

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.436 OF 2017

DISTRICT : SATARA

Shri Shashikant Shivaji Mane,)
Age 28 years, occ. Nil, R/o At & Post Masur,)
Taluka. Karad, District Satara 415 106)..Applicant

Versus

1. The State of Maharashtra,)
Through the Additional Chief Secretary,)
Home Department, Mantralaya, Mumbai)
2. The Superintendent of Police, Ratnagiri)
3. Shri Nitin Dhondu Ghanekar,)
R/o Village Narade, At & Post Karbude,)
Taluka & District Ratnagiri)..Respondents

Shri R.M. Kolge – Advocate for the Applicant

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

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

RESERVED ON : 7th July, 2023

PRONOUNCED ON: 25th July 2023

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

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

2. The applicant challenges his non selection for the post of Bandsman vide advertisement dated 23.2.2017 issued by respondent no.2. The applicant applied for the said post and appeared for the physical, written and Band test. In physical test he got 60 marks, in written test he got 52 marks and in Band test he got 46 marks, which added upto a total of 158 marks. He challenges the selection of respondent no.3 who got 82 marks in physical test, 45 in written and 42 in Band test, which added upto a total of 169 marks. He submits that applicant got more marks in Band test than the respondent no.3. He further states that in the provisional list which was published on 18.4.2017 the name of the applicant was included in the said list through Bandsman category. However, his name was not there in the final select list published on 1.5.2017.

3. Ld. Advocate argues that applicant should have been selected only on the basis of marks obtained in written test and Band test. He further pointed out the provisions of GR dated 16.3.2019 cannot be made applicable to the applicant since the post of Bandsman is not included in the said GR. He also states that it is not mentioned in the advertisement that marks obtained in the physical test would be made applicable to the Bandsman category and the physical test marks are applicable only to Police Constable. He therefore prays that he should be given appointment after cancelling the appointment of respondent no.3.

4. Per contra Ld. PO relies on the affidavit dated 7.7.2017 filed by Pranaya Ashok, Superintendent of Police, Ratnagiri. She pointed out that the provisional list is not a final list and that applicant was fully aware of all the process of assessing the marks. Ld. PO states that Bandsman is appointed after adding marks in all the 3 tests. The affidavit further mentions that in the advertisement published by respondent no.2 for recruitment of 2017 it was as per terms and conditions mentioned in 1(B) of the advertisement. It was made clear that provisional list is not to be presumed as the final list and applicant therefore did not have the right to take advantage of the said provisional list. She, therefore, stated that since respondent no.3 had higher marks in the aggregate and hence, his name appeared in the final select list.

5. Ld. PO further relies on the affidavit in reply dated 16.6.2023 filed by Dhananjay R. Kulkarni, Superintendent of Police, Ratnagiri. Ld. PO pointed out that during the process of appointment, the respondent no.3 was arrested under Section 394, 34 of IPC and under Section 380 of IPC having FIR No.165/2019 & 170/2019 respectively at Ratnagiri Rural Police Station and hence no appointment was issue in respect of the post of Bandsman and therefore selection remained unfulfilled for the single post. It was further pointed out that respondent no.3 has been arrested by Ratnagiri Rural Police Station and is still in judicial custody till date and in the absence of any separate rules to the contrary the respondent no.2 is not bound to offer an unfulfilled vacancy to the candidate next below in the list in provisional merit list. Ld. PO further submits that as per the select list in Ratnagiri District Police Bharti dated 29.4.2017 only the name of respondent no.3 is on record and there is no mention of the applicant in the said waiting list for the post which is duly signed by the then Superintendent of Police, Ratngiri and other Members of the Selection Committee. So there is no question of appointing the applicant on the said post.

6. Ld. Advocate for the applicant relied on the judgment and order dated 5.2.2013 passed by the Hon'ble Supreme Court in Civil Appeal No.938-939 of 2013 State of J&K & Ors. Vs. Sat Pal, wherein para 11 reads as under:

“11. A waiting list would start to operate only after the posts for which the recruitment is conducted, have been completed. A waiting list would commence to operate, when offers of appointment have been issued to those emerging on the top of the merit list. The existence of a waiting list, allows room to the appointing authority to fill up vacancies which arise during the subsistence of the waiting list.”

7. Ld. Advocate for the applicant also relied on the judgment and order dated 22.1.2014 passed by the Hon'ble High Court in W.P. No.4257 of 2013 Mr. Udaysing Jalamsing Valvi Vs. The Secretary, District Selection Committee & Anr., wherein para 9 reads as under:

“9. The Government circular in question so referred and read, just cannot be read to mean and/or permit the respondents to deny the claim and/or deny the appointment, through post is vacant in that period of one year. The respondents themselves failed to take action by not appointing the petitioner and they kept the post vacant for undisclosed reason and/or for the reason, which in our view is not sufficient to deny the crystallized rights of the petitioner for the post in question, as the appointed candidate failed to join the post within the prescribed period.”

8. We have carefully considered the submission of both the sides. The subject matter of this OA relates to selection to the post of Bandsman. We

are unable to accept the arguments of the Ld. Advocate for the applicant stating that the applicant should have been selected only on the basis of his written and Band test marks and that his physical test marks should be excluded. In the affidavit dated 16.6.2023 filed by S.P., Ratnagiri it has been made clear that in the final list of marks all 3 tests are required to be added up for appointment to the post of Bandsman. Respondent no.3 who was selected could not be appointed as FIRs were registered against him. The then Selection Committee has not maintained any waiting list.

9. The facts in this case are crystal clear. In the absence of waiting list the question of giving appointment to the applicant does not arise.

10. Hence, in view of the above the Original Application is dismissed. No orders as to cost.

Sd/-

(Medha Gadgil)
Member (A)
25.7.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
25.7.2023

Dictation taken by: S.G. Jawalkar.