

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 374 OF 2021

DISTRICT:- NANDED

Pradeep S/o Kishanrao Puri,
Age: 40 years, Occu.: Service
(as Police Naik, District Special
Branch, Nanded),
R/o: At Post Taroda (Kh),
Vedant Nagar, Nanded,
Dist. Nanded.

APPLICANT.

V E R S U S

1. The Additional Director General
of Police (Transport),
Maharashtra State, Mumbai,
Moti Mahal, 6th Floor, 195,
J. Tata Road, Near CCI Club,
Oppo. Shashank Restaurant,
Church Gate, Mumbai – 20.
2. The Superintendent of Police,
Nanded, Vazirabad, Nanded.

.. RESPONDENTS.

APPEARANCE : Shri Avinash S. Deshmukh, learned
counsel for the applicant.

: Shri S.K. Shirse, learned Presenting
Officer for the respondent authorities.

CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN

DATE : 03.05.2023

ORAL ORDER

Heard Shri Avinash S. Deshmukh, learned counsel
appearing for the applicant and Shri S.K. Shirse, learned
Presenting Officer appearing for the respondent authorities.

2. The applicant has preferred the present Original Application seeking quashment of the order dated 22.12.2020 issued by respondent No. 1 to the extent of the applicant. The applicant has also sought direction against respondent No. 1 to restore the order dated 5.10.2020 of applicant's posting/ appointment on deputation under the Highway Safety Patrol (HSP) and consequently to permit the applicant to join and work under HSP.

3. The applicant entered the Police Services as a Police Constable on 4.12.2012. In the year 2014 the applicant was designated as a Police Naik. In the year 2020 the process was initiated for making fresh appointments on deputation in HSP by respondent No. 1 i.e. the Additional Director General of Police (Transport). The Police Commissioners and the Superintendents of Police in the State were required to seek willingness of the persons from the constabulary desirous to work in HSP and to forward the list of such persons with their complete service details and confidential reports of last 10 years. The instructions were also issued to ensure that no such person from the constabulary, against whom the serious punishment is imposed or is proposed, is included in the said list.

4. The applicant, accordingly, gave his willingness to work in HSP. Previously under the Circulars dated 18.1.2007 and 7.3.2014 a written, as well as, oral test used to be conducted for appointment in HSP. Subsequently vide Circular dated 13.1.2017 the said method of conducting written examination was cancelled and the fresh terms and conditions as were there in the Circulars dated 18.1.2007 and 7.3.2014 were confirmed. Since the applicant was fulfilling the basic eligibility conditions prescribed in the Circular dated 13.9.2017, respondent no. 2 forwarded the name of the applicant to respondent no. 1 along with names of large number of other Police personnel. Thereafter the meeting of the committee constituted for the purpose was held on 17.9.2020 for considering the eligibility of the personnel from Nanded District police force, whose names were forwarded by respondent no. 2. The name of the applicant was included in the list of personnel held fit for appointment in HSP at Sr. No. 16 amongst total 34 personnel. Ten police personnel were kept on waiting list and 184 police personnel were held to be unfit for posting/appointment in HSP. Respondent no. 1 then issued an order of appointment to all 34 police personnel from Nanded District police force in HSP on 5.10.2020.

5. As noted hereinabove, the name of the applicant was at sr. no. 16 in the said list. When the applicant was awaiting to be relieved by respondent no. 2 for joining in HSP, on 22.12.2020, respondent no. 1 issued another order and thereby cancelled the previous order dated 5.10.2020 whereby the appointments in HSP were issued in favour of the applicant and others. Respondent no. 1 simultaneously on the same date i.e. on 22.12.2020 issued a fresh appointment order of 34 personnel from Nanded District police force, name of the applicant was not included therein.

6. As mentioned in the order dated 22.12.2020, respondent no. 1 had issued the said order on the basis of the decision taken in the meeting of the Police Establishment Board held on 21.12.2020. Applicant subsequently learnt that after issuance of the order dated 5.10.2020, respondent no. 1 issued a Circular on 27.10.2020 superseding the previous Circular dated 13.9.2017. It is the grievance of the applicant that his selection on the basis of Circular dated 13.9.2017, which was in force at the time when the applicant was selected for appointment in HSP, could not have been cancelled on the basis of subsequent Circular dated 27.10.2020. It is the further contention of the applicant that the Circular dated 27.10.2020 could not have

been retrospectively made applicable. As averred in the O.A. in the circular dated 27.10.2020 one additional eligibility condition under the caption 'स्वच्छ चरित्र' was introduced amongst some other additional conditions. It is further contended that while assessing the candidate in context of the condition of 'स्वच्छ चरित्र' it was to be seen whether any offence was registered against the candidate, whether the candidate was facing any departmental/preliminary enquiry, whether any enquiry was proposed against him, and whether he was ever placed under suspension.

7. In the year 2007 the applicant was suspended in the period between 8.6.2007 and 20.10.2007, because of the registration of the offence against him U/s 307, 498(A) r/w section 34 of the I.P.C. According to applicant, the aforesaid incident could not have been considered for disqualifying him for the reason that in the Sessions Case, which was registered against him in the year 2007 bearing Sessions Trial No. 16/2008 was decided on 24.7.2009 and the applicant was acquitted of the offence charged against him. As further contended, after the acquittal of the applicant, respondent No. 2 passed an order and had regularized the period of suspension undergone by the applicant. In the circumstances, according to

the applicant, the said suspension was not liable to be considered as disqualification for the applicant. The applicant, therefore, made representations to respondent No. 1 on 28.12.2020 and 18.1.2021 seeking his appointment in HSP. However, his said representations were not favourably considered and respondent No. 1 vide his communication dated 19.1.2021 communicated the applicant that his appointment/posting in HSP was cancelled. Aggrieved by the said communication the applicant has filed the present Original Application.

8. As noted hereinabove, the applicant has questioned the order of cancellation mainly on two grounds that the criteria of 'not having suffered suspension' could not have been retrospectively made applicable and the fact of 'having suffered suspension' could not have been considered for disqualifying him since ultimately the said period of suspension was revoked and regularized.

9. The respondents have resisted the contentions raised and the prayers made in the Original Application. Affidavit in reply has been filed on behalf of respondent No. 1. In the said affidavit in reply, it is contended that the order dated 5.10.2020 was cancelled in toto by the Police Establishment Board. It is

further stated that the Police Establishment Board took the decision of cancellation of the said order on the basis of various complaints received regarding the selection list and the defamatory news published in Newspaper 'वतनवाला' published from Nanded against the selection list of deputation on HSP. It is further contended that in the enquiry subsequently made by respondent No. 2 it was revealed that the applicant had faced the criminal charge under Section 307, 498(A) r/w section 34 of the I.P.C. and was under suspension in the relevant period. It is further contended that in the Circular dated 27.10.2020 the condition was incorporated that any Police Personnel suspended at any point of time will not be selected and appointed to work in HSP. It is contended that in view of the fact that the applicant was suspended in the past on account of criminal charges against him, the order issued in his favour was cancelled. It is further contended that the order dated 5.10.2020 was cancelled by the Police Establishment Board because complete and relevant information was not send by the concerned unit. It is further contended that the order dated 22.12.2020 was totally a new order passed on the basis of Circular dated 27.10.2020 and, as such, the order dated 22.12.2020 cannot be said to be as modified order. The

respondents have thus supported the impugned order and have prayed for dismissal of the O.A.

10. Shri Avinash S. Deshmukh, learned counsel appearing for the applicant assailed the impugned order on various grounds. Learned counsel submitted that earlier selection of 34 Police Personnel including the present applicant was made on the basis of the Circular dated 13.9.2017. Learned counsel submitted that since the applicant fulfilled the eligibility criteria as mentioned in the said circular, his name was included in the list of 34 selected candidates and accordingly appointment order was also issued on 5.10.2020. Learned counsel further submitted that while applicant was awaiting for his posting, the order dated 5.10.2020 came to be cancelled. Learned counsel submitted that as has been communicated to the applicant vide communication dated 19.1.2021 (Annexure 'A-10'), his selection has been cancelled on the ground that he is not fulfilling the criteria as mentioned in the Government Circular dated 27.10.2020. Learned counsel submitted that the stand taken by the respondents in the affidavit in reply is thus falsified, wherein it is contended that the selection was cancelled because of the complaint received to the Police Establishment Board.

11. Learned counsel further submitted that once selection of the applicant and other 34 persons was made on the basis of eligibility criteria, which was prescribed at the relevant time, their selection could not have been cancelled on the basis of additional criteria prescribed in Circular subsequently issued on 27.10.2020. Learned counsel further submitted that the applicant even could not have been disqualified on the basis of that additional criteria mentioned in the Circular dated 27.10.2020, for the reason that the suspension of the applicant was subsequently revoked and regularized by the respondents. Learned counsel submitted that the suspension of the applicant was not having any nexus with his duties at government since offence was registered on a private complaint.

12. Learned counsel further submitted that if the judgment of the Sessions Court is perused, it reveals that the complainant and her mother both have deposed that they were having no complaint against the applicant. Learned counsel submitted that it also has to be considered that the respondents have subsequently regularized the suspension period of the applicant and he is held on duty in the relevant period and all service benefits of the said period are extended to him. Learned

counsel submitted that the impugned order, therefore, cannot be sustained and prayed for quashment of the said order.

13. Shri S.K. Shirse, learned Presenting Officer submitted that the selection not only of the applicant, but all 34 candidates so selected was cancelled in toto because of complaint received against the said selection to the Police Establishment Board. Learned P.O. further submitted that the selection of the applicant and 34 other candidates was cancelled by Police Establishment Board because complete relevant information was not sent by the concerned unit. Learned P.O. further submitted that the order dated 22.12.2020 was totally an independent order passed on the basis of the Circular dated 27.10.2020 and it's not a modified order. Learned P.O. submitted that the allegation made by the applicant that circular dated 27.10.2020 has been made retrospectively applicable, therefore, cannot be sustained. Learned P.O. submitted that in the subsequent process conducted, the applicant could not be selected for the reason that he had faced criminal prosecution and was also under suspension. Learned P.O. submitted that in the Circular dated 27.10.2020 it has been provided that no person will be appointed in HSP who was suspended at any time in the past. Learned P.O. submitted

that the criteria as aforesaid, has been introduced to ensure that in HSP no such candidates are appointed. Learned P.O. submitted that the respondents have not committed any error in cancelling the appointment of the applicant. He, therefore, prayed for dismissal of the Original Application

14. I have duly considered the submissions advanced on behalf of the applicant and the respondents. I have also perused the documents filed on record.

15. Though the respondents have in their affidavits in reply have taken a stand that issuance of Circular dated 27.10.2020 has nothing to do with and has no nexus with the Circular dated 27.10.2020 and further that the selection of the applicant, as well as, all other candidates in the said list has been cancelled as the several complaints were received to the Police Establishment Board, in the letter dated 19.1.2021 received to the applicant from respondent No. 1 it has been specifically stated that his appointment has been cancelled on the ground that he does not fulfill the criteria as prescribed in the Circular dated 27.10.2020 read with corrigendum dated 6.11.2020 and 12.11.2020. The question is whether the criteria, which additionally came to be incorporated vide the subsequent Circular dated 27.10.2020 could have been used for

cancellation of the order of appointment issued in favour of the applicant, which was made based on the previous circular on the subject which was duly holding field at the relevant time.

16. It is not in dispute that the Police Commissioners and Superintendents of Police were required to seek the willingness of the Police Personnel for their appointment in HSP and name of such Police Personnel were forwarded by the Commissioner of Police and Superintendent of Police to respondent No. 1 along with the complete service details and the confidential reports of last 10 years. The Commissioner of Police and Superintendent of Police were also directed to ensure that no personnel against whom serious punishment is imposed or was proposed is included in the said list. It is the matter of record that the name of the applicant was included in the list of eligible candidates and subsequently his name was also came to be included in the select list. It is also matter of record that the appointment orders also were issued on 5.10.2020 and subsequently the said orders unilaterally came to be cancelled without giving any opportunity of hearing to the applicant.

17. As noted above, in view of the letter dated 19.1.2021 received to the applicant from respondent No. 1 there has remained no doubt that the order of the appointment dated

5.10.2020, wherein the name of the applicant was also existing, has been cancelled in view of the Circular dated 27.10.2020 mentioning that the applicant does not fulfill the criteria laid down in the said Circular. It is also evident from the record that the criteria which the applicant is alleged to have not fulfilling is that he was suspended in the year 2007 and suffered the period of suspension from 8.6.2007 to 20.10.2007. Admittedly, the aforesaid condition was not there when the selection process was earlier carried out. Whether the condition as has been imposed is just and proper is altogether different issue. The question raised in the present matter is whether the criteria so laid down could have been made retrospectively applicable. Ordinarily the eligibility criteria cannot be changed after completion of the selection process and when the select list is declared.

18. Insofar the facts in the present matter are concerned, I may not indulge in dealing with the issue whether the condition as aforesaid could have been retrospectively made applicable. In the case of the applicant, it is more material to see whether such condition would be applicable or not. Admittedly, the applicant was suspended and remained under suspension during the period between 8.6.2007 and 20.10.2007. It is also

not in dispute that the said suspension was on account of registration of a crime bearing C.R. No. 54/2007 against the applicant for the offences punishable U/ss 307, 498-A r/w 34 of IPC. It is the matter of record that the applicant has been acquitted of the aforesaid charges by the learned Second Additional Sessions Judge, Parbhani in Sessions case No. 16/2008 arising out of the aforesaid crime. It is also matter of record that after acquittal of the applicant from the aforesaid Sessions case, Superintendent of Police, Nanded vide his order dated 24.7.2009 regularized the suspension period of the applicant from 8.6.2007 to 20.10.2007 and further directed that in the aforesaid period the applicant shall be deemed to be on duty and the said period shall be considered as duty period for all service benefits payable to the applicant. It is important to note that while passing the order dated 24.7.2009 the Superintendent of Police, Nanded has recorded that he has carefully examined and scrutinized the judgment delivered in the Sessions Case No. 16/2008 and it is noticed by him that the learned Sessions Court has acquitted the applicant of the charges leveled against him.

19. The question arises in light of the facts as aforesaid that the alleged period of suspension undergone by the applicant was regularized and the applicant was held as on duty in the

said period and all the service benefits of the said period were extended to the applicant in the year 2009, whether the order of suspension passed on 12.6.2007 can be said to be in existence and whether that can be a reason for attaching the disqualification on the ground that the applicant was suspended. The answer has to be necessarily in negative. The order of suspension dated 12.6.2007 became non-existent after the order was passed on 24.7.2009. It appears to me that the respondents committed an error in attaching the disqualification to the applicant on the ground that he was under suspension in the period between 8.6.2007 and 20.10.2007. It shows the utter non-application of mind by the respondent authorities.

20. After the suspension period was regularized and was held to be the period on duty, the respondents shall have ignored the earlier order, whereby the applicant was put under suspension. It is thus, evident that the aforesaid disqualification could not have been attached to the applicant and his selection could not have been cancelled on the said ground. On issuance of the order of appointment dated 5.10.2020 a right was vested in favour of the applicant and the said right could not have been unilaterally withdrawn without giving an opportunity of hearing

to the applicant. The impugned order dated 22.12.2020, therefore, has to be quashed and set aside to the extent of the applicant.

21. The next question however, arises what consequential relief would be liable to be granted in favour of the applicant. As has come on record, 34 posts of Police Head Constable and Assistant Police Inspector in HSP were notified. Vide the order issued by the Additional Director General of Police on 22.12.2020 all the aforesaid 34 posts have been filled in. At present there is no material before me showing that out of 34 posts any post is still vacant or has become vacant. In the circumstances, it may not be possible to issue any mandatory direction to the respondents for issuance of the order of appointment in favour of the applicant. However, while setting aside the impugned order, the respondents can be directed to consider the case of the applicant for his appointment in HSP at the first instance as and when vacancy would arise.

22. For the reasons stated above, the following order is passed:-

ORDER

- (i) The order dated 5.10.2020 passed by respondent No. 1 shall stand set aside to the extent of the applicant.

(ii) The respondents are directed to consider the applicant for his appointment in HSP at the first instance as and when vacancy would arise.

(iii) The Original Application stands allowed to the aforesaid extent.

(iv) There shall be no order as to costs.

VICE CHAIRMAN

O.A.NO.55-2019 (SB)-2023-HDD-Pay & Allowances