

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

**ORIGINAL APPLICATION NO.820 OF 2014
(Subject : Cancellation of Appointment)**

DISTRICT: SATARA

Shri Prashant Tukaram Sutar,)
R/o. Nandalapur, Tal : Karad,)
Dist. Satara.)

Address for Service of Notice :

Shri A.V. Bandiwadekar, Advocate)
Having office at 9, "Ram-Kripa",)
Lt. Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)

.. Applicant.

Versus

The Member / Secretary,)
District Selection Committee cum)
Superintendent, State Excise,)
Satara.)

..Respondent.

Shri A.V. Bandiwadekar, the learned Advocate for the Applicant.

Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondent.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN
SHRI RAJIV AGARWAL, VICE-CHAIRMAN

RESERVED ON : 17.01.2017.

PRONOUNCED ON : 08.02.2017.

PER : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondent.

C H A L L E N G E

2. In this Original Application, the Applicant is challenging the order dated 02.07.2014 issued by the sole Respondent (copy whereof is at Page 12, Exhibit –A.). By the impugned order the offer of appointment order issued by Respondent on 18.01.2014 has been revoked / cancelled.

3. **B R I E F F A C T S**

- (a) Applicant entered in Government service as Police Constable on the establishment of Commissioner of Police, Mumbai on 01.06.2009.
- (b) On 02.10.2013, Respondent advertised the recruitment to the post of Excise Constable.
- (c) Applicant submitted application for appointment as Excise Constable directly i.e. not through proper channel, and did not disclose the fact that he was already serving as a Police Constable.
- (d) Applicant has undergone the process of selection. Applicant was found eligible and was selected.
- (e) Thereafter the order of appointment dated 01.04.2014 was issued to the Applicant.
- (f) Since Applicant was already in Government service as a Police Constable, he submitted resignation to Mumbai Police on 24.02.2014.
- (g) By order / Police notice dated 20.03.2014 issued by the office of Commissioner of Police, Mumbai, upon acceptance of applicant's resignation, the applicant was ordered to be relieved w.e.f. 21.03.2014.
- (h) Applicant reported to the Respondent for joining duty as excise constable on or about 29.03.2014.
- (i) Applicant was not permitted to join. Thereafter impugned order dated 02.07.2014 was issued.
- (j) Applicant has challenged the said order dated 02.07.2014 in present Original Application.

4. **GROUND OF CHALLENGE**

- (a) In the O.A. Applicant has incorporated the grounds of challenge in paragraph No.6. The grounds are again numbered in Indian numeral. Various grounds are raised in sub paragraph Nos.6 to 14 of paragraph no.6.
- (b) Though these various grounds are raised, grounds on which emphasis is given by Applicant during the hearing, are ground Nos.6, 7, 9, 10 and 11 only and of other grounds raised in the sub paragraphs of paragraph 6 have not been urged and perused.

5. Grounds which are emphasized by the applicant during oral submission and reply thereto need quick advertence. For the sake of convenience and ready reference, the ground Nos.6, 7 15 and 16 and reply thereto are quoted below :-

Ground

“6] That from the facts stated above chronologically, it is clear that the Petitioner no doubt applied for the post of Excise Constable without obtaining permission from the Head of the Office, where the Petitioner was working in Mumbai Police Commissionerate and also failed to submit alongwith the application, the No Objection Certificate from the said office, that, however, this is the technical defect, which should not have resulted in either denying the order of appointment to the Petitioner on that count or cancelling the same. This is more so, when the Petitioner had not suppressed this fact deliberately and mala fide from the Respondent while filling up the application form.

Reply

11. With reference to para no.6.6 of the original application, it is further respectfully submitted that the applicant failed to intimate to the respondent authority, the applicant is in gainfully job with the Mumbai police. I say that in spite of selection of the applicant, the applicant failed to collect his selection order within time. The applicant intentionally breach of condition of the advertisement and disobey the order of the competent authority.

Ground

7] That in fact, the aforesaid failure of the Petitioner was totally innocent failure being unaware of the consequences thereof, which consequences are also not provided in the advertisement and therefore, the Respondent was not justified in cancelling the order of appointment when he has already issued an order of appointment in favour of the Petitioner.

Reply

12. With reference to para no.6.7 of original application, I say that the applicant is very well aware all the further consequence. Despite the same the applicant committed breach of the condition more specifically prescription no.6.4 of the advertisement (i.e. he has to make application through proper

channel and obtain N.O.C. from the concerned office) and Nos.7 & 23 of the appointment order. And the order passed cancelling the appointment of applicant is proper in view of aforesaid facts.

Ground

10] That the Condition No.7 of the order of appointment is not attracted in the present case, since it is not that there was any difficulty faced by the Respondent with regard to the education qualification and other documents. That similarly it is not that by reason of the aforesaid lapse on the part of the Petitioner, that there was anything to attribute to the Petitioner. That there was no false certificate which he submitted or any false information be submitted.

Reply

15. With reference to para no.6.10 of OA, I say that the wording of the condition No.7 of the order stated that the qualification eligibility and other documents in respect of candidate. It is further stated that the condition no.7 specifically about the false document and / or information given by candidate then his post get cancelled.

Ground

11] That the Condition No.23 of the order of appointment is also not attracted in the present case when the said Condition No.23 all that it states is that subject to the satisfactory fulfillment of the aforesaid conditions that the candidate should join the order of appointment within 7 days of the order of appointment, failing which the order of appointment shall stand cancelled automatically. That in fact, the Respondent from time to time extended the joining period of the Petitioner and that the Petitioner never informed the Respondent that he is not agreeable to any of the conditions of the order of appointment."

Reply

16. With reference to para no.6.11 of OA, I say that the condition no.23 of the order itself stated that the candidate after getting order should remain join his service within 7 days failing which his appointment order get stand cancelled. I say that the applicant failed to join his service within time therefore the order passed in proper and does not need to interfere in the order dated 4 Jan, 2014. I hereby deny remaining statement which is made in para no.11 of the original application.

(Quoted paragraphs from page Nos. 5, 6, 7, 25 and
26 of O.A. paper book)

6. Perusal of Respondent's pleadings reveals that the applicant has committed breach of conditions contained in the advertisement so also conditions contained in the order of appointment.

7. It is necessary to advert to various points contained in the impugned order. Text of the impugned order which points at the cause which has led to termination can be read from the following text excerpted from impugned order as below :-

- A { “या कार्यालयाचे समकामांक दि.४/१/१४ चे नियुक्ती आदेश पारीत करण्यांत आले त्याप्रमाणे आवश्यक प्रतिज्ञापत्र व विहित नमुन्यातील फॉर्म सादर करून सदर आदेश स्वीकारणे आवश्यक होते. इतर उमेदवारांनी सदर पूर्तता केली व आदेश घेवून ते त्यांच्या त्यांच्या पदस्थापनेचे ठिकाणी रुजूही झाले. }
- B { परंतु श्री. प्रशांत सुतार हे आदेश सही करून न घेता परस्पर निघून गेले त्यामुळे त्यांना सदर नियुक्ती आदेश दि.१८/१/२०१४ रोजी डाक नोंद पोच देय पावतीने पाठविण्यांत आले. सदर आदेश श्री. प्रशांत तु. सुतार, यांना मिळाल्याची पोच या कार्यालयाचे अभिलेखावर आहे. }
- C { सदर आदेश प्राप्त होवूनही ते जवानपदी हजर होण्यास न आल्याने पुनहा दि.४/३/२०१४ चे पत्राने त्यांना हजर होण्यास संधी देण्यांत आली. }
- D { श्री. प्रशांत तु. सुतार, यांनी दि.७/०४/२०१४ चे अर्जांने त्यांना जवानपदी हजर करून घेण्याची विनंती केली असता सदर त्यांचा अर्ज या विभागाचे उप-अधीक्ष मे.श्रीराम स.सा.का. फलटण यांचे सविस्तर चौकशी व अभिप्रायासाठी पाठविला असता प्रकरणी वाचले क्र.५ नुसार सविस्तर अहवाल सादर केला आहे. }
- E { सदर दि.७/४/२०१४ चे अर्जासोबत श्री. प्रशांत तु.सुतार हे पोलीस विभागात कार्यरत असल्याबाबत व दि.२१.३.२०१४ रोजी पोलीस विभागाचा राजीनामा मंजूर झाला असून जवानपदी हजर करून घेण्याची विनंती केली परंतु तोपर्यंत श्री. प्रशांत तु. सुतार हे पोलीस विभागात कार्यरत असल्याबाबत या कार्यालयास त्यांना निदर्शनास आणले नव्हते. }
- F { श्री. प्रशांत तु. सुतार यांनी या कार्यालयाचे वाचले क्र-१ मध्ये नमूद जाहिरातीमधील अट क्र.६,४ तसे वाचले क्र.३ नियुक्ती आदेशातील अट क्र.७ व २३ चा हेतुपुरस्करणे भंग केला असल्याने श्री. प्रशांत तु. सुतार यांची वाचले क्र.-३ मध्ये नमूद आदेशाने जवान पदी केलेली तात्पुरती नियुक्ती वाचले क्र.६ मान्यतेनुसार रद्द करण्यांत येत आहे.” }

8. Segregation of points from the order in foregoing quotation is done and is marked with bracketing and marking as ‘A’ to ‘F’ for the sake of convenience for emphasis.

9. The breaches relied upon by the respondent as stated in impugned order and those referred to in the affidavit-in-reply are :-

(a) Condition No.6.4 contained in the advertisement Exhibit-B, copy whereof is at page 13 to 18. This condition reads as follows :-

“६.४ विहित वयोमर्यादेतील शासकीय / निमशासकीय कर्मचा-यांनी त्यांचे अर्ज त्यांच्या कार्यालयीन प्रमुखांच्या परवानगीने भरावेत. अर्जामध्ये सध्या कार्यरत असलेले पद व कार्यालयाचा पत्ता नमुद करावा. अर्जदारांनी संबधित विभागाचे ना हरकत प्रमाणपत्र जोडणे आवश्यक आहे.”

(Quoted from page 16, paragraph 6.4 of the O.A. paper book.)

(b) Applicant had committee breach of Condition Nos.7 and 23 of the order of appointment.

10. In fact a factual imputation is contained in the impugned order viz.

(a) In bracketed text 'B' that "परंतु श्री. प्रशांत सुतार हे आदेश सही करून न घेता परस्पर निघून गेले त्यामुळे त्यांना सदर नियुक्ती आदेश दि.१८/१/२०१४ रोजी डाक नोंद पोच देय पावतीने पाठविण्यांत आले. सदर आदेश श्री. प्रशांत तु. सुतार, यांना मिळाल्याची पोच या कार्यालयाचे अभिलेखावर आहे. "

(b) In bracket 'C' states that, "सदर आदेश प्राप्त होवूनही ते जवानपदी हजर होण्यास न आल्याने पुनहा दि.४/३/२०१४ चे पत्राने त्यांना हजर होण्यास संधी देण्यांत आली."

11. Texts quoted in bracket 'B' and bracket 'C' in foregoing paragraph No.7 and paragraph No.10 are not disputed and challenged by Applicant in manner whatsoever.

12. In the absence of challenge to the text and facts contained in the impugned order quoted in foregoing paragraphs 7 and 11, in fact the reasons due to which the order of termination is issued are conceded to by Applicant as factually correct, legal and are not challenged by the Applicant.

13. Conduct of the Applicant in failing to raise challenge of the text put in bracket 'B' and 'C' quoted in foregoing paragraphs 7 and 10, amounts to deliberate and conscious act on the part of the Applicant to suppress the facts and to coach a lie. By this conduct the applicant has tacitly admitted that he was offered the appointment order, he avoided to receive and later on when sent by post, he has received appointment order. He does not deny that he declined to physically receive it when offered, in the manner referred to in the impugned order.

14. Did the Applicant have any bonafide reasons for failing to apply through Departmental challenge, he could have very well requested the Respondent stating that failure to apply through proper channel was a lapse on his part and he should have sought time for joining on the post, till he is duly relieved from the present employment.

15. The condition to apply with "NOC" or through proper channel cannot be treated as recommendatory or directory. While said condition is directory same could have operated as a ground for seeking extension in joining time, had the Applicant's joining been delayed due to delay in acceptance of resignation. Present employer may have even waived the notice period to relieve the candidate to join on new employment.

16. Applicant did not choose those straight, simply and legitimate course, rather he remained hinged to his stand of suppression of fact of this employment with Police. Applicant had rather chosen to keep the Excise Department as well as Police Department in dark and after getting relief after acceptance of resignation reported for joining the duty.

17. Applicant has not shown that he had applied for extension of time for joining by stating the grounds whatsoever. Therefore, challenge contained in the present O.A. is a challenge for the name's sake.

18. No ground whatsoever is strong to sustain and support the challenge before the Tribunal exercising the jurisdiction under Article 226 of the Constitution of India is made out.

19. Moreover the statement contained in paragraph 11 of the grounds, is a patent lie and deliberate suppression is done by the Applicant as regards the fact that Applicant was offered the appointment. Conduct of Applicant amounts to deliberate suppression of facts. A litigant who coaches a lie and chooses to suppress the facts does not deserve any latitude for exercise of jurisdiction under Article 226 of the Constitution of India, apart that Applicant had failed / refused to accept and honour the offer of appointment.

20. Moreover there bring no challenge to the crucial part containing imputations contained in the impugned order in fact on the facts applicant has failed to make out a case that impugned order is vitiated due to illegality.

21. Therefore, Original Application is does not mark any interference and it is dismissed with costs.

SD/-
(Rajiv Agarwal)
Vice-Chairman

SD/-
(A.H. Joshi, J.)
Chairman

Date : 08.02.2017

Place : Mumbai.

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