

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 133 of 2013 (DB)**

Nitin S/o Suresh Sonwane,  
Aged about 28 years, Occ. Nil,  
R/o Nimboli (PHC), Tq. Dhamangaon Railway,  
District Amravati.

**Applicant.**

**Versus**

- 1) State of Maharashtra through  
Secretary Home Department,  
Mantralaya, Mumbai-32.
- 2) The Commandant,  
State Reserve Police Force,  
Group No.IX, Amravati.

**Respondents.**

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**Shri M.R. Khan, Advocate for the applicant.**

**Shri A.M. Khadatkar, P.O. for respondents.**

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**Coram :- Shri Shree Bhagwan,  
Vice-Chairman and  
Shri Anand Karanjkar, Member (J).**

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**Date of Reserving for Judgment : 24<sup>th</sup> July, 2019.**

**Date of Pronouncement of Judgment : 30<sup>th</sup> August, 2019.**

**JUDGMENT**

**Per : Anand Karanjkar : Member (J).**

**(Delivered on this 30<sup>th</sup> day of August,2019)**

Heard Shri M.R. Khan, learned counsel for the applicant  
and Shri A.M. Khadatkar, learned P.O. for the respondents.

2. The applicant is challenging the decision taken by the  
Government not to appoint the applicant on the post of Police

Constable and cancelling his selection. The facts in brief are as under –

3. The advertisement Annex-A-2 was published by the respondents to fill 83 posts of Police Constable on establishment of State Reserve Police Force, Group No.IX, Amravati. As the applicant was eligible, he submitted his application. The applicant passed the physical examination, written test and vide letter dated 26/4/2018 he was informed that he was selected and the applicant was directed to submit the documents for verification of his caste certificate.

4. It is submitted that the respondents called information from Superintendent of Police, Amravati regarding his character and antecedent and vide Annex-A-6 information was given that the applicant was accused in Crime No.27/2006 punishable under Sections 302,120B r/w 34 of the IPC and he was acquitted in the trial vide Judgment dated 10/4/2007. This matter was thereafter referred to the Government and vide Annex-A-1 the applicant was informed that the respondent no.1 had taken decision not to appoint the applicant on the post of Constable and therefore the selection of the applicant was cancelled.

5. It is contention of the applicant that the approach of the respondent no.1 was illegal. The respondent no.1 did not consider the fact that the applicant was honourably acquitted by the Session

Court, Amravati. It was honourable acquittal and without considering this, the Government has taken decision not to appoint the applicant. It is submitted that except this case, there was no material against the applicant for taking such a drastic view. It is submitted that the action of the Government taking this decision is arbitrary and contrary to the Judgments delivered by the Hon'ble Apex Court.

6. The applicant submits that in case of **Commissioner of Police and others Vs. Sandeep Kumar (2011) 4 SCC, 644, Commissioner of Police, New Delhi & Ano Vs. Mehar Singh (2013) 7 SCC, 685, Mahadeo S/o Laxman Pund Vs. State of Maharashtra & Ano., 2010 (4) Mh.L.J.,337** and the Judgment in case of **Avtar Singh Vs. Union of India & Ors., 2016 (6) Mh.L.J.,484,** the legal position was explained but it was not considered by the respondent no.1. It is contention of the applicant that the approach of the respondent no.1 was contrary to the law laid down by the Hon'ble Apex Court and there was no material for holding that entry of the applicant in the Police Department was prejudicial to the Society or to the S.R.P.F., therefore, the impugned order be set aside and direction be given to the respondents to appoint the applicant as Police Constable on the establishment of the respondent no.2.

7. The respondents have submitted their reply which is at page no.59 of the P.B. It is contention of the respondents that the

applicant vaguely mentioned in his application that he was accused in criminal case and acquitted, but the applicant deliberately avoided to mention that what was the nature of the crime. It is submitted by the respondents that this matter was referred to the Government and accordingly the Government has taken decision that the applicant was not suitable for being appointed as Police Constable. It is submission of the respondents that as the applicant was involved in serious crime of murder and he did not submit the details in his application and this entire material was taken into account, therefore, the decision of the Government is fair and there is no illegality in it.

8. As it was contended by the applicant that the decision taken by the Government was arbitrary, direction was given to the respondents to produce the copy of the decision taken by the Government. Time was given to the respondents to comply this order and on 29/4/2019 it was informed by the Deputy Secretary vide letter dated 25/4/2019 that there was a fire in the Ministry on 21/6/2012 and in that fire the entire record of the applicant's case was destroyed. As this information was given by the Deputy Secretary, Home Department, Government of Maharashtra, we think it suitable to see whether there were reasonable grounds to refuse appointment to the applicant.

9. Annex-A-7 before the Bench is the copy of the Judgment in Session Trial No.135/2006. The applicant has also produced the

copies of the depositions in Session Trial No.135/2006. We have gone through the deposition of the witnesses. It is contention of the applicant that he was acquitted in this crime and acquittal is on merit, the acquittal was not given on principle of benefit of doubt. It is submitted that the acquittal of the applicant was clean acquittal without any stigma and therefore there was no material available against him to set aside his selection.

10. We have gone through the deposition of witness no.10 Shri Mahadeo Manikrao Dhande, PSI who investigated the crime. In para no.3 of a chief examination, Shri Dhande, PSI specifically deposed that deceased Dilip Wankhede had lodged report against Suresh Sonwane who was accused no.2 in the trial and present applicant Nitin Sonwane who was accused no.3 on 15/12/2005. On the basis of that report noncognizable crime was registered against the applicant and the copy of the NC register regarding registration of the crime was at Exh-85 in the trial. In that matter, Shri Dhande, PSI further deposed that the accused Suresh Sonwane was released on bail and thereafter accused Suresh Sonwane and the present applicant Nitin Sonwane used to threaten the deceased. We have gone through the cross examination of PSI Dhande, it seems that this version of PSI Dhande was not challenged. It appears from the facts and circumstances that before the commission of the offence threat was given by the accused no.2 Suresh Sonwane and accused no.3

the present applicant to deceased Dilip Wankhede and in respect of the threat NC was registered vide Exh-85. As a matter of fact, this material was suggesting what was the behaviour of the applicant in the Society. No doubt, the applicant was acquitted as material witnesses did not depose against him, but fact remains that regarding criminal attitude of the applicant there was evidence in the trial, in our opinion perhaps when the Government made scrutiny of the matter, this evidence was considered by the Government. In this situation, it is not possible to say that there was no criminal antecedent of the applicant.

11. So far as the Judgments on which reliance is placed by the applicant are concerned, in case of **Commissioner of Police and others Vs. Sandeep Kumar (cited supra)**. The facts were that the minor crime was committed in the youth age and it was under Section 325 r/w 34 IPC and that crime was compromise and therefore the view was taken.

12. In case of **Commissioner of Police, New Delhi & Ano Vs. Mehar Singh (cited supra)**, the following observations are made by the Hon'ble Apex Court -

*"Hence, Screening Committee is entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that acquittal or discharge is on technical grounds/not honourable - Whether a person acquitted/discharged in a criminal case should be appointed to a post in the police force, relevance is of nature of offence, extent of his*

*involvement, whether acquittal was a clean acquittal or an acquittal by giving benefit of doubt, and the propensity of such person to indulge in similar activities in future - Decision can only be taken by Screening Committee - If Screening Committee's decision is not mala fide nor actuated by extraneous considerations it cannot be questioned, as in present case”.*

13 . In the case of **Mahadeo S/o Laxman Pund Vs. State of Maharashtra & Ano.(cited supra)**, the facts were that the candidate was accused under Sections 147,149,324,504 & 506 of IPC and therefore considering the nature of the crime view was taken. In case of **Avtar Singh Vs. Union of India & Ors. (cited supra)** the issue was suppression of relevant material facts of submission of false information in the verification form. In the present matter, it seems that the matter was referred to the Government, it was examined by the Government and thereafter decision was taken.

14. In the reply the learned P.O. has placed reliance on the Judgment in case of **Commissioner of Police, New Delhi & Ano Vs. Mehar Singh (2013) 7 SCC, 685**, the ratio in this case is already discussed above. The learned P.O. has placed reliance on the Judgment in case of the **Union Territory, Chandigarh Administration & Ors. Vs. Pradeep Kumar & Ano., (2018) 1 SCC, 797**. In this Judgment, the Hon'ble Supreme Court has observed that the employer can go into issue of suitability. Even if the candidate has self-declared his criminal antecedents, the employer still has right to consider such criminal antecedents to decide the suitability. It is

further observed that the acquittal in a criminal case is not a conclusive of the suitability of the candidate if a person is acquitted or discharged, it cannot always be inferred that he was falsely involved or he had no criminal antecedents. In view of this, the evidence of PSI Shri Dhande prosecution witness no.10 in the Session trial throwing light on criminal activities of the applicant were sufficient. The legal position is examined by the Division Bench of the Bombay High Court in case of **Vithal Waman Shelke Vs. High Court of Bombay through Registrar General & Ano. 2017 (1) Mh.L.J.,367.**

After placing reliance on the Judgment of Hon'ble Apex Court in para no.8 of the Judgment, the Hon'ble High Court has quoted the observations made by the Hon'ble Constitution Bench of the Apex Court in case of **Shankarasan Dash vs. Union of India [(1991) 3 SCC, 47.** The relevant portion is as under –

*"8. We have heard the learned counsel for the respective parties at length and have also perused the papers and proceedings in the Writ Petition along with the annexures thereto. Before we deal with the rival contentions, we would like to state that it is now well settled that in service jurisprudence a candidate in the select list / merit list has no fundamental right to be appointed. His only right is to be considered for appointment and in a fair manner. If any authority is required for this proposition the Supreme Court in the case of Union Territory of Chandigarh v. Dilbagh Singh (1993) 1 SCC, 154 has succinctly set it out at paragraphs 11 and 12, which read thus:-*

*"11. In Shankarasan Dash v. Union of India [(1991) 3 SCC 47 = 1991 SCC (L&S) 800 = (1991) 17 ATC 95 = JT (1991) 2 SC 380 a Constitution Bench of this Court which had occasion to examine the question whether a candidate seeking appointment to a civil post can be regarded to have acquired an indefeasible right to appointment in such post merely because of the appearance of his name*



*in the merit list (select list) of candidates for such post has answered the question in the negative by enunciating the correct legal position thus: (SCC pp. 50-51, para 7)*

"It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in the State of Haryana v. Subhash Chander Marwaha [(1974) 3 SCC 220 = 1973 SCC (L&S) 488 = (1974) 1 SCR 165] ; Neelima Shangla (Miss) v. State of Haryana [(1986) 4 SCC 268 = 1986 SCC (L&S) 759 or Jitender Kumar v. State of Punjab [(1985) 1 SCC 122 = 1985 SCC (L&S) 174 = (1985) 1 SCR 899."

15. In view of the legal position explained in this Judgment, it is to be seen whether there was a material for not giving appointment to the candidate. The rule is that the decision should be taken in judicious manner, it should not be arbitrary. Now situation is that in the present case the entire record was destroyed in fire, therefore, it is not possible to examine what material was considered by the Government while cancelling the selection of the applicant, but after considering the evidence of PSI Shri Dhande which is discussed above, it is not possible to say that the decision taken by the Government was arbitrary. Once it is accepted that the employer has

a right to examine the antecedents of the candidate before issuing appointment order, the only rider is that the scrutiny and decision of the employer shall be based on some circumstance, it should not be arbitrary. In the present case it seems that even before the commission of crime for which the applicant was tried, the report was lodged against him by the deceased that the present applicant and accused no. 2 in the trial had threatened the deceased. In view of this matter, it is not possible to accept contention of the applicant that his character was spotless. It seems that non-cognizable offence was registered against the applicant and preventive action was taken. In fact, this material is sufficient to say that the decision of the Government that the applicant was not suitable for the post of Police Constable is not arbitrary. We, therefore, do not see any illegality in this decision. Hence, the following order –

**ORDER**

The O.A. stands dismissed. No order as to costs.

**(Anand Karanjkar)**  
**Member(J).**

**(Shree Bhagwan)**  
**Vice-Chairman.**

**Dated :- 30/08/2019.**

\*dnk

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 30/08/2019.

and pronounced on

Uploaded on : 30/08/2019.