

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

TRANSFER APPLICATION NO. 1 OF 2017
(WRIT PETITION NO. 3939 OF 2016)

District : Jalgaon

Yogesh Dnyandeo Gonge,
Age. 28 years, Occu. : Student,
R/o Sule, Taluka Mukatainagar,
District Jalgaon.

-- Applicant

V E R S U S

1. The State of Maharashtra,
Through Home Department,
Mantralaya, Mumbai - 32.
2. District Collector, Jalgaon
District Jalgaon.
3. Sub Divisional Magistrate,
Bhusaval Division, Bhusaval.
4. Tahsildar, Muktainagar,
Taluka Muktainagar,
District Jalgaon.
5. Umesh Mahadeo Bathe,
Age. 34 years, Occu. Agri.,
R/o Sule, Taluka Muktainagar,
District Jalgaon.

(Copy to be served on Govt. Pleader for
Respondent No. 1 to 4). --

RESPONDENTS

APPEARANCE : Shri P.P. Kothari, learned Advocate holding
for Shri S.S. Bora, learned Advocate for the
applicant.

: Shri S.K. Shirse, learned Presenting Officer
for the respondent nos. 1 to 4.

: Shri Vijay Patil, learned Advocate for
respondent no. 5.

CORAM : **Hon'ble Shri B.P. Patil, Member (J)**
DATE : **28th April, 2017**

ORDER

1. The applicant has challenged the order dated 3.2.2016 passed by the res. no. 3 – the Sub Divisional Magistrate, Bhusaval Division – rejecting his complaint dated 29.1.2016 by filing this T.A. and also sought direction to the res. no. 2 – The Collector, Jalgaon - to decide the appeal filed by him on 23.3.2016 against the said order dated 3.2.2016 passed by the res. no. 3 and prayed to disqualify the res. no. 5 from the interview process.

2. On 2.11.2015, the res. no. 3 published an advertisement and invited applications of interested & eligible candidates for appointment on the post of Police Patil of village Sule, Tq. Muktainagar, Dist. Jalgaon. The terms and conditions as well as eligibility criteria of the candidates for the appointment on the post of Police Patil have also been mentioned in the said advertisement. It was one of the conditions mentioned in the said advertisement that the candidate applying for the post of Police

Patil shall have to sworn an affidavit on stamp paper of Rs. 100/- stating that he is not affiliated and related to any political party.

3. The applicant and the res. no. 5 applied for the said post of Police Patil of village Sule, Tq. Muktainagar, Dist. Jalgaon. The written examination was conducted and the list of successful candidates in the written examination has been declared. The documents of the successful candidates were also called by the Tahsildar, Muktainagar for verification and the res. no. 5 was one of them. It is the contention of the applicant that the res. no. 5 was affiliated with a political party and he is a active member of B.J.P. The res. no. 5 has submitted his false declaration at the time of submitting online application for the post of Police Patil stating that he is not affiliated with any political party. Therefore, the res. no. 5 was not eligible for the post of Police Patil. The applicant filed complaint and raised objection regarding candidature of res. no. 5 before the res. no. 3 – the Sub Divisional Magistrate, Bhusaval on 29.1.2016. On 3.2.2016, the res. no. 3 communicated the applicant that his complaint application has been rejected and the res. no. 3 called the candidates, who have successfully completed the written examination, for oral interview. The applicant challenged the order dated 3.2.2016 issued by the res. no. 3 regarding rejection

of his complaint before the res. no. 2 – the Collector, Jalgaon - by filing an appeal. But it was not decided and, therefore, the applicant has approached the Hon'ble Bombay High Court, Bench at Aurangabad by filing writ petition No. 3939/2016. Hon'ble High Court has passed order on 22.3.2017 in the said writ petition and transferred the said writ petition to this Bench of the Tribunal with a direction to dispose of the said writ petition within a period of 4 weeks from the date of appearance of the parties.

4. On transfer of the writ petition from Hon'ble High Court this Tribunal has renumbered the said writ petition as Transfer Application no. 1/2017. Thereafter parties appeared before the Tribunal.

5. The respondents filed affidavit in reply and contended that the res. no. 5 was not affiliated to any political party and he was not a active member of any political party. It is further contended by the res. no. 5 that the res. no. 5 has mentioned mobile no. 7387859886 in the application form filed by him so as to facilitate the recruiting authorities to communicate him about the stages in the recruitment process and the said Mobile number was given by him only for information purpose.

6. It is further contended by the res. no. 5 that the SIM card of the said mobile no. 7387859886 was not in the name of res. no. 5 and that he has no concern with any political party, though it is registered with the website of the B.J.P. It is their further contention that the res. no. 3 rightly rejected the complaint application of the applicant and there was no illegality in the order. It is further contention of the respondents that the appeal preferred by the applicant before res. no. 2 - the Collector, Jalgaon - has been decided by the said authority. It was informed to the applicant by the res. no. 2 vide his letter dated 21.4.2016 that the Collector has no jurisdiction to try the said appeal. It is their further contention that in view of the order dated 5.4.2016 passed by the Hon'ble High Court in the writ petition, no oral interview has been taken by the res. no. 3 for appointment on the post of Police Patil of village Sule. Therefore, respondents prayed to reject the T.A.

7. It is the contention of res. no. 5 that during the pendency of this Transfer Application a crime bearing no. 161/2016 has been registered against the present applicant and others on 8.10.2016 for the offences punishable U/Ss 143, 147, 148, 427, 323, 504 and 506 of the Indian Penal Code. The present applicant is having criminal antecedents and, therefore,

he is not eligible for appointment on the post of Police Patil. On these grounds the res. no. 5 prayed to dismiss the Transfer Application.

8. I have heard Shri P.P. Kothari, learned Advocate holding for Shri S.S. Bora, learned Advocate for the applicant, Shri S.K. Shirse, learned Presenting Officer for the respondent nos. 1 to 4 and Shri Vijay Patil, learned Advocate for respondent no. 5. I have also gone through various documents placed on record.

9. The learned Advocate for the applicant has submitted that the res. no. 3 published an advertisement on 2.11.2015 (paper book pages 10 onwards) and invited applications of interested & eligible candidates for the appointment on the post of Police Patil of village Sule, Tq. Muktainagar, Dist. Jalgaon. The terms and conditions as well as eligibility criteria of the candidates for appointment on the post of Police Patil had also been mentioned in the said advertisement. It was one of the conditions that the candidate applying for the post of Police Patil should sworn an affidavit on stamp paper of Rs. 100/- contending that he is not affiliated to any political party. The applicant and the res. no. 5 applied for the said post of Police Patil of village Sule, Tq. Muktainagar, Dist. Jalgaon. Thereafter the written examination was conducted and the list of successful candidates in the written

examination had been declared. He has submitted that mobile no. 7387859886 mentioned by the res. no. 5 in his application is registered with the website of the BJP (Exh. G). He has further argued that the res. no. 5 was affiliated to a political party and he is a active member of B.J.P. He has submitted that though the res. no. 5 was a active Member of BJP, he has filed false affidavit (paper book page 24) stating that he is not affiliated to any political party and he is not a active Member of any political party. He has submitted that the very fact itself is sufficient to declare the res. no. 5 as ineligible candidate for the post of Police Patil and, therefore, the res. no. 3 would not have called the res. no. 5 for oral interview.

10. The learned Advocate for the applicant has further submitted that the applicant has raised objection in that regard by filing complaint application dated 29.1.2016 before the res. no. 3 the Sub Divisional Magistrate, Bhusaval Division (paper book page 19), but the res. no. 3 has not considered the said objection of the applicant and rejected complaint by passing order dated 3.2.2016 (paper book page 29). The applicant has submitted that the res. no. 3 has not verified the fact as to whether the mobile no. 7387859886 mentioned on the website of B.J.P. is belonging to res. no. 5. He has submitted that the res.

no. 5 has mentioned mobile no. 7387859886 in online application submitted by him for the post of Police Patil (paper book page 21). He has argued that mentioning of mobile no. 7387859886, which is registered in the website of the BJP, by the res. no. 5 as his contact number in the online application submitted by him, supports the contention of the applicant that the res. no. 5 is affiliated with political party and he is a active Member of B.J.P. Therefore, considering the said aspect, the res. no. 3 ought to have allowed the objection raised by the applicant and ought to have declared the res. no. 5 as ineligible candidate for the post of Police Patil. However, the res. no. 3 illegally rejected the complaint application of the applicant by passing order on 3.2.2016. Thereafter the applicant has filed appeal against the order of res. no. 3 dated 3.2.2016 before the res. no. 2 the Collector, Jalgaon, but it is not decided. Therefore, the applicant has approached the Hon'ble High Court by filing writ petition, which in due course came to be transferred to this Tribunal.

11. The learned Advocate for the applicant has submitted that there are sufficient documents before the respondents to disqualify the candidature of res. no. 5 and, therefore, he prayed to allow the present T.A. & to set aside the

impugned order dated 3.2.2016 passed by the res. no. 3 – the Sub Divisional Officer, Bhusaval Division.

12. The learned P.O. and the learned Advocate for res. no. 5 have submitted that the res. no. 5 was not affiliated to any political party and he was not a active member of any political party. It is further argued on their behalf that the res. no. 5 has given mobile no. 7387859886 in the online application form filed by him so as to enable the recruiting authorities to inform him about the stages in the recruitment process and the Mobile number was given by him only for information purpose. The res. no. 5 is not holding his own mobile and, therefore, he has mentioned mobile no. 7387859886, which belongs to his relative in the application form. They have submitted that mere mentioning of mobile number 7387859886, which has been registered in the website of BJP, by the res. no. 5 in his application is not sufficient to arrive at conclusion that the res. no. 5 is active Member of BJP & he is affiliated to political party. They have submitted that from the document at page book page 33 of the T.A. it is not clear that the res. no. 5 is a active Member of BJP. The respondent no. 3 has rightly considered the documents available on record and rightly rejected the complaint

application of the applicant vide his order dated 3.2.2016. Therefore, they prayed to reject the T.A.

13. The learned Advocate for res. no. 5 and learned P.O. submitted that since the applicant approached Hon'ble High Court by filing the present writ petition, the entire recruitment process has been kept in abeyance in view of directions of Hon'ble High Court therein. The oral interview of the eligible candidates has not been conducted and, therefore, he prayed to reject the present T.A.

14. On perusal of document (page 22) it reveals that while submitting online application the res. no. 5 has mentioned mobile no. 7387859886 as his contact number and for enabling the recruiting authorities to inform him about the recruitment process. It further appears from paper book page 33 that the mobile number 7387859886 mentioned by the res. no. 5 in the online application is also reflected on the website of the BJP, but there is nothing on record to show that the said document on paper book page 33 is a authentic document. It does not disclose that the res. no. 5 is the owner of the said mobile no. 7387859886. It is incumbent on the part of the applicant to establish that the said mobile no. 7387859886 belongs to res. no. 5 and the res. no. 5 is a active Member of BJP when he has

submitted the complaint application before the res. no. 3. But no substantial document has been produced on record by the applicant in that regard. In the absence of any authentic document in that regard, it cannot be said that the res. no. 5 was active Member of any political party at the time of submission of online application for the post of Police Patil. Therefore, it cannot be said that the res. no. 5 has sworn false affidavit (paper book page 24) in that regard.

15. The res. no. 3 has rightly rejected the complaint application of the applicant in the absence of sufficient evidence on record. The rule quoted by the applicant is regarding cancellation of appointment of a person appointed on the post of Police Patil. Therefore, it is not applicable in the present case. There is no merit in the submissions advanced by the learned Advocate for the applicant. Therefore, the same are not acceptable. There is no merit in the application. Consequently, the transfer application deserves to be dismissed. Hence, I pass the following order :-

ORDER

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

MEMBER (J)