

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH: NAGPUR
ORIGINAL APPLICATION NO. 291/2016

Sudhir Ramdasji Wankhede,
R/o Village Wandali, Post Marda,
Tq. Tiosa, Distt. Amravati. -----**Applicant.**

Versus

1. The State of Maharashtra,
Through its Secretary,
Home Department
Mantralaya, Mumbai. 32
2. The Collector, Amravati.
Distt. Amravati.
3. The Sub -Divisional Officer,
Tq.Bhatkuli, Distt. Amravati. ----- **Respondents.**

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1. Shri H.A. Biherani , Advocate for the applicant.
 2. Shri H.A. Pande, P.O. for the Respondents.

CORAM : S.S. Hingne : Member (J)

DATE : 23rd August, 2016

ORDER

Heard Shri H.A. Biherani, Id. Counsel for the
applicant and Shri H.A. Pande, Id. P.O. for the respondents.

2. By consent of both the parties matter is heard finally and decided at the stage of admission.

3. The applicant was selected as a Police Patil for village Wandali, Tq. Tiosa, Distt. Amravait. However, his selection is cancelled vide order dtd.5/1/2016 issued by the Sub-Divisional Officer, Tq, Bhatukali, Distt. Amravati.

4. The selection of the applicant was cancelled on the ground that the Crime No. 40/2003 dtd. 18/5/2003 under Section 354 of the IPC was registered against him in Police Station Kurha, Tq. Tiosa. This order is also based on the character certificate and report issued by the P.S.O., Kurha (Annex.R-3, page,39) dtd. 21/11/2015.

5. According to the respondents, the applicant has suppressed this fact of being prosecuted for the above offence. As per the term no. 11 of the proclamation (Annexure-A-1, page-14), the candidate after appointment has to submit a character certificate from the PSO within a week else his appointment can be cancelled. The PSO submitted the report

and character certificate on 21/11/2015 (Annexure-R-3, pag-39) which mentions that on confidential information, it is found that the applicant's behavior with the villagers is not good, he is habituated to speak false and to consume liquor and he has not good relations with villagers.

6. The Id. Counsel for the applicant submits that he is acquitted on 21/8/2008 in the summary criminal case No. 153/2008 for which he was prosecuted. As per the proclamation the application was to be submitted in the prescribed proforma. However, that is not placed on record even by the respondents so as to demonstrate that the applicant has suppressed the fact of prosecution of which he was already acquitted by the competent Court.

7. The SDO's order is based on the police report but that police report is not based on any concrete material but whatever the information received is from the unknown sources. No doubt, the offence under Section 354 under which the applicant was prosecuted falls under the category of

offence against the moral turpitude. However the applicant was already acquitted of the said charge. The Id. Counsel for the applicant has relied on the case of **Commissioner of Police and Others –vs. Sandeep Kumar (2011) 4 SCC 644**, wherein Their Lordships held that the non-mention of criminal case would not be a disqualification. In the said case the respondent was prosecuted under Section 325 r/w 34 of the IPC. The matter was compromised on 18/1/1998. This fact was not mentioned by the applicant in the application. His candidature was cancelled on that point. The applicant approached the Central Administrative Tribunal, but could not get any relief. Hence he filed the W.P. before the Hon'ble High Court which was allowed. The Govt. had challenged the order before the Hon'ble Supreme Court. Their Lordships dismissed the Appeal. No doubt, Their Lordships had observed that the applicant was not prosecuted for serious offence like murder, dacoity, or rape etc. and therefore more lenient view was taken in the matter.

8. Truly, in the case in hand the applicant was prosecuted for the offence which falls in the category of moral turpitude. However, the aspect that he is acquitted cannot be lost sight of. Moreover the character certificate issued by the SDO is not supported by the material on record. Consequently, the impugned order dtd. 15/1/2016 cannot be legal and valid.

9. In the result, the O.A. is allowed. The impugned order dtd. 15/1/2016 is quashed and set aside.

10. The SDO to issue the appointment order in favour of the applicant as a Police Patil of village Wandali, Tq, Tiosa, Distt. Amravati. The order be complied with within one month.

No order as to costs.

(S.S. Hingne)
Member (J)

Skt.