

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 830 OF 2018
(Subject:- Kotwal)**

DISTRICT:- DHULE

Shailendra s/o Hiraman Mali,)
Age: 37 years, Occu: Service,)
R/o Lamkani Tq. Dhule,)
District Dhule)...**APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through its Secretary,)
Revenue & Forest,)
Mantralaya, Mumbai 400 032.)

2. The Collector, Dhule)
District Dhule.)

3. The President of Kotwal Selection)
Committee Cum Sub Divisional)
Officer, Dhule, District Dhule.)

4. The Tahsildar (Rural),)
Dhule, District Dhule.)

5. Naresh s/o Baburao Mali)
Age: Major, Occu: service,)
as Kotwal, R/o Lamkani,)
Tq. & Dist. Dhule.) ...**RESPONDENTS**

APPEARANCE : Shri Shamsunder B. Patil, learned
counsel for the applicant.

: Shri D.M. Hange, learned Presenting
Officer for the respondent authorities.

: Shri M.V. Bhamre, learned counsel for
respondent No.5.

CORAM : **Justice Shri V.K. Jadhav, Member (J)**
RESERVED ON : **18.10.2024.**
PRONOUNCED ON : **05.12.2024.**

ORDER

Heard Shri Shamsunder B. Patil, learned counsel for the applicant, Shri D.M. Hange, learned Presenting Officer for the respondent authorities and Shri M.V. Bhamre, learned counsel for respondent No.5.

2. By filing this Original Application the applicant is seeking declaration that he is entitled to hold the post of Kotwal by virtue of the order dated 17.05.2018 (Annexure 'A-2'). The applicant is also seeking quashing and setting aside the order dated 19.07.2018 (Annexure 'A-11') and order dated 27.07.2018 (Annexure 'A-13') cancelling thereby the appointment of the applicant and selection of respondent No.5 on the post of Kotwal of village Lamkani, Tq. and Dist. Dhule.

3. Brief facts giving rise to this Original Application are as follows:-

(i) The applicant had applied for the post of Kotwal of village Lamkani, Tal. and Dist. Dhule vide application dated

14.05.2018 and pursuant to the said application, the applicant had appeared for written examination on 15.05.2018. The written test papers were checked in front of the candidates and signature was obtained by the invigilator on the said papers. The applicant succeeded in the said examination. Consequent thereto, the applicant had appeared for oral interview and result of the same was declared on the very same day i.e. on 16.05.2018.

(ii) The applicant has secured 67 marks, whereas the respondent No.5 has secured 66 marks. The copy of the mark-sheet dated 16.05.2018 issued by respondent No.3 is marked as Annexure 'A-1'. In view of the same, the Tahsildar, Dhule was pleased to issue the appointment order of the applicant dated 17.05.2018 (Annexure 'A-2') with the direction to resume on duty since 01.06.2018.

(iii) The applicant further contends that on 18.06.2018 the respondent No.5 took the objection to the selection of the applicant contending therein that the applicant has darkened two circles each in the OMR Sheet while answering question Nos. 41 and 68 respectively. As per the note in the OMR Sheet the questions those have multiple answers will not be

counted and no marks will be considered for the same. The competent respondent authorities have never raised any such ground while checking written test paper. However, the respondent No.5 has not disclosed any source of knowledge about the said information. Thus, the possibility of tampering the answer sheet at later stage cannot be ruled out at the behest of the respondent No.5.

(iv) It is the further case of the applicant that the respondent No.3 has issued the letter dated 17.07.2018 and kept hearing on 19.07.2018 for rechecking. It is recorded that multiple options have been chosen by the applicant while replying the question Nos. 41 & 68 respectively so also the scout guide certificate was not produced by the applicant. Thus the authority has finally reduced two marks of the applicant by issuing the letter dated 19.07.2018. Ultimately, the appointment of the applicant came to be cancelled after discharging the duty for the period of 50 days and the respondent No.5 came to be selected instead of applicant. Learned counsel for the applicant further contends that the applicant's appointment came to be cancelled vide order dated 27.07.2018. Hence, this Original Application.

4. Learned counsel for the applicant submits that the applicant has submitted the application dated 12.10.2018 and sought the information regarding the objection raised by the respondent No.5. Pursuant to the same, the applicant has received the application dated 23.05.2018 tendered by the respondent No.5. From bare perusal of the said application, it appears that there is no whisper about the question Nos. 41 and 67 of the answer sheet of the applicant. On the contrary, the respondent No.5 has demanded some other information in respect of the process of allotment of marks.

5. Learned counsel for the applicant submits that one Shri P.A. Rajput, Circle Officer, Pimpalner and Shri U.R. Padvi, Talathi, Chikse were working as Invigilator and Associate respectively. They have been invited in connection with the allotment of marks to the applicant so far as the question Nos. 41 and 68 are concerned. It is contended in the said letter dated 25.06.2018 (Annexure 'A-5') that the applicant has given the answer of the question Nos. 41 and 68 respectively by darkening two circles to each of the said question and as such two marks of the said questions need

not be considered for counting purpose. Thus, the explanation came to be solicited from the persons referred to above. Pursuant to the said communication, both of them have submitted their explanation and admitted the mistake. The same is evident from the letter dated 26.06.2018 addressed by respondent No.2 to the respondent No.3. Learned counsel for the applicant submits that in any case the respondent No.5 has attempted to interfere in the answer sheet manipulation at the behest of the rest of the respondents.

6. Learned counsel for the applicant further submits that the respondent No.2 has issued the letter dated 26.06.2018 to the respondent No.3 directing to submit the report in connection with the grievance of the respondent No.5. Learned counsel for the applicant submits that the said communication itself indicates that the respondent authorities were inclined to victimize the applicant and shown favoritism to the respondent No.5. Pursuant to the said letter, the respondent No.3 has submitted the report vide letter dated 06.07.2018. Learned counsel for the applicant

submits that all this has been done by respondent No.5 in collusion with the rest of the respondent authorities.

7. Learned counsel for the applicant submits that the respondent No.5 has not disclosed the basic source of knowledge about the aforesaid information in connection with the question Nos. 41 and 68 respectively. Thus the cancellation of the appointment of applicant and selection of respondent No.5 is tainted with mala-fides. Learned counsel for the applicant submits that the applicant has worked since 01.06.2018 on the post of Kotwal. Thus the impugned order under challenge needs to be quashed and set aside. Learned counsel for the applicant further submits that the defeated candidates have no any vested right to challenge the process of selection, more particularly in the absence of knowledge from the genesis and source. Learned counsel for the applicant submits that the reasons employed by the respondent authorities pertaining to non -production of scout guide certificate is no more tenable, more particularly when the applicant has very much tendered the said certificate after the date of the interview.

8. Learned counsel for the applicant submits that once the employee secured the entry in the Government service, then his termination of service ought to have been followed with the assistance of due procedure of law governing the field in this behalf by giving opportunity of hearing to the applicant and by following the principles of natural justice. All this has not been followed by the respondent authorities. The Original Application thus deserves to be allowed in terms of the prayer clause.

9. Learned counsel for the applicant in order to substantiate his contentions placed his reliance in a case of **Vallampati Sathish Babu Vs. State of Andhra Pradesh and Ors. (Civil Appeal No. 2473/2022).**

10. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent Nos. 3 and 4 submits that as per the advertisement issued by respondents for the post of Kotwal the applicant as well as the respondent No.5 had appeared for the examination and the Selection Committee has allotted the marks as per the conditions laid down in the advertisement. Learned Presenting Officer submits that the respondent No.5 has sought information of

the applicant in connection with the selection of the applicant under Right to Information Act and he has also taken the copy of answer sheet solved by the applicant. So far as the question Nos. 41 and 68 of the answer sheet of the applicant are concerned, the applicant has darkened two circles to each of the question. It is crystal clear that mistakenly two marks are given to the applicant for those two questions, which was required to be corrected.

11. Learned Presenting Officer submits that after considering the report submitted by the committee and revaluation of the marks, the committee on 19.07.2018 submitted the mark-sheet to the Additional Collector showing that two marks of the applicant for question Nos. 41 & 68 are required to be reduced and accordingly submitted the corrected mark-sheet of the applicant as well as respondent No.5. As per the corrected mark-sheet the applicant got 65 marks and the respondent No.5 got 66 marks in total. Considering the position of merit the authority has issued appointment order in favour of the respondent No.5. Learned Presenting Officer submits that the selection for the post of Kotwal has been done by the respondents in free, fair

and legal manner. There is no illegality committed by the respondents. There is no substance in the Original Application and the same is liable to be dismissed.

12. Learned counsel for respondent No.5 submits that the respondent No.5 has applied for the post of Kotwal of village Lamkani, Tal. and Dist. Dhule vide offline application dated 20.04.2018 and pursuant to the said application the respondent No.5 had appeared for written examination on 15.05.2018. On 16.05.2018 the result was declared and the present applicant secured 67 marks and respondent No.5 secured 66 marks. The applicant got selected because he has secured 67 marks and accordingly, the appointment order was issued in his favour. On the same day i.e. on 17.05.2018 the respondent No.5 made an application to Tahsildar, Dhule, Sub Divisional Officer, Dhule and the Collector, Dhule under Right to Information Act and prayed for getting of the answer sheet because the respondent No.5 got only one mark in personality development category though he had given all correct answers. Thus the respondent No.5 has prayed for the answer sheet of the present applicant. Annexure 'R-1'

collectively is the copy of application under Right to Information Act made by respondent No.5.

13. Learned counsel for respondent No.5 submits that on 23.05.2018 the respondent No.5 has received the letter from the Collector that his application has been forwarded to the Tahsildar, Dhule (Rural) and the Sub Divisional Officer, Dhule as per rule. Thereafter on 24.05.2018 the respondent No.5 has received the letter from the Sub Divisional Officer, Dhule about forwarding the application to Tahsildar, Dhule (Rural) for above information. On 31.05.2018 the respondent No.5 has received the letter from the Tahsildar, Dhule to contact with the Tahsil Office Dhule for information. On 14.06.2018 the requisite information was furnished to respondent No.5.

14. Learned counsel for the respondent No.5 further submits that on 18.06.2018 the respondent No.5 has filed an application before the Collector-Dhule, Sub Divisional Officer-Dhule and the Tahsildar Dhule (Rural) that as per the information submitted to him while giving answer it is mandatory that only one circle is required to be darkened and more than one encircling of the answer for the same question

will be considered as wrong answer. The respondent No.5 has noticed that the applicant has darkened two circles while furnishing the answer to each of question Nos. 41 and 68 but the examiner has considered it as right answer and accordingly given the marks. It is wrong answer as per Rule 7 of answer sheet. Accordingly, the respondent No.5 has requested to take appropriate action in the matter.

15. Learned counsel for the respondent No.5 submits that on 21.06.2018 the Collector has issued letter to the Sub Divisional Officer to remain present in his office with the entire examination record for the post of Kotwal on 26.06.2018. Further considering the grievance raised by the respondent No.5 the Additional Collector appointed the committee for rechecking the answer sheet of the applicant as well as the respondent No.5. The committee has scrutinized the answer sheet of the applicant as well as the respondent No.5 and submitted the report to the Additional Collector, Dhule on 06.07.2018 and submitted that the applicant has given two answers to each questions Nos. 41 and 68 respectively. It is therefore clear that mistakenly two marks are given to the applicant for those two questions.

16. Learned counsel for respondent No.5 submits that on 17.07.2018 the Sub Divisional Officer, Dhule issued notice to the applicant as well as the respondent No.5. After considering the report submitted by the Committee and reevaluation of the marks, the committee on 19.07.2018 submitted the mark sheet to the Additional Collector reducing two marks of the applicant. Accordingly by letter dated 19.07.2018, the Sub Divisional Officer, Dhule given letter to the Tahsildar, Dhule to cancel the appointment order of the applicant dated 17.05.2018 and give the appointment order to the respondent No.5 immediately. Accordingly, on 27.07.2018 the Tahsildar passed an order and appointment order dated 01.06.2018 of the applicant came to be cancelled as per the revaluation of the marks. The Tahsildar, Dhule appointed the present respondent No.5 for the post of Kotwal as per the mark sheet. The appointment order dated 31.07.2018 is marked as Annexure 'R-7'. Learned counsel for the respondent No.5 submits that there is no substance in the Original Application and the same is liable to be dismissed.

17. Learned counsel for the applicant submits that the provision of Right to Information Act is not applicable to the

recruitment process. It is so held by the Hon'ble Supreme Court in a case of **U.P.S.C. Vs. Agnesh Kumar & Others reported in (2018) 4 SCC 530.**

18. Learned counsel for the applicant submits that the Selection Committee for selection of candidates for the post of Kotwal under the chairmanship of the Sub Divisional Officer was an ad-hoc committee. It is not a permanent statutory committee like UPSC, MPSC etc. Therefore, once the selection committee has completed its work by selecting and recommending the name of suitable candidate to the appointing authority, the said committee has become *functus officio*. Hence, the further steps and action taken by the Sub Divisional Officer in this regard are without any authority and jurisdiction. Once the selection process is over the same cannot be re-opened on any count by such committee and the objections, if any, relating to the selection process shall be referred to the concerned Administrative Department of the Government for further guidance and directions.

19. Learned counsel for the applicant submits that the action taken by the respondents on the basis of so called application made by the respondent No.5 is also illegal and

bad in law and contrary to the Government directives in terms of G.R. dated 12.03.2013 issued by the General Administration Department. By this G.R., it is made clear that, if there is any dispute about the recruitment based on written test the matter shall be decided by the concerned Administrative Department of the Government. Further there is no nexus between the information sought by respondent No.5 in respect of the recruitment process and his right to seek appointment.

20. Learned counsel for the applicant submits that Selection Committee has taken into consideration the marks given in the oral interview. Clause No.9 of the advertisement is contrary to the Government policy in terms of the G.R. dated 05.10.2015. It is clearly mentioned in the said G.R. that for filling up Group 'D' posts, no oral test/interview shall be taken and the final select list shall be prepared only on the basis of marks obtained in the written test. Learned counsel for the applicant submits that if the Selection Committee holds the oral interview that would be only for personal interaction with the candidates and nothing more. If the selection committee allots marks for oral interview those marks are not to be taken into consideration for drawing final

merit list. In the instant case the applicant has secured 61 marks and the respondent No.5 has secured 57 marks. The applicant was allotted 6 marks in oral interview while the respondent No.5 was allotted 9 marks. Even if two marks are deducted from the marks allotted for the written text, even then the applicant's total marks would be 59 as against 57 marks of the respondent No.5. Hence, the applicant's appointment could not have been cancelled and the respondent No.5 could not have been given appointment in place of the applicant. There is no justification for the action taken by the respondents in cancelling the appointment of the applicant and giving appointment to the respondent No.5. The Original Application thus deserves to be allowed.

21. This pertains to recruitment for the post of Kotwal. The applicant is seeking quashing and setting aside the order dated 19.07.2018 and order dated 27.07.2018 cancelling thereby the appointment of the applicant and selection of respondent No.5 on the post of Kotwal of village Lamkani, Tq. and Dist. Dhule. The applicant has succeeded in the written examination. The applicant had appeared for oral interview and the result of the same was declared on the very same day

i.e. on 16.05.2018. It further appears that the applicant has secured 67 marks, whereas the respondent No.5 has secured 66 marks. The copy of the mark-sheet dated 16.05.2018 issued by respondent No.3 is marked as Annexure 'A-1'. In view of same, the appointment order of the applicant dated 17.05.2018 with the direction to resume on duty on 01.06.2018 came to be issued. However, on 18.06.2018 the respondent No.5 took the objection to the selection of the applicant.

22. In consequence of the said objection the respondent No.3 has heard both the sides. It is necessary to mention here that the respondent authorities have never raised any ground while checking the written test papers that the applicant has darkened two circles each in the OMR Sheet while answering question Nos. 41 and 68 respectively. As per the note in the OMR Sheet the questions those have multiple answers will not be counted and no marks will be considered for the same.

23. It reveals from the original record that the applicant has darkened two circles to each of the question Nos. 41 & 68 respectively and even then two marks are given

to the applicant for those two questions. Initially it was difficult for me to believe that while checking the written examination paper, the examiner has not noticed the said multiple answers to question Nos. 41 & 68 to the answer sheet of the applicant. In view of same, initially I find some substance in the submissions made on behalf of applicant that the possibility of tampering the answer sheet at later stage cannot be ruled out at the behest of the respondent No.5.

24. Consequently, I have called the record. Learned Presenting Officer has demonstrated in the open court the unique method adopted by the department to check the answer sheet and allot the marks. Learned Presenting Officer has shown me the copy of dotted paper. On careful perusal of the said dotted paper it appears that an only corrected answers holes of the said dotted papers are opened. Consequently, if the said dotted paper is spread on the answer sheet of the particular candidate, only the correct choice if exercised by the particular candidate in the answer sheet, the same would be seen on the dotted paper as the other holes on the dotted papers are closed (not in open

condition). Consequently, if two answers to particular question are attempted, then because of use of dotted paper for examination of answer sheet, only the correct answer is reflecting and other answer is not visible if attempted. In view of same, there is every possibility of mistake when the answer sheets were examined with the help of the dotted paper.

25. It is further the part of record that the entire recruitment record including the answer sheet is kept in the custody of respondent No.3 i.e. the Sub Divisional Officer, Dhule himself and there is absolutely no possibility of tampering with the record. It is thus clear that the applicant has darkened two circles to each of the question Nos. 41 and 68 respectively and mistakenly two marks are given to the applicant for those questions. Thus after correction of the answer sheet, the respondent No.5 has secured more marks than the applicant and therefore, he has been rightly given the appointment order.

26. Learned counsel for the applicant has also raised an objection that the Selection Committee has taken into consideration the marks given in the oral interview. Clause No.9 of the advertisement is contrary to the Government

policy in terms of the G.R. dated 05.10.2015. It is mentioned in the said G.R. that for filling up Group 'D' posts, no oral test/interview shall be taken and the final select list shall be prepared only on the basis of marks obtained in the written test. Learned counsel for the applicant submits that if the Selection Committee holds the oral interview that would be only for personal interaction with the candidates and nothing more. If the selection committee allots marks for oral interview those marks are not to be taken into consideration for drawing final merit list. In the instant case the applicant has secured 61 marks and the respondent No.5 has secured 57 marks. The applicant was allotted 6 marks in oral interview while the respondent No.5 was allotted 9 marks. Even if two marks are deducted from the marks allotted for the written text, even then the applicant's total marks would be 59 as against 57 marks of the respondent No.5.

27. I find no substance in the above submissions for the reason that knowing well about clause No.9 of the advertisement the applicant has appeared for the written examination, appeared for the oral interview and even initially he was also given an appointment order. The applicant has

never taken objection to the effect that the clause No.9 of the advertisement is contrary to the Government policy in terms of G.R. dated 05.10.2015. Now the applicant cannot be permitted to raise an objection by referring clause No.9 of the advertisement after the appointment order was given to respondent No.5. In view of same, I find no substance in the Original Application. The same deserves to be dismissed. Hence, the following order:-

ORDER

- (A) The Original Application is hereby dismissed.
- (B) In the circumstances, there shall be no order as to costs.
- (C) The Original Application is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad
Date : 05.12.2024
SAS O.A. 830/2018 Kotwal