

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 271 OF 2020
(Subject:-Appointment)**

DISTRICT: - AURANGABAD

Siddharth Mahendra Kadam)
Age : 31 years, Occu.: Service,)
R/o. Plot No. 161, Pethe Nagar,)
Bhavsingpura, Aurangabad,)
Dist. Aurangabad.)...**APPLICANT**

V E R S U S

The State of Maharashtra,)
Through its Principal Secretary,)
Public Works Department (Seva-3),)
Madam Cama Road, Hutatma Rajgur)
Chowk, Mantralaya, Mumbai -32.)...**RESPONDENT**

APPEARANCE : Shri V.B. Wagh, learned Advocate for
the applicant.
: Smt. M.S. Patni, learned Presenting
Officer for the respondent.

CORAM : **Shri V.D. Dongre, Member (J)**
And
Shri Bijay Kumar, Member (A)

Reserved on : **11.01.2023.**

Pronounced on : **03.02.2023.**

ORDER**(Per: Shri V.D. Dongre, Member (J))**

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed seeking direction to the respondent to issue appointment order to the applicant for the post of Assistant Engineer Grade-II (Civil), (Group-B) (Gazetted) pursuant to advertisement No.67/2017 dated 11.10.2017 (Annexure A-1) as per the recommendation letter dated 29.06.2019 (Annexure A-3) issued by Maharashtra Public Service Commission (M.P.S.C.) and also challenging the order dated 09.10.2020 (Annexure A-11) issued by the respondent No.1 through it's Deputy Secretary, rejecting the claim of the applicant for getting appointment on that post.

2. The facts in brief giving rise to this Original Application can be summarized as follows:-

(i) The applicant possesses the educational qualification of B. Tech (Civil) and he is a Sports Person and was awarded with Shiv Chhatrapati Krida Awards which is highest award in the Maharashtra State Sports.

(ii) The M.P.S.C. issued common advertisement for various posts to be filled in to the Irrigation and Public Works

Department being advertisement No. 67/2017 dated 11.10.2017 (Annexure A-1). Pursuant to the said advertisement, the applicant applied for the post of Assistant Engineer Grade-II (Civil), (Group-B) (Gazetted).

(iii) The M.P.S.C. had issued the hall tickets for pre and mains examination. The applicant cleared pre examination on 11.10.2017 as well as mains examination on 30.01.2019. After mains examination, the applicant was called for interview by M.P.S.C. by its letter dated 18.02.2019 (Annexure A-2) which was scheduled on 15.03.2019. The applicant remained present for the said interview. On that date applicant's original documents were verified.

(iv) After interview, M.P.S.C. published merit list. In the said merit list of Assistant Engineer Grade-II (Civil), (Group-B) (Gazetted) the applicant was at Sr. No. 83 from the S.C. Sports Category. The M.P.S.C., thereafter, by letter dated 29.06.2016 (Annexure A-3) recommended the name of the applicant to the post of Assistant Engineer Grade-II (Civil), (Group-B) (Gazetted).

(v) Thereafter, the respondent sent letter dated 15.07.2019 (Annexure A-4) by E-mail to all the candidates who were

recommended directing them to remain present on 20.07.2019 for documents verification. However, due to some technical problem the applicant could not open his E-mail till 27.12.2019 and as such, the said communication dated 15.07.2019 (Annexure A-4) was not known to him.

(vi) Thereafter, the respondent issued appointment order dated 29.08.2019 (Annexure A-5) to in all 79 recommended candidates. The applicant, however, was unaware about the posting given to other candidates by said order dated 29.07.2019. The applicant came to know about it on 27.12.2019 when the second list dated 26.12.2019 (Annexure A-6) of Water Resources Department was published, which was for the post of Assistant Engineer (Civil), Group –A. Accordingly on 27.12.2019, the applicant saw the e-mail dated 15.07.2019 sent by the respondent.

(vii) Thereafter, the applicant immediately approached the respondent and made representation dated 30.12.2019 and subsequent representation dated 03.01.2020 (Annexure A-7 collectively) explaining the difficulties faced by him in opening e-mail and sought appointment.

(viii) It is submitted that in the entire process the M.P.S.C. sent the text messages of preliminary, mains examination and

interview in which directions were given to download and take the prints of necessary documents. In letter dated 15.07.2019 (Annexure A-4) issued by the respondent, the modes of services mentioned were by Speed Post (Post Office)/by e-mail. In view of that it was incumbent upon the respondent to send communication dated 15.7.2019 (Annexure A-4) by Speed Post (Post Office), which would have received by the applicant and got appointment.

(ix) Because of technical problem in e-mail, the applicant could not remain present for document verification scheduled on 20.07.2019 as per communication dated 15.07.2019, which was not received by the applicant. The applicant's claim cannot be denied due to technical problem, which would be in violation of Article 16 of the Constitution of India. The applicant has approached the respondent authority within one year of validity period of the list.

(x) It is further submitted that this Tribunal by order dated 06.03.2020 passed in O.A.No.129/2020 (Annexure A-8) filed by the applicant directed the respondent to consider the representation dated 30.12.2019 and 03.01.2020 (Annexure A-8 collectively) made by the applicant within the period of

one month and to communicate the decision in writing to the applicant. The respondent by impugned communication dated 09.10.2020 (Annexure A-11) rejected the claim of the applicant for appointment to the post of Assistant Engineer Grade-II (Civil), (Group-B) (Gazetted), which is impugned in this Original Application.

(xi) It is the grievance of the applicant that the respondent while rejecting the claim of the applicant has not considered the technical problem faced and pleaded by him in his representations and that the applicant approached the respondent within the period of one year. The said rejection order is in violation of Article 16 of Constitution of India. Hence, this application.

3. Affidavit in reply is filed on behalf of the respondent by one Smt. Rohini Satishchandra Ubale working as Assistant Superintending Engineer, Public Works Circle, Aurangabad, District Aurangabad. Thereby she denied the adverse contentions raised in the Original Application.

(i) It is admitted that the M.P.S.C. recommended the name of the applicant for the concerned post amongst 83 recommended candidates and the applicant and others were

called for document verification by issuing letter dated 15.07.2019 (Annexure A-4). The applicant, however, did not remain present for document verification on the specified date of 20th July, 2019 meant for candidate Nos. 61 to 83.

(ii) It is further submitted that the contentions raised by the applicant that he received e-mail late and that he was unaware of document verification process due to technical reason is unacceptable. The applicant approached the respondent after lapse of about six months which is not explained. The representations dated 30.12.2019 and 03.01.2020 made by the applicant in this regard were considered by the respondent and the same were rightly rejected by reasoned order dated 09.10.2020. In these circumstances, there is no merit in the Original Application and is liable to be dismissed.

4. The applicant filed his affidavit in rejoinder denying the adverse contentions raised in the affidavit in reply and reiterating the contentions raised in the Original Application. It is additional contention of the applicant that during pendency of the Original Application, the applicant sought information about postal acknowledgement of letter dated 15.07.2019 (Annexure A-4) from the respondent. However,

such acknowledgement was not produced stating that it was not available. The respondent has cancelled the recommendation made by the M.P.S.C. only on hyper technical ground. What has remained is only verification of document.

5. We have heard at length the arguments advanced by Shri V.B. Wagh, learned Advocate for the applicant on one hand and Smt. M.S. Patni, learned Presenting Officer representing the respondent on other hand.

6. Considering the facts of the present case, it is evident that the whole matter revolves around letter dated 15.07.2019 (Annexure A-4) by which all the recommended candidates were asked to remain present in the office of the M.P.S.C. on 18th, 19th and 20th of July, 2019 as per slots at Sr. Nos. 1 to 30, 31 to 60 and 61 to 83 respectively. The name of the applicant appears at Sr. No. 83 in the said recommendation list of M.P.S.C. annexed with the said letter dated 15.07.2019. On the top of the said letter mode of sending the letter is mentioned as follows:-

“नोंदणीकृत पोच देय डाकेने/ई-मेलव्दारे”

Contents of paragraph No.4 of the said letter are relevant. Hence, the said paragraph No.4 is reproduced which is as follows:-

“सर्व उमेदवारांना असेही कळविण्यात येते की, महाराष्ट्र स्थापत्य अभियांत्रिकी सेवा (मुख्य) परीक्षा-२०१७ अंतर्गत नियुक्ती देण्यात येणाऱ्या सर्व उमेदवारांशी पत्रव्यवहार, त्यांनी महाराष्ट्र लोकसेवा आयोगास सादर केलेल्या ई-मेलव्दारे करण्यात येईल. त्यानुसार उमेदवारांनी विहित कालमर्यादित कागदपत्रे सादर करणे व सूचनांचे पालन करणे आवश्यक राहिल. दि. २० जुलै, २०१९ पर्यंत उपरोक्त सूचनांचे पालन न करणाऱ्या उमेदवारांचा नियुक्तीसाठी विचार करण्यात येणार नाही, याची कृपया नोंद घ्यावी.”

The endorsement in top and paragraph No.4 would make it clear that the communication was to be made with the candidates by e-mail. In view of the same, sending communication by post cannot be termed as mandatory. That seems to be alternate mode.

7. Undisputedly the applicant was selected and recommended by the M.P.S.C. for the post of Assistant Engineer Grade-II (Civil), (Group-B) (Gazetted) and the name of the applicant was at Sr. No. 83 in the said letter dated 15.07.2019 (Annexure A-4). Admittedly, the applicant failed to remain present in the office of the M.P.S.C. on 20.07.2019 which date was fixed for document verification of the candidates at Sr. Nos. 61 to 83.

8. It is the contention of the applicant that due to some technical problem the applicant could not open his e-mail till 27.12.2019. Considering this contention heavy burden was upon the applicant to establish that due to some technical problem, the applicant could not open his e-mail till 27.12.2019. However, no evidence is produced on record to substantiate this contention. The applicant could have produced the screen short of the date on which would have shown if any attempts being made by the applicant to open his e-mail id, but he was unable to open it. Under what circumstances he could open his e-mail only on 27.12.2019 is also not explained by the applicant. In all fairness it was incumbent upon the applicant to produce such evidence which was available to him as on 27.12.2019. In view of failure of the applicant to produce any evidence, the contention raised by the applicant in this regard appears to be devoid of merits and it is vague contention. In view of the same, gross negligence is attributable to the applicant for not having been vigilant and watchful about searching information to be received from the M.P.S.C. from time to time.

9. No doubt the interview was held on 15.07.2019 when documents were also verified. But for the reasons already mentioned, this is not a fit case where discretion can be exercised in favour of the applicant to reopen recruitment process and direct the respondent to give appointment to the applicant. We do not find any illegality in the impugned communication dated 09.10.2020 issued by the respondent rejecting the representations of the applicant dated 30.12.2019 and 03.01.2020, wherein it is mentioned that next recruitment process has already started after completion of recruitment process of 2017 in which the applicant was selected but could not be appointed for failure of the applicant for remained present for document verification. Hence, we find no merit in the Original Application and proceed to pass the following order:-

ORDER

- (A) The Original Application stands dismissed.
- (B) There shall be no order as to costs.

MEMBER (A)

MEMBER (J)

Place:-Aurangabad
Date : -03.02.2023
SAS O.A.271/2020