be of 5 years and then if the performance is satisfactory, it can be extended for a further period of 5 years and likewise till the candidate attains the age of 60 years. The appointment order of respondent No.3 is for a period of 10 years in the first instance itself and, therefore, the same is not as per the provisions of the Recruitment Rules of 1968.

13. The respondent No.2, by filing an affidavit in reply and after the case was relegated to this Tribunal, tried to justify the order. It is stated that, respondent No.3 is quite young, energetic, having landed property in the village, educated having good esteem in the village amongst the villagers and having full and complete

knowhow of the allotted work and atmospheric condition in the village and in the surrounding vicinity and can very well easily pull on the charge of the post of Police Patil and due to inadvertence and through oversight, 10 years' tenure was mentioned instead of 5 years. At the initial stage, respondent No.2 tried to justify the order for 10 years. But subsequently stated that it is inadvertently written that it is for 10 years. Plain reading of the appointment order clearly shows that it cannot be an inadvertent mistake. Respondent No.2 is expected to know the law and particularly the Recruitment Rules of 1968 which clearly states that the appointment order shall be for a period of 5 years in the first instance. Its extension depends upon satisfactory performance of the candidate. Thus on this ground only, the respondent No.3's order of appointment is liable to be quashed and set aside.

14. The learned counsel for the applicant has also invited my attention to Rule 5 (1) & (2) of the Recruitment Rules of 1968. The said Rule reads as under:-

Rule 5. Selection of Police Patils.

- (1) Whenever a vacancy occurs in the office of Police Patil, the competent authority shall invite applications for the post by issuing a proclamation in the village by beat of drum stating the date upto which, and the place at which, applications will

be received. A copy of proclamation shall also be affixed on the village chawdi. On receipt of the applications, the competent authority shall, after making such enquiries as it may deem necessary, select from amongst the applicants eligible for appointment a person who in its opinion is best suited for the appointment.

- (2) In making the selection, the competent authority shall take into consideration whether the applicant is known to the villagers is acquainted with all the circumstances of the village and is possessed of landed property in the village.”

15. The learned counsel for the applicant submits that on receipt of applications, the competent authority has to make enquiries as may be deemed necessary for selecting eligible candidate and before such selection, the Committee must form an opinion as to who is the best suited candidate for the appointment. It is further stated that while making selection, the competent authority has to consider whether the candidate is known to the villagers, is acquainted with all the circumstances of the village and possesses of landed property in the village.

16. According to the learned counsel for the applicant, there is a grave disobedience of this Rule by the competent authority. Firstly, all the Members of the Interview Committee who

conducted interview or alleged to have made an enquiry as per Rule 5 (1) and (2) of the Recruitment Rules of 1968, were not present. Some of the Members have not signed the final select list and no enquiry was made as contemplated under Rule 5 of the Recruitment Rules of 1968 nor any opinion was formed by the competent authority as regards best suited candidate for appointment to the post and, therefore, on this ground also, appointment of respondent No.3 is illegal.

17. The learned counsel for the applicant invited my attention to the marks allotted to the applicant as well as the respondent No.3. The marks in respect of the applicant is at Annexure A-6 at page No.62 of the O.A. and that of the respondent No.3 is at page No.64 of the O.A. From the said mark-sheets, it seems that the respondent No.3 has been awarded 2 marks for passing graduation examination and the applicant as well as the respondent No.3 have been awarded 1 mark each for acquaintance with the villagers and answers of general information (सर्वसाधारण माहितीची उत्तरे). According to the learned counsel for the applicant, the requisite qualification for the post was S.S.C. passed and, therefore, granting 2 marks to respondent No.3 for acquiring

graduate qualification is not legal. The said argument, however, cannot be accepted; as naturally, even though the qualifying examination is SSC passed, more marks can be awarded for higher education and, therefore, there are columns to that effect in the mark-sheets. For passing of 12th standard examination, 4 marks are to be allotted and for passing of graduation examination, 2 marks are allotted. In the similar fashion, for MSCIT, CCC and passing of typewriting examination, different marks are to be allotted and, therefore, it cannot be said that granting more marks for graduation is illegal. However, it seems from both the mark-sheets that 1 mark has been allotted for acquaintance and general knowledge answers. It also cannot be said to be illegal, since the applicant as well as respondent No.3 have been awarded equal marks. The mark-sheet of the applicant, however, shows that it is not signed by the President and the Member Secretary of the Committee, whereas in case of respondent No.3, the Member Secretary of the Committee has not signed the mark-sheet. It is the case of the applicant that, the Member Secretary and the President of the Selection Committee were not present when the applicant's mark-sheet was prepared and, therefore, they have not signed and the Member Secretary of

the Committee was absent when the respondent No.3's mark-sheet was prepared.

18. In the affidavit in reply, the applicant specifically submitted that all the Members of the Committee were not present. The respondent No.2 has replied these allegations. In para 6, it is admitted that the score-sheet of the applicant has been signed only by three Members of the Interview Committee out of Five Members and that the President and the Member Secretary of the Committee have not signed the score-sheet. But it is an inadvertent mistake due to oversight. However, a contradictory stand has been taken by respondent No.2 in para 7 of the additional affidavit. It is stated that in case of respondent No.3, four Members of the Committee were present including the President and in the score-sheet, the President has signed alongwith three Members. It is further admitted that four Members of the Committee were present at the time of interview, whereas in case of the applicant, only three Members were present. Thus, it is an admitted fact that, all the Members of the Committee were not present when the applicant and the respondent No.3 were alleged to be interviewed. The respondent No.3, however, denied this fact and submitted that the process of interview was video-graphed. Thus, the respondent

Nos. 2 and 3 are contradicting each others on the point of presence of the Members of the Interview Committee.

19. The learned counsel for the applicant further submits that, the Interview Committee for the post of Police Patil have conducted different procedure for different villages. The learned counsel for the applicant invited my attention to the score-sheets of the candidates appearing for interview for various posts of Police Patils in Karanja and Manora Tehsils. These score-sheets are at page Nos. 68 to 73 (both inclusive) and at Annexure A-12. It shows that in different cases, different procedure has been adopted for granting marks in oral interview. It seems that each Members of the Committee have given their own marks separately and thereafter it was consolidated and average has been taken into consideration. In any case, it is a fact that all the Members of the Committee were not present when the applicant and respondent No.3 alleged to have been examined or interviewed.

20. The learned counsel for the applicant has placed reliance on the judgment delivered by the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur in case of **Sandeep Namdeo Nawghade and others V/s State of Maharashtra and others in W.P. No. 1664/2014 delivered on 19.8.2014.** The

Hon'ble High Court observed in that case that, "though the Interview Committee consisted of five Members and though two Members of the Committee were not present while conducting interviews of the petitioners and other candidates, proxies / representatives of two Members interviewed by the candidates alongwith other three Members of the Committee and allotted marks to them". It was observed that, "since the selection process was vitiated, the Tribunal rightly held that the appointment of the petitioner on the post of Police Patil was bad in law." It was further observed that "since it was necessary for the Members of the Committee to remain present at the time of conducting interview and since the interview could not have been conducted by the representative of the Members of the Committee, we find no fault with the impugned order of the Tribunal allowing the O.A. filed by respondent Nos.4 to 10 and quash the appointment of the petitioner as Police Patil." Thus even though the proxies / representatives of the Members of the Committee were present, conducted the interview and allotted marks, the same was held illegal. In the case at hand, the Members were not present at all and, therefore, the interview process conducted by respondent No.2 is not as per rules.

21. The learned counsel for the applicant placed reliance on the judgment reported in the case of **Dipak Babria V/s State of Gujarat and others, AIR 2014 SC 1792**. In the said case, it was observed by the Hon'ble Apex Court in para 54 (ii) as under:

“54 (ii)-On the other hand, in the event, the Collector was to form an opinion after receiving the bids or otherwise that it was not worth disposing of the land in that particular way, he could have divested respondent No.4 of the land by paying compensation, and re-allotted the same to the respondent No.5 at an appropriate consideration. The statute required him to act in a particular manner and the land had to be dealt in that particular manner only, and in no other manner, as can be seen from the legal position, accepted in various judgments based on the proposition in Taylor vs. Taylor.”

22. From the aforesaid facts, it is clear that if the Interview Committee was of five Members, all the Members should have been present and the Committee cannot act on its own differently in different cases, as they have acted in the present case. In the present case, while interviewing the applicant, the President and the Member Secretary of the Committee were absent and while

interviewing the respondent No.3, the Member Secretary was absent and still the marks have been allotted. Such procedure is absolutely unknown to the rules.

23. The learned counsel for the applicant placed reliance on the judgment reported in the case of **Hindustan Petroleum Corporation Limited V/s Darius Shapur Chenai and others reported in AIR 2005 SC 3520**, wherein it has been held that, “when an order is passed by a statutory authority, the same must be supported either on the reasons stated therein or the grounds available therefor in the record. A statutory authority cannot be permitted to support its order relying on or on the basis of the statements made in the affidavit *de hors* the order or for that matter *de hors* the records.” The learned counsel for the applicant submits that the respondent No.2, therefore, cannot justify the order by filing an affidavit in reply, justifying the absence of some of the Members of the Committee. As already discussed in the earlier paras, affidavit filed by respondent No.2 seems to be contradictory. Sometimes the respondent No.2 has come with a case that there were sixty candidates to be interviewed and for want of time, the applicant could not be interviewed thoroughly. Then it has come with a case that the Members of the Committee could not sign

inadvertently on the score-sheets and thereafter admitted the fact that some of the Members were not present. This conduct clearly shows that the respondent No.2 has not followed and complied the statutory rules with a proper perspective.

24. The learned P.O. relied on the judgment reported in **2016 (1) Mh.L.J. 443 in case of Ashok Laxman Nikale V/s Dr. Babasaheb Ambedkar Marathwada University, Aurangabad and others.** The learned counsel for the respondent No.3 also placed on the judgment reported in **2002 (3) ALL MR-841 in case of Niraj Janardhan Kherde V/s Maharashtra Administrative Tribunal, Nagpur and others.** I have carefully gone through both these citations and in my opinion, the said citations are not applicable to the present set of facts.

25. In view of the discussion in foregoing paras, it will be thus crystal clear that the order of appointment in respect of respondent No.3 is against the provisions of Recruitment Rules of 1968. Similarly, the respondents have not conducted the procedure for conducting oral interview properly and even the Members of the Selection Committee were not present while conducting interview and, therefore, the process of recruitment to the post of Police Patil of village Chaudhar Khel Kurha, Taluka-Chandur Bazar, District

Amravati has been vitiated from the stage of conducting oral interview. Hence, the following order:-

ORDER

- (i) The O.A. is allowed in terms of prayer clause 10 (i).
- (ii) The appointment order of the post of Police Patil of village Chaudhar Khel Kurha, Taluka-Chandur Bazar, District Amravati dated 19th January 2016 in respect of respondent No.3 issued by respondent No.2 stands quashed and set aside.
- (iii) The respondent No.2 is directed to conduct fresh interview of the eligible candidates wherein all the Members of the Selection Committee shall be present.
- (iv) Oral interview shall be carried out as per advertisement (Annexure A-1) and the marks shall be allotted to the candidates and the eligibility of candidates for such oral interview shall be as per the advertisement which states that those candidates who got more than 45% marks i.e. the minimum 36 marks out of 80 in the written test, shall only be called for oral interview.
- (v) The entire process shall be completed within a period of two months from the date of this order.

- (vi) The post of Police Patil at village Chaudhar Khel Kurha, Taluka-Chandur Bazar, District Amravati stands vacated forthwith.
- (vii) The authority to take further steps accordingly.
- (viii) No order as to costs.

(J.D.Kulkarni)
Vice-Chairman (J)
Dt. 26.3.2018.

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