

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 713 OF 2013

DISTRICT : THANE

Shri Ravindra Prabhakar Marekar,)
Occ : Nil [Ex. Police Constable],)
Buckle no. 7182, Last Posting- Police)
Head Constable, Police Commissionerate,)
Thane.)
Add for service of notice :)
Shri A.V Bandiwadekar, advocate,)
Office at 9, "Ram Kripa",)
Lt Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)...Applicant

Versus

1. The Additional Commissioner of)
Police, [Administration],)
office at Police Commissionerate)
Thane.)



2. The State of Maharashtra,)
Through Principal Secretary,)
Home Department, having office at)
Mantralaya, Mumbai 400 032.)...**Respondents**

Shri G.A Bandiwadekar, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 04.08.2015

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri G.A Bandiwadekar, learned advocate for the Applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents

2. This Original Application has been filed by the Applicant challenging the order dated 2.12.2011 passed by the Respondent no. 1 dismissing him from service and the order in appeal dated 23.4.2013 passed by the Respondent no. 2 confirming the order of the Respondent no. 1.




3. Learned Counsel for the Applicant argued that a Departmental Enquiry (D.E) was held against the Applicant by the Respondent no. 1 on the charge that the Applicant suppressed the information about a pending criminal case against him while filling the Attestation Form on 3.7.2009. The Applicant was charged with giving false and misleading information and having obtained employment consequently as a Police Constable. Learned Counsel for the Applicant argued that the charge against the Applicant in the criminal case were false and Additional Sessions Judge, Omerga acquitted the Applicant by order dated 10.5.2010. Learned Counsel for the Applicant argued that the Applicant submitted Attestation Form on 3.7.2009 and at that time no charge sheet was filed against him in the court of law. It cannot, therefore, be held that a criminal case was pending against him in the Court. The Applicant was, therefore, not wrong in giving 'nil' information in this regard. Learned Counsel for the Applicant argued that the order of dismissal in passed by the Additional Commissioner of Police, Thane, while the appointing authority of the Applicant was Commissioner of Police, Thane. The order dated 2.12.2011 is bad in law on this count also.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the order appointing the Applicant as Police Constable was issued by the Deputy Commissioner of Police, Thane on 2.7.2009, while the

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impugned order dismissing him from service is passed by the Additional Commissioner of Police, Thane on 2.12.2011. The Additional Commissioner of Police is senior in rank to the Deputy Commissioner of Police. Learned Presenting Officer argued that the argument of the Applicant that order of his dismissal is passed by an officer junior in rank to the officer, who appointed him is not supported by facts.

5. Learned Presenting Officer argued that the Applicant has filled Attestation Form on 3.7.2009 and against the columns 11(a), 11(b) and 11(c) the Applicant has given reply as 'No'. Column 11(a) is regarding whether the Applicant was arrested, prosecuted kept under detention or bound down, fined, convicted by a court of law for any offence. Column 11(b) asked for information about any case pending against the Applicant in any court of law or University etc. at the time of filling up the Attestation Form and column 11(c) was regarding whether the Applicant is facing criminal prosecution in any Court. Learned Presenting Officer argued that a criminal case C.R No 37/2008 was registered against the Applicant at Murum Police Station, Osmanabad on 20.4.2008 and he was arrested on 21.4.2008. Charge sheet was filed on 31.7.2008. However, the Applicant replied 'No' to the columns No 11(a), 11(b) and 11(c) and furnished false information. In the beginning of Attestation Form warning is given to the




candidate to furnish True information. It is clearly mentioned that furnishing of false information or suppression of any factual information in the Attestation Form would be disqualification and when this information comes to the notice, services will be liable to be terminated. Learned Presenting Officer argued that the claim of the Applicant that at the time of filling Attestation Form on 3.7.2009, charge sheet was not filed against him is incorrect as the charge sheet was filed against him on 31.7.2008. Learned Presenting Officer stated that the fact that the Applicant was acquitted subsequently will have no impact in the outcome of the Departmental Enquiry, as the charge against him was furnishing false information and suppression of information which was proved against him in the Departmental Enquiry. Learned Presenting Officer argued that the Applicant has not alleged any procedural irregularity in conduct of the D.E against him. He was given full opportunity to defend himself. The charge against him was proved and show cause notice was issued to him along with report of the Enquiry Officer. The Applicant's reply to the show cause notice was duly considered and a reasoned order was passed by the Respondent no. 1 dismissing him from service. The Respondent no. 2 also gave personal hearing to the Applicant and passed a detailed order dismissing the appeal. Learned Presenting Officer argued that the

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present Original Application has no merit and may be dismissed.

6. We find that the Applicant is relying on the judgment of this Tribunal dated 26.2.2015 in O.A no 223/2012. The Applicant has claimed that his appointing authority is Commissioner of Police, but he has been dismissed by order of Additional Commissioner of Police. This issue was examined by this Tribunal in O.A no 223/2012. The Applicant in that Original Application was a Police Constable in the office of Police Commissioner, Pune. He was also appointed by Deputy Commissioner of Police (HQ) and the order of dismissal was passed by the Deputy Commissioner of Police (Traffic). This Tribunal held that the order of appointment by Deputy Commissioner of Police (HQ) was issued on behalf of the Commissioner of Police, who is the appointing authority for a Police Constable. Order of dismissal cannot be issued by an authority subordinate to an authority who had appointed a Government servant. Deputy Commissioner of Police (Traffic) was held not to be competent to pass order of dismissal of the Applicant and order of dismissal was held void ab-initio

7. In the present case, facts are almost identical. Only difference is that the order of dismissal here is passed by the Additional Commissioner of Police. However, Additional Commissioner of Police is also a



subordinate officer of Commissioner of Police. The order dismissing the Applicant from service has to be held bad, ab initio, for having been passed by an authority who was legally not competent to pass the order. In the result the order dated 2.12.2011 has to be quashed and set aside. Consequent thereupon the order in appeal also is quashed and set aside. It is, however, made clear that there will be no embargo in adopting a course of action consistent with law and rules by the Respondents. At present, the Applicant is out of job. We direct that the same state of affairs shall continued for a period of ten weeks from today and after expiry thereof, in the absence of any order which would be legally competent the Applicant shall be reinstated with continuity of service and all the benefits except back wages. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 04.08.2015

Dictation taken by : A.K. Nair.