

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.911 OF 2016

DISTRICT : NASHIK

Shri Yogesh Ananda Kale.)
Age : 28 Yrs., Occu.: Nil, R/at Deolane,)
Post Bokte, Tal.: yeola,)
District : Nashik - 423 402.)...Applicant

Versus

1. Sub Divisional Officer.)
Yeola Sub Division, Tal.: Yeola,)
District : Nashik - 423 401.)
2. Shri Vilas Gangadhar Nikam.)
At : Deolane, Post : Bokte, Tal.: Yeola,)
District : Nashik – 423 402.)...Respondents

Mr. C.T. Chandratre, Advocate for Applicant.

Ms. S.T. Suryawanshi, Presenting Officer for Respondent No.1.

None for Respondent No.2

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 14.01.2019

JUDGMENT

1. The Applicant has challenged the impugned orders pertaining to the appointment of Police Patil invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as follows :

The Applicant is a resident of Village Deolane, Taluka Yeola, District Nashik. In February, 2016, the Respondent No.1 (S.D.O) issued Circular (माहितीपत्रक) to fill-in the post of Police Patil in various Villages of Taluka Yeola, District Nashik. Accordingly, the Applicant made an application for the post of Police Patil of Village Deolane and appeared in written examination. He was declared successful in the examinations conducted by Respondent No.1. Accordingly, the Respondent No.1 by his letter dated 12.05.2016 asked the Applicant to submit the documents viz. Fitness Certificate, Character Certificate and Undertaking, etc. so as to issue appointment order on further compliance. Accordingly, the Applicant submitted the documents along with Character Certificate, which is material in this context. However, the Respondent No.2 lodged complaint against the Applicant alleging that the Applicant has suppressed material fact of his involvement in Criminal Case No.372/2016 (private complaint) filed under Section 143, 147, 447, 323, 504 read with 34 of Indian Penal Code. On receipt of objection, the Respondent No.1 without giving an opportunity to the Applicant cancelled the recommendation of the Applicant by order dated 20.06.2016. Being aggrieved by it, the Applicant has filed O.A.672/2016 in which, the Respondent No.1 filed an Affidavit stating that the impugned order will be withdrawn and fresh order will be issued on hearing the parties. Accordingly, the O.A.672/2016 was disposed of.

Thereafter, the Applicant has submitted his representation / say along with the documents contending that there is no suppression of material fact and the private complaint case is arising out of civil dispute and the allegations made therein are false and no case is made out against him for suppression of material fact.

However, the Respondent No.1 rejected his representation by order dated 23.08.2016 with the finding that the Applicant has suppressed material fact of his involvement in Criminal Case while submitting documents for the post of Police Patil. On these pleadings, the Applicant has filed the present application challenging the impugned orders dated 20.06.2016 and 23.08.2016. During the pendency of these applications, the Respondent No.1 appointed Respondent No.2 as Police Patil by order dated 19.09.2016. The Applicant accordingly amended the application and challenged the order dated 19.09.2016 also. With these pleadings, he prayed for declaration of his appointment as Police Patil of Village Deolane.

3. The Respondent No.1 resisted the application by filing Affidavit-in-reply (Page No.54 of Paper Book) *inter-alia* contending that the Applicant has suppressed material fact of his involvement in Criminal Case. As per the requirement, the Applicant was required to furnish Character Certificate, However, he knowingly suppressed about the Criminal Case which was pending against him in the Court of law. Therefore, in view of the provisions of Maharashtra Police Patil (Recruitment, Pay Allowances and Other Conditions of Service) Order, 1968 (hereinafter referred to as "Police Patil Order 1968"), the Applicant found not suitable for the employment as Police Patil. He hold summary enquiry about the Character of the Applicant as contemplated in Clause 3(c) of 'Police Patil Order 1968' and found that the antecedents of the Applicant is not good because of his involvement in criminal case, and therefore, found not suitable for the post of Police Patil. Consequently, the Respondent No.2 who was next to the Applicant in merit was appointed as Police Patil. With these pleadings, the Respondent No.1 prayed to dismiss the application.

4. The Respondent No.2 who has been appointed as Police Patil has also resisted the application by filing his Affidavit-in-reply supporting the stand of

Respondent No.1 and submitted that his appointment being legal and valid calls for no interference.

5. Shri C.T. Chandratre, learned Advocate for the Applicant urged that, there is no suppression of material facts much less to render the Applicant unsuitable for employment as Police Patil and secondly, there is no objective assessment of the situation on the part of Respondent No.1 to see whether the Applicant's case falls strictly within Clause 3(e) of 'Police Patil Order, 1968'. He also sought to place reliance on the Judgment of Hon'ble Supreme Court in **AIR 2016 SC 3598 (Avtar Singh Vs. Union of India and others)**.

6. Per contra, the learned P.O. submitted that the Applicant has suppressed material fact of pendency of criminal case against him purposely. According to her, in view of pendency of criminal case against the Applicant, he is unsuitable for employment as Police Patil as contemplated in Clause 3(e) of 'Police Patil Order, 1968'.

7. At this juncture, it would be appropriate to reproduce Clause 3(e) of 'Police Patil Orders, 1968', which is as follows :

"3. Eligibility for appointment.- No person shall be eligible for being appointed as a police patil who –

(a)

(b)

(c)

(d)

(e) It is judged by the competent authority after a summary inquiry to be of bad character or has, in the opinion of that authority, such antecedents as render unsuitable for employment as Police Patil."

8. It would be also apposite to refer the Judgment of Hon'ble Supreme Court in **Avtar Singh's** case (cited supra) wherein the Hon'ble Supreme Court summarized the conclusions in this behalf which are as follows :

"(1) Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

(2) While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

(3) The employer shall take into consideration the Government orders / instructions /rules, applicable to the employee, at the time of taking the decision.

(4) In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted :

(a) In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

(5) In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

(6) In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

(7) In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

(8) If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

*(9) In case the employee is confirmed in service, **holding** Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.*

(10) For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

9. Shri C.T. Chandratre, learned Advocate for the Applicant mainly focused on point nos.(2),(3), 4(a), and (10) as reproduced above.

10. At the very outset, it needs to be stated that, admittedly, the Applicant was accused in Criminal Case No.93/2012 under Sections 143, 147, 447, 323, 504(2) read with 34 of Indian Penal Code. It was private complaint filed by complainant Mr. Devram Tribhuvan against the present Applicant and others. On filing of the complaint, the learned Magistrate recorded verification and held that the complainant has made out prima-facie case and issued process against accused for the offences punishable under Sections 143, 147, 447, 323, 504(2) read with 34 of I.P.C. on 6th August, 2012. It was also not in dispute that while filing an application for the post of Police Patil, the Applicant has not disclosed

this fact. Therefore, now the question is whether suppression of this fact is material and it renders the Applicant unsuitable for employment as Police Patil.

11. As per the requirement, the Applicant was to furnish Character Certificate to be obtained from the concerned Police Station. In this respect, the Applicant had produced Certificate issued by Superintendent of Police, Nashik dated 14th May, 2016 which states that, as per the information available in Yeola Taluka Police Station, no record was found about registration of crime or conviction against the Applicant. As such, on the basis of this Character Certificate, the Applicant was qualified for the post of Police Patil, but later it was revealed that in fact, the Applicant has been involved in Criminal Case referred to above. As it was private complaint case, obviously there was no entry to that effect in the record of concerned Police Station, and therefore, the said Character Certificate was issued. However, there is no denying that the Applicant himself has procured the said Certificate from S.P, Nashik (Rural) and submitted to Respondent No.1. Thus, he was aware as well as conscious of the pendency of Criminal Case against him, but he did not disclose the same, which he ought to have disclosed at the time of furnishing the application. Having not done so, it is definitely suppression of material fact. The Applicant has applied for the post of Police Patil where his antecedent needs to be considered to see whether he is suitable for the post of Police Patil.

12. The perusal of Maharashtra Village Police Patil Act, 1967 reveals that, he needs to work under the supervision of Executive Magistrate and responsible to collect the information and communicate to the Police Station Officer on the matters affecting the public peace. He is also expected to afford every assistance in his power to all Police Officers when called upon in performance of their duties and is also expected to execute the orders and warrants issued to him by learned Magistrate and Police Officers. As such, the Police Patil performs

the duties as a representative of District Magistrate and also works as a part of Police Force. Suffice to say, Police Patil plays an important role in the administration concerning public peace and law and order situation. This being the position, his antecedent needs to be examined by way of summary enquiry as contemplated under Section 3(e) of 'Police Patil Order, 1968'.

13. In the present case, on receipt of objection, the Respondent No.1 conducted summary enquiry as contemplated under Section 3(e) of 'Police Patil Order, 1968' and held the Applicant unsuitable for the appointment to the post of Police Patil and cancelled his recommendation letter by order dated 23rd August, 2016.

14. The Respondent No.1 in his order observed that the Applicant is involved in Criminal Case which is subjudice, but he has suppressed the said aspect intentionally and thereby tried to misrepresent the authorities. With this observation, he concluded that the Applicant is not suitable for the post.

15. Needless to mention that, verification of character and antecedents is important to assess suitability and it is always open to the State / employer to adjudge antecedents of the incumbent. The Hon'ble Supreme Court in ***Avtar Singh's*** case in Para No.26 held as follows :

"26. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects."

16. In the present case, it cannot be said that the information suppressed by the Applicant is very technical or trivial nature. It was important aspect to be considered objectively by the Respondent No.1, which he did.

17. The Applicant was accused in the Criminal Case on the allegation that he along with his family members committed criminal trespass by entering in the field of Anna Tribhuvan armed with weapons and abused and assaulted him with weapons. True, there seems to be civil dispute in between complainant and the Applicant over the possession of the field. In Civil Suit, a decree also seems to have been passed in favour of the Applicant. However, the fact remains that in Criminal Case, the learned Magistrate has taken cognizance and issued process against the Applicant and others on 06.08.2012. As such, the position stands on the date of filing the application is that the Applicant was accused in the Criminal Case, but he suppressed this fact. Having regard to the nature of duties to be performed by the Applicant, the Respondent No.1, therefore, found the Applicant not suitable for the post of Police Patil. Probity requires that the person to be appointed on the post of Police Patil should be free from any criminal antecedents to have confidence and faith of the villagers in him. If the person against whom the Criminal Case is pending is appointed on the post of Police Patil, then it would definitely erode the faith of people in him and it would sent wrong signal to villagers. Therefore, the decision taken by Respondent No.1 cannot said arbitrary.

18. The Respondent No.1 is the appointing authority, and therefore, his decision seems to be outcome of objective assessment of the situation. Even if one examine the situation in the light of law summarized by Hon'ble Supreme Court in **Avtar Singh's** case (cited supra), the decision of Respondent No.1 cannot be faulted with. In Point NO.7, as reproduced above, the Hon'ble Supreme Court held that, in case of deliberate suppression of fact with respect to multiple pending cases, such false information by itself will assume significance and the employer may pass appropriate order cancelling candidature or terminating the services.

19. Shri Chandratre, learned Advocate for the Applicant referred to Point No.10 of **Avtar Singh's** Judgment (cited supra). The Hon'ble Supreme Court held that, only such information which was required to be specifically mentioned has to be disclosed and if information not asked for, but is relevant come to the knowledge of employer, the same can be considered in an objective manner while addressing the question of fitness (suitability in the present case). However, in such cases, the action cannot be taken on the basis of suppression and submit false information as to fact which was not even asked for. In so far as the facts of present case are concerned, it is true that the Applicant was only required to submit Character Certificate from Police. It is also equally true that, there was no such Clause in the Application Form asking about the information in respect of Criminal Case. However, in the present case, there is no denying that the Applicant himself has procured the Certificate from S.P, Nashik and submitted to Respondent No.1 by suppressing the fact of his involvement in Criminal Case which was subjudice. As stated above, such information about the pendency of Criminal Case was relevant and significant. This being the position, there is deliberate suppression of material fact, and therefore, it cannot be said that, only because the Applicant was not specifically asked for furnish the information about the Criminal Case, he was not required to disclose the same. While submitting the Character Certificate that no Criminal Case is pending against him obtained from Police, he in all fairness ought to have disclosed the fact of his involvement in Criminal Case and its pendency. As such, in view of the parameters and law laid down by Hon'ble Supreme Court itself, the Applicant cannot be said suitable for the post of Police Patil, as opined by his appointing authority.

20. True, subsequently, the Applicant seems to have been discharged from the Criminal Case, as the complainant failed to produce evidence before charge as seen from the order of learned Judicial Magistrate 1st Class dated 11.08.2017.

However, it is subsequent event, and therefore, the relevant date is the date of filing of application. Therefore, only because subsequently, the Applicant was discharged, that will not help the Applicant to challenge the decision of Respondent No.1 dated 23.08.2016.

21. Shri Chandratre, learned Advocate for the Applicant further sought to refer G.R. dated 26th August, 2014 issued by G.A.D. whereby instructions were given for the procedure to be followed while examining the character of the candidates for appointing them in Government service. By this G.R, the Committee has been constituted to take decision in this behalf. It enumerates the offences where conviction and where only pendency of case would make the candidate ineligible for the appointment in Government service. It seems that for some offences in case of conviction, the candidate is not eligible for the appointment but in some offences, mere pendency of Criminal Case may not bar him from the appointment. It is clear from this G.R. itself that the list of offences is illustrative and not exhaustive.

22. Reading of G.R. dated 26th August, 2014 and Annexures 'A' and 'B' shows that in case of conviction in Criminal Case of Murder, attempt to commit Murder, Culpable Homicide not amount to Murder, Rape, Kidnapping and Abduction, Dacoity, Robbery, Counterfeiting, Grave Hurt, offences under Narcotic Drugs and Psychotropic Substances Act, 1985, the conviction as well as pendency of trial is disqualification for appointment in Government service. Whereas, in offences relating to Burglary, Threat, Riots, Criminal breach of trust, Cheating/forgery, Arson, dowry Death, Molestation, Sexual Harassment, etc., only conviction is disqualification and pendency of trial for these offences is not the disqualification for the appointment in Government service.

23. In my considered opinion, this G.R. is of no avail to the Applicant as it relates to the appointment in Government service whereas in the present case, the situation is covered by 'Police Patil Order, 1968' which specifically deals with this subject. As quoted above, the Respondent No.1 is the competent authority who hold summary enquiry and opined that the Applicant has suppressed material fact and it rendered him unsuitable for the appointment of Police Patil. His opinion is the outcome of subjective assessment of the situation vis-à-vis the nature of duties and responsibilities to be performed by Police Patil. The order passed by Respondent No.1, therefore, is unassailable and I find no illegality therein.

24. The necessary corollary of aforesaid discussion leads me to sum-up that the challenge is devoid of any merit and the application deserves to be dismissed. Hence, the following order.

ORDER

The Original Application is hereby dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 11.01.2019

Dictation taken by :

S.K. Wamanse.