

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.558/2017

DISTRICT: - AURANGABAD

Shankar s/o. Shrikrushna Dubey,
Age : 31 years, Occu. : Service,
Tq. Flat No.8, Plot No.13, Gut No.91,
Shivneri Housing Society, Opp. Satara
Police Station, Satara Parisar,
Aurangabad, Dist. Aurangabad.

...APPLICANT

V E R S U S

Maharashtra Public Service Commission,
Head Office at 5 ½, 7 & 8th Floor,
Cooprej Telephone Nigam Building,
Maharshi Karve Marg, Cooprej, Mumbai-21,
Through its Deputy Secretary (Examination)

...RESPONDENT

APPEARANCE :Shri A.S.Shelke Advocate for the
Applicant.

:Shri V.R.Bhumkar, Presenting Officer for
the respondents.

CORAM : J.D.KULKARNI, VICE-CHAIRMAN (J)
AND
P.N.DIXIT, MEMBER (A)

DATE : 23rd February, 2018

O R D E R**[PER : P.N.DIXIT, MEMBER (A)]**

1. Heard Shri A.S.Shelke, Advocate for the Applicant and Shri V.R.Bhumkar, Presenting Officer for the respondent.

2. Learned Advocate for the applicant has prayed for the following reliefs:

"XI.-B. By way of appropriate order or directions, the impugned order bearing Outward No.1442(K)/MAVIPA/2016/13-B dated 28-04-2017 issued by the Deputy Secretary (Examination), MPSC, Mumbai, may kindly be quashed and set aside.

C. By way of appropriate order or directions, the respondent be directed to allow the applicant to appear for the ensuing examinations to be conducted by the Maharashtra Public Service Commission."

3. In this O.A. learned Advocate for the applicant has challenged impugned order dated 28-04-2017 issued by the Maharashtra Public Service Commission which debarred the applicant for appearing in the said examination as well as future examinations for 5 years and put his name in the black list.

4. Aggrieved by the impugned order, learned Advocate for the applicant contended that the applicant was a

candidate for examination for selection of Police Sub Inspector (P.S.I.) through department from amongst Assistant Police Inspectors, Police Constables etc. During the examination on 21-08-2016 while the paper no.2 (legal paper) was on, after 35 minutes of the paper, invigilator and in charge of the Examination Centre noticed that the applicant was in possession of one key hand book. Therefore, said objectionable key book was seized from the applicant and he was not permitted to continue with the examination.

5. Thereafter, the Maharashtra Public Service Commission (MPSC) served show cause notice on the applicant on 01-10-2016 calling upon the applicant to explain as to why did he violate the instructions which prohibited carrying any key book, pages etc. in his possession while appearing for the said examination. In reply to the same, the applicant submitted his say on 17-11-2016 and admitted that he was reading the key book before the examination and some pages remained in his pocket inadvertently when he rushed for the examination paper. However, he had kept his other belongings such as mobile etc. outside the examination hall. After considering

the reply given by the applicant, the MPSC did not find it satisfactory and issued the impugned order.

6. Learned P.O. for the respondents drew our attention to the instructions, particularly, the instruction no.8 on the backside of the Admit Card directing the candidates to keep all their belongings outside. He further mentions that the applicant had violated instructions mentioned above as well as the instructions on the website for the candidates i.e. instruction nos.1.3.1 and 1.3.3. It is further contended that it is a serious breach of the instructions, and therefore, the MPSC has rightly debarred the applicant for a period of 5 years from appearing for further examinations and put his name in black list.

7. Learned Advocate for the applicant requested for leniency in view of the unblemished past service record of the applicant. He further contended that applicant is now 32 years of age and if debarred for 5 years, he will become over-age after 5 years and cannot appear for the said promotional examination. Learned P.O. for the respondents countered the submission of the learned Advocate for the applicant pointing out the fact that department has already shown leniency to the applicant by not proceeding against

him in view of his objectionable act/misconduct during the examination, so far. After considering these facts we find that there is no place for considering his case on the basis of leniency also.

8. Considering the facts admitted by the applicant and the affidavit submitted by the respondents and also the objection raised by the Registry that malpractice indulged in by the applicant during the examination does not fall in the category "service matter", we have come to a conclusion that without going into the merits of the case and without looking at the contended facts, whether the applicant had committed malpractice intentionally or otherwise, the order issued by the MPSC dated 28-04-2017 cannot be treated as arbitrary or malafide and cannot be interfered in. Hence, we pass following order.

ORDER

O.A.No.558/2017 stands dismissed with no order as to costs.

MEMBER (A)

**Place : Aurangabad
Date : 23-02-2018.**

VICE-CHAIRMAN (J)