(G.C.P.) J 2959 (A) (50,000—3-2017) [Spl.- MAT-F-2 E.

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	09.05.2023 Tribunal's orders

M.A 332/2023 in O.A 541/2023

Shri R.S Sakpal & Ors ... Applicant
Vs.
The State of Maharashtra & Ors ... Respondents

1. Heard Shri B.A Bandiwadekar, learned advocate for the applicants and Ms Archana B.K, learned P.O for the Respondents.

2. Misc Application to sue jointly is allowed, subject to payment of court fees, if not already paid.

Sd/-

(Mridula Bhatkar, J.)
Chairperson

Akn

(G.C.P.) J 2737 (50,000—4-2019)

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

M.A./R.A./C.A. No. of 20

I N

Original Application No. of 20

FARAD CONTINUATION SHEET No.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

O.A. No.541 of 2023

Ravindra R. Sapkal & 11 Ors. ..Applicants

Vs.

The State of Maharashtra & Ors. ..Respondents

Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicants and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. All the applicants are working as Police Constables in Mumbai and they are transferred to Aurangabad by order dated 3.5.2023. Ld. Advocate for the applicants submit that applicants have requested for inter-district transfer from Mumbai to Aurangabad. They are working for 6 to 12 years at Mumbai from 2010 & 2017. Ld. Advocate for the applicants submits that there is policy decision of the Govt. that Police Constable who have completed 3 years of posting at a place may ask for inter-district transfer. The request of the applicants was forwarded by the Commissioner of Police, Mumbai on 26.12.2022 to Commissioner of Police, Aurangabad and accordingly NOC for absorbing these applicants at Aurangabad was granted by Commissioner of Police, Aurangabad.

3. Ld. PO submits that these applicants are not relieved by Commissioner of Police, Mumbai as there is shortage of Police Constables at Mumbai. Considering the law and order situation the Police Constables cannot be relieved from Mumbai.

4. Ld. Advocate for the applicants relies on the judgment and order dated 19.12.2022 passed by this Tribunal in OA No.774 of 2022 and other group matters (Shri Vinod K. Adsul & Ors. Vs. State of Maharashtra & Ors.). He relies on the observations made in para 16 of the judgment that the DGP in his affidavit has stated that 546 Police Constables are available on the establishment of Commissioner of Police, Mumbai w.e.f. 28.12.2022.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

5. Ld. PO submits that she will enquire with the Commissioner of Police, Aurangabad about availability of 12 vacancies at Aurangabad.

6. The applicants pray that the Tribunal be pleased to set aside the impugned order dated 3.5.2023 passed by Respondent no.2, by which if the applicants fail to join on the establishment of Respondent no.2, on account of inter District Transfer on or before 12.5.2023, the vacancies earmarked for the applicants will be cancelled.

7. Learned P.O. submits that C.P, Mumbai has filed affidavit dated 4.5.2023 in O.A. No.15/2023 wherein it is stated that there is total strength of 22167 sanctioned posts of Police Constables. As per G.R dated 26.10.2017 not more 5% of the sanctioned posts can be relieved. As per the said G.R dated 26.10.2017 approval for inter district transfer of 1400 Police Constable out of Mumbai was given. Still 1057 Police Constables have applied for inter district transfer for going out of Mumbai. Learned P.O. further submits that general transfer for the year 2023 has not yet started.

8. Perused the G.R dated 26.10.2017, which is relied on by both the parties. Clause 2 (iii) of the said G.R is reproduced below:-

> "एका वर्षात त्या घटकातील एकूण मंजूर पदांच्या ५% पेक्षा जास्त कर्मचारी आंतरघटक बदलीवर सोडण्यात येणार नाहीत." (emphasis placed).

9. Commissioner of Police, Mumbai, is directed to remain present before this Tribunal tomorrow.

10. S.O to 10.5.2023.

Sd/-

(Mridula Bhatkar, J.)
Chairperson
9.5.2023

(sgj)

(G.C.P.) J 2737 (50,000—4-2019) [Spl.- MAT-F-2 E.

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

M.A./R.A./C.A. No. of 20

I N

Original Application No. of 20

FARAD CONTINUATION SHEET No.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

M.A. No.334 of 2023 in O.A. No.543 of 2023

Dr. Vandana N. Wahul & 11 Ors. ..Applicants

Vs.

The State of Maharashtra & Ors. ..Respondents

Heard Shri S.S. Dere, learned Advocate for the Applicants and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. The applicants are prosecuting for the same cause of action. For the reasons stated in the MA, leave to sue jointly as prayed for is granted, subject to the Applicants paying requisite court-fees, if not already paid. MA disposed off accordingly.

Sd/-

(Mridula Bhatkar, J.)
Chairperson
9.5.2023

(sgj)

(G.C.P.) J 2959 (A) (50,000—3-2017) [Spl.- MAT-F-2 E.

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
	09.05.2023

O.A 396/2023

Smt P.P. Kulkarni ... Applicant
Vs.
The State of Maharashtra & Ors ... Respondents

1. Heard Shri A.U Pawar, learned advocate for the applicant and Ms Swati Manchekar, learned C.P.O for the Respondents.

2. The applicant prays that the Respondents be directed to consider the case of the applicant as per Government Circular date 25.3.2013 and Corrigendum dated 17.2.2023.

3. Learned counsel for the applicant states that the applicant is from open general category. However, she was not having Non-Creamy Layer Certificate at the time of filling up the Form. She is qualified to appear for the Main Examination and now applicant is having N.C.L Certificate of the current Financial Year and therefore she is to be considered in Open Female Category for Group-A and Group-B post. Learned counsel for the applicant submits that the candidates who were not having valid N.C.L Certificate have also filled up the form with those Certificates. However, the Government though found them ineligible subsequently issued Circular dated 25.3.2013 and then Corrigendum dated 17.2.2023 in respect of valid N.C.L Certificate. Thus, the candidates whose candidature was earlier rejected were allowed to appear for the interview on submitting valid N.C.L Certificate.

4. Learned C.P.O submitted that this has happened in the earlier selection process and not in the selection process in which the applicant wants to appear pursuant to the advertisement dated 11.5.2022. Learned C.P.O further relies on the affidavit in reply dated 3.5.2023 of Megha S. Dhere, Under Secretary, in the office of Secretary, M.P.S.C, Navi Mumbai. Also, she relied on clause 5.5. of the advertisement, wherein it was specifically mentioned that the female candidates who wants to claim recruitment in Non-Creamy Layer, then they should mention accordingly in the application form itself without fail. She also produces photo copy of the Application Form of the applicant Ms Priyanka P. Kulkarni. Learned C.P.O pointed out that in the Caste Category details a question was put as under:-

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

"Category - Unreserved"
"Do you belong to Non-Creamy Layer? – No."

Learned C.P.O, thus submitted that once the applicant declared that she does not fall in N.C.L strata, now she cannot make any claim in open female category which is reserved for female candidate holding N.C.L Certificate.

5. In view of the submissions of both the parties, it appears prima facie that the stand taken by the Respondents cannot be faulted. Hence the prayer of the applicant for interim relief is rejected.

6. S.O to 8.6.2023.

Sd/-

(Mridula Bhatkar, J.)
Chairperson

Akn

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

09.05.2023

O.A 537/2023

Shri Dipak T. Chaudhari ... Applicant
Vs.
The State of Maharashtra & Ors ... Respondents

1. Heard Ms Purva Pradhan i/b Shri D.B Khaire, learned advocate for the Applicant and Ms Archana B.K, learned Presenting Officer for the Respondents.

2. The applicant has appeared for the post of Police Constable, pursuant to the advertisement dated 6.11.2022. The applicant cleared the physical as well as written examination and the provisional select list was published on 13.4.2023. The name of the applicant appeared in the said list. He was called for document verification on 20.4.2023. However, as the applicant was not possessing the Caste Certificate in proper Format, he was informed that he could not be considered for appointment to the post of Police Constable.

3. Learned counsel for the applicant points out to the said Caste Certificate, which was issued by the Sub Divisional Officer, Jalgaon. It is to be noticed that the Sub Divisional Officer, Jalgaon has not put the date on the Certificate while issuing the same.

4. It is brough to the notice of Shri Nitin Gadre, Additional Chief Secretary, General Administration Department (Services) that in many documents issued by the Government, the concerned officers do not put the date below the signature of the Certificates/Orders passed by the competent authorities, which are very important documents in the Court proceedings. It is to be noted that the authenticity of the document depends on the date on which the same is issued. Hence, necessary orders or G.R is to be issued to that effect to remove the ambiguity.

5. Learned counsel for the applicant has submitted that in the years 2006, 2007 and 2008 the Caste Certificate was issued in the same Format, which is divided into two parts, Part-A is regarding Caste Certificate and Part-B is about Non-Creamy Layer. The Certificate of Non-Creamy Layer was renewed and not the Caste Certificate. The Format of the Caste Certificate was subsequently changed, which is sufficient to prove the Caste as there is no change in the caste at any point of time.

6. In view of the facts of the present case, the Respondents are directed to produce the Format of the Caste Certificate which was issued in the years 2006, 2007 and 2008 by the Sub Divisional Officer, Jalgaon and the S.D.O, Jalgaon is directed to send the format of Caste Certificate of the years 2006, 2007 and 2008 issued then by S.D.O, Jalgaon.

7. S.O to 11.5.2023.

Sd/-

(Mridula Bhatkar, J.)
Chairperson

Akn

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.540 OF 2023

DISTRICT : MUMBAI

Rajendra H. Shinde ..Applicant

Versus

The State of Maharashtra & Ors. ..Respondents

Shri K.R. Jagdale – Advocate for the Applicant

Smt. Archana B.K. – Presenting Officer for Respondents No.1 & 2

None for Respondent No.3

CORAM : Smt. Justice Mridula Bhatkar, Chairperson

DATE : 9th May, 2023

ORDER

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. The Ld. Advocate for the applicant submits that applicant who is working as Sub Inspector of State Excise at M-2 Division, Mumbai Suburb, Powai is challenging order dated 4.5.2023 transferring him to Winspri Enterprises, Mumbai Suburban, Chembur on the ground that he has not completed 3 years. The applicant was posted at M-2 Division on 10.8.2020. Hence, it is mid-tenure transfer and the applicant will complete tenure of 3 years in August, 2023. The applicant is going to retire on 31.5.2024 and the Civil Services Board should have taken into account this important point. Ld. Advocate further submits that contingent order cannot be passed as mentioned in order dated 4.5.2023.

The respondents have published list of officers who are due for transfer in 2023 in which name of the applicant is appearing at Sr. No.27. The applicant has submitted representation on 28.3.2023 and he has requested to remain him at M-2 Division as he is going to retire on 31.5.2024. Other 3 candidates whose names were mentioned in list of due candidates for transfer have also made representation and they are not transferred viz. Mr. G.M. Pawar, Mr. M.R. Tambe and Mr. M.K. Nimande. Ld. Advocate submits that respondent no.1-State has not given approval for transfer and no reasons are recorded as per Section 4(4)(2) and 4(5) of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'the Transfer Act'). Section 5(1)(a) of the Transfer Act should have been applied in its true spirit in the case of applicant who is going to retire within one year. There is violation of circular dated 11.2.2015 as applicant has not completed 3 years. Respondent no.3 is transferred in place of the applicant and she is not relieved and the applicant is also still working at M-2 Division. Therefore he challenged the order and seeks protection to continue him on the said post.

3. Ld. PO opposes the OA and submits that applicant is not transferred within one year, he is transferred now and that period is beyond one year. He falls due as he is working at M-2 from 10.8.2020. Ld. PO submits that in the year 2020 general transfers which were supposed to take place in the month of April-May could not take place on account of COVID-19 Pandemic and government with special orders has postponed transfer by one to two months and therefore he was transferred on 10.8.2020 from Mumbai Suburb to M-2 Division and therefore it is not correct to say that applicant was transferred in August, 2020 but it was a general transfer which was supposed to take place in May 2020 and hence applicant was due for transfer in April-May, 2023. Ld. PO further points

out representation dated 28.3.2023 wherein applicant has stated that he is due for transfer which is going to take place in May 2023 and same statement is made in second representation dated 5.4.2023. This being general transfer and not mid-tenure transfer and hence approval of respondent no.1 is not required. Ld. PO submits that Mr. Pawar is going to retire in February 2024 and Mr. Tambe & Mr. Nimande are retiring in December, 2023 and they are undisputably covered under Section 5(1)(a) and hence they were dropped from list of persons due for transfer.

4. Ld. Advocate submits that whatever statement is made in representation cannot be read contrary to the law on the point of tenure. If due to COVID-19 applicant was transferred in August 2020 then to continue him and to extend the period as to due to transfer by two months.

5. Considered submissions of both the sides. The general transfers in the year 2020 were postponed in August on account of COVID-19. It was an exceptional circumstance and therefore transfers in August 2020 made on account of postponement of transfer policy are to be considered as general transfers like in April-May 2020 as per Section 3(1) of the Transfer Act. The submissions made by Ld. PO are correct on this point. Hence, accepted. On query it is informed that the applicant is staying at Parel in Mumbai. At present he is working at Powai which is 15 kms. and he is transferred to Chembur which is 18 kms. away. Considering distance, I am of the view that no case is made out to grant interim relief. Under such circumstances the submissions made by Ld. PO that no special approval is required from respondent no.1 are accepted. Hence, interim relief is rejected and the applicant shall join at the transferred posting immediately.

6. The office objections, if any, are to be removed and court fees to be paid, if not already paid.

7. Issue notice before admission returnable on 5.6.2023. The respondents are directed to file reply.

8. Applicant is authorized and directed to serve on Respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Private service is allowed. Respondents are put to notice that the case may be taken up for final disposal at the stage of admission hearing.

9. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

10. By Hand delivery, speed post, courier notice to be served and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.

11. In case notice is not collected within **seven days** or service report on affidavit is not filed **three days** before returnable date, the OA shall be placed on board before the concerned Bench under the caption **"For Dismissal"** and thereafter on the subsequent date the OA shall stand dismissed.

Sd/-

(Mridula Bhatkar, J.)
Chairperson
9.5.2023

Dictation taken by: S.G. Jawalkar.

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(G.C.P.) J 2959 (A) (50,000—3-2017) [Spl.- MAT-F-2 E.

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

10.05.2023

O.A 536/2023

Shri R.M More & Ors ... Applicants
Vs.
The State of Maharashtra & Ors ... Respondents

1. Heard Ms Bhavana R. Khichi i/b Shri A.S Gaikwad, learned advocate for the Applicants, Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents. None present on behalf of Respondent no. 3, though served.

2. Learned counsel for the applicants submit that out of 18 applicants, 15 applicants were found eligible for applying for the post of Food Safety Officer, as all the 15 applicants while filling the application form mentioned the Degree as B. Sc, Agricultural Science. However, applicants no. 1 & 5 while filling up the form mentioned their Degree as B. Sc, Business Management and applicant no. 18, mentioned the Degree as B. Sc (Horticulture). Therefore, the forms of these three applicants were not accepted for the post of Food Safety Officer (Group-B) and Assistant Commissioner for Food (Group-A).

3. In view of the factual position, M.P.S.C is directed to consider the candidature of these three applicants for the post of Food Safety Officer (Group-B) and Assistant Commissioner for Food (Group-A), and do the needful, subject to the outcome of this Original Application

4. S.O to 12.6.2023.

Sd/-

(Mridula Bhatkar, J.)
Chairperson

Akn

(G.C.P.) J 2959 (A) (50,000—3-2017) [Spl.- MAT-F-2 E.

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

10.05.2023

O.A 544/2023

Shri S.S Gaikwad ... Applicant
Vs.
The State of Maharashtra & Ors ... Respondents

1. Heard Shri Pranav Avhad, learned advocate for the applicant and Ms Archana B.K, learned P.O for the Respondents.

2. Learned counsel for the applicant submits that the applicant, Project Affected Person, applied for the post of Police Constable under the Project Affected Persons category under horizontal reservation in open category, pursuant to the advertisement dated 9.11.2022, which was uploaded on 9.11.2022. Learned counsel submits that in the category of P.A.P horizontal reservation, 19 posts are available in open category. Learned counsel for the applicant relies on the Notification dated 23.11.2022 issued by the Home Department. As per this Notification, the candidate securing minimum 50 marks in physical test will be eligible to appear for the written test. However, the ratio of 1 : 10 for each vacancy will be maintained. So, for 19 posts in PAP category, there should be shortlisting of 190 candidates for the written examination. Learned counsel further submitted that in the select list of qualified candidates dated 23.3.2023 the name of the applicant was appearing at Sr. No. 87 in Male, Open PAP category. Learned counsel submitted that a revised list was published on 28.3.2023. However, in that list the name of the applicant was not appearing. The applicant submitting application through email on 29.3.2023 inquiring about the elimination of his name from the select list.

3. Learned P.O submitted that the earlier list was published without taking into consideration the migration of meritorious candidates from SC/ST category. Therefore, the revised list was published by migrating SC/ST candidates in open category of PAP.

4. At the request of learned counsel for the applicant, matter is adjourned to 11.5.2023.

Sd/-

(Mridula Bhatkar, J.)
Chairperson

Akn

(G.C.P.) J 2959 (A) (50,000—3-2017)

[Spl.- MAT-F-2 E.

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

10.05.2023

O.A 541/2023

Shri R.R Sapkal & Ors ... Applicants
Vs.
The State of Maharashtra & Ors ... Respondents

1. Heard Shri B.A Bandiwadekar, learned advocate for the applicants and Ms Archana B.K, learned P.O for the Respondents.

2. Matter called out at 10.50 am.

3. The Deputy Commissioner of Police, Mumbai was directed to remain present today. Deputy Commissioner of Police was not present. Further no proper instructions were given to the learned P.O.

4. Hence, the Commissioner of Police, Mumbai and Commissioner of Police, Chhatrapati Sambhaji Nagar are hereby directed to keep the 12 posts vacant and not to implement the order dated 3.5.2023, qua the applicants till the next date. i.e. 20/6/2023

5. Ms Tejasvi Satpute, Deputy Commissioner of Police, Head Quarter-2, is present before the Tribunal at 11.00 am.

6. The office objections, if any, are to be removed and court fees to be paid, if not already paid.

7. Applicant is authorized and directed to serve on Respondent intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Private service is allowed. Respondents are put to notice that the case may be taken up for final disposal at the stage of admission hearing.

8. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

9. By Hand delivery, speed post, courier notice to be served and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders

10. In case notice is not collected within **seven** days or service report on affidavit in not filed **three** days before returnable date, the Original/Miscellaneous Application shall be placed on board before the concerned Benches under the caption **'for Dismissal'** and thereafter on the subsequent date the Original/Miscellaneous Applications shall stand dismissed."

11. The Commissioner of Police, Chhatrapati Sambhaji Nagar, is directed to inform as to how many posts are vacant as on today.

12. S.O to 11.5.2023. Hamdast.

Sd/-

(Mridula Bhatkar, J.)
Chairperson

Akn