

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

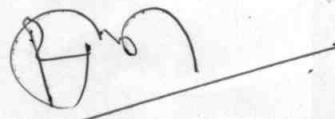
ORIGINAL APPLICATION NO.843 OF 2015

DISTRICT : MUMBAI

Shri Firoj Tayyabji Shaikh.)
Age : 30 Yrs, Occu.: Service, R/o. Near)
Ranteshwar Hanuman Temple, Bhikhar)
Shahu Line, Ratnaput Chowk, Latur-512.)
Address of Service of Notice :)
Shri A.V. Bandiwadekar, Advocate,)
C/o. Prashant S. Bhavake, Advocate,)
28-A, 4th Floor, Noble Chambers, (RPI))
House, Opp. Janmabhoomi Bhavan,)
Janmabhoomi Marg, Near Hutatma Chowk)
Fort, Mumbai 400 016.)...Applicant

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Home Department,)
Mantralaya, Mumbai - 400 032.)
2. Maharashtra Public Service)
Commission, M.S, Mumbai having)
Office at 5th, 7th & 8th Floor,)
Cooprej Telephone Exchange Bldg,)
Maharshi Karve Road, Cooprej,)



Mumbai 400 021.)
Through the Chairman / Secretary.)

3. The Directorate of Sports & Youth)
Welfare, M.S, Pune Through its)
Director.)...Respondents

Shri P.S. Bhavake with Shri M.D. Lonkar, Advocates for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for Respondents.

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)**

DATE : 30.08.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

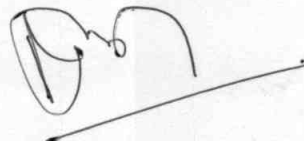
1. This Original Application (OA) is made by a frustrated candidate for the post of Police Sub-Inspector (PSI) whose application for the said post from the OBC Sports Category was ultimately rejected by the Respondent No.2 - Maharashtra Public Service Commission (MPSC). The Respondent No.1 is the State of Maharashtra and the Respondent No.3 is the Directorate of Sports and Youth Welfare.



2. The Applicant belongs to OBC category and he had applied through the said category in the Sports quota for the said post. He was born on 11.5.1985 and is a Post Graduate in Science. The case of the Applicant is that he cleared the various tests, but in effect and ultimately, he was not selected for the said post which according to him is an erroneous decision of the MPSC because he fully answered all the requirements for the said post. In this set of circumstances, he seeks the relief of quashing and setting aside of the orders against him and an affirmative direction to appoint him through the category mentioned above.

3. The Respondent No.3 filed an Affidavit-in-reply whereby the onus was entirely shifted on co-Respondent - MPSC.


4. MPSC filed Affidavit-in-reply through Mr. Maruti P. Jadhav, an Under Secretary. The details of the Schedule of the Examination is given. It is the case of MPSC that in order to be eligible from the said category, the representation in the sports should be at the national level competition and also in accordance with the relevant G.R. of 2005. The Applicant submitted his application from the category mentioned above and got through the

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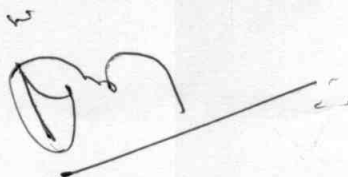
pre and main examination but ultimately, the Sport Certificate produced by him at the time of the interview were found invalid, because in so far as the Sport of Karate was concerned which by far, was the only Sport that he mentioned in his on-line application, the same was invalid because it did not fall within the 2005 G.R. and further because the competition mentioned in the Certificate was not proper and admissible for him to seek appointment from that particular Sport event. There is another aspect of the case of the Applicant which has been disputed by the said Respondent. According to the Applicant, he was also qualified from the Sport of Tug of War. But his case was not considered and this is something that he is aggrieved by. According to the said Respondent, however, he did not mention this Sport in his on-line Application Form and was, therefore, not considered and hence all his grievances against MPSC are baseless.

5. We have perused the record and proceedings and heard S/S M.D. Lonkar and P.S. Bhavake, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

6. The above discussion must have made it quite clear that the crux of the matter is as to whether the



Applicant had applied for the post invoking the Sport of Tug of War in his on-line application. In fact, there cannot be much dispute that in so far as Karate was concerned, that was not something that could be a plus point in Applicant's case. Now, no doubt at Page 179 of the Paper Book annexed to the Affidavit-in-Rejoinder, the Applicant has submitted his copy of the on-line application where as far as the type of the Sport was concerned, both Karate as well as Tug of War have been mentioned. A similar document on behalf of the Respondent No.2 - MPSC which is at Page 94 of the Paper Book (Exh. 'R-3') shows that he had only mentioned the Sport 'Karate' and not the Sport 'Tug of War'. It was argued on behalf of the Applicant that unless the Applicant had mentioned both the Sports, he would not have been allowed to go right upto the stage of production of documents for verification and that is a vindication of the stand of the Applicant. It is not possible for us to accept this submission on behalf of the Applicant. Various documents on behalf of the MPSC as well as the contents of the Affidavits would show that while submitting the applications, the documents are not required to be filed. They are only required to be submitted at the time of verification thereof and by then, the tests are cleared. We are not here to rule upon the accuracy or otherwise of the practice, but that practice is being followed for one and all,

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and therefore, in our opinion, just because the Applicant was allowed to course through one stage to another, it cannot necessarily be held that he had mentioned both the Sports in his on-line application.

7. We are thus faced with some kind of word against word scenario. In this set of facts, let us see as to what, if any, are the collateral facts. In Para 9 (Page 9 of the OA) itself, the Applicant has clearly mentioned that in the relevant column of on-line application form, he mentioned the Sport as 'Karate' only because of the fact that he had bagged a gold medal in that Sport and secured top place. But according to him, the concerned Officer had taken photo-copy of the Sport Certificate of 'Tug of War'. In setting out the grounds, in Para 14 (Page 11 of the P.B.), he stated that his candidature was rejected only on the ground that he had not submitted the Sports Certificate of 'Tug of War'. It will be appropriate to fully quote a passage from Para 14 of the OA.

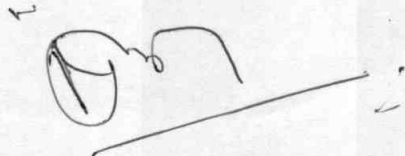
"The Applicants state that said reason is ex-facie illegal as well as factually incorrect. It is true fact as well as firm contention of the Applicant that on 19.01.2012 (date of interview) the Applicant has submitted his sport certificate of



'Tug of War' sport along with other sports certificates. However, the Respondent No.2 deliberately neglected the said certificate by taking disadvantage of the fact that in the relevant column of online application form the Applicant mentioned his game as 'Karate'. The Applicants state that only because of the said fact the candidature of the Applicant cannot be rejected."

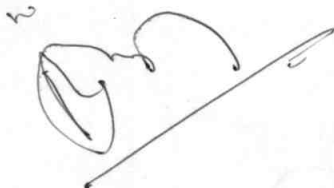
8. In Para 19 (Page 13 of the OA) again it was mentioned that though the Applicant mentioned the game 'Karate' in the Application Form, his Certificate of 'Tug of War' was required to be considered for his selection from Sports quota. At Page 42 of the P.B, there is a communication of 9.4.2015 from the Applicant to the MPSC where again he has mentioned in Marathi that he has mentioned in his on-line Application Form, the Sport of Karate because he topped in that Sport. He did not know, however, that the said Sport of 'Karate' as far as he was concerned was not recognized but he had submitted even the 'Tug of War' Certificate.

9. It is, therefore, very clear from Applicant's own statement in the OA and in the various documents



mentioned above, that in the on-line Application Form, he did not mention the Sport of 'Tug of War'. Again in so far as the submission of the document is concerned, a reference was made to various conditions, etc. by the MPSC to point out in effect that the claim of the Applicant from Sports category was found invalid.

10. It is no doubt true that the MPSC could have produced the original documents. At the fag end of the hearing, we were informed that the originals have been destroyed in accordance with the Rules. On the other hand, from Exh. 'B' to the Affidavit-in-Rejoinder (Page 181 of the P.B.) it would appear that on 7.5.2015, the Applicant himself lost the original copy of the on-line Application Form along with some other documents for which he made a Police Complaint, a copy of which is a document under reference. Now, if that was so, it is not possible to comprehend as to how the Applicant could still get a copy of the on-line Application Form which he has submitted before us in this matter. There is nothing on record to conclude as to why MPSC would play such "tricks" and "games" as is alleged by the Applicant. We cannot accept the case of the Applicant in this behalf.

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11. Examine it from any angle and we are clearly of the opinion that in the context of the facts, such as they are, the claim of the Applicant could not have been accepted. There is nothing inherently improbable in the MPSC destroying the documents under the normal rule of procedure. Had there been no facts and circumstances emanating therefrom based on Applicant's own averments and documents, that would have been a different matter. But the fact as a fact has ultimately been proved by Applicant's own recitals in the OA and his letters of the contemporaneous vintage, and therefore, we do not feel handicapped in any manner whatsoever in arriving at a conclusion that the claim of the Applicant was rightly negated and the Original Applicant is, therefore, liable to be and is hereby dismissed with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
30.08.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
30.08.2016

Mumbai
Date : 30.08.2016
Dictation taken by :
S.K. Wamanse.