

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 669 OF 2011

DIST.: JALGAON

Kishor S/o Bhagwan Koli,
Aged: 30 years, Occu: Nil,
R/o Galangi, Tq. Chopda,
Dist. Jalgaon.

- APPLICANT

V E R S U S

1. State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai- 32.
2. The Deputy Secretary,
Home Department,
State of Maharashtra, Mantralaya,
Mumbai- 32.
3. The Police Commissioner (Railways),
Office of Railway Police,
4th Floor, Area Manager Building,
Dimelo Road, Wadi Bandar,
Mumbai.

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RESPONDENTS

APPEARANCE : Shri A.D. Sonar, learned Advocate
holding for Shri V.B. Patil, for the
Applicant.

: Shri I.S. Thorat, learned Presenting Officer
for the Respondents.

**CORAM :HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN (A)
AND
HON'BLE SHRI J.D. KULKARNI, MEMBER (J)**

DATE : 23-09-2016.

ORDER

[Per- Hon'ble Shri J.D. Kulkarni, Member (J)]

The applicant who was Constable in the Railway Department has challenged order dated 6.8.2011 issued by the respondent no. 3 i.e. the Police Commissioner (Railways), Office of Railway Police, Mumbai, whereby the applicant's claim for appointment to the post of Railway Police Shipai was rejected. The applicant has also claimed direction that he be declared eligible and qualified as per his selection in the merit list for the post of Police Shipai (Railway) in the recruitment of the year 2009 and that the respondents be directed to issue appointment order in his favour.

2. The applicant belongs to Koli caste. He responded to the advertisement published by the respondent no. 3 for recruitment of Police Shipai (Railway) for the year 2009. The applicant was allowed to participate and was successful in written and physical examination, as well as oral examination, and has secured 160.75 marks.

3. The applicant was falsely implicated in three offences, in Crime Nos. 3/2005, 54/2007 and 55/2007 at Chopda Gramin Police Station. The competent Criminal Court was pleased to

acquit him in all three cases. On 6.8.2011, the respondent no. 3 passed an order and communicated that the claim of the applicant has been rejected. According to the applicant, rejection of his claim without giving opportunity to the applicant is totally illegal, against the principles of natural justice and liable to be quashed and set aside and the applicant is liable to be appointed to the post of Police Shepai (Railway) and hence, this Original Application.

4. The respondent Nos. 1 & 2 and respondent no. 3 have filed separate affidavit in replies. They justified the rejection of applicant's claim.

5. We have heard Shri A.D. Sonar, learned Advocate holding for Shri V.B. Paitl for the Applicant and Shri I.S. Thorat, learned Presenting Officer for the Respondents. We have also perused the application, affidavit, affidavit in replies and various documents placed on record by the respective parties.

6. Vide impugned communication dated 6.8.2011 it was intimated to the applicant by the Police Commissioner (Railway), Mumbai as under:-

“महोदय,

उपरोक्त संदर्भीय विषयास अनुसरुन कळविण्यात येते की, पोलीस भरती सन २००९ मध्ये आपली पोलीस शिपाई पदावर विशेष मागास प्रवर्गातून निवड करण्यात आलेली होती. तुमची नियुक्ती देण्यापुर्वी चारित्र्य पडताळणी केली असता चारित्र्य पडताळणी अहवालामध्ये तुमचे विरुद्ध ०३ गुन्हे दाखल असल्याबाबत अहवाल प्राप्त झालेला असल्याने आपणास अद्यापपर्यंत नियुक्ती देण्यात आलेली नाही.

आपल्याला पोलीस शिपाई पदावर नियुक्ती द्यावी अगर असे या संदर्भातील प्रस्ताव शासनाच्या उच्चस्तरीय समितीकडे निर्णयासाठी पाठविण्यात आला असता शासनाने संदर्भीय आदेशान्वये आपणास पोलीस शिपाई पदावर सामावून घेवू नये असा निर्णय घेतलेला आहे. तरी सदरची बाब आपणांस माहितीस्तव कळविण्यात येत आहे.

सही/-
(दामोदर प. शिंदे)
पोलीस आयुक्त, लोहमार्ग मुंबई
यांचे करिता.”

7. From the aforesaid communication it seems that even though, the applicant was selected for the post of Police Shepai (Railway), his selection was subject to the verification of character and antecedents. Character verification was done in which it was found that three offences were registered against the applicant and therefore, it was communicated to the applicant that he cannot be considered for the appointment to the post of Police Shepai (Railway).

8. The respondent no. 3 has submitted in its affidavit in reply in paragraph no. 8 that the applicant did not give details about his criminal history/pending cases/case number/nature of the offences pending against him as required in prescribed

pro-forma. It was also specifically mentioned in the prescribed pro-forma that if the candidate is acquitted from the Criminal Charges, information to that effect shall be given. The applicant however, with mala-fide intention suppresses that fact about pendency of the criminal offences against him.

9. In paragraph no. 11 of the reply affidavit, the respondent no. 2 has stated that the S.P. Jalgaon was directed to submit character report of the applicant vide letter dated 18.05.2010 and accordingly, after making due enquiry the S.P. Jalgaon submitted the report on 24.07.2010 and it was intimated that the criminal cases were pending against the applicant. The respondents have placed on record the said communication about character verification of the applicant and the report thereof is at paper book page nos. 65 to 69 (both inclusive).

10. The learned Advocate for the applicant submits that the applicant was acquitted from all the offences registered against him. He has also placed on record judgment delivered in Sessions Case No. 19/2015 dated 30.04.2009 by the Additional Sessions Judge, Amalner, Dist. Jalgaon, judgment in Regular

Criminal Case No. 173/2007 dated 1.8.2008 delivered by the Judicial Magistrate First Class, Chopda Dist. Jalgaon and judgment in Summary Criminal Case No. 1490/2007 dated 5.5.2009 delivered by the Judicial Magistrate First Class, Chopda, Dist. Jalgaon. From all the said judgments it is clear that in Sessions Case No. 19/2005 the applicant was tried by the Additional Sessions Court, Amalner for the offences punishable under section 147, 148, 324, 436, 509 r/w 149 of the Indian Penal Code. In Regular Criminal Case No. 173/2007, the applicant was tried for the offences punishable under section 386, 427, 451 r/w 34 of the Indian Penal Code by Judicial Magistrate First Class, Chopda and in Summary Criminal Case No. 1490 of 2007, the applicant was tried for the offences punishable under section 353, 323, 504, 506, 510, 427 r/w 34 of the Indian Penal Code. Though, the applicant was acquitted in all three cases filed against him, it is the fact that the applicant did not disclose that crimes were registered against him or that he was arrested or released on bail in the said crimes or whether he was in custody in all the crimes etc. All these were facts revealed only after character verification of the applicant and therefore, the respondents have rightly refused to appoint the applicant. The verification report of the applicant

was forwarded to the High Power Committee of the Government of India. The decision was taken not to accommodate the applicant on the post of Police Shepai (Railway). Thus, considering the fact that serious offences were registered against the applicant and the fact that he has concealed this fact, the decision taken by the respondents cannot be said to be illegal.

11. The Hon'ble Apex Court has recently held in the Special Leave Petition (C) No. 20525/2011 in the case of Avtar Singh Vs. Union of India and others in paragraph no. 30 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 suppression veri or suggestion 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.

12. As already stated, the appointment of the Police Shepai is subject to the verification of the character of the candidate and if, the Committee thought it proper not to appoint a person having involved in three crimes under grave serious charges under I.P.C., nothing wrong has been done by the respondent authorities. Considering this fact, we do not find any merits in the O.A. and hence, we pass following order:-]

ORDER

The Original Application stands dismissed with no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)

Kpb/DB OA No 669 of 2011 JDK