

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 772 of 2017(D.B.)

Sunil S/o Shankarrao Jambhulkar,
Aged about 35 years, Occupation : Nil,
R/o at & post Sindhi Rly. Malipura,
Tq. Seloo, Distt. Wardha.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) Superintendent of Police,
Nagpur Rural, Civil Lines,
Nagpur.

Respondents.

Shri S.N. Gaikwad, Advocate for the applicant.

Shri A.M. Ghogre, P.O. for the respondents.

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

JUDGMENT

Per : Anand Karanjkar Member (J).
(Delivered on this 27th day of February,2019)

Heard Shri S.N. Gaikwad, learned counsel for the applicant and Shri A.M. Ghogre, learned P.O. for the respondents.

2. The question involved in this matter is that whether the candidate who is selected in the recruitment process has right to compel the department to appoint him on the post advertised. The facts are that in pursuance of the advertisement published by the respondent No.2 the applicant applied for the post of police constable. After recruitment process the applicant was informed that he was selected for the post of the police constable. It came to the notice that the applicant was in service as Guard in Nagpur Central Jail and after departmental inquiry he was removed from the service for serious misconduct. On the basis of this material the respondent No.2 held that the applicant was not suitable for the service in Police Department.

3. It is contention of the applicant that the disciplinary authority passed the order Anx. A-8, and removed the applicant from the service, but observed that the removal of the applicant from the service will not be disqualification for his appointment in service of Government, in future. It is submitted that the case of the applicant was examined by the appointing committee and it was held that the applicant was eligible and fit for the appointment. It is contention of the applicant that the respondent No.2 did not consider this decision of the appointing committee and refused to appoint the applicant on the post of the police constable.

4. We have perused the order passed by the disciplinary authority, it is Anx. A-8, after reading the same, it appears that while performing the duty as Guard in Central Jail Nagpur the applicant was caught and in his search it was noticed that the applicant had fixed two mobile phone batteries of Samsung phone by adhesive tape to his right sole and one Samsung mobile hand set was fixed to his left sole then he wore the socks. This misconduct was held proved and the applicant was removed from the service. The disciplinary authority also held that this material was carried by the applicant inside the Jail with intention to handover it to the criminals. In view of this misconduct it is necessary to examine legality and correctness of the order passed by the respondent No.2 not appointing the applicant in service.

5. In case of Vitthal vs High Court of Bombay 2007 (1) 367 Mh.L.J the Hon'ble Division D.B. has examined the legal position and in para 8 of the judgment discussed the law laid down by the Hon'ble Constitution Bench of the Apex Court, in which it was held that -

"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 indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notifications 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.”

6. In para 14 of the judgment the Hon'ble D.B. has placed reliance on the judgment of Hon'ble S.C. in case of Avtar Singh vs Union of India 2016 (6) Mh.L.J. (S.C.) 484 the relevant passage is as under.

“31. Coming to the question whether an employee on probation can be discharged/refused appointment though he has been acquitted of the charge(s), if his case was not pending when the form was filled, in such matters, employer is bound to consider grounds of acquittal and various other aspects, overall conduct of employee including the accusations which have been levelled. If on verification, the antecedents are otherwise also not found good, and in number of cases incumbent is involved then notwithstanding acquittals in a case/cases, it would be open to the employer to form opinion as to fitness on the basis of material on record. In case offence is petty in nature and committed at young age, such as stealing a bread, shouting of slogans or is such which does not involve moral turpitude, cheating, misappropriation, etc. or otherwise not a serious or heinous offence and accused has been acquitted in such a case when verification form is filled, employer may ignore lapse of suppression or submitting false information in appropriate cases on the consideration of various aspects”

7. In view of the above legal position, it must be said though the applicant has disclosed about the fact of his removal from the service to the respondent No.2, this will not take away the right of the respondent No.2 to consider the suitability of the applicant in view of the misconduct. Merely because the disciplinary authority has observed in the order that the removal of applicant would not be a bar for his future appointment in Government service, it does not take away right of the respondent No.2 to decide suitability of the applicant. It must be remembered that the applicant is claiming post of Police Constable and he is removed from the service of Central Jail for the reason that he was caught while attempting to supply mobile phone and mobile phone batteries to the criminals in the Jail. This conduct was involving moral turpitude, this was showing favour and loyalty to the criminals breaching the trust of the Jail authorities. It seems that the respondent No.2 has examined this misconduct of the applicant keeping in view the interests of the society at large. If candidate like applicant is appointed on the post of Police Constable, then it will provide him more opportunity to serve the criminals, therefore, we are of the firm view that the decision not to appoint the applicant in service, is in fact in the interest of the Government and the society, therefore, the concession given by the disciplinary authority has no meaning at all and it was not binding on the respondent No.2 who was appointing authority. In view of this

discussion we are of the firm view that no illegality or error is committed by the respondent No.2 in refusing appointment to the applicant on the post of Police Constable. Hence the following order.

ORDER

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

(Anand Karanjkar)
Member(J).

(Shree Bhagwan)
Member (A).

Dated :- 27/02/2019.

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