

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 714 OF 2021

DISTRICT : PARBHANI

Rahul S/o Gautam Malsamindar,)
Age : 36 Years, Occu. : Nil,)
R/o. Near Police Quarter, Parbhani,)
Tq. and Dist. Parbhani.) **APPLICANT**

V E R S U S

The Superintendent of Police,)
S.P. Office Campus, Parbhani,)
Tq. & Dist. Parbhani.) ... **RESPONDENT**

APPEARANCE : Shri V.B. Wagh, Counsel for Applicant.

: Shri A.P. Basarkar, Presenting Officer for
respondent authority.

CORAM : **Shri A.N. Karmarkar, Member (J)**
RESERVED ON : **21.03.2025**
PRONOUNCED ON : **09.04.2025**

O R D E R

1. By filing present Original Application, this applicant has sought declaration that he is entitled for appointment on compassionate ground. He has also prayed for quashing and setting aside impugned order dated 15.10.2019 rejecting his claim for appointment on compassionate ground. The applicant has also prayed to direct the respondent authority to consider his claim for appointment on compassionate ground as per G.R. dated 21.09.2017 as per his qualification.

2. The date of birth of the applicant is 26.12.1984. The father of the applicant was working as Assistant Sub Inspector died on 18.11.2010 in harness. The applicant's mother has applied to the respondent for appointing her son on compassionate ground vide application dated 18.01.2011. The respondent has initially considered his claim and directed him to remain present for interview. The applicant's name was considered and he was directed to fill in the attestation form. He was directed to furnish the details in respect of crimes, if any registered against him. The applicant has informed about registration of two minor crimes against him. The said fact of registration of crime was considered in committee meeting dated 10.05.2016. Accordingly, the Collector, Parbhani has directed the respondent to take steps in respect of applicant's appointment on compassionate ground. Then, the sole respondent has forwarded letter dated 20.07.2016 to the Desk Officer in respect of claim of the applicant. The Under Secretary, Home Department has directed the sole respondent to take decision being the appointing authority and remanded the file to him on 06.12.2018. The sole respondent has rejected the claim of the applicant on 15.10.2019 on the ground that the High

Power Committee concluded that the applicant is not to be appointed on compassionate ground.

The applicant has raised ground that respondent should have considered that two crimes, which were registered against him, are petty offence. In one of the crime under Section 12 (a) of Prevention of Gambling Act, the applicant was acquitted on 21.12.2013. On the basis Crime No. 73/2016, RCC No. 71/2017 was registered for the offences punishable U/s 341, 504 of IPC against the applicant, but in that matter he came to be acquitted. According to the applicant, informant in that matter has lodged false complaint against him because of personal grudge, as there were love affair between the present applicant and the daughter of informant. In the backdrop of acquittal in both the matters, the respondents should have verified the case of applicant properly. The applicant has also contended that the Government Resolution is in respect of appointment to be given on compassionate ground, though review committee has taken the decision that it is discretion of the respondent authorities to consider overall circumstances and to take appropriate decision.

3. The sole respondent has filed his affidavit in reply (page No. 63 to 74 of paper book). It is denied that offences

registered against the applicant are minor in nature. According to respondent, one of Criminal Case RCC 71/2017 for the offence punishable U/s 354-A, 341, 504 of IPC was registered against the applicant. Another Criminal case bearing SCC No. 1680/2013 for the offence punishable U/s 12(a) of Prevention of Gambling Act was registered against the applicant and six others. After getting information from the applicant regarding registration of crimes, it was forwarded to character verification committee in the office of District Collector, Parbhani. It has submitted its report to High Power Committee headed by District Magistrate and Collector, Parbhani and the report of committee was submitted to the High Power Committee on 10.05.2016. That committee has rejected the claim of the applicant for appointment on compassionate ground.

The applicant has again made application for reconsideration of his candidature. It was sent to the Home Department, Govt. of Maharashtra. The respondent was informed by the Government to take decision being an appointing authority. The High Power Committee after considering these facts has recorded that the character of the applicant is not unblemished and acquittal in Criminal Case under Section 354(a) of IPC was on the basis of compromise and so the

applicant cannot be given appointment having criminal history. Thus considering these facts the present Original Application deserves to be rejected.

The Crime U/s 354(A), 341, 504 of I.P.C. is serious in nature. Another offence U/s 12(A) of Bombay Prevention of Gambling Act was registered against the applicant.

4. The applicant has filed rejoinder affidavit (page No. 75 of paper book). According to him, registration of RCC No. 71/2017 was because of personal grudge against the applicant. The applicant and daughter of informant were having love affair and informant was against the said relation. Hindu Marriage Petition No. 110/2020 was filed by daughter of informant in that criminal case before the Civil Court at Parbhani. Subsequently, it was transferred to Family Court, Parbhani. It was finally disposed of on 03.08.2021. According to the applicant, in view of the judgment of Hon'ble Apex Court in a case of **Avtar Singh Vs. Union of India, (2016) 8 Supreme Court Cases 471**, the respondent can consider the claim of applicant in objective manner.

5. I have heard Shri V.B. Wagh, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for

the respondent authority. Both the parties have submitted as per their respective contentions.

6. Learned counsel for the applicant has submitted that the claim of the applicant for appointment on compassionate ground came to be rejected vide communication dated 06.12.2018 on the ground that the same is taken on the basis of decision taken by High Power Committee-B. According to him, in view of the judgment of Hon'ble Apex Court in a case of **Avtar Singh Vs. Union of India, (2016) 8 Supreme Court Cases 471** and judgment of this Tribunal in **O.A. No. 319/2014 (Sayyad Yejdani s/o Sayyad Jilani Vs. The State of Maharashtra and Ors.)**, dated 20.10.2016, the present matter may be remanded back to the competent authority for taking decision regarding claim of the applicant. He has also submitted that there was second report of High Power Committee. He has also relied on the decision of Hon'ble High Court in a case of **The State of Maharashtra and Anr. Vs. Shri Rahim J. Tundiwale in W.P. No. 6701/2016**.

On the other hand, learned Presenting Officer submits that in Criminal case bearing SCC No. 1680/2013 for the offence punishable U/s 12(A) of Bombay Prevention of Gambling Act, the applicant was acquitted by giving benefit of

doubt. Similarly in Regular Criminal Case No. 71/2017 for the offence punishable U/s 354-A, 341, 504 of IPC the applicant was acquitted due to settlement between the informant and present applicant (original accused). Offence punishable U/s 354 of IPC is serious offence in the eye of society. So it would not be appropriate to appoint the applicant in Police Department.

7. It appears that the mother of applicant has filed application on 18.01.2011 for appointment to her son on compassionate ground because of death of her husband. It appears that subsequently on 11.01.2012 the applicant was called upon to remain present in the office of S.P. Parbhani along with documents. It appears from the minutes of meeting of High Power Committee dated 10.05.2016 that the present applicant was on the selection list for appointment on compassionate ground. It was noticed that the Criminal Case was pending against him. The committee has decided not to appoint the present applicant. When the matter was forwarded to the Hon'ble Chief Minister, he has directed to reconsider the said matter.

8. Claim of the applicant was for appointment on compassionate ground. This is one of the way for getting appointment in Government service. It will be appropriate to

reproduce sub-para under clause No. 23 of G.R. dated 21.09.2017:-

“(२३) सामान्य प्रशासन विभागाच्या अधिकार क्षेत्रातील अनुकंपा नियुक्ती योजनेशी संबंधित कोणताही धोरणात्मक निर्णय प्रशासकीय विभागांनी परस्पर न घेण्याबाबत:-

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वस्तुतः कोणतीही नियुक्ती ही सेवाविषयक बाब असल्याने, अनुकंपा नियुक्तीसंदर्भात निर्णय घेताना सर्वकष विचार होणे आवश्यक असते व त्यासाठी सेवाविषयक नियम/तरतूदी, वेळोवेळी पारित झालेले न्याय निर्णय तसेच घेतलेल्या निर्णयाचा राज्य स्तरावरील सर्व सेवांवर होणारा परिणाम विचारात घेऊन निर्णय घ्यावा लागतो.”

9. Learned Presenting Officer has placed on record a copy of G.R. dated 26.08.2014. The reason behind this G.R. is to have criteria for appointing the candidate on Government job against whom any criminal case is pending or if he is acquitted or convicted. If any criminal case is pending against the candidate, who is to be considered for Government service, the committee is formed to take decision in that connection. It has to be noted that list of offences attached with this G.R. is illustrative and not comprehensive.

It appears from the minutes of meeting of High Power Committee-B dated 10.05.2016 (page No. 17 of paper book) that

prior to this meeting, the report was called from the District Women and Child Development Office, Parbhani in respect of character of the present applicant and information was placed before the committee that offence U/s 354, 341, 504 of IPC is registered vide C.R. No. 73/2016 at Nanalpeth Police Station Parbhani against the present applicant and it was under investigation. The decision was taken by the committee that considering the nature of offences against the applicant, it would not be appropriate to appoint the present applicant in Police Department. This committee was consisting of Collector, Residential Deputy Collector, Superintendent of Police, who is also the competent authority, Executive Engineer and Joint Secretary, Law and Judiciary Department. The report of committee was forwarded by the Superintendent of Police to the Home Department, Maharashtra State. It seems that the Superintendent of Police, Parbhani was informed vide letter dated 06.12.2018 (Annexure A-6, page No. 21 of paper book) that since he is the appointing authority, he has to take decision on his own. Subsequently, another meeting of High Power Committee was held on 05.08.2019. Minutes of said meeting dated 14.08.2019 shows that the acquittal of the present applicant in Regular Criminal Case No. 71/2017 (which was on

the basis of CR No. 73/2016) for the offence punishable U/s 354-A, 341, 504 of IPC was due to the settlement between the informant in that matter and the applicant (original accused). The committee has also noted the fact that earlier also the applicant was acquitted U/s 12A of Prevention of Gambling Act and his character and antecedent are not of such nature so as to consider his case for appointment in Government service. Copy of judgment in Regular Criminal Case No. 71/2017 also shows that when the original informant resiled from her statement, she was read over the contents in her report and she has just replied that she does not know. She has not specifically denied the allegations. So the allegation in that matter was pertaining to outraging the modesty of informant in that matter.

Actually the applicant was called for verification of documents in the month of January, 2012. So the applicant must be knowing about consideration of his claim for Government service still he was involved in the matter for the offence punishable U/s 12-A of Prevention of Gambling Act as alleged. Though, the applicant was acquitted in December, 2013 in the said case, still another offence came to be levelled against him for the offences punishable U/s 354-A of IPC. Learned counsel for the applicant has referred para No. 38.6 of judgment

in a case of **Avtar Singh Vs. Union of India** (cited supra) and submitted for remanding of matter. Para No. 38.6 is reproduced as under :-

“38.6. 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.”

There may not be concealment of fact about prosecution. But it is discussed in above paragraph that employer in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case. In the present matter, the High Power Committee has mentioned the reasons for which the applicant was not held to be suitable candidate for consideration of appointment on compassionate ground.

The Hon'ble Supreme Court has held in para No. 38.4.3. of the said judgment of **Avtar Singh Vs. Union of India** (cited supra) that if acquittal had already been recorded in a case involving moral turpitude, 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. It appears that the High Power Committee has taken into consideration the grounds that acquittal in Criminal Case for the offence punishable U/s 354-A of IPC, which is one of the serious offence in the eye of society. The Hon'ble Supreme Court in a case of **State of M.P. and Ors. Vs. Parvez Khan, (2014) 14 SCR 520** considered the case of **COMMISSIONER OF POLICE, NEW DELHI & ANR. V. MEHAR SINGH, 2013 (7) SCC 685** and in para No. 13 the Hon'ble Supreme Court has made following observations :-

“13. From the above observations of this Court, it is clear that a candidate to be recruited to the police service must be worthy of confidence and must be a person of utmost rectitude and must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was completely exonerated. Persons who are likely to erode the credibility of the police ought not to enter the police force. No doubt the Screening Committee has not been constituted in the case considered by this Court, as rightly pointed out by learned counsel for the Respondent, in the present case, the Superintendent of Police has gone into the matter. The Superintendent of Police is the appointing authority. There is no allegation of mala fides against the person taking the said decision nor the decision is shown to be perverse or irrational. There is no material to show that the appellant was falsely implicated. Basis of impugned

judgment is acquittal for want of evidence or discharge based on compounding.”

In the present case also the respondent-Superintendent of Police, Parbhani, who is the competent authority, was one of the Member of High Power Committee. Considering the nature of offence, in which the applicant was involved the decision of High Power Committee cannot be said to be unreasonable. Secondly, it is not the case of applicant that there are *mala-fides* on the part of respondent-Superintendent of Police for taking decision against the applicant.

10. Learned counsel for the applicant has tried to rely the judgment of this Tribunal in **O.A. No. 319/2014 (Sayyad Yejdani s/o Sayyad Jilani Vs. The State of Maharashtra and Ors.)**, dated 20.10.2016. In that matter, there was contention about submission of false information in the attestation form by the applicant in it. There was no decision by High Power Committee in that matter. So that case can be said to be distinguished on facts and cannot be made applicable to the present case. Learned counsel for the applicant has also relied on the decision of Hon'ble High Court in a case of **the State of Maharashtra and Anr. Vs. Shri Rahim J. Tundiwale in W.P. No. 6701/2016**. In that said matter, one of the prosecutions was for causing a simple hurt

and it is also held that the offences for which the respondent in that matter is acquitted was not some serious offence in terms of the G.R. dated 13.06.1988. So the facts in that matter appear to be different and cannot be made applicable to the present case.

11. In view of the discussions in foregoing paragraphs, the present Original Application deserves to be dismissed. Hence, the following order :-

ORDER

The Original Application stands dismissed. There shall be no order as to costs.

(A.N. Karmarkar)
Member (J)

PLACE : Aurangabad
DATE : 09.04.2025

KPB S.B. O.A. No. 714 of 2021 ANK Compassionate Appointment (Criminal Case)