

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.610 OF 2017

(Subject : Appointment)

Shri N.J. Bharmale

.. Applicant

Versus

The State of Maharashtra & Ors.

..Respondents

Shri L.S. Deshmukh, the learned Advocate for the Applicant.

Ms. S.P. Manchekar, the learned C.P.O. for the Respondents No.1, 2 and 3.

Shri D.B. Khaire, the learned Special Counsel for the Respondents No.1A, 4 and 5.

CORAM : Justice Shri A.H. Joshi, Chairman

DATE : 15.12.2017.

ORDER

1. Heard Shri L.S. Deshmukh, the learned Advocate for the Applicant, Ms. S.P. Manchekar, the learned Chief Presenting Officer for the Respondents No.1, 2 & 3 and Shri D.B. Khaire, the learned Special Counsel for the Respondents No.1A, 4 and 5.
2. Notice for final disposal was issued in this Original Application by order dated 10.07.2017.
3. Facts of the case in nutshell are as follows :-
 - (a) Applicant had participated in Fourth National Level Rural Tournament at Siliguri (West Bengal) conducted by Sports Authority of India.
 - (b) Applicant has passed H.S.C. Examination conducted by Maharashtra State Board of Higher Secondary Education and is pursuing for Bachelor of Arts Degree course.
 - (c) Government of Maharashtra has provided 5% horizontal reservations in various groups and cadres of sportsmen who have achieved success at State or National or International levels.
 - (d) On 30.07.2016 Applicant furnished for scrutiny his Sports Certificate pertaining to participation in 2011 and 2012 National Tournament.



- (e) On 23.02.2017 Respondent No.2 advertised recruitment for Police Constables.
- (f) Last date for filing application for appointment furtherance to the advertisement issued by the Respondent No.2 was 17.03.2017.
- (g) Applicant received Sports Verification Certificate from the Respondent No.5 on 06.06.2017.
- (h) On 13.06.2017, Applicant's candidature is rejected by the Respondent No.2, on the ground that certificate of validity of applicant's Sport Certificate was not furnished along with application.

4. Applicant had challenged the order of rejection by the Respondent No.2 by filing present Original Application.

5. Initially case was heard and notice was issued. Affidavit-in-reply is filed by the Respondent No.1 as well as the Respondents No.4 and 5.

6. Though Applicant's prayer pertains to quashing rejection, he is in fact claiming exception to the policy decision of the Government wherein by virtue of this Government Resolution No.सकीथो-२००२/प्र.क्र.६८/क्रियुसे-२ dated 01.07.2016, it is laid down in paragraph 4 (v) as follows :-

"४ (i)

- (v) खेळाडू उमेदवारांनी अर्ज करण्यापूर्वीच सुधारीत तरतूदीनुसार विभागीय उपसंचालक यांचेकडून खेळाडूच्या प्रमाणपत्राची पडताळणी करून घेणे आवश्यक आहे. त्यामुळे खेळाडू उमेदवाराने अर्जासोबतच विभागीय उपसंचालक यांनी क्रीडा प्रमाणपत्र योग्य असल्याबाबत व खेळाडू कोणत्या संवर्गासाठी पात्र ठरतो याबाबत प्रमाणित केलेले प्रमाणपत्र जोडणे आवश्यक राहिल."

(Quoted from page 22, paragraph 4(v) of G.R. dated 01.07.2016)

7. Later on when the case was heard on 08.09.2017 this Tribunal had passed order wherein a query was posed in paragraph 5, which reads as follows :-

"5. Applicant's submission is, prima facie, rather ex-facie eloquent and exhibits either non-application of mind or arbitrariness while framing said Rule 4(v). Therefore, the Respondent No.1 and Respondent No.1-A are called to file their own affidavit-in-reply i.e. not of any subordinate officer, to state as to whether condition contained in Rule 4(v) of Government Resolution dated 01.07.2016 issued by Respondent No.1-A stands to the reason, on the ground that it tends to deprive a candidate who is duly selected for an appointment on account of act of omission or lapse which is accountable to the Officers of Government and in particular the Respondent Nos.4 and 5, and not is attributable to the candidate."

(Quoted paragraph 5 of order dated 08.09.2017.)

8. Secretary of the Education and Sports Department was added as Respondent No.1(A) and has filed affidavit-in-reply. Affidavit-in-reply is filed by Respondents No.2 and 3 and they wish to toe in as per the stance of the Respondent No.1A.

9. Today i.e. on 15.12.2017 when the case was taken for Final disposal, Shri D.B. Khaire, the learned Special Counsel of Respondent No.1A states as follows :-

This being the case liable to be heard by the Division Bench, the Respondent No.1A is not agreeable for the case being taken up by the Hon'ble Chairman sitting singly, however, the case may be heard for admission, hearing and hearing on Interim Relief.

10. In view of the objection by the learned Special Counsel for Respondents No.1A, 4 and 5, case could not proceed for final disposal.

11. Learned Advocate for the Applicant has urged for hearing on interim relief.

12. Learned Special Counsel Shri D.B. Khaire for the Respondents No.1A, 4 and 5 as well as learned Chief Presenting Officer Ms. S.P. Manchekar for Respondents No.1, 2 and 3 have conceded to have the O.A. heard on interim relief.

13. Heard on Interim Relief.

14. Applicant is claiming to be the candidate in parallel reservation carved for Sports Category.

15. Admitted facts need to be reiterated. Those are as below :-

- (a) Applicant has submitted request for verification of certificate of participation in Sports on 30.07.2016.
- (b) The advertisement for recruitment in the police force was issued by the Government on 23.02.2017.
- (c) The date fixed for commencement of furnishing the applications is 24.02.2017 and last date is 17.03.2017.



16. Applicant's candidature is rejected through the impugned communication dated

13.06.2017. Reasons assigned towards rejection reads as follows :

“५. ऑन लाईन अर्जांमध्ये खेळाडू, समांतर आरक्षणासाठी दावा केलेला आहे. परंतु कागदपत्र पडताळणीच्यावेळी सादर केलेल खेळाडू पडताळणी प्रमाणपत्र हे ऑन लाईन अर्ज भरण्याची अंतिम मुदत दिनांक २०/३/२०१७ रोजीचे किंवा त्यापूर्वीचे सादर केले नाही. सदरहु प्रमाणपत्र दिनांक २०/०५/२०१७ रोजी निर्गमित केले असल्यामुळे.”

(Quoted from page 14, paragraph 5 of O.A. paper book)

17. In the background that this Tribunal had directed the Secretary, Respondent No.4 to answer the query posed in paragraph 5 of the order dated 08.09.2017, the Respondent No.1A has filed the affidavit-in-reply, however, the specific answer to the query though specifically raised, is not candidly answered.

18. Learned Special Counsel has put a finger on averments contained in paragraph 4 of affidavit-in-reply dated 03.11.2017, which reads as follows :-

“4. I further say and submit that, during the course of time, it has been observed that, ineligible candidates who were unaware about the detailed provisions of Government Resolutions regarding reservation to the sportsperson submit their applications for the recruitment under sports quota and successfully score in the written test. When the Director, Sports and Youth Services, Maharashtra State, Pune submits report of ineligibility of such candidates, results into disqualification of the said candidates and the post remains vacant. This give rise to various complications such as eligible candidates from sports category were deprived of their rightful entry in the Government service and those candidates who used to get entry in the Government service on the basis of ineligible sports certificates were required to vacate the said post after a considerable span. Therefore, the posts reserved for sports category used to remain vacant due to non availability of sportspersons and multiplicity of litigations.”

(Quoted from page 230 of O.A. paper book)

19. During the oral submissions, Shri D.B. Khaire, the learned Special Counsel for the Respondents No.1A, 4 and 5 states and submits that whatever is done through Government Resolution dated 01.07.2016 is the policy of the State settled after due consideration of various facts and needs of situation, and it need not be modified, nor it needs to be interfered.


20. Learned Special Counsel has placed reliance on the judgment of Hon'ble Supreme Court in the case of Rakesh Kumar Sharma Vs. Government of NCT of Delhi & Ors., Civil Appeal No.6116 of 2013, Civil Appeal No.6117 of 2013, Civil Appeal Nos.6119-6120 of 2013, decided on 29.07.2013.

21. The said judgment in case of Rakesh Kumar Sharma Vs. Government of NCT of Delhi & Ors.(supra) as regards candidates who were appointed without being eligible. Present case the candidate withstands eligibility, however, subject to scrutiny. The power to scrutinize lies with the Government, which the Government has not punctually exercised. Hence, the reliance of learned Special Counsel on the judgment is totally misplaced. In case of Rakesh Kumar Sharma Vs. Government of NCT of Delhi & Ors.(supra) judgment which is rendered in totally different premises and does not govern the issue arising in present case, as a precedent.

22. The specific query as to how the candidate can be rendered ineligible when the fault towards failure to have certificate is not attributable to him, is not replied by any of the Respondents.

23. Utmost prudence on the part of the candidate could have to approach this Tribunal or Hon'ble High Court and seek direction against the Government i.e. Sport Authority to scrutinize the certificate.

24. At the same time utmost prudence could have been shown by the Government and the Government could have made arrangement of ensuring that the scrutiny of certificates of the candidates who have applied well in time, could have been done. It was also possible for the State to direct that the recruiting authority to leave a little more time space for such adjudication.



25. Now, at this stage, the question which arises for consideration is :-


Whether the candidate whose certificate is not scrutinized and fault towards failure to conduct the scrutiny of certificate is not attributable to the candidate, should he be denied chance to be a candidate and deny him right of equal opportunity of employment ?

26. Thus time available from the date of advertisement till the date of application which duration as seen from the record is of hardly 20 days. No efforts are made by the State to give direction to the Sports Authority to scrutinize the certificates on priority and war footing in so far as candidates who have applied for the appointment in the police force through, subject matter advertisement. For this failure of the State, candidate who is eligible and qualified cannot and ought not suffer.

27. Thus the conduct of the Respondents in imposing and applying the condition and having eligibility connected to validity to be possessed by the candidate before the date of application is utmost arbitrary, unfair and is violative of fundamental right guaranteed under Article 14 and 16 of the Constitution of India for which no separate proof or evidence is required.

28. Thus as a result Applicant has made the case for grant of interim relief. Hence, if the Applicant is not granted interim relief at this stage applicant shall miss the opportunity of employment and consequent opportunity of undergoing the training and may also lose the seniority etc.. Therefore, it is necessary in the interest of justice to direct the Respondents take into account Applicant's candidature based on the validation of certificate and if the Applicant stands chance for selection, admit him to the training, subject to fulfillment of all other eligible conditions, if necessary by creating of supernumerary posts subject to outcome of O.A..

29. Order be complied, within 15 days from the date of receipt thereof.
30. Original Application is admitted. It be listed for final hearing after Division Bench become available.
31. Steno copy and Hamdast is allowed to both parties.
32. Learned P.O. is directed to communicate this order to the Respondents.



(A.H. Joshi, J.)
Chairman

prk

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.926 OF 2017

Shri Siddhesh S. Sutar

.. Applicant

Versus

The State of Maharashtra & Ors

..Respondents

Shri R.M. Kolge, the learned Advocate for the Applicant.

Ms. S.P. Manchekar, the learned Chief Presenting Officer for the Respondents No.1 & 2.

Shri D.B. Khaire the learned Special Counsel for the Respondents No.3 to 5.

CORAM : Justice Shri A.H. Joshi, Chairman

DATE : 15.12.2017.


ORDER

1. Heard Shri R.M. Kolge, the learned Advocate for the Applicant, Ms. S.P. Manchekar, the learned Chief Presenting Officer for the Respondents No.1 & 2 and Shri D.B. Khaire the learned Special Counsel for the Respondents No.3 to 5.
2. Heard both sides. Perused the record.
3. Applicant has approached this Tribunal challenging the rejection of his candidature for main examination of Police Sub Inspector.
4. Applicant's case is replica of the reasons of rejection and the same are erroneous and illegal as in O.A.No.610 of 2017.
5. Applicant had applied for verification of his Sport Certificate on 03.12.2016. Thus for the same reasons recorded in interim order dated 15.12.2017 passed in O.A.No.610/2017, Applicant is granted following relief as quoted in paragraph 28 of order dated 15.12.2017 in O.A.No.610/2017 which reads as follows :-

"28. Thus as a result Applicant has made the case for grant of interim relief. Hence, if the Applicant is not granted interim relief at this stage applicant shall miss the opportunity of employment and consequent opportunity of undergoing the training and may also lose the seniority etc.. Therefore, it is necessary in the interest of justice to direct the Respondents take into account Applicant's candidature based on the validation of certificate and if the Applicant stands chance for selection, admit him to the training, subject to fulfillment of all other eligible conditions, if necessary by creating of supernumerary posts subject to outcome of O.A.."

(Quoted paragraph 28 of order dated 15.12.2017 in O.A.No.610/2017)

6. Order be complied, within 15 days from the date of receipt thereof.
7. Original Application is admitted. It be listed for final hearing after Division Bench become available.
8. Steno copy and Hamdast is allowed to both parties.
9. Learned C.P.O. is directed to communicate this order to the Respondents.


Sd/-
(A.H. Joshi, J.)
Chairman

prk

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

Original Application No. _____ of 20 _____ DISTRICT _____ Applicant/s

(Advocate)

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
<p>DATE : <u>15/12/2017</u></p> <p>CORAM : Hon'ble Justice Shri A. H. Joshi (Chairman)</p> <p>APPEARANCE: Shri/Smt. <u>A.S. Deshpande</u> Advocate for the Applicant</p> <p>Shri/Smt. <u>H.K. Rajpurohit</u> C.P.O./P.O. for the Respondent/s</p> <p>Adj./S.O. to <u>21/12/2017.</u> steno copy & Hamdast is allowed to learned P.O. <i>prk</i></p>	<p>Date : 15.12.2017.</p> <p align="center">O.A.No.848 of 2017</p> <p>Dr. Y.U. SatheApplicant.</p> <p>Versus</p> <p>The State of Maharashtra & Ors.Respondents.</p> <p>1. Heard Shri A.S. Deshpande, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Presenting Officer for the Respondents.</p> <p>2. Shri N.K. Rajpurohit, the learned Presenting Officer for the Respondents prays for time.</p> <p>3. Shri N.K. Rajurohit, the learned Presenting Officer is directed to secure and produce the following documents for perusal :-</p> <p>(a) Copy of charge-sheet in FIR No.49/2016 of Police Station, Ramanand Jalgaon.</p> <p>(b) Case diary of investigation of FIR No.94/2017.</p> <p>4. Let Investigation Officer or any other Staff who may be able to explain all facts and read out statements and case dairy shall remain present on the next date.</p> <p>5. Steno copy and Hamdast is allowed to learned P.O.. Learned P.O. is directed to communicate this order to the Respondents and the respective Investigation Officer.</p> <p>6. S.O. to 21.12.2017.</p> <p align="right">Sd/- (A.H. Joshi (J.)) Chairman</p> <p>prk</p>

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

Original Application No. _____ of 20 _____ DISTRICT _____
..... Applicant/s

(Advocate)

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
<p>DATE : <u>15/12/2017</u></p> <p>CORAM : Hon'ble Justice Shri A. H. Joshi (Chairman)</p> <p>APPEARANCE: Shri/Smt. <u>V.U. Sherkhane Appl. person.</u> Advocate for the Applicant Shri/Smt. <u>A.J. Chougule</u> C.F.O./P.O. for the Respondent/s Adj./S.O. to <u>19/11/2018</u></p> <p style="text-align: right;"><i>BYE</i></p>	<p>Date : 15.12.2017.</p> <p style="text-align: center;">O.A.No.981 of 2017</p> <p>V.U. SherkhaneApplicant. Versus The State of Maharashtra & Ors.Respondents.</p> <ol style="list-style-type: none"> 1. Heard Shri V.U. Sherkhane, Applicant in person and Shri A.J. Chougule, the learned Presenting Officer for the Respondents. 2. Shri V.U. Sherkhane, Applicant in person states that he is willing to file application for condonation of delay. 3. In view of the foregoing adjourned to 19.01.2018. 4. Registrar is directed to enquire as to who has failed to raise the objection to delay and make a report within ten days. <p style="text-align: right;">Sd/- (A.H. Joshi) Chairman</p> <p>prk</p>

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

Original Application No. _____ of 20 _____ DISTRICT _____
..... Applicant/s


(Advocate)

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date : 15.12.2017.</p> <p>O.A.No.362 of 2017 in M.A.No.524 of 2017 (Subject : Police Patil)</p> <p>S.D. PawaleApplicant.</p> <p>Versus</p> <p>The State of Maharashtra & Ors.Respondents.</p> <p>1. Heard Shri J.N. Kamble, the learned Advocate for the Applicant and Smt. Archana B.K., the learned Presenting Officer for the Respondents.</p> <p>2. Shri J.N. Kamble, the learned Advocate for the Applicant states that Applicant desires to withdraw present O.A. and M.A. with liberty to file an application for review, and prays for liberty to do so.</p> <p>3. With liberty as sought, O.A. and M.A. are disposed as withdrawn with liberty as sought.</p> <p style="text-align: right;">  Sd/- (A.H. Joshi) Chairman </p> <p>prk</p>