

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

TRANSFER APPLICATION NO. 04/2016

(WRIT PETITION NO. 3181/2015)

DIST.: AHMEDNAGAR

Sandip Mohan Sherkar,
Age: 26 years, Occu. Nil,
R/o Kasar Pimpalgaon, Taluka Pathardi,
District Ahmednagar.

--

APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Secretary
School Education & Sports Department,
Mantralaya, Mumbai.

(Copy to be served on Government Pleader,
High Court of Bombay,
Bench at Aurangabad)

2. The Director,
Director of Sports & Youth Services,
State of Maharashtra, Pune.
3. The Additional Commissioner of Police
(Administration), Pune City,
Pune, Dist. Pune.

--

RESPONDENTS

APPEARANCE : Shri S.S. Jadhavar, learned Advocate
for the Applicant.

: Shri S.K. Shirse, 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 : 20.10.2016.

J U D G M E N T

[PER- HON'BLE SHRI J.D. KULKARNI, MEMBER (J)]

This petition has been transferred by the Hon'ble High Court to this Tribunal vide order passed in W.P. No. 3181/2015 on 8.3.2016 and on transfer, the petition has been renumbered as Transfer Application No. 4/2016. It seems that vide order dated 30.03.2015, the Hon'ble High Court was pleased to direct as under:-

"Heard.

2. *Notice before admission, returnable on 8th April, 2015.*
3. *Learned APP waives service for respondents.*
4. *In case, none is appointed in place of the petitioner, not to be appointed till the next date of hearing. The said stay order is still continued."*

2. From the admitted facts as revealed from the pleadings of both the parties, it reveals that the applicant has applied for the post of Police Constable in view of the advertisement dated 29.04.2014. The applicant has claimed appointment under Sportsmen quota. The applicant participated in 33rd Championship competition held by the Maharashtra State Karate Championship-2011 at Shahaji Raje Bhosale Krida Sankul, Andheri (West), Mumbai on 30th

November, 2011. The applicant stood 2nd in the said tournament in its group and has obtained certificate issued by the Maharashtra Karate Association. The said Association was affiliated to the Indian Olympic Association so also Maharashtra Olympic Association. The applicant is therefore, entitled for reservation from the Sportsmen category.

3. As already stated the applicant applied for the post of Police Constable and his name was included in the select list at Sr. No. 158. The applicant was waiting for the appointment order of the Police Constable but surprisingly he received a letter from respondent no. 2 on 20.10.2014, which is it at paper book page nos. 36 and 37 (Annexure-4)(both inclusively). It was stated in the said letter in item no. 9 as under:-

“९. शालेय शिक्षण व क्रीडा विभाग,

१. क.राक्रीधो-२००२/प्र.क. ६८/क्रीयुसे-२, दि. ३० एप्रिल, २००५, दि. २१

जून, २००६, दि. १८ नोव्हेंबर, २००६

२. क.संकीआ-१००६/(प्र.क. १८२/०६)/क्रीयुसे-२, दि. ६ मे, २००८

३. शासन निर्णय कमांक क्रीअसो १९०८/(प्र.क.३९४/००८) क्रीयुसे-२, दि. २१

ऑगस्ट, २००८

४. शासन निर्णय क. संकीर्ण-३००८/(प्र.क.३६/०८) क्रीयुसे-२, दि. ७ मे,

२०१३.

५. शासन निर्णय कमांक क्रीस्पर्धा-२१०८/(प्र.क.४४०/०८) क्रीयुसे-२, दि. २०

सप्टेंबर, २०१३

६. शासन निर्णय कमांक राक्रीधो-२००२/प्र.क. ६८/००८) क्रीयुसे-२, दि. ३०

डिसेंबर, २०१३

अन्वये क्रीडा प्रमाणपत्राची पडताळणी केली असता, सदर स्पर्धा नोव्हेंबर, २०११ या महिन्यातील असून सदरच्या कालावधीत सदर संघटनेस इंडियन ऑलिम्पिक असोसिएशनची मान्यता नव्हती. दि. ११ फेब्रुवारी, २०११ पर्यंतच संघटनेस इंडियन ऑलिम्पिक असोसिएशनची मान्यता होती. यास्तव **श्री. संदीप मोहन शेरकर हे उमेदवार गट-क** या पदाकरिता विहित केलेली खेळविषयक अर्हता पूर्ण करित नाहीत.”

4. Consequently, the applicant also received letter dated 27.02.2015 from respondent no. 3 i.e. the Police Recruitment Head and Additional Commissioner of Police (Administration), Pune City, Pune, Dist. Pune, to the effect that the selection of the applicant has been cancelled, since the sport certificate is illegal. The exact communication vide letter dated 27.02.2015 is as under:

“प्रति,

श्री. शेरकर संदीप मोहन, चेस्ट ३६६६५
मु.पो. कासार पिंपळगांव,
ता. पाथर्डी जिल्हा अहमदनगर,
पिन कोड-४१४५०५.

विषय :- पोलीस भरती-२०१४.....

खेळाडू समांतर आरक्षणांतर्गत पोलीस शिपाई पदासाठी झालेली निवड रद्द केले बाबत.

उपरोक्त नमूद संदर्भ व विषयांस अनुसरून की, पोलीस भरती-२०१४ मध्ये आपली प्रारूप अंतिम निवडयादीनुसार इतर मागास प्रवर्गातून खेळाडू या समांतर आरक्षणांतर्गत प्रारूप निवड यादीनुसार पोलीस शिपाई पदासाठी अंतिम टप्प्यात खेळविषयक प्रमाणपत्राची संचालक, क्रीडा व युवक सेवा संचालनालय, महाराष्ट्र राज्य, पुणे यांचेकडून पडताळणी होउन, वैधता/अवैधता अहवाल प्राप्त होण्याचे अधीन राहून निवड झालेली होती.

तुम्ही, खेळ विषयक सादर केलेले प्रमाणपत्र संचालक, क्रीडा व युवक सेवा संचालनालय, महाराष्ट्र राज्य, पुणे यांच्या कार्यालयात पडताळणीसाठी

पाठविले असता, त्यांच्याकडील दिनांक २०.१०.२०१४ चे पत्रान्वये प्राप्त झालेल्या अहवालामध्ये तुम्ही, खेळविषयक सादर केलेले प्रमाणपत्र अवैध ठरवून, खेळाडूसाठी असलेल्या ५ टक्के समांतर आरक्षणांतर्गत गट-क या पदाकरीता अपात्र ठरविलेले आहे. सबब तुमची इतर मागास प्रवर्गातून खेळाडू समांतर आरक्षणांतर्गत पोलीस शिपाई पदासाठी अंतिम प्रारूप यादीनुसार झालेली निवड रद्द करण्यांत येत आहे.

सोबत संचालक, क्रीडा व युवक सेवा संचालनालय, महाराष्ट्र राज्य, पुणे यांच्याकडील अहवालाची प्रत व आपण सादर केलेले खेळ विषयक मुळ प्रमाणपत्र परत केले आहेत.”

Being aggrieved by the said communications, the applicant has filed W.P. before the Hon'ble High Court of Judicature at Bombay Appellate Side, Bench at Aurangabad and the said W.P., as already stated, has been transferred to this Tribunal.

5. The respondents have filed affidavit in reply of one Shri Mohan Dattatraya Mohadikar, Assistant Commissioner Police (Operation) in the office of Commissioner of Police, Pune-1 on behalf of respondent no. 3 and Rajkumar Dattatraya Mahadawad, Deputy Director of Sports and Youth Services, Aurangabad Division, Aurangabad. According to the respondents, the sport certificate submitted by the applicant was forwarded to the Director of Sports and Youth Services, State of Maharashtra. Pune and the Director of Sports and Youth Services of State of Maharashtra, Pune informed vide

letter dated 20.10.2014 that the sport association under which the applicant participated in the sports activity was recognized up to 11.02.2011 only and the applicant is not eligible in this Sportsmen category and therefore, his selection was cancelled.

6. The Deputy Director of Sports and Youth Services, Aurangabad filed affidavit in reply on behalf of respondent no. 2 and submitted that the Indian Olympic Association has derecognized the National Sports Federation vide letter dated 11.07.2011. As the 33rd Maharashtra State Karate Championship, 2011 was conducted after 12.02.2011 without having recognition of the Indian Olympic Association, the players who participated in that tournament are not eligible. It is however, admitted that in pursuance of the G.R. dated 30.12.2013, the services of the other candidates like petitioner were protected and validity of their certificates has been held to be valid up to 31.12.2013.

7. As regards Government Resolution dated 30.12.2013, the respondent no. 2 stated in paragraph no. 7 as under :-

“7. I say and submit that, however, the provision in the Government Resolution dated 30th December, 2013

is applicable only for re-verification of sports certificate. The important Point No. 3 A & B mentioned in the said Government Resolution, which is reproduced as below-

३ अ) इंडियन ऑलंपिक असोसिएशनने मान्यता काढलेल्या संघटनेने फेब्रुवारी २०११ नंतरच्या आयोजित केलेल्या स्पर्धांमध्ये प्राविण्य मिळविलेल्या ज्या खेळाडूंची प्रमाणपत्रे मान्यता नसल्याच्या कारणास्तव दिनांक ३१ डिसेंबर २०१३ पर्यंत अवैध ठरविण्यात आली आहेत त्या खेळाडूंना संघटनांना मान्यता नसल्याची बाब आवगत नसल्यामुळे त्या खेळाडूंच्या बाबतीत ज्या विभागात त्यांनी निवड झालेली होती त्या विभागाने जर सदर प्रमाणपत्र दि. २८ फेब्रुवारी २०१४ पर्यंत पुनर्तपासणीसाठी क्रीडा संचालनालयास पाठविली तर त्याची क्रीडा संचालनालयाने त्यांना इंडियन ऑलंपिक असोसिएशनने मान्यता आहे असे गृहीत धरून पुनर्तपासणी करून द्यावी. मात्र दि. १ मार्च २०१४ पासून खेळाडूंच्या प्रमाणपत्राची पुनर्तपासणी करण्यात येणार नाही.

३ ब) तथापि, १ जानेवारी २०१४ नंतर होणा-या नौकर भरती प्रक्रियेतील ५ टक्के आरक्षणांतर्गत निवड झालेल्या खेळाडूंचे संबंधीत विभागातून खेळाडूंचे प्रमाणपत्र तपासणीसाठी अर्ज क्रीडा संचालनालयास नव्याने प्राप्त होतील त्या अर्जाच्या बाबतीत ३०.४.२०१५ च्या शासन निर्णयानुसार जी इंडियन ऑलंपिक असोसिएशनच्या मान्यतेची तरतुद आहे ती लागू राहिल. /\$G@\$0\$B& - 9G\$@ 2 B 0 9 @ The above mentioned clause is not applicable to be present petitioner on following grounds.

1. His sports certificate was not invalidated till 31.12.2013 whereas, his sports certificate was invalidated on 20.10.2014.
2. His sports certificate was not received upto 28th February, 2014 for re-verification.
3. His sports certificate was received for verification by the Respondent no. 3 vide their letter dated 17.09.2014.

According to the provisions in the Government Resolution dated 30.12.2013 clause 2 (b) his application was treated as a fresh application and as per Government Resolution dated 30.04.2005, the condition of having recognition of Indian Olympic Association is applicable to the present Petitioner.

Accordingly, this Respondent vide letter dated 20.10.2014, has communicated the decision to the Respondent no. 3 and copy for information to the present Applicant was also forwarded at his official address at Pune.

Considering the above mentioned and statutory position, it is therefore requested to this Hon'ble Court not to quash and set aside the communication dated 20.10.2014 issued by this Respondent."

8. The respondent no. 2 also files additional affidavit as regards G.R. dated 14.04.2009.

9. We have heard Shri S.S. Jadhavar, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents. We have perused the affidavit, affidavit in replies, additional affidavit in reply and various documents placed on record by the respective parties on record.

10. The material point to be considered in this case is whether the cancellation of the selection of the applicant from Sportsmen category to the post of Police Constable vide impugned letters is legal and proper?

11. As already stated from the admitted facts, it emerges that the applicant has participated in the sports event in November 2011. It is the case of the respondents that the Association which conduct the sports event though earlier was recognized by the Indian Olympic Association, the recognition has been cancelled w.e.f. 11.2.2011. In other words, when the applicant participated in the sports event in November 2011, the concerned association's recognition was withdrawn, and that is the reason why it has been held by the respondents and particularly respondent no. 2 the Director of Sports and Youth Services, Pune that the certificate issued in favour of the applicant cannot be accepted.

12. The learned Advocate for the applicant invited our attention to one G.R. dated 30.12.2013 and submitted that the Government has given protection to the players even to the Associations who were derecognized. The copy of the said G.R.

is placed on record at paper book page no. 26 to 28 (both inclusive). The very purpose of the said G.R. seems to give protection to the players who participated in the sports event and who were not knowing about de-recognition of the Association. The decision taken by the Government in this regard is as under:-

“ शासन निर्णय :-

इंडियन ऑलंपिक असोसिएशन यांनी त्यांच्या ११ जुलै २०११ च्या पत्रान्वये ३१ राष्ट्रीय संघटनांच्या काढलेल्या मान्यतेच्या अनुषंगाने दि. ३० एप्रिल २००५ च्या शासन निर्णयातील खेळांच्याबाबत पुढीलप्रमाणे कार्यवाही करण्याचा निर्णय घेण्यात आला आहे :-

अ) इंडियन ऑलंपिक असोसिएशनने मान्यता काढलेल्या संघटनेने फेब्रुवारी २०११ नंतरच्या आयोजित केलेल्या स्पर्धांमध्ये प्राविण्य मिळविलेल्या ज्या खेळाडूंची प्रमाणपत्रे मान्यता नसल्याच्या कारणास्तव दि. ३१ डिसेंबर २०१३ पर्यंत अवैध ठरविण्यात आली आहेत त्या खेळाडूंना संघटनांना मान्यता नसल्याची बाब अवगत नसल्यामुळे त्या खेळाडूंच्या बाबतीत ज्या विभागात त्यांची निवड झालेली होती त्या विभागाने जर सदर प्रमाणपत्र दि. २८ फेब्रुवारी २०१४ पर्यंत पुनर्तपासणीसाठी क्रीडा संचालनालयास पाठविली तर त्याची क्रीडा संचालनालयाने त्यांना इंडियन ऑलंपिक असोसिएशनची मान्यता आहे असे गृहीत धरून पुनर्तपासणी करून द्यावी. मात्र दि. १ मार्च २०१४ पासून खेळाडूंच्या प्रमाणपत्रांची पुनर्तपासणी करण्यात येणार नाही.

ब) तथापि, दि. १ जानेवारी २०१४ नंतर होणा-या नोकर भरती प्रक्रीयेतील ५ टक्के आरक्षणाअंतर्गत निवड झालेल्या खेळाडूंचे संबंधित विभागाकडून खेळाडूंचे प्रमाणपत्र तपासणीसाठी अर्ज क्रीडा संचालनालयास नव्याने प्राप्त होतील त्या अर्जांच्या बाबतीत दि. ३० एप्रिल २००५ च्या शासन निर्णयानुसार जी इंडियन ऑलंपिक असोसिएशनच्या मान्यतेची तरतूद आहे ती लागू राहिल.

क्रीडा व युवक सेवा संचालनालयाने वेळोवेळी अधिकृत स्पर्धा व संघटनांची अदययावत माहिती त्यांच्या वेब साईटवर उपलब्ध करून देण्याची दक्षता घ्यावी.

क) वरील प्रश्न हा संबंधित राष्ट्रीय व राज्य संघटनांनी इंडियन ऑलंपिक असोसिएशनची मान्यतेची बाब उघड न केल्यामुळे उद्भवला आहे. तसेच त्या संघटनाकडून खेळाडूंना मान्यता नसतांना अद्यापही इंडियन ऑलंपिक असोसिएशनची मान्यता असल्याबाबत प्रमाणपत्रावर उल्लेख करून खेळाडूंना प्रमाणपत्र देवून त्यांची व शासनाची फसवणूक करित असल्यामुळे त्या संघटनांची महाराष्ट्र शासनाने दिलेली मान्यता का रद्द करण्यात येवू नये या बाबतची कारणे दाखवा नोटीस बजावण्यात यावी जर सदर प्राप्त खुलासा असमाधानकारक वाटल्यास त्या संबंधित राज्य संघटनेवर योग्य ती कायदेशीर कार्यवाही करण्यात यावी. तसेच यापुढे प्रमाणपत्र इंडियन ऑलंपिक असोसिएशनची मान्यता असल्याचे नमूद करू नये, अशा सूचना संबंधित संघटनांना आयुक्त क्रीडा व युवक सेवा यांनी द्याव्यात.

ड) उपरोक्त बाब भविष्यात परत उद्भवू नये याकरिता खेळाडूंनी ते सहभागी होणार असलेल्या खेळाच्या स्पर्धेची व संघटनेची अधिकृतता असल्याबाबतची खातरजमा करणे ही त्यांची जबाबदारी राहिल.

सदर शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेतांक २०१३१२३०१७१६४९३०२१ असा आहे. हा आदेश डिजिटल स्वाक्षरीने साक्षात्कृत येत आहे. ष

13. From the impugned letter dated 20.10.2014 it seems that the Joint Director of Sports and Youth Services, Maharashtra State, Pune has rejected the applicant's claim under sportsmen category, as the Indian Olympic Association has not recognized Association under which the applicant participated in the sports event in November 2011. However, the sportsmen were entitled to get validity of their certificates from the Director of Sports up to 28.02.2014. In the present case, the respondent no. 3 seems to have forwarded the certificate of

validation to the respondent no. 2 vide letter dated 17.09.2014 i.e. after 1.3.2014. However, for that purpose the applicant cannot be blamed.

14. Learned Advocate for the applicant has invited our attention to the recent judgment in this regard by the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad in W.P. no. 10280 of 2015 (Vinod Khandoji Bhandare Vs. the State of Maharashtra and others). The said judgment has been pronounced on 21st December, 2015. In the said judgment, the very issue as regards validity of the sportsman's certificate was considered. In the said judgment, the G.Rs. dated 30.04.2005 and G.R. dated 30.12.2013 are interpreted. In the said case, also the petitioner applied for the post of Police Constable under Sportsmen category and he was denied appointment on the ground that the sports event in which he participated was derecognized. The Hon'ble High Court has observed in paragraph nos. 10 and 11 as under:-

“10) We have carefully considered the submission advanced by the learned counsel appearing for the respective parties. We have also perused, the documents filed on record by the petitioner as well as by the respondents. The Government Resolution dated 30th April 2005 is

the material document for resolving the controversy arose in the present matter. On perusal of the said Government Resolution and more particularly clause 4-c thereof, which prescribes the qualification for the candidates claiming reservation from the sportsman category falling in Group C & D, it is revealed that, such candidates are supposed to have secured merit as prescribed in the said clause in the competitions tournaments organized by any registered State organization affiliated to Maharashtra Olympic Association or by Maharashtra Olympic Association itself. In the aforesaid Government Resolution which has also been relied upon by the respondents for rejecting the claim of the petitioner, it is nowhere prescribed or stipulated that, the concerned State organization should also be affiliated to or recognized by Indian Olympic Association.

11) *The petitioner has submitted the certificate of merit, certifying that he has secured first position in Kumitee team in the 34th Maharashtra State Karate Championship, 2013 conducted by Maharashtra Karate Association. In the impugned communication dated 16th October 2014, it is mentioned that, the Maharashtra Karate Association was not approved by the Indian Olympic Association in the year 2013, during which the 34th*

Maharashtra State Karate Championship tournaments were held. However, the respondents have not placed on record any document showing any such condition therein, requiring the approval or affiliation of the concerned State Association with the Indian Olympic Association. As mentioned earlier, in the Government Resolution dated 30th April 2005, the only condition prescribed is that the concerned State Association shall be affiliated to Maharashtra Olympic Association.”

15. The Hon'ble High Court in the case cited supra has also observed in paragraph no. 14 and relevant paragraph no. 5 as under:-

“14) Considering the documents filed by the petitioner and in absence of any contrary evidence it has to be held that at the relevant time i.e. in the year 2013 and more particularly, during the period in which the 34th Maharashtra State Karate Championship, 2013 competitions were held, the Maharashtra Karate Association was affiliated to Maharashtra Olympic Association. Secondly, as we have discussed herein before, the Government Resolution dated 30th April, 2005 does not prescribe any such condition that such a State organization should be approved or affiliated to Indian Olympic Association.

15) *In the above circumstances, the act of invalidating the sports certificate submitted by the petitioner appears apparently unsustainable. Having regard to the documents filed on record, we are satisfied that the petitioner fulfills the criterion as prescribed under the Government Resolution dated 30th April, 2005 and thus is entitled to be selected from the category of sports person, if he otherwise fulfills the other requirements. We are, therefore, inclined to allow the petition.”*

16. In view of the aforesaid observation we are satisfied that the present case is also covered by the judgment delivered by the Hon’ble High Court as stated supra and therefore, we pass following order:-

ORDER

1. The Original Application is allowed.
2. The communication dated 20.10.2014 issued by the respondent no. 2 the Joint Director of Sports and Youth Services, Maharashtra State, Pune addressed to the respondent no. 3 i.e. Additional Commissioner of Police (Administration), Pune City, Pune is quashed and set aside. Consequently, the letter dated 27.02.2015 passed by the Head of the Police

Recruitment and Additional Commissioner of Police (Administration), Pune City is also quashed and set aside.

3. The respondent no. 3 is directed to take steps to consider the applicant for appointment to the post of Police Constable for which he has been selected from the category of Sportsmen, if he otherwise fulfills all other conditions.
4. Rule is made absolute in above terms with no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)