

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.1081 OF 2019

DISTRICT : SANGLI

Shri Pradeep Yashwant Sathe,)
Age 29 years, Occ. Nil, R/at: At Post Hatnur,)
Taluka Tasgaon, District Sangli)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Home Department, Mantralaya, Mumbai)
2. The Commissioner of Police for Greater Mumbai,)
CST, Mumbai)
3. The Dean, G.T. Hospital,)
Near Police Commissioner Office,)
Lokmanya Tilak Marg, Fort, GPO, Mumbai-1)
4. The Dean, Government Medical College,)
Miraj Pandharpur Road, Maji Sainik Vasahat,)
Miraj, Maharashtra 416 410)
5. The Deputy Commissioner of Police, HQ2,)
In the office of Commissioner of Police,)
CST, Mumbai)..Respondents

Shri K.R. Jagdale – Advocate for the Applicant

Smt. Archana B. Kololgi – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula R. Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)

RESERVED ON : 12th October, 2021

PRONOUNCED ON: 18th October, 2021

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Smt. Archana B. Kololgi, learned Presenting Officer for the Respondents.

2. The applicant is challenging the order dated 3.1.2019 passed by respondent no.5 wherein the applicant is declared as unfit for appointment to the post of Police Constable. He also seeks directions against respondent no.3 or 4 to examine applicant's vision and if found fit appoint the applicant on the post of Police Constable.

Brief facts of the case:

3. The applicant applied for the post of Police Constable as per the advertisement published on 5.2.2018. The name of the applicant appeared at Sr. No.56 in the provisional final select list dated 23.7.2018 wherein he had secured 171 marks and was selected under the SC category. The cut-off marks for SC category was 170. After his successful completion of physical test and written test, he was called for medical test on 4.8.2018. In this medical test he was found temporary unfit in vision test. Therefore, applicant's case was referred by Police Surgeon to Board of Referees, Sir J.J. Group of Hospitals, Byculla, Mumbai and also intimated

to the applicant vide letter dated 4.8.2018. The Board of Referees vide certificate dated 24.9.2018 declared the applicant unfit to perform the duties of Police Constable. Subsequently applicant underwent Lasik Surgery at J.J. Hospital on 24.10.2018, as suggested, and his vision was re-corrected to 6/6. On the basis of report of re-examination done by Board of Referees of J.J. Hospitals, the respondent no.5 communicated to the applicant on 3.1.2019 that the applicant was declared permanently unfit for the post of Police Constable and his selection was cancelled in view of Rule 6 of Maharashtra Police Constable (Recruitment) Rules, 2011. Therefore, the applicant has filed the present OA challenging the impugned order dated 3.1.2019 passed by respondent no.5.

4. Shri K.R. Jagdale, learned Advocate for the applicant argued that the impugned decision was arbitrary and discriminatory. He pointed out that applicant had earlier filed OA No.183 of 2019 and prayed for reexamination of his vision and sought appointment on the post of Police Constable under SC category. This Tribunal passed the following order on 14.3.2019:

“2. Disposed as withdrawn on instructions with liberty to re-agitate the question, if some legal right could be identified and pleaded.”

5. He also pointed out that all the 11 candidates from the same recruitment who had undergone Lasik Surgery for rectifying vision were appointed, however, applicant was not given appointment.

6. Ld. PO refuted the arguments put forward by the Ld. Advocate for the applicant. Shri Mansing Prayagsing Patil, Assistant Commissioner of Police (HQ-II), Mumbai has filed affidavit in reply dated 24.2.2020 on behalf of respondents no.2 & 5. In the reply he pointed out that applicant

was not eligible for appointment to the post of Police Constable on medical grounds on the basis of unfit medical report issued by the competent authority on 4.8.2018 and 24.9.2018. He also stated that under Rule 6 of Maharashtra Police Constable (Recruitment) Rules, 2011, it is mandatory condition that the candidate should be medically fit for appointment. He also stated that decision rendered by the Board of Referees is final and irrevocable.

7. During pendency of the above OA this Tribunal has passed the following order on 8.1.2021:

“2. The applicant who is aspiring to become a Police Constable, could not pass the Medical Examination as he was found unfit in the year 2018. Then again he was referred for re-verification for his eye sight to Medical Board. His vision was shown as 6/12. The applicant went for Lasik surgery. The applicant was also again tested by J.J Group of Hospital on 24.10.2018 and his vision was found 6/6/ after Lasik surgery.

3. Learned counsel submits that the applicant is now fit to render service in the police Department as his vision is clear and he has no problem of eye sight.

4. Learned P.O pointed out a report-cum-letter of Dr. Ragini Parekh, Professor and H.O.D, Grant Medical college, Mumbai, dated 11.12.2019 addressed by her to learned C.P.O, Mumbai wherein she has opined that the applicant was examined by three Members on 24.9.2018 and on examination of the eyes it was found that applicant is having Glaucoma and Glaucoma is potentially blinding disease. It is a progressive and blinding disease and therefore he is made unfit for the post of Police Constable. In the said letter Dr Parekh has mentioned that the applicant has undergone Lasik surgery to correct refractive error.

5. *We perused the letter and report. Dr. Parekh had also mentioned that though after lasik surgery his vision is 6/6 and it will not reduce Glaucoma as it is a progressive disease.*

6. *We don't find any merit in the matter as the H.O.D has expressly made it clear that Glaucoma was found and therefore, he was found unfit for appointment to the post of Police Constable.*

7. *Learned Advocate for the Applicant Shri K.R. Jagdale insisted that the Applicant should be sent to Medical Board for examination of Glaucoma and if he is found unfit he may be debarred from appointment to the post of Police Constable.*

8. *We have clarified to the learned Advocate for the Applicant that constitution of medical board is not so easy as three Doctors need to spare valuable time to work as Members of medical board. We have also pointed out report given by Dr. Ragini Parekh, Professor & Head of Department, Grant Medical College and Sir J.J Group of Hospitals, Mumbai. However, as it is repeatedly requested that he does not have Glaucoma and therefore he is to be sent to medical board, we make clear to Learned Advocate that the case of the Applicant can be referred to medical board and if at all the report is found consistent with the report given by Dr. Ragini Parekh then he will be saddled with costs of Rs.10,000/- which is payable to J.J. Hospital, Mumbai. Learned Advocate for the Applicant is directed to give application to that effect.”*

8. Pursuant to above order, following order was passed by this Tribunal on 12.1.2021:

“2. Learned counsel Mr. Jagdale, pursuant to order dated 8.1.2021 has given the undertaking that applicant is ready to pay cost of Rs.10,000/- if the medical report is found positive about suffering from Glaucoma. Application dated 12.1.2021 is taken on record and marked as Exh.1.

3. *Learned PO on instructions from Shri Shyam Raje, Administrative Officer, in the office of Respondent no.4, informs that a Medical Board can be constituted at Government Medical College, Miraj. Respondent No.4 is hereby requested to constitute a Medical Board within two weeks and the applicant is to be examined by the Medical Board especially on the point that whether the applicant is suffering from Glaucoma. The Dean, is requested to submit a written report accordingly and the conclusion of the examination within four weeks thereafter.*”

9. Subsequently, following order was passed by this Tribunal on 10.3.2021:

“2. *Pursuant to letter dated 20.2.2021, the applicant, has attended the Medical Board, Government Hospital, Sangli. It is informed that two tests that is OCT and PERIMETRY are required to be one in order to find out Glaucoma. The said tests are not available at Sangli and therefore, the Medical Board referred the applicant to Board of Referee, Eye Dept. B.J. Medical College, Sassoon Hospital, Pune.*

3. *Learned counsel Mr. Jagdale informs that the applicant has visited on 9.3.2021 and appeared before Board of Referee, B.J. Medical College, Sassoon Hospital, Pune.*

4. *Under these circumstances, we direct Board of Referee, Eye Department, Medical College, Sassoon Hospital, Pune to send the report regarding whether Shri Pradeep Y. Sathe is suffering from Potential Glaucoma within one week.*”

10. This Tribunal in its order dated 20.7.2021 has observed as under:

“2. *Learned PO on instructions from Mr. M.P. Patil, Assistant Commissioner of Police, HQ-2, Mumbai submits that the applicant*

was referred to Sassoon Hospital, Pune. The Sassoon Hospital, Pune had examined the applicant and submitted their report to respondent no.2 on 25.3.2021, which was received on 22.4.2021. According to them, the applicant is not having Glaucoma. On instructions, learned PO states that respondent no.2 proposes to get the applicant examined from another competent experts from other two hospitals.

3. Respondent no.2 is therefore directed to furnish list of two Hospitals where the competent medical experts are available in this field in the afternoon session.”

11. Later on, following order was passed on the same day i.e. 20.7.2021:

“1. Respondent No.2 proposes two hospitals, namely KEM Hospital and NAIR Hospital, where the applicant can be examined.

2. Respondent no.2 is directed to get the applicant examined from any of these Hospitals and inform the Tribunal about the progress regarding the same, within a period of four weeks. The examination shall be done without any charges to be paid by the applicant.”

12. Subsequently, the applicant was referred to TNMC and BYL Nair Ch Hospital, Mumbai and the said hospital submitted its report by letter dated 23.8.2021 wherein it is stated that, “The ophthalmic examination appears to be normal. Normal vision and Intraocular pressure. Thus, Mr. Pradeep Yashwant Sathe has no features suggestive of Glaucoma at present.”

13. We have carefully perused the various medical reports placed on record. The original report of J.J. Group of Hospitals shows that he has Glaucoma. However, subsequent report from Sassoon General Hospital,

Pune dated 22.4.2021 clearly states that applicant does not have Glaucoma. Furthermore Nair Hospital, Mumbai also states that he has no features suggestive of Glaucoma.

14. In view of these subsequent two medical reports given by Sassoon General Hospital, Pune and Nair Hospital, Mumbai, we find that applicant is medically fit to be appointed as Police Constable. We go by majority medical report of two Government hospitals i.e. Sassoon Hospital and Nair Hospital as against the medical report of J.J. Group of Hospitals. Hence, we pass the following order.

ORDER

The Original Application is allowed and the impugned order dated 3.1.2019 is hereby quashed and set aside. The respondents are directed to appoint the applicant on the post of Police Constable under SC category forthwith not later than 1st November, 2021, with all consequential service benefits. Moreover, the undertaking dated 12.1.2021 given by the Ld. Advocate for the applicant pursuant to order dated 8.1.2021 is discharged. The amount deposited by the applicant is to be returned to the applicant on production of receipt. No orders as to cost.

Sd/-

(Medha Gadgil)
Member (A)
18.10.2021

Sd/-

(Mridula R. Bhatkar, J.)
Chairperson
18.10.2021

Dictation taken by: S.G. Jawalkar.