

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR**

**CIVIL APPLICATION NO.37/2016**

**AND**

**ORIGINAL APPLICATION NO.504/2015. (S.B.)**

Manisha Prabhakar Kadam,  
Aged about 29 years,  
Occ-Nil,  
R/o C/o Shri Rajesh Umale,  
Plot No.33, Tirumala Apartment,  
Dupare Layout, Pannase Nagar,  
Nagpur.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Home,  
Mantralaya, Mumbai-32.
2. The Commissioner of Police,  
Civil Lines, Nagpur.
3. The Chairman,  
Maharashtra Public Service Commission,  
Bank of India Bldg. No.3,  
Mahatma Gandhi Marg, Hutatma Chowk,  
Mumbai-01.

**Respondents**

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Shri S.P. Palshikar, the Ld. Advocate for the applicant.  
Shri M.I. Khan, the Ld. P.O. for the respondents.

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**Coram:-Shri J.D. Kulkarni,  
Vice-Chairman (J)**

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### **JUDGMENT**

(Delivered on this 30<sup>th</sup> day of November 2018.)

Heard Shri S.P. Palshikar, the Ld. counsel for the applicant and Shri M.I. Khan, the learned P.O. for the respondents.

2. In this O.A., the applicant has claimed that the order passed by respondent No.2 i.e. Commissioner of Police, Nagpur whereby he has refused to send the applicant for training at Maharashtra Police Academy, Nashik, be declared as illegal and bad in law. The order dated 25.10.2012 which is impugned in the O.A. has been challenged by filing the O.A. on 17.7.2015 and thereafter the applicant has preferred C.A. No. 37/2016 for condonation of delay in filing the O.A. It is stated that there is a delay of 592 days in challenging the impugned order and the said delay be condoned in the interest of justice and equity. The O.A. as well C.A. for condonation of delay have been heard together.

3. From the facts on record, it seems that the applicant was already recruited as Prison Guard after following due procedure

of law in the year 2005. However after joining, some irregularities were noticed in the appointments of 34 Prison Guards including the applicant and a criminal case was lodged against them by the Anti Corruption Bureau. The applicant was, however, terminated on 13.3.2007. The applicant challenged the order of termination by filing an appeal before the Director General of Prisons. But her appeal was rejected on 10.8.2007. The applicant thereafter filed the O.A. No. 187/2007 before this Tribunal and the said O.A. was pending.

4. During the pendency of the O.A. No. 187/2007, the applicant came across the advertisement for the post of P.S.I.. She accordingly applied for the said post on 25.5.2011. The applicant cleared the preliminary examination as well as physical test examination and personal interview and the M.P.S.C. (R.3) recommended her name for appointment to the post of P.S.I. vide letter dated 10.4.2012. The applicant was directed to fill the requisite proforma / undertaking and accordingly she has submitted the proforma on 27.4.2012. She has undergone medical examination on 26.7.2012 and was waiting for appointment to the post of P.S.I. However instead of receiving the appointment order, the applicant

received impugned communication dated 25.10.2012 (A-1, page 14)

whereby she was intimated as under:-

“उपरोक्त विषयाबाबतचे संदर्भाधीन पत्रास अनुसरून आपणास कळविण्यात येते कि, पोलीस ठाणे, धंतोली येथे आपल्याविरुद्ध अप क्र. १३ (ड) १३ (२) १५ लाचलुचपत प्रतिबंध कायदा सहकलम ४६५, ४२०, ४६८, ४७१, १०९, १२०ब भादवि अन्वये गुन्हा दाखल असून सदरहू प्रकरण न्यायप्रविष्ट असल्याचे आपण आपल्या दि. २५.९.२०१२ च्या अर्जान्वये कळविलेले आहे. त्यामुळे पोलीस उपनिरीक्षक (मुख्य) परीक्षा-२०११ महाराष्ट्र लोकसेवा आयोगाने शिफारस केलेल्या (सरळसेवा) उमेद्वाराप्रमाणे आपणास पोलीस उपनिरीक्षक पदाचे प्रशिक्षणास पाठविण्याबाबतची आपली विनंती पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई यांनी संदर्भीय पत्रान्वये अमान्य केलेली आहे. तरी याबाबत कृपया नोंद घ्यावी.”

5. The Ld. counsel for the applicant submits that the applicant was not sent for training as required prior to appointment to the post of P.S.I. only on the ground that, a crime was registered against her U/s 13 (i) (d) and 13 (2) of the Prevention of Corruption Act and U/s 465, 420, 468, 471, 109 and 122 (B) of the I.P.C. The applicant submits that while submitting requisite information in the requisite proforma on 27.4.2012, she has clearly mentioned that she was prosecuted and arrested in the crime and she never concealed the fact that crime was registered against her and, therefore, there was no malafide on the part of the applicant and she should have been sent for training. The respondent No.2, however, refused to

send her for training at Nashik and, therefore, this refusal is challenged in this O.A.

6. It seems that the refusal as aforesaid is dated 25.10.2012. But the application for challenging the said communication has been filed on 17.7.2015. In the application for condonation of delay, the applicant tried to explain the delay. According to her, the applicant's termination from the post of Prison Guard was challenged before this Tribunal in O.A. 187/2007 and said proceedings were pending and the applicant was expecting final hearing of the said petition. However, she realized that it may take time for decision of O.A. No. 187/2007 and, therefore, she approached the Hon'ble High Court by filing W.P. No. 3658/2015, as she was given wrong advice to approach the Hon'ble High Court. The Hon'ble High Court vide order dated 2.7.2015 was pleased to dispose of the writ petition on the ground that the alternative remedy was available to the applicant to approach this Tribunal and, therefore, immediately on 17.7.2015, the applicant filed this O.A. It is stated that the applicant is lay woman and was not aware that the order dated 25.10.2012 should have been assailed within a period of one year and, therefore, delay is not intentional. It is stated that there is a delay of 591 days in approaching the Tribunal and the same shall

be condoned. She further stated that, the O.A. No.187/2007 came to be disposed of by this Tribunal vide order dated 14.10.2015 and it was dismissed and it is also one of the reasons that the applicant could not approach the Tribunal immediately.

7. The respondent No.2 strongly resisted the application for condonation of delay. It is stated that the application is hopelessly barred by limitation and no reason has been made out for condonation of delay.

8. Perusal of the application for condonation of delay shows that the reason tried to be made out, is not at all convincing. The applicant was terminated from the post of Prison Guard and she has filed an appeal against the said order of termination which was dismissed and thereafter she approached the Tribunal by filing O.A. No. 187/2007. It is during the pendency of the O.A., the applicant came across the advertisement. It is material to note that, the advertisement for the post of P.S.I. was notified in the year 2011. Applicant appeared for examination, physical test and personal interview and her name was recommended by respondent No.3 on 10.4.2012 and she received the impugned communication on 25.10.2012. The applicant did not take any step to challenge that

communication from 25.10.2012 till for the first time she approached the Hon'ble High Court directly by filing W.P. No. 3658/2015 and the said writ petition was dismissed on 2.7.2015 on the ground that, efficacious remedy was available to the applicant. There is absolutely no reason as to why the applicant did not take any action to challenge the impugned communication dated 25.10.2012 at least till filing of the W.P. No. 3658/2015. Admittedly, the applicant was in service and was working as Prison Guard and it cannot be said that she was lay-woman and was having no knowledge of law, particularly when she has challenged her termination before the appellate authority and thereafter before the Tribunal. Her O.A. No. 187/2007 was very much pending before this Tribunal and, therefore, it does not lie in her mouth that she was not knowing the procedure or was not knowing law. Even the period to be condoned, is not properly calculated by the applicant. Filing of writ petition for the first time in 2015 and the observations of the Hon'ble High Court, that she has alternate remedy available to approach the proper forum i.e. the Tribunal in this particular case will not help the applicant for justifying the delay in filing the O.A. When the applicant's earlier O.A. No. 187/2007 was already pending before this Tribunal, it cannot be said that the applicant was not having knowledge to

approach the Tribunal before approaching the Hon'ble High Court. I am, therefore satisfied that the applicant has miserably failed to prove the delay in filing the O.A., challenging the communication dated 25.10.2012. However, since the matter is being heard on merits also, it is necessary to consider the case of the applicant on merits.

9. The Ld. counsel for the applicant invited my attention to the impugned communication dated 25.10.2012 (A-1, Page 14). The said communication has already been reproduced in the earlier para. From the impugned communication, it seems that the respondent No.2 refused to send the applicant for training at Nashik before issuing appointment order in favour of the applicant for the post of P.S.I. on the ground that, the offences were registered against the applicant in Anti Corruption Case and in I.P.C. as already stated. The Ld. counsel for the applicant invited my attention to the fact that the applicant in her declaration form has not concealed the fact that crime was registered against her. The Ld. counsel for the applicant has also invited my attention to the attestation form and particularly para No. 11 (a) (b) and (c) of the said form at page Nos. 61 and 62. By the said communication, it was intimated that she was arrested and criminal proceedings was pending against her before the Court of Sessions at Nagpur. It is also stated that the objection



was taken on her selection process for the post of Prison Guard under Nagpur Division in 2005 and total 22 candidates alongwith the applicant have been suspended and case was pending in the Court of Sessions at Nagpur bearing ACB No. 15/2010 U/s 109, 120 (B) and 420 of I.P.C. The learned P.O. submits that the applicant has not given full information as not only the offences U/s 109, 120 (B) and 420 of I.P.C. was pending against her, but she was also prosecuted under various other offences under I.P.C. and U/s 13 (i) (d) and 13 (2) of the Prevention of Corruption Act and this was not mentioned by her. However, this does not help the respondents, because the applicant has already declared that she was facing trial in the Court of Sessions at Nagpur. Fact however remains that, that was not a reason that the applicant has suppressed the information, but the reason for refusal was that the criminal case was pending against her. Admittedly, criminal case against the applicant is still pending before the Court of Sessions at Nagpur and the applicant has not been acquitted in the said case. It is already an admitted fact that, prior to making application for the post of P.S.I., the applicant was appointed as a Prison Guard and because of irregularities and pendency of criminal case, she has been terminated from the said post. The applicant challenged the said termination.

But the Tribunal has dismissed her O.A. and no appeal has been filed against the order of dismissal of the O.A. Thus, the fact remains that the applicant has been terminated from her earlier post, which has a relation with pendency of criminal case as well as irregularities proved against the applicant.

10. The learned counsel for the applicant submits that since the applicant has not suppressed the fact of pendency of criminal case against her, the competent authority should have accepted the recommendation of M.P.S.C. and should have sent the applicant for requisite training at Nashik. The learned counsel for the applicant has relied on the judgment in case of **Avtar Singh V/s Union of India and others, reported in (2016) 8 SCC 471: (2016) 2 SCC 9L&S) 425.**

11. The learned P.O., however, submits that the appointment to the post in Govt. service is always subject to verification of character of the candidate and considering the fact that the applicant has already been terminated from her post of Prison Guard and further the fact that serious criminal offences were registered against her and criminal trial was also pending against her in the Court of Sessions at Nagpur, the competent authority thought it

proper not to send the applicant for training, is perfectly legal and proper decision. The learned P.O. has placed reliance on **(i) Civil Appeal No. 11356/2018 arising out of SLP (C) No. 17404/2016 by the Hon'ble Apex Court, (ii) the judgment reported in (2011) 10 SCC 184 in case of State of West Bengal V/s Sheikh Nazrul Islam, (iii) (2018) 1 SCC 797 in case of Union Territory of Chandigarh Administration and others V/s Pradeep Kumar and others and (iv) (2015) 2 SCC 591 in case of State of Madhya Pradesh V/s Parvez Khan.** I have perused the judgments relied on by the learned P.O. as well as learned counsel for the applicant. I am satisfied that the recruitment of a candidate in police force having criminal antecedents is subject to discretion of the appointing authority.

12. The learned counsel for the applicant invited my attention to the judgment in O.A. No. 217/2013 passed by this Tribunal on 25.4.2013 and in O.A. No. 26/2014 passed on 5.2.2014. Both the judgments are at page Nos. 83 to 90 (both inclusive). The learned counsel for the applicant submits that in the similar circumstances, the candidates against whom crime was registered, were sent for training and, therefore, similar view should have been taken in case of the applicant. The facts of the present case are,

however, different and in the present case, the applicant has been terminated from the post of Prison Guard, since she was involved in criminal offences. Even otherwise, the Hon'ble Apex Court has observed in **(2018) 1 SCC 797 in case of Union Territory of Chandigarh Administration and others V/s Pradeep Kumar and another** that "even if a candidate has self-declared his criminal antecedents, employer still has right to consider such criminal antecedents to decide his suitability."

13. The doctrine of equality enshrined in Article 14 of the Constitution of India does not envisage negation of equality and is not made to perpetuate illegality or fraud, because it embodies positive concept. The Hon'ble Apex Court has time and again observed that the employer can go into issue of suitability, even if the employee has declared his criminal antecedents and the employer has a right to consider such criminal antecedents to decide the suitability of the employee. In my opinion, considering the fact that the applicant was facing criminal case under grave offences such as under Section 13 (1) and 13 (2) of the Prevention of Corruption Act and Sections 420, 465 and 467 of the I.P.C., the employer cannot be said to have used discretion malafidely, coupled with the fact that the applicant has already been terminated from the post of Prison

Guard, I do not find any reason to interfere in the decision taken by the competent authority not to send the applicant for training at Nashik. The Ld. P.O. submits that the applicant slept over his rights for years together and he has relied upon the judgment reported in (i) **2015 ALL SCR 3392 in case of State of Jammu and Kashmir V/s R.K. Zalpuri and others**, and (ii) **2013 SCC Online SC 1270 in case of Anvil Cables Private Limited V/s Commissioner of Central Excise, Jamshedpur** whereby the Hon'ble Apex Court observed that it was not necessary to entertain the application for condonation of delay. The facts of the present case as already submitted also shows that the applicant could not make out any sufficient cause for not challenging the impugned order immediately before the Tribunal.

14. In the result, the C.A. as well as the O.A. has no merit Hence, I proceed to pass the following order:-

### **ORDER**

C.A. No. 37/2016 as well as O.A. No. 504/2015 stand dismissed with no order as to costs.

(J.D.Kulkarni)  
Vice-Chairman(J)

Dt. 30.11.2018.  
pdg.

