

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.758 OF 2022

DISTRICT : KOLHAPUR

Shri Vipul Vasant Mali,)
Age 24 years. Occ. Nil, R/o Patil Mala,)
Behind New English School, A/P Rendal,)
Taluka Hatkanangale, District Kolhapur)..Applicant

Versus

1. The Superintendent of Police,)
Kasaba Bawada Road, Kolhapur)
2. Laxman Ananda Kumbhar,)
Police Constable attached to Police Training)
Centre, Akola (RPTS Akola), A/P Godanki)
Guljar Pura Road, Old Akola City, Akola)..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for Respondent No.1

Shri R.B. Khot – Advocate for Respondent No.2

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

RESERVED ON : 19th April, 2023

PRONOUNCED ON: 6th July, 2023

PER : Smt. Justice Mridula Bhatkar, Chairperson

J U D M E N T

1. The applicant challenges the order dated 4.3.2022 passed by respondent no.1 declining to cancel the selection of respondent no.2 to the post of Police Constable through horizontal reservation (Home Guards) despite being not eligible having not completed 1095 days as Home Guards on the cut-off date i.e. 3.9.2019 and prays for cancelling the selection of respondent no.2.

2. The respondent no.1 issued advertisement dated 3.9.2019 inviting applications for the post of Police Constable and the last date for submission was 23.9.2019. The applicant applied from OBC category. After completing the selection process the merit list was published on 30.9.2021 of OBC category. Total 5 posts were reserved for OBC General and 6th post was reserved for OBC Home Guard. If a candidate from OBC Home Guard is not found eligible or such candidate is not available then that 6th post is included in 5 posts and candidate from OBC general can be considered. Ld. Advocate for the applicant pointed out that reference of merger is made in clause 3 of the advertisement dated 3.9.2019.

3. Ld. Advocate for the applicant submitted that applicant has secured 129 marks out of 150 marks. Respondent no.2 secured 108 marks. The cutoff was 130 marks. Ld. Advocate for the applicant pointed out clause 16.2.7 of the said advertisement which states about reservation for Home Guard in Police Recruitment. As per this clause it is necessary for the candidate applying in the reserved category of Home Guard to have experience of 3 years i.e.1095 days overall on the date of advertisement which is 3.9.2019. On this background of this clause, Ld. Advocate for the applicant relies on order dated 4.3.2022 passed by Dy. Superintendent of Police, Kolhapur wherein the respondent has

mentioned that objection raised by the applicant regarding the appointment of respondent no.2-Laxman Ananda Kumbhar was dealt with. Ld. Advocate for the applicant submits that respondent no.2 in fact has completed 3 years i.e. 1095 days on 20.9.2019 and accordingly he has submitted the certificate of Home Guard. So, 1095 days were not completed on the date of advertisement i.e. 3.9.2019. Ld. Advocate for the applicant submits that however as per the said order respondents have erroneously extended the period of completion of the requisite period of 3 years from the date of advertisement to age limit as 30.9.2019 and therefore the case of the applicant was rejected by the respondents.

4. Ld. Advocate for the applicant relied on the judgment and order dated 10.11.2022 passed by this Tribunal in **OA No.173 of 2022 Shri Javed Nawab Shaikh Vs. The Commissioner of Police, Mumbai & Anr.**

5. Ld. Advocate for respondent no.2 submits that the last date for filling up the form was 23.9.2019 and he had completed at that time 1095 days i.e. on 20.9.2019. Though he was less of 7 days on the date of the advertisement. Ld. Advocate for respondent no.2 submits that he received appointment order on 11.3.2022 and thereafter he was sent for training and completed 9 months and now he has joined the office of Superintendent of Police, Kolhapur some time back. Therefore, he cannot be removed.

6. Moreover, the representation of the applicant made on 1.2.2022 was rejected by the authority by order dated 4.3.2022 which is challenged in this OA. Ld. Advocate for the applicant pointed out Rule 8(iii) of the Maharashtra Police Constables (Recruitment) Rules, 2011, dated 16.6.2011 which reads as under:

“(iii) गृहरक्षक दल (Home Guards). - पोलीस शिपाई पदांवर नियुक्ती करताना एकूण पदांच्या ५ टक्के पदे होमगार्डमध्ये जाहिरातीच्या दिनांकास कमीत कमी ३ वर्ष (१०९५ दिवस) एकत्रित सेवा झालेल्या व या नियमानुसार पोलीस शिपाई पदासाठी आवश्यक शैक्षणिक व शारीरिक पात्रता पूर्ण करणाऱ्या, विहित वयोमर्यादेतील होमगार्डसमधून भरण्यात येतील.”

(Emphasis laid)

The English version reads as under:

“(iii) Home Guards.- Out of the total posts available for recruitment to the post of Police Constable in the Police Force, 5% posts shall be filled in from amongst the members of Home Guards who have completed minimum three years service i.e. 1095 days of consolidated service as Home Guards and possess the requisite educational and physical qualifications and age limit as per these rules.”

7. Ld. Advocate for respondent no.2 submitted that there is no specific mention of the completion of counting of period of 1095 days on the date of advertisement and therefore the respondents have rightly calculated period of 3 years till the last date of filing of online application i.e. 23.9.2019.

8. Ld. PO states that Rule 3(8) states about reservation of Home Guard.

9. Thus, as per Rules person who is coming from Home Guard and wants to take benefit of reservation of Home Guard should have completed 1095 days as Home Guard on cut-off date on 3.9.2019 for this recruitment. Respondent no.2 admittedly completed 1095 days as on 20.9.2019 i.e. before the last date of submissions of applications i.e.

23.9.2019. Thus we are of the view that respondent no.2 has not completed the requisite period of 1095 days as contemplated under Rule 8(iii) of the said Rules of 2011. We therefore made query to Ld. PO why candidature of respondent no.2 was accepted in the reserved category of Home Guard when he was not entitled to reservation. We have also pointed out clause 16.2.7 of the advertisement dated 3.9.2019 wherein under the reservation for Home Guard a candidate is required to complete 1095 days in Home Guard on the date of advertisement. We made specific query to Ld. PO as to why respondent no.2 was recruited in the reserved category of Home Guard, though the applicant has secured more marks and was meritorious in non reserved category.

10. Ld. PO while answering our query, drew our attention to a circular dated 13.10.2021 issued by the Additional Director General of Police, Training & Special Unit, M.S., Mumbai wherein it is stated that for the purpose of age limit the date is extended and fixed till 30.9.2019 and that is the date to be considered for verification of documents. The said circular was sent to all the Districts including Kolhapur and the recruiting authority i.e. respondent no.1 has erroneously considered the date is also extended for all the purpose i.e. also for completion of 1095 days for working as Home Guard.

11. We have perused letter dated 4.3.2022 written by Deputy Superintendent of Police (Headquarter), Kolhapur. This letter is addressed to the applicant informing that his representation taking objection to the application of respondent no.2 cannot be accepted and in the said letter the understanding of the authority about the extended date i.e. 30.6.2019 for the purpose of verification of documents is to be considered is also mentioned.

12. These two letters explained why such decision was taken by respondent no.1. It is not a malafide or intentional action by respondent no.1 but it is a bonafide error committed by respondent no.1. It is a matter of misreading the instructions given by the higher authority i.e. respondent no.1. The respondent no.2 is already appointed and has put in one year in service. There is no fault of the respondent no.2 in this entire recruitment process. It is true that as per the rules of reservation in recruitment, respondent no.2 was not eligible for want of short of 17 days to 1095 days.

13. We came across one more relevant and important point argued by learned P.O. in respect of the difference in Marathi and English Rules of 2011 for the recruitment of Police Constable. The Rules in Marathi specifically state that the candidate who claims for reservation in Home Guards for the post of Police Constable should have completed 1095 days as a Home Guard on the date of advertisement. However, the Rules which are in English term, "from the date of advertisement" is absent. This issue also might have created confusion in the minds of recruiting authority. However, we make it clear that the Rules which are in Marathi, which is the language of the State of Maharashtra, are to be considered authentic in case of discrepancy in English and Marathi. Thus, in these peculiar circumstances, though it is true that the Respondent No.2 would not have been eligible for want of 1095 days as Home Guard on the date of advertisement, however, his selection by the recruiting authority is not malafide or intentional or for other extraneous reasons but it is a bonafide mistake. We can see the confusion in the mind of recruiting authority as to which date is to be considered for completion of 1095 days. We are informed that applicant is also selected as a Police Constable in another recruitment process at Sindhudurg. We are informed by Respondent no.1 that one post is vacant at Kolhapur. Thus, Applicant can be accommodated.

14. Thus, for the reasons given, we are not inclined to cancel the appointment of Respondent No.2. However, we are of the view that the following order will meet the ends of justice:

ORDER

(A) The prayer of the Applicant to quash and set aside the order dated 4.3.2022 passed by Respondent No.1 declining to cancel the selection of Respondent no.2 to the post of Police Constable, is rejected.

(B) However, Respondent No.1 is directed to accommodate the Applicant at Kolhapur in the vacant post of Police Constable within a period of one month.

(C) Original Application is disposed off with the above directions. No orders as to cost.

Sd/-

**(Medha Gadgil)
Member (A)
6.7.2023**

Sd/-

**(Mridula Bhatkar, J.)
Chairperson
6.7.2023**

Dictation taken by: S.G. Jawalkar.