

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.319/2014

DISTRICT – NANDED

Sayyad Yejdani s/o Sayyad Jilani,
Age : 33 years, Occ : Nil/Unemployed,
R/o. Momin Mohalla, Mukhed,
Tq. Mukhed, Dist Nanded.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through Chief Secretary,
Home Department, M.S.,
Mantralaya, Mumbai-32.
2. The Director General of Police
(Training and Special Squad)
Police Head Quarter,
Shahid Bhagat Singh Marg,
Kulaba, Mumbai-400 001.
3. The Superintendent of Police,
Nanded, Dist.Nanded.

...RESPONDENTS

APPEARANCE :Shri V.B.Wagh, learned Advocate for the
applicant.

Shri M.P.Gude, learned Presenting Officer
for the respondents.

CORAM: Hon'ble Shri Rajiv Agarwal, Vice-Chairman (A)
A N D
Hon'ble Shri J.D.Kulkarni, Member (J)

DATE: 20th October, 2016.

ORDER**[PER: MEMBER (J)]**

Applicant in this case i.e. Syed Yejdani s/o Sayyad Jilani has applied for appointment on compassionate ground on the post of Police Constable as his father Sayyad Jilani, who was Police Head Constable, died on 23-07-1993. Applicant was called for medical examination, and thereafter, for oral interrogation. On 23-07-2007, the applicant was directed to submit attestation form in Marathi language. Attestation form was sent for character verification to Police Station Mukhed. Applicant was, therefore, interrogated orally at Police Station, Mukhed on 27-07-2007 and during the interrogation the applicant disclosed that he was tried in SCC No.164/1999 u/s.457, 380, 511, 506 r/w 34 of I.P.C. He was acquitted of the said criminal case on 04-11-2003. Investigation Officer, Mukhed Police Station after making deep enquiry submitted a favorable report mentioning that the applicant is of good character.

2. Applicant was hoping for his appointment, however, he received the impugned letter dated 12/14-01-2008 whereby it was informed to him that his selection to the

post of Police Constable was cancelled as while submitting attestation form, he suppressed fact that offence bearing no.115/1999 u/s.457, 380, 511, 506 r/w 34 of I.P.C. was lodged against him. Applicant, thereafter, immediately approached respondent no.3 and explained his position as regards information in clause 11 of the attestation form. He also informed respondent no.3 that similarly situated candidates who have been acquitted of the criminal charges were considered for appointment. In the meantime, Director General of Police, Mumbai also submitted favorable report of the applicant.

3. Applicant was given assurance that his claim will be considered favorably. On 09-03-2010, applicant's mother again filed representation. Respondent no.3, was therefore, directed to submit his report by respondent no.2 vide letter dated 20-09-2013. However, respondent no.3 did not submit his report afresh and insisted to consider its earlier report on 09-06-2009. On 14-03-2014, respondent nos.3 and 4 forwarded case to respondent no.1 for taking proper decision in respect of the applicant. However, no decision was taken. On 01-05-2014, respondent no.3 issued advertisement for the post of Police Constable in Nanded

District. Applicant could not apply to said advertisement since he was age barred till that time. Applicant was, therefore, constrained to file this O.A. claiming following reliefs:

“A) Respondents more particularly respondent no.1, pursuant to, communication dated 14-03-2014 (EXH-5) may kindly be directed to take appropriate decision in respect appointment/selection of the applicant on the compassionate ground for the post of the police shipai. And to issue appointment order in favour of the applicant forthwith.

B) Order/communication dated 12/14-01-2008 issued by respondent no.3 canceling the selection of the applicant for the post of Police be kindly quashed and set aside and the respondent no.3 be kindly directed to issue appointment order in favour of the applicant forthwith.

C) Advertisement dated 01-05-2014 issued by the respondent no.3 for the recruitment of the post of Police Shipai from Nanded District, may kindly be quashed and set aside.”

Since the process of recruitment as per advertisement dated 01-05-2014 had already completed, prayer clause C) in the O.A. no more survives.

4. Respondents have filed their affidavit in reply, which is sworn in by the Superintendent of Police, Nanded. From the reply affidavit, it seems that it is a fact that respondent no.2 in the letter dated 20-09-2013 and 17-12-2013 directed respondent no.3 to submit report on the representation filed by the applicant. It is denied that respondent no.2 directed respondent no.3 to consider the applicant's claim afresh and submit report. From his reply to paragraph 25, it seems that the respondents have not denied that respondent no.2 after receipt of the communication dated 17-12-2013 from respondent no.3 forwarded the matter to respondent no.1. However, it is denied that the respondent no.3 ignored the genuine claim of the applicant made on 01-05-2014 by issuing fresh advertisement. It is clear from the reply affidavit as well as the contents in the application that the applicant's case was sent for consideration to respondent no.1 in 2013, and admittedly, no decision has been taken thereon, as is evident from the documents on record.

5. We have heard Shri V.B.Wagh learned Advocate for the applicant and Shri M.P.Gude learned Presenting Officer (P.O.) for the respondents. We have also perused memo of O.A., affidavit in reply and various documents placed on record by the parties.

6. Only material point to be considered is whether denial of claim of the applicant for the post of Police Constable by respondent no.3, in view of the fact that the claim was forwarded to the State of Maharashtra for consideration, is legal and proper ?

7. From the admitted facts on record it is clear that the applicant was called for interrogation on his request for appointment on compassionate ground. He was directed to fill up information as per requisite proforma i.e. attestation form. Said attestation form is at paper book page 25-30. In the very first page as per warning no.1, it has been clearly mentioned that furnishing of false information or suppression of any factual information in the attestation form would be disqualification and likely to render the applicant unfit for Government service. According to the respondents, applicant has given false information while

furnishing information in column no.11 of the attestation form. In this regard, warning no.4 states that while furnishing information regarding column no.11 of the attestation form, candidate must write “yes” or “no”. If the column is kept blank or simply a dash is marked by the candidate, attestation form will be returned back to him.

8. In paragraph 11(a) and (b) some information was called whereby the applicant was to give correct answers. Queries made vide question no.11(a) and (b) are as under (page 20):

“11. (a) Have you ever been arrested / prosecuted / kept under detention, or bound down / fined / convicted by a court of law for any offence or debarred / disqualified by any Public Service Commission from appearing at its examinations / selections or debarred from taking any examination / rusticated by any University or any other educational authority / Institution ?

(b) Is any case pending against you in any court of law, university or any other educational authority ?

Applicant has answered in negative as “**ukgh**” to all these queries. Query 11 clearly shows that the candidate has to feel particulars of the case, arrest, detention fine, conviction, sentence etc. and the nature of case pending in any court. Since the applicant has answered all these queries in negative, it was presumed that he was never arrested nor prosecuted in a criminal trial.

9. From the record, it seems that on police verification, it was noticed that the applicant was prosecuted in a criminal case. Earlier Crime No.115/1999 was registered against the applicant for commission of offence punishable u/s.457, 380, 511, 506 r/w 34 of I.P.C. After investigation, a criminal case was filed against the applicant. This fact can be clear from the report submitted by Police Inspector (PI), Police Station, Mukhed, Dist. Nanded. A copy of the said report dated 28-07-2007 is placed on record by the respondents at Exhibit R-6 (page 68). As per said report, PI informed the Superintendent of Police (SP) Nanded that Crime No.115/1999 for offences already stated above was registered against the applicant but he was not arrested since he obtained anticipatory bail. He further informed that on the basis of investigation in Crime No.115/1999,

criminal case i.e. S.C.C.No.164/1999 was filed and applicant was acquitted by decision in summary case No.1147/2003. He further informed that no further offence was registered against the applicant at any time. Applicant was not affiliated to any political party and that his conduct was good.

10. It seems that the applicant filed number of representation in view of the fact that he was acquitted. Additional Director General of Police, Maharashtra State, Mumbai vide fax message dated 27th December, 2007 at Exhibit R-7 (page 76) directed S.P. Nanded to appoint the candidates in service since they were acquitted in criminal case. However, ignoring the said fax message, S.P. Nanded has taken decision not to appoint the applicant. It was intimated to the applicant vide impugned order dated 12/14-01-2008 that though acquitted in Crime No.115/1999 u/s.457, 380, 511, 506 r/w 34 of I.P.C., he has concealed the said information while submitting attestation form, and therefore, his selection was cancelled.

11. It is clear from the record that earlier vide letter dated 18-06-2008 the Additional Director General of Police,

Mumbai directed S.P. Nanded to appoint one Vijay Ramrao Kadam who was on waitlist at Sr.No.98 of the Police Constable to be appointed. Since the said person was acquitted in criminal case no.1714/2005 (u/s.294, 323, 504, 34 I.P.C.), though earlier it was informed that his selection was cancelled.

12. From the record, it seems that the applicant and his mother had from time to time made representation to the respondents and requested that applicant's case be considered and also tried to defend him stating various circumstances giving incorrect information in the attestation form.

13. In paragraph no.24, the applicant states that respondent no.2 vide letter dated 20-09-2013 directed respondent no.3 to consider the applicant's claim afresh and submit report. Respondent no.3, however, without considering the explanation submitted by the applicant by letter dated 17-12-2013 reiterated the contents of his report dated 09-06-2009 and did not submit a fresh report. In paragraph 25, it is stated that respondent no.2 after receipt of the communication dated 17-12-2013 from respondent

no.3 forwarded the matter to respondent no.1 to take appropriate decision in respect of selection of the applicant as evident from communication dated 14-03-2014 at Annexure-J. As already stated these facts are not denied by the respondents.

14. From these circumstances, it is clear that the applicant's representation must be still pending with the respondent no.1. In view of this respondents' say in the reply that appeal/representation should have been filed within 6 months on receipt of communication dated 12/14-01-2008, can be ignored.

15. Learned P.O. submits that the applicant has provided false information in the attestation form. Therefore, fact remains that though the applicant is acquitted, he submitted false information by not disclosing offence registered against him.

16. Learned P.O. has placed reliance on the case of **Kendriya Vidyalay Sangathan V/s. Ram Ratan Yadav** reported in [2003 AIR 1709 SC] decided on 26-02-2003. In similar circumstances, Hon'ble the Apex Court was pleased to uphold cancellation of appointment order of an

employee who suppressed information regarding his prosecution in criminal trial.

17. Learned Advocate for the applicant placed reliance on the judgment reported in [**2011 (4) SCC 644**] in the case of **Commissioner of Police and Ors. V/s. Sandeep Kumar** decided on 17-03-2011, wherein Hon'ble the Apex Court has observed as under:

“13. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often been condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

14. In this connection, we may refer to the character 'Jean Valjean' in Victor Hugo's novel 'Les Miserables', in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life.

15. *The modern approach should be to reform a person instead of branding him as a criminal all his life.”*

18. While discussing the peculiar circumstances before Hon’ble the Apex Court, it is further observed in paragraph nos.17 to 21 (page 65) as under:

“17. In our opinion, we should display the same wisdom as displayed by Lord Denning.

18. As already observed above, youth often commit indiscretions, which are often condoned.

19. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Section 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified.

20. At any event, it was not such a serious offence like murder, decoity or rape, and hence a more lenient view should be taken in the matter.

21. For the reasons above given, this Appeal has no force and it is dismissed. No costs.”

19. On the similar line, learned Advocate for the applicant has also placed reliance on the judgment in **Writ Petition No.912/2010** by the Hon'ble High Court of Judicature of Bombay Bench at Nagpur delivered on 9th March, 2010 in the case of **Mahadeo s/o. Laxman Pund V/s. the State of Maharashtra & Anr.**

20. Learned P.O. has invited our attention to one judgment in the case of **State of West Bengal V/s. Nazrul Islam** decided by the Hon'ble Apex Court in **Civil Appeal No.8638 of 2011** decided on 13th October, 2011. In the said case, it was observed by the Hon'ble Apex Court as under:

“The authorities entrusted with the responsibility of appointing constables were under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of constable and so long as the candidate has not been acquitted in the criminal case of the charges he cannot possibly be held to be suitable for appointment to the post of constable.”

21. Learned P.O. further submits that post of constable is a very responsible post. If candidates having tainted record

are allowed to work in Police Force, it may have adverse impact on the Police Force. It is also submitted that the applicant has concealed fact of criminal prosecution, deliberately and intentionally, and therefore, mistake committed by the applicant is not inadvertent.

22. Learned Advocate for the applicant has also referred to judgment delivered by the Hon'ble the Apex Court in **Special Leave Petition (C) No.20525 of 2011** in the case of **Avtar Singh V/s. Union of India & Ors.** In the said case, the Hon'ble the Apex Court has given some guidelines in paragraph 30, wherein it is observed as under:

“30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

(1) Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

(2) While passing order of termination of services or cancellation of candidature for

giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(4) In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted : -

(a) In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

(5) In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

(6) In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

(7) In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a

person against whom multiple criminal cases were pending may not be proper.

(8) If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

*(9) In case the employee is confirmed in service, **holding** Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.*

(10) For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.

*We answer the reference accordingly.
Let the matters be placed before an appropriate Bench for consideration on merits.”*

23. In this case though S.P. Nanded refused to appoint the applicant to the post of Police Constable on the ground that he has submitted false information in the attestation form. Government had asked for report on the said subject from the respondent authorities. Respondent no.3, however, instead of submitting fresh report forwarded earlier report only, which he had submitted in 2009. Admittedly, no decision has been on the subject by the Government of Maharashtra.

24. We are, satisfied that there is no doubt that the applicant has suppressed fact of criminal prosecution against him and information required as per query no.11(a), and (b). However, it will be better to give an opportunity to the respondents to consider all the guidelines issued by Hon'ble the Apex Court in the case of **Avtar Singh** (supra)

and pass necessary order thereafter in the matter to come to a conclusion as to whether the applicant should be given appointment to the post of Police Constable or not.

25. It is worthwhile to note that Hon'ble the Apex Court in the case of Avtar Singh (supra) has given valuable guidelines as to how the cases of the employees concealing material information or giving false information about the prosecution against them are to be dealt with. In view thereof, we expect that the State Government may issue guidelines to Head of the offices under its control for taking proper decision under particular circumstances as per those guidelines. In view thereof, we pass following order:

ORDER

- (A) O.A. is partly allowed.
- (B) Impugned order dated 12/14-01-2008 issued by respondent no.3 is quashed and set aside.
- (C) Matter is remanded back to the competent authority i.e. the State of Maharashtra, for reconsidering application of the applicant for appointment to the post of Police Constable, in view of the guidelines of the Hon'ble the Supreme Court case in the case of Avtar Singh (supra).

- (D) Respondent no.1 may take proper decision as it may deem fit in the peculiar circumstances, as per rules and taking into consideration the guidelines in Avtar Singh's case on merits, without being influenced by any of the observations made by us in this judgment.
- (E) Requisite decision may be taken within 3 months from the date of passing of this order and shall be intimated to the applicant in writing.
- (F) In the peculiar circumstances, there shall be no order as to costs.

(J. D. Kulkarni)
MEMBER (J)

(Rajiv Agarwal)
Vice-Chairman