

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 826 OF 2018

DISTRICT : SOLAPUR

Shri Ramesh Shivaji Khapale)
Occ : Nil, Residing at Post Laxmi Takali,)
Tal-Pandharpur, Dist-Solapur 413 304.)...**Applicant**

Versus

1. The Secretary,)
Through the Maharashtra Public)
Service Commission, floor B-5,)
Cooperage, MTNL Bldg,)
M.K Road, Cooperage,)
Mumbai 400 021.)
2. The Directorate of Sports & Youth,)
Services, Central Bldg, Somwar Peth,)
Pune 411 001.)
3. The State of Maharashtra,)
Through Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)...**Respondents**

Shri S.S Dere, learned advocate for the Applicant.

Ms Swati Manchekar, learned Presenting Officer for the Respondents.

CORAM : **Shri Justice A.H Joshi (Chairman)**
Shri P.N Dixit (Member) (A)

DATE : **10.01.2019**

PER : **Shri Justice A.H Joshi (Chairman)**

ORDER

1. Heard Shri S.S Dere, learned advocate for the Applicant and Ms Swati Manchekar, learned Presenting Officer for the Respondents.

2. Facts of the case are as follows:-

(a) Respondent no. 1 issued advertisement in order to fill up total 750 posts of Police Sub-Inspector subject to the fulfilment of terms and conditions as mentioned therein.

(b) The applicant applied for the post of Police Sub-Inspector from Open Sport category pursuant to the advertisement.

3. As applicant's candidature is declined.

4. Aggrieved by rejection the applicant has approached this Tribunal.

5. Applicant has approached this Tribunal with following prayers:-

“10) Relief sought:-

In view of the foregoing, the applicant prays that this Hon'ble Tribunal be pleased:

(a) Call for the record and proceedings pertaining to the above matter for perusal of this Hon'ble Tribunal, this Hon'ble Tribunal may further be pleased to direct the Respondent no. 1 to recommend the name of present applicant through Open Sports Category and accordingly the Respondents may be directed to appoint the applicant.”

6. Applicant's claim and contentions contained in the O.A are as follows:-

- (a) Applicant participated in 10th Senior National Fencing Championship held at Uttarpradesh in August, 1998 and secured third position in the event.
- (b) He applied for validation of Sports Certificate on 02.05.2017.
- (c) The advertisement for recruitment to the post of Police Sub-Inspector was issued by Respondent no. 1 on 7.12.2016.
- (d) The last date for submitting application is 1.6.2017.
- (e) The applicant received Validation Certificate on 7.11.2017.

7. The crucial pleadings contained in the Original Application are seen in grounds 7.1, 7.2 & 7.3.

“7.1 That the applicant has applied to Sports Certificate in view of Clause 3.6 of the advertisement dated 17.12.2016, therefore, the applicant has followed the mandatory direction issued by the Respondent no. 1.

7.2 That the applicant has applied to the Respondent no. 2 within the reasonable time and the Respondent no. 2 had reasonable time in view of clause 5(iii) of G.R dated 1.7.2016 to verify the Sports Certificate of the applicant.

7.3 That the Sports Certificate produced by the applicant though bares that date, later on the cut-off date i.e. 1.6.2017 but the applicant has applied to the Respondent no. 2 before making application in pursuant to the advertisement dated 18.5.2017 and there enough reasonable time to the Respondent to verify the certificate.”

8. The question which arises for consideration in the present O.A are as follows:-

Question No. (1). Whether conditions contained in clause 4(v) of Government decision dated 1.7.2016 and requiring that candidate must obtain the Validation Certificate of participating in Sports before the last date fixed for nomination, results in denial of opportunity of being a candidate for public employment?

Question No. (2). On facts, has the applicant made out a case of his eligibility on account of failure to possess validation, delay in grant whereof is not attributable to him.

9. In the background that applicant had applied well in time but was awarded the validity certificate 190 days from his applying, applicant cannot be faulted for his inability to get the validation certificate.

10. On the facts of the case, it is not shown that the delay in issuance of the validity in the present case was on account of any fault on the part of the applicant.

11. Finding on Questions:-

Question No. (1). Whether conditions contained in clause 4(v) of Government decision dated 1.7.2016 and requiring that candidate must obtain the Validation Certificate of participating in Sports before the last date fixed for nomination, results in denial of opportunity of being a candidate for public employment?

Findings : (a) In so far as first question is concerned, this Tribunal has decided O.A 610/2017 and held that imposition of a condition, compliance whereof is exclusively within the domain of the executive and is beyond the control of candidate cannot be made a hurdle in the way of a individual of becoming a candidate for public employment.

(b) Denial of candidature to a citizen in the matter of public employment on account of failure to comply with a condition which is beyond his physical control, human limits and is a matter of authority and domain of public authorities, can never be imposed. Imposition of such condition result in

violation of fundamental Rights of equal opportunity of consideration in the matter of public employment, is utter violation of Articles 14 & 16 of the Constitution of India.

- (c) This Tribunal holds for the reasons recorded in O.A 610/2017 and O.A 204 of 2018 decided on 19.11.2018 that the imposition of condition of possession of certificate by a candidate before the last date fixed for making application cannot apply to the candidates whose claim for verification or vetting of the Sports Certificate is pending before the authorities and the candidate is not responsible for the delay and the blame is not attributable to the candidate.
- (d) In view of the said discussion and findings, Question No. 1 is answered against the authorities and in favour of the Government.
- (e) Therefore, applicant is held entitled for consideration of his claim on his own merit and in accordance with the recruitment rules.

Question No. (2) On facts, has the applicant made out a case of his eligibility on account of failure to possess validation, delay in grant whereof is not attributable to him.

Findings : The details as to how the applicant had participated, his Certificate had been validated and Respondent no. 2 took more than two months' time are admitted facts.

12. In the result, O.A is allowed in following terms:-

- (a) Clause 4(v) of Government decision dated 1.7.2016 shall not apply to applicant's candidature for his claim being considered.
- (b) Applicant's candidature be considered on the basis of validity certificate received by him on 7.11.2017, which is on record of O.A, at Exh. G, pages 44-45.
- (c) Applicant's candidature be considered on its own merit and Respondent shall grant to him due placement in the provisional and final merit list in accordance with the Recruitment Rules and all consequential benefits according to his entitlement as regards his eligibility as to appointment according to his merit and as per the rules and procedure of recruitment, except impugned para/ Rule 4(v) contained in Govt. Decision dated 1.7.2016.
- (d) In the facts and circumstances of the case, parties are directed to bear their own costs.

(P.N Dixit)
Member (A)

(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 10.01.2019
Dictation taken by : A.K. Nair.