

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

OAs NO.653, 654, 701, 670, 662, 673, 674, 675, 676, 694, 695 & 696 OF 2020

1) ORIGINAL APPLICATION NO.653 OF 2020

Shri Ashok Mahadev Sapkal,)
Age 28 years, Service, R/o 1164/4, Vaidya Shala Road,))
Madhurajash Ganesh Society, Shivajinagar, Pune-5)..Applicant

Versus

1. The State of Maharashtra,)
Through its Chief Secretary, Home Department,)
Mantralaya, Mumbai)
2. The Under Secretary,)
School Education & Sports Department,)
Sports & Youth Services-2, Mantralaya, Mumbai)
3. The Divisional Deputy Director,)
Sports & Youth Services, Pune Division, Pune,)
Survey No.191, Divisional Sports Sankul,)
Near Mojhe School, Yerwada, Pune 411006)
4. The Commissioner,)
Sports and Youth Services, MS, Pune)
5. The Superintendent of Police,)
Near Shivaji Statue, Barshi Road, Beed 421122)
6. The Deputy Inspector General and Joint)
Director of Police, Maharashtra Police Academy,)
Nashik)..Respondents

WITH

2) ORIGINAL APPLICATION NO.654 OF 2020

Shri Arun Anandrao Gaikwad,)
Age 31 years, Service, R/o At Post Shetphale,)
Shetphale Malewadi Road, Shivacha Mala,)
Taluka Atpadi, District Sangli)..Applicant
Versus
The State of Maharashtra & Ors.)..Respondents

WITH**3) ORIGINAL APPLICATION NO.701 OF 2020**

Shri Tejas Balasaheb Suryawanshi,)
Age 37 years, Service, R/o Plot No.5, Gangakrupa,)
Karpenagar, Pune 411 052)..Applicant
Versus
The State of Maharashtra & Ors.)..Respondents

WITH**4) ORIGINAL APPLICATION NO.670 OF 2020**

Pawar Pooja Jalindar,)
Age 31 years, Service, R/o Matoshree Aangan,)
Plot No.29, Third floor, Bhoomkar Nagar,)
Nahregaoon, Tq. Haveli, District Pune)..Applicant
Versus
The State of Maharashtra & Ors.)..Respondents

WITH**5) ORIGINAL APPLICATION NO.662 OF 2020**

Shri Balkrishna A. Nagargoge,)
Age 31 years, Police Constable at Headquarter,)
Shivajinagar, Pune, R/at 208, Punnayi Heights,)
Nandedgaon, Pune 411041)..Applicant
Versus
The State of Maharashtra & Ors.)..Respondents

WITH

6) ORIGINAL APPLICATION NO.673 OF 2020

Shri Savata Kashinath Pankhade,)
 Age 31 years, Police Constable at C.P.Office, Thane City))
 R/at Santoshi Mata Road, Laxmi Niwas, Room No.9,)
 Kalyan West, Thane)..Applicant
 Versus
 The State of Maharashtra & Ors.)..Respondents

WITH**7) ORIGINAL APPLICATION NO.674 OF 2020**

Shri Amol Bhagwan Daspute,)
 Age 29 years, Police Constable at CP Office, Thane City))
 R/at Santoshi Mata Road, Laxmi Niwas, Room No.10,)
 Kalyan West, Thane)..Applicant
 Versus
 The State of Maharashtra & Ors.)..Respondents

WITH**8) ORIGINAL APPLICATION NO.675 OF 2020**

Shri Amol Dattatray Ghuge,)
 Age 28 years, Police Constable, SP Office, Ahmednagar)
 R/at Jay Gurudev Apartment, Nagar-Aurangabad Road))
 Tavale Nagar, Savedi, Ahmednagar 414003)..Applicant
 Versus
 The State of Maharashtra & Ors.)..Respondents

WITH**9) ORIGINAL APPLICATION NO.676 OF 2020**

Shri Krushna Dayandev Chemte,)
 Age 25 years, Police Constable at SP Office, Ratnagiri)
 Jail Road, Police HQ, Ratnagiri 415 612)..Applicant
 Versus
 The State of Maharashtra & Ors.)..Respondents

WITH

10) ORIGINAL APPLICATION NO.694 OF 2020

Shri Mahesh Gangadhar Mundhe,)
 Age 27 years, Occ. Service,)
 Office at Medium Project Divisional Squad, Ambadpal,)
 Tq. Kudal, District Sindhudurg,)..Applicant
 Versus
 The State of Maharashtra & Ors.)..Respondents

WITH**11) ORIGINAL APPLICATION NO.695 OF 2020**

Shri Bipin Rajendra Kadam,)
 Age 32 years, Occ. Service,)
 R/o Padhegaon, Tal. Kopargaon, Ahmednagar 423603)..Applicant
 Versus
 The State of Maharashtra & Ors.)..Respondents

AND**12) ORIGINAL APPLICATION NO.696 OF 2020**

Shri Auti Aniket Somanath,)
 Age 28 years, Occ. Service/Jail – Police Constable,)
 R/o Maka, Tq. Nevasa, Dist. Ahmednagar)..Applicant
 Versus
 The State of Maharashtra & Ors.)..Respondents

Shri S.B. Talekar – Advocate for Applicants in OAs. No.653, 654 & 701 of 2020

Shri S.B. Talekar with Shri V.P. Sangvikar – Advocate for Applicant in OA No.670 of 2020

Smt. Punam Mahajan – Advocate for Applicants in OAs. No.662, 673, 674, 675 & 676 of 2020

Shri V.P. Sangvikar – Advocate for Applicants in OAs. No.694, 695 & 696 of 2020

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula R. Bhatkar (Chairperson)
Shri P.N. Dixit, Vice-Chairman (A)
DATE : 26th November, 2020
PER : Smt. Justice Mridula R. Bhatkar (Chairperson)

J U D G M E N T

1. Heard Shri S.B. Talekar, Shri V.P. Sangvikar & Smt. Punam Mahajan, learned Advocates for Applicants and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. In all these matters the applicants have submitted the Sports Certificate in Power Lifting with a view to get the benefit of GR dated 30.4.2005 thereby providing 5% reservation to the candidates for participation and performance as mentioned in the games approved by the Indian Olympic Association and mentioned in the said GR. All the candidates as per their contention have participated in power lifting which is enlisted at Sr. No.15 in the said GR. The validity of the those certificates in power lifting was verified by the respondents and the same were declared as valid in 2017 and pursuant to that the present applicants are given appointments in various government departments and they are in service as on today. However, the respondents in the month of October, 2020 issued orders that those respective sports certificates submitted by the applicants are found invalid and their validity is cancelled. Consequently, the applicants apprehend termination of their services and therefore they approached the Tribunal mainly on the following grounds:

- (1) No notice was given to the applicants before issuance of such orders.

(2) The respondents who have once issued validity certificate cannot again go through it and declare the certificate as not valid. Thus on the principles of natural justice and on the principles of estoppels the applicants seek relief.

3. Ld. CPO after taking instructions from the concerned officer of Commissioner of Sports submits that in March, 2020 the respondents came across a case of forged sports-certificate in Power-Lifting which was issued by Vidarbha Power Lifting Association. A criminal case was registered against the said candidate/government servant so also against the office bearers who have issued the said certificate of Vidarbha Power Lifting Association. Thereafter the office of the respondents became vigilant and started taking review of all the certificates which were earlier considered as valid. This triggered the investigation in all such certificates and it was found that the certificates issued by only 2 associations i.e. Vidarbha Power Lifting Association and Indian Power Lifting Association at Jamshedpur, Jharkhand are questionable certificates. The respondents thereafter asked reply from the office bearers of these two associations and also called for the record to ascertain the genuineness and so also whether the events have taken place or not. Ld. CPO informs that till today there is no response from these associations and some of the office bearers of the associations are not traceable. However, Ld. CPO fairly admits that no notice was given to either of the applicants before passing orders declaring their sport certificates, invalid.

4. Most of the facts are admitted except the issue of validity of the sports-certificate of the applicants. The submissions of the Ld. Advocate for the applicants that the principles of natural justice was required to be followed before passing such orders are correct. However, we make it clear in case of fraud or forgery, cases can be reopened any time.

5. Shri S.B. Talekar, learned Advocate for the applicant in OA No.653 of 2020 submits that the case of the applicant stands on a different footing as Division Bench of this Tribunal by order dated 26.4.2019 in OA No.584 of 2018 has directed the respondents and MPSC to declare him an eligible candidate for recommendation published by MPSC and appointed as PSI from Open Sports Category, pursuant to the PSI Main Examination, 2016. Ld. Advocate submits that once the sports certificate of the applicant is verified by the authority in OA No.584 of 2018 the said authority has no power to re-verify the said certificate. The same authority cannot sit either in review or in appeal about the said sports-certificate. The correct procedure for the respondents in the matter of the applicant in OA No.653 of 2020 was to approach the Tribunal and should have sought review of the order dated 26.4.2019. Secondly the power of review is statutory and therefore the respondents cannot re-verify the said certificate unless the statute provides the power of review to the said authority.

6. Shri S.B. Talekar, Ld. Advocate in support of his submissions has relied on the judgment of the Hon'ble Supreme Court in **Naresh Kumar & Ors. Vs. Government (NCT of Delhi) (2019) 9 SCC 416.**

7. Ld. CPO has argued that in the said earlier OA the issue was different. The sports certificate was verified on the basis of two affidavits produced by the applicant and she further submitted that the respondents are administrative authority however now they have to act as quasi judicial. As they are going to hold enquiry about the genuineness of these certificates the authority has power to re-verify or review its own decision. The power of review is available in such quasi judicial enquiry by the respondent authority. In support of her submission, Ld. CPO has relied on the judgment of the Hon'ble Supreme Court in **Indian National**

Congress (I) Vs. Institute of Social Welfare & Ors., (2002) 5 SCC 685.

However, fraud is an exception to the statutory power of review.

8. In OA No.584 of 2018 the applicant has approached for verification of concerned sports certificate and his appointment, because he produced the certificate after cut-off date. However, in case in hand the issue is altogether different and respondents have come out with a case of forgery and fraud against the applicant. On perusal of the order passed by the Division Bench in OA No.584 of 2018 it is found that the Tribunal at that time had no opportunity to deal with an iota of fraud or forgery in respect of the said certificate. Thus the said order passed by the Division Bench of Tribunal is not at all relevant to the present issue. Hence, the respondents coming before this Tribunal for review of its order does not arise. Secondly, it is settled law that the power of review cannot be exercised unless it is mentioned in the statute. In the judgment of **Naresh Kumar** (supra) the award was passed by the SLAO and the matter was taken before the Collector and the Collector enhanced the compensation but thereafter the amount was subsequently by other order deducted by reviewing earlier order by the Collector. The said order of the Collector was challenged in writ petition before the Hon'ble High Court and subsequently it went to the Hon'ble Supreme Court. At that time the Hon'ble Supreme Court has upheld that the review is a statutory power unless it is granted expressly in the statute, the power of review does not exist. However, the issue before the Tribunal is not the same. The issue of review of the certificates has gone further because of the subsequent developments. The respondents had come with the case of fraud and forgery. It is also settled law that if there is a fraud or forgery then there is no limitation and it can be reviewed at any time by the authority as fraud vitiates everything.

9. In case of ***Indian National Congress (I)*** (supra) the Hon'ble Supreme Court had an opportunity to deal with the election matter under the Representation of the People Act, 1951 and the Election Commission while exercising powers under the said Act had exercised it as a quasi judicial authority and the Hon'ble Supreme Court held that it is a statutory power and when there is no express provision in the Act the Commission cannot de-register the registration of the political party. However, the Hon'ble Supreme Court has specified exception to the principles of review i.e. practicing fraud or forgery.

10. In view of this, the submissions by Shri S.B. Talekar, Ld. Advocate are not sustainable in law and therefore the respondents can review or re-verify and also investigate the genuineness of the sports certificate.

11. Ld. CPO on instructions submits that orders of cancellation of validity of the sports certificate in Power Lifting issued by the Deputy Director, Pune, Aurangabad in October, 2020 will be withdrawn within one week by 4.12.2020.

12. Thus we dispose off all the applications with following order :-

- (a) The respondents shall withdraw their respective orders on or before 4.12.2020. The respondents are free to give show cause notice to all the applicants or other similarly situated government servants. However, the notice should include the reasons of the cancellation of validity to enable the applicants to meet the objections effectively. If such orders are issued, personal hearing to be given to all such similarly situated persons thereafter within 3 weeks.

- (b) In the event of any order of cancellation of the validity of the sports certificate is passed, thereafter for one week no further order of termination is to be passed from the date of the service of the order.
- (c) The applicants and similarly situated persons are hereby directed to appear before the respondent authority as and when date and time is given along with the documents, if any, and co-operate the authority.

13. With these directions all the Original Applications stand disposed off. Interim order stands vacated.

Sd/-

(P.N. Dixit)
Vice-Chairman (A)
26.11.2020

Sd/-

(Mridula R. Bhatkar, J.)
Chairperson
26.11.2020

Dictation taken by: S.G. Jawalkar.