

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.759 OF 2018

(Subject :- Police Patil)

DISTRICT : AURANGABAD

Shri Rangnath S/o. Atmaram Mete)
Age-36 Years, Occ- Agri.,)
R/o. Aasadi, Tq. Sillod,)
Dist. Aurangabad) **...Applicant**

V E R S U S

1. **The State of Maharashtra,**)
Through its Principal Secretary)
Home Department,)
Mantralaya, Mumbai.)
2. Sub Divisional Officer,)
Sub Divisional Office at Sillod,)
Tq. Sillod, Dist. Aurangabad.) **...Respondents**

Shri B.N. Magar, learned Advocate for the Applicant.

Shri V.R. Bhumkar, learned Presenting Officer for the Respondents.

CORAM : B.P. Patil, Member (J).

DATE : 01.04.2019.

ORDER

1. The Applicant has challenged the order dated 24.01.2018 issued by the Respondent No.2 rejecting his case for appointment on the post of Police Patil of village Aasadi, Tq. Sillod, Dist. Aurangabad by filing the present Original Application and prayed to direct the Respondent No.2 to appoint him on the said post.

2. The Applicant is resident of village Aasadi, Tq. Sillod, Dist. Aurangabad. He participated in the recruitment process for the post of Police Patil of village Aasadi, Tq. Sillod, Dist. Aurangabad. On conclusion of written examination and oral interview, the Respondent published merit list. One Shri Fakirba Pandurang Salve stood 1st in the merit and the Applicant stood 2nd in the merit. He raised objection regard eligibility of the candidate who stood 1st in the merit list. But his objection was rejected. Therefore, he approached the Tribunal by filing Original Application bearing No.496/2016. The Respondent No.2 appeared in that O.A. and contested the said application. During the pendency of the Original Application, as per the directions of the Tribunal, the Respondent No.2 initiated the proceeding and cancelled the appointment of the selected

candidate namely Shri Fakirba Pandurang Salve as Police Patil by order dated 17.10.2017. When the matter came up for final hearing, this Tribunal passed the order dated 22.11.2017 and directed the Respondent No.2 to decide the claim of the Applicant for appointment on the post of Police Patil of village Aasadi, Tq. Sillod, Dist. Aurangabad and also directed to complete the said exercise within one month from the date of order. As per the direction, the Applicant filed a written application before the Respondent No.2, but the Respondent No.2 rejected the same on 24.01.2018 on the ground that as per the provisions of Maharashtra Village Police Act, 1957, Rules and the Government Resolution, no wait list can be prepared and there is no provisions to consider the candidate who was at Sr.No.2 in the merit list when appointment of selected candidate has been cancelled. It is contention of the Applicant that after receiving the said communication, he filed Contempt Application Stamp No.382/2018 before this Tribunal as the Respondent No.2 had disobeyed the order passed by this Tribunal. But this Tribunal rejected it and gave liberty to the Applicant to file fresh proceedings as permissible according to law. Therefore, the Applicant has filed the present Original Application. It is

contention of the Applicant that the Respondent No.2 ought to have considered his case on merit as per the direction of this Tribunal. But the Respondent No.2 had not considered the case of the Applicant properly and rejected his claim. It is his contention that after cancellation of the candidature of the selected candidate on the ground of his ineligibility, the Applicant ought to have been considered by the Respondent No.2 for appointment on the post of Police Patil of village Aasadi, Tq. Sillod, Dist. Aurangabad. But the Respondent No.2 has wrongly interpreted the direction of this Tribunal and rejected the application of the Applicant. Therefore he approached the Tribunal and prayed to quash and set aside the impugned order by allowing the Original Application and prayed to direct the Respondent No.2 to appoint him on the post of Police Patil of village Aasadi, Tq. Sillod, Dist. Aurangabad.

3. The Respondent No.2 resisted the contention of the Applicant by filing his affidavit-in-reply. He has not disputed the fact that there was an advertisement inviting the applications from aspiring eligible candidates for the post of Police Patil of village Aasadi, Tq. Sillod, Dist. Aurangabad. He has not disputed

the fact that he has completed the selection process as per the recruitment rules. He has not disputed the fact that one Shri Fakirba Pandurang Salve stood 1st in the merit and the Applicant stood 2nd in the merit. He has not disputed the fact that Shri Fakirba Pandurang Salve was selected and appointed as Police Patil of village Aasadi, Tq. Sillod, Dist. Aurangaba. He has not disputed the fact that appointment of Shri Fakirba Pandurang Salve has been cancelled by the Respondent No.2 as per the directions given by this Tribunal. He has not disputed the fact that this Tribunal directed him to take appropriate decision on merit on the application filed by the Application.

4. It is his contention that the Home Department, Government of Maharashtra issued G.R. dated 22.08.2014 and laid down the guideline for appointment and selection for the post of Police Patil. It is his contention that as per the clause no.4 of the said G.R., one candidate for one post is required to be selected and no waiting list should be prepared. It is his contention that Shri Fakirba Pandurang Salve secured highest marks and as he was meritorious candidate, he was declared as selected candidate and no waiting list has been prepared. As no

waiting list was prepared, no question of considering the application of the Applicant for appointment after declaration of Shri Fakirba Pandurang Salve as ineligible, arises. It is his contention that after considering the rules and G.R., he passed the impugned order and therefore, there is no illegality in the impugned order. Therefore, he prayed to reject the Original Application.

5. I have heard Shri B.N. Magar, learned Advocate for the Applicant and Shri V.R. Bhumkar, learned Presenting Officer for the Respondents. I have perused the documents on record produced by both the parties.

6. Admittedly, the Respondent No.2 published the advertisement/proclamation inviting the application from aspiring candidates for the appointment on the post of Police Patil of village Aasadi, Tq. Sillod, Dist. Aurangabad. Admittedly, the Applicant, one Shri Fakirba Pandurang Salve and other candidates participated in the recruitment process. After conclusion of written examination and oral interview, the merit list has been prepared and published by the Respondent No.2. Shri Fakirba Pandurang Salve secured highest marks and

therefore, his name had been placed at Sr.No.1 in the merit list, while the name of the Applicant had been placed at Sr.No.2 as per the merit. Admittedly, the Applicant raised the objection regarding candidature of Shri Fakirba Pandurang Salve regarding non production of Character Certificate. But his objection has been rejected by the Respondent No.2 and he declared Shri Fakirba Pandurang Salve as selected candidate and accordingly appointed him on the post of Police Patil of village Aasadi, Tq. Sillod, Dist. Aurangabad. Admittedly, present Applicant filed Original Application No.496/2016 before this Tribunal challenging the selection and appointment of Shri Fakirba Pandurang Salve on the post of Police Patil of village Aasadi, Tq. Sillod, Dist. Aurangabad. Admittedly, during the pendency of the Original Application No.496/2016, as per the direction of the Tribunal, the Respondent No.2 decided the objection of the Applicant and took the decision on merit and thereby cancelled the selection and appointment of the Shri Fakirba Pandurang Salve (Respondent No.3 in O.A.No.496/2016) as Police Patil. Admittedly, the Original Application No.496/2016 has been disposed of on 22.11.2017 with the directions to the Respondent No.2 to consider the case of the Applicant for appointment on the

post of Police Patil of village Aasadi, Tq. Sillod, Dist. Aurangabad on merit as per rules because of the cancellation of the selection and appointment of selected candidate namely Shri Fakira Pandurang Salve. Admittedly, the Respondent No.2 had not taken the decision within stipulated time. Therefore, he filed Contempt Petition Stamp No.382/2018 against the Respondent No.2 before this Tribunal. But meanwhile, the Respondent No.2 decided the representation of the Applicant and rejected his request to give him appointment on the ground that there is no provisions to maintain waiting list and to give appointment to the candidate who stood 2nd in merit list. In view of the said order, the Contempt Petition came to be disposed of on 28.03.2018 with liberty to Applicant to file fresh proceedings as permissible according to law. Therefore, the Applicant has filed the present Original Application.

7. Learned Advocate for the applicant has submitted that the candidature, selection and appointment of Shri Fakirba Pandurang Salve had been cancelled by the S.D.O., Sillod as per the direction given by this Tribunal as he was ineligible. The directions were given by this Tribunal to the Respondent No.2 to

consider the case of the Applicant on merit for appointment on the post of Police Patil of village Aasadi, Tq. Sillod, Dist. Aurangabad. Learned advocate for the Applicant has submitted that since Shri Fakirba Pandurang Salve was declared ineligible, the Respondent No.2 ought to have considered the case of the Applicant on merit and declared him as selected and appointed candidate, if he complies other criteria. But the Respondent No.2 had not interpreted the directions given by the Tribunal in O.A.No.496/2016 in its true spirit and sense and rejected the case of the Applicant on technical ground by impugned order. He has submitted that the Respondent No.2 has wrongly applied the G.R. dated 22.08.2014 to the case of the Applicant though it was not applicable. Therefore, he prayed to direct the Respondent No.2 to appoint the Applicant on the post of Police Patil of village Aasadi, Tq. Sillod, Dist. Aurangabad by allowing the Original Application.

8. Learned Advocate for the Applicant has submitted that in case of similar situated persons and identical situations, S.D.O., phulambri appointed next candidate who secured highest marks after cancellation of the candidature of the meritorious

candidate who declared as selected candidate. He has produced the copy of the said order on record.

9. He has further submitted that this Tribunal has decided the Original Application No.502/2018 in respect of similar situated persons and directed the concerned S.D.O. to appoint the eligible candidate whose name has been placed at Sr.No.2 in the merit list as per the rule. In support of his submission he has placed reliance on the judgment of this Tribunal in case of ***Bansilal s/o Chiranjilal Jaiswal Vs. The state of Maharashtra & Ors. decided on 20.03.2019.*** He has further placed reliance on the judgment of this Tribunal in case of ***Shri Raju R. Dagadghate Vs. The State of Maharashtra & Ors. in the O.A.No.382 of 2016 decided on 14.03.2017.*** He has submitted that case of the Applicant is covered by the above cited decision and therefore, he prayed to allow the Original Application accordingly.

10. Learned P.O. for the Respondents has submitted that the Respondent No.2 had rightly rejected the request of the Applicant as there is no provision to maintain waiting list for the post of Police Patil as per the G.R. dated 22.08.2014. He has

submitted that the G.R. provides that one candidate for one post has to be selected. He has submitted that as per the said G.R., the Respondent No.2 declared Shri Fakirba Pandurang Salve as selected candidate and accordingly appointed order has been given. But the said appointment has been cancelled by the Respondent No.2 as per the directions given by this Tribunal. The post had already been filled. No merit list has been prepared and therefore, no question of considering the case of the Applicant for appointment on the post of Police Patil of village village Aasadi, Tq. Sillod, Dist. Aurangabad arises and therefore, the Respondent No.2 has rightly rejected the claim of the Applicant by impugned order and therefore, he supported the impugned order.

11. On going through the record, it reveals that one Shri Fakirba Pandurang Salve secured 71 marks and the Applicant secured 68 marks in aggregate. After conclusion of the written examination and oral interview Shri Fakirba Pandurang Salve was declared as selected candidate by the Respondent No.2 as he secured highest marks. The Applicant raised objection regarding eligibility of selected candidate namely Shri Fakirba Pandurang

Salve. The Respondent No.2 had not considered the same and therefore, the Applicant by filing O.A.No.496/2016 challenged the selection of selected candidate. During the pendency of the O.A. No.496/2016, the Respondent No.2 decided the objection and cancelled the selection and appointment of Shri Fakirba Pandurang Salve on the ground of his ineligibility. The Original Application came to be disposed of with the directions to the Respondent No.2 to consider the case of the Applicant on merit as per rule.

12. In view of the said directions, the Respondent No.2 ought to have considered the case of the Applicant and his eligibility on merit. In view of the cancellation of the candidature of Shri Fakirba Pandurang Salve, the Respondent No.2 ought to have declared him as selected candidate, if he fulfills other criteria regarding appointment on the post of Police Patil. Instead of that, the Respondent No.2 had considered the G.R. dated 22.08.2014 and rejected the request of the Applicant. Considering the fact that the meritorious candidate i.e. Shri Fakirba Pandurang Salve was declared ineligible for appointment on the post of Police Patil of village Aasadi, Tq. Sillod, Dist.

Aurangabad, the Respondent No.2 ought to have considered the case of the Applicant for appointment on the post of Police Patil as he secured 2nd position in the merit list. But without considering the said fact, the Respondent No.2 rejected the case of the Applicant. The Respondent No.2 had misinterpreted the directions given by this Tribunal. He has not considered the directions of this Tribunal in true spirit. He ought to have given appointment to the Applicant, if he fulfills other eligible criteria as per the advertisement and rules but without considering the said aspect, the Respondent No.2 rejected the claim of the Applicant. Therefore, the impugned order issued by the Respondent No.2 in that regard is not in accordance with the rules. Therefore, it deserves to be quashed and set aside.

13. I have gone through the decision preferred by the learned Advocate for the Applicant in O.A.No.502/2018 and in O.A.No.382/2016 in respect of the similar situated persons. Fact of those cases and fact in present case are identical. Therefore, the present matter is also covered by the said decision.

14. The Applicant has been secured 68 marks and he stood 2nd in merit. After cancellation of the candidature of the

candidate Shri Fakirba pandurang Salve who stood 1st in the merit list, the Respondent No.2 ought to have declared the Applicant as selected candidate and issued appointment order in his favour, if he fulfills other recruitment criteria and qualifies for the said post. But the Respondent No.2 rejected the claim of the Applicant on other grounds. Therefore, it is just to allow the Original Application and direct the Respondent No.2 to issue appointment order in favour of the Applicant, if he fulfills other eligible criteria for the post.

15. In view of the above, the Original Application is allowed. The Respondent No.2 is directed to appoint the Applicant on the post of Police Patil of village Aasadi, Tq. Sillod, Dist. Aurangabad, if he fulfills other eligible criteria. The Respondent No.2 shall take decision accordingly within one month from the date of this order. No order as to costs.

Place:- Aurangabad
Date :- 01.04.2019

(B.P. Patil)
Member (J)

Sas. O.A.No.759/2018.Police Patil BPP.