

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**REVIEW APPLICATION NO.05 OF 2022  
IN  
ORIGINAL APPLICATION NO.70 OF 2022**

**DISTRICT: KOLHAPUR**

Jabbar Chandso Naikwade, )  
Age: 35, Occu.: Agriculture, )  
R/o. Ingali, Taluka: Hatankangale. )  
Dist.: Kolhapur, 416202. )  
jabbar6688@rediffmail.com, Mob.:7744991717. )... **Applicant**

**Versus**

- 1) State of Maharashtra, )  
Through the, Principal Secretary of )  
Home Department, )  
Mantralaya, Mumbai. )
- 2) Divisional Commissioner, )  
Pune Division, Council Hall )  
Camp Pune 1. )
- 3) Collector, )  
Kolhapur, District Collector Office, )  
Nagala Park, Kolhapur. )
- 4) Sub – Divisional Officer, )  
Ichalkaranji Sub Division - Ichalkaranji, )  
Taluka: Hatankangale, Dist: Kolhapur. )... **Respondents**

**Shri Dhairyasheel V. Sutar, learned Advocate for the Applicant.**

**Smt. Archana B. Kologi, learned Presenting Officer for the Respondents.**

**CORAM : A.P. Kurhekar, Member (J)**

**DATE : 25.07.2022.**

### **JUDGMENT**

1. This is an Application for review of the order passed by the Tribunal on 23.02.2022 in O.A. No.70/2022 whereby O.A. was dismissed summarily.

2. Facts giving rise to the R.A. are as under:-

Respondent No.4 – Sub – Divisional Officer (S.D.O.), Ichalkaranji, Taluka – Hatankangale, District – Kolhapur had initiated process to appoint Police Patil of village Ingali, Tal. Hatankangale, District – Kolhapur. In the process the Applicant as well as one Shri. Javed Y. Mullani participated. In merit list Shri. Javed Y. Mullani was first in rank and the Applicant stood 2<sup>nd</sup>. Sub Divisional Officer therefore appointed Shri. Javed Y. Mullani as Police Patil by order dated 06.01.2017. Thereafter he received compliant from the Applicant stating that Shri. Javed Y. Mullani was serving as Clerk in Amardeep Co-operative Credit Society and was not eligible for the appointment. Initially, Sub Divisional Officer by order dated 29.12.2017 suspended Shri. Javed Y. Mullani for one year invoking Section 9 of Maharashtra Village Police Patil Act, 1967. Being not satisfied with the order of suspension, Shri. Javed Y. Mullani filed Review Application before the Sub Divisional Officer but it was rejected. The Applicant again approached Respondent 2 – Divisional Commissioner by filing appeal. Divisional Commissioner by order dated 01.12.2018 directed the Sub Divisional Officer to take appropriate action. After expiring of one year period of suspension S.D.O. again reappointed Shri. Javed Y. Mullani on the post of Police Patil. Thereafter, again on complaint the Sub Divisional Officer conducted enquiry and by order dated 20.11.2020 imposed punishment of recovery of remuneration equal to not exceeding one month in terms of Section 9 (c) of Maharashtra Village Police Patil Act, 1967. Later, having found that Shri. Javed Y. Mullani was not discharging duties appropriately, Sub Divisional Officer by order dated 10.08.2021 removed Shri. Javed Y. Mullani from the post of Police Patil in terms of Section 9 (e) of Maharashtra Village Police Patil Act, 1967.

Later, the Applicant made an application to appoint him as Police Patil in place of Shri. Javed Y. Mullani. However, request made by the Applicant was rejected by order dated 21.12.2021 stating that from appointment of Shri. Javed Y. Mullani period of more than five years is over and now post is required to be filled in by initiating fresh process. It was challenged in O.A. No.70/2022.

3. O.A. No.70/2022 was heard on merit and dismissed by the Tribunal on 23.02.2022. In Para No.7 to 9, Tribunal held as under:-

“7. Undisputedly, recruitment process was initiated in 2016, wherein Shri Javed Y. Mullani was appointed on the post of Police Patil and he worked on the said post. He was finally removed from the post of Police Patil by order dated 10.08.2021. As such, there is no denying that recruitment process of 2016 had come to an end. As rightly pointed out by learned P.O. Validity of Waiting / Select list for the post of Police Patil could be one year as specifically provided in G.R. dated 22.08.2014. Now, period of more than 5 years is over from the recruitment process and Waiting / Select list had lapsed. Therefore, the Applicant has no right to ask for appointment on the post of Police Patil. Now, recruitment process to fill in the post of Police Patil would be initiated afresh since vacancy has arisen recently.

8. It is only in a case Waiting / Select list is valid and issue arises immediately after appointment of candidate who is at Sr. No.1 and for some or other reasons his candidature is cancelled or revoked in that event only candidate who is at Sr.2 can ask for appointment on the post of Police Patil. However, in present case it is not so. Shri Javed Y. Mullani was at Sr. No.1 and worked on the post of Police Patil for 3/4 years and he is dismissed from the post of Police Patil having found that he failed to discharge his duties diligently.

9. Indeed, as fairly stated by learned Advocate for the Applicant that the appointment of Shri Javed Y. Mullani on the post of Police Patil was for 5 years. He was appointed by order dated 06.01.2017. Now, admittedly 5 years time which was given to him in appointment order has come to an end. This being the factual position the Applicant has no right whatsoever to ask for appointment on the post of Police Patil. Recruitment process of 2016 as well as the term of Shri Javed Y. Mullani has already come to an end.”

4. Now this R.A. is filed stating that in O.A. No.70/2022 the Applicant had challenged the order dated 20.11.2020 also in addition to direction to appoint him on the post of Police Patil. But Tribunal had not examined the legality and correctness of the order dated 20.11.2020.

5. Shri D.V. Sutar, learned Advocate for the Applicant sought to contend that instead of imposing punishment of recovery of remuneration of one month by order dated 20.11.2020, Sub Divisional Officer ought to have imposed major punishment that time itself. He further submits that had the Sub Divisional Officer took immediate steps within one year of the period of validity of waiting list in that event the Applicant would have been appointed on the post of Police Patil being next in the merit list. This is nothing but based upon assumption and surmises.

6. Per contra, learned P.O. sought to contend that Tribunal has already considered the issue raised in O.A. and since period of five years from the date of initial process is already over now the Applicant cannot raise any grievance and the post is required to be filled in by initiating recruitment process a fresh as ordered by Tribunal in order dated 23.02.2022.

7. In the R.A. main grievance of the Applicant is that Tribunal has not considered the prayer of the Applicant challenging the order dated 20.11.2020 whereby Sub Divisional Officer imposed punishment of recovery of one month remuneration. In sofaras punishment is concerned it was within the competency of Sub Divisional Officer to pass appropriate punishment in terms of Maharashtra Village Police Patil Act, 1967. Sub Divisional Officer in order dated 20.11.2020 observed that since the Applicant has already undergone suspension of one year, it would be inappropriate to impose further severe punishment.

8. Significantly, later Sub Divisional Officer having found that Shri. Javed Y. Mullani was not discharging duties appropriately he came to be removed from service by order dated 14.08.2021. As such, major punishment of removal of service was already imposed by Sub Divisional Officer on 10.08.2021. This being the position while deciding the O.A. on 23.02.2022 there was no question of quashing order dated 20.11.2020 and directing Sub Divisional Officer to impose more severe punishment than the punishment inflicted on 20.11.2020 since challenge to order dated 20.11.2020 had become infructuous.

9. The Tribunal in order dated 20.03.2022 has held that the period of validity of waiting list was only one year in terms of G.R. dated 22.08.2014. Vacancy finally arose on 14.08.2021 when Shri. Javed Y. Mullani was removed from service and by that time waiting list validity was expired. Therefore, the Applicant's claim for appointment to the post of Police Patil as candidate No.2 in merit list was rejected. The Tribunal has also noted that Shri. Javed Y. Mullani had already worked for 3 to 4 years, and thereafter he was removed from service. Therefore, vacancy arisen after 3 to 4 years was required to be fill in by fresh process.

10. In view of above, ground raised by the Applicant's counsel that Tribunal has not considered the contention raised by the Applicant about imposing severe punishment than the punishment of recovery of one month remuneration is not required to be entertained in R.A. It is fait accompli since Shri. Javed Y. Mullani was already removed from post. In other words since ultimately the final order of removal from service was passed, the challenge to the order dated 20.11.2020 become infructuous.

11. For the aforesaid reasons, I see no merit in R.A. the Applicant is raking up issue which have already attained finality. I see no such

apparent error on the face of record in the order rendered by this Tribunal. Hence, the order

**ORDER**

Review Application is dismissed with no order as to costs.

**Sd/-  
(A.P. Kurhekar)  
Member (J)**

Place: Mumbai  
Date: 25.07.2022  
Dictation taken by: N.M. Naik.

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