

**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><u>11.05.2023</u></p> <p><u>O.A 541/2023</u></p> <p>Shri R.R Sapkal &amp; Ors ... Applicants Vs. The State of Maharashtra &amp; Ors ... Respondents</p> <p>1. None present for the Applicants. Heard Ms Archana B.K, learned P.O for the Respondents.</p> <p>2. Learned P.O on instructions from Ms Tejasvi Satpute, Deputy Commissioner of Police, Head Quarter-2, Mumbai, states that the Minutes of yesterday's meeting is ready. However, signatures are to be obtained. Hence time is sought. Time granted.</p> <p>3. S.O to 16.5.2023.</p> <p style="text-align: right;">Sd/- <b>(Mridula Bhatkar, J.) Chairperson</b></p> <p>Alkn</p>

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION NO 345 OF 2023**

**DISTRICT : THANE**

Shri R.D Akrupe

)...**Applicant**

**Versus**

The State of Maharashtra & Ors

)...**Respondents**

Shri S.S Dere, learned advocate for the Applicant.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

**CORAM : Justice Mridula Bhatkar (Chairperson)**

**DATE : 10.05.2023**

**ORDER**


1. The applicant working as Food Safety Officer prays for relaxation in terms of age relaxation to participate in the selection process by nomination to the higher post. However, the age as per the Rules is 38 years and the applicant is today 39 years. Hence, he prays that age relaxation should be available to the person in Government service. Learned counsel for the applicant prays that age relaxation is to be provided on the basis of Bombay Civil Services, Classification and Recruitment Rules 1939 and on the basis of Government Circular dated 1.11.2003 and so also on the basis of statutory directions issued by the Hon'ble High Court dated 7.1.2008 in W.P 6179/2007, Anil Motilal Nimbhore Vs. State of Maharashtra & Ors. He further seeks declaration that not incorporating the upper age limit in the advertisement to in-service

candidates pursuant to the above guidelines and the law is illegal and unconstitutional act of Respondent no. 3. He further prays that Respondent no. 1, be directed to adopt, amend the Recruitment Rules dated 8.6.2022 on the basis of Notification dated 16.1.2003 and also direct the Respondent no. 3 to incorporate the amendment as a qualification under Clause 3 of the Corrigendum dated 17.3.2023. He further prays that the applicant should not be held disqualified on the ground of age bar and he be allowed to participate in the selection process for the post of State Services, Group-A and Group-B pursuant to the advertisement dated 24.2.2023.

2. Learned counsel for the applicant prays for interim relief as the applicant wants to appear for the examination which is going to be conducted on 4.6.2023 and hence the matter is taken before the Vacation Court.

3. Learned counsel for the applicant has basically relied on the Recruitment Rules of 1939 which is a Pre-Independence enactment, wherein under Rule 7, it is stated that provision of age is to be relaxed by 3 years to the persons in Government service. The said Rule 7 is referred in the case of Anil Motilal Nimbhore (supra). In the said case, similar issue of Government servants are praying for age relaxation on the basis of 1939 Recruitment Rules and Circular dated 1.11.2003 for selection by nomination before the Hon'ble High Court. Learned counsel for the applicant therefore stated that as on today also 1939 Recruitment Rules hold the field because they are not superseded.

4. Learned C.P.O has submitted that there is no provision of granting age relaxation blanketly to all the Government servants for all the posts. The 1939 Recruitment Rules are totally silent





about age relaxation in the process of nomination, and therefore, they cannot be made applicable to the present process where the selection is made by nomination. She relied on paragraph 8 in the case of Anil Motilal Nimbhore (supra), wherein Note 3B to Rule 7 of the 1939 Rules is analyzed. Learned C.P.O submitted that Rules of 1939 today cannot be made applicable. She pointed out that on 13.9.2013 the State of Maharashtra has framed fresh Rules for appointment to the post of Assistant Commissioner, (Food)-cum - Designated Officer, (Group-A), wherein in Rule 4(b) for the process of selection by nomination the upper age limit was 33 years. But it was relaxed upto 50 years in case of candidates already in Government service. Thereafter, she pointed out to the Recruitment Rules subsequently amended and framed on 8.6.2022 for the post of Assistant Commissioner, (Food)-cum -Designated Officer, (Group-A) and Food Safety Officer (Group-B). She pointed out to Rule 4 of the said Recruitment Rules, wherein for the selection by nomination for the said post of Assistant Commissioner, (Food)-cum -Designated Officer, (Group-A), the age limit for general category is 38 years, 43 years for reserved category and there is no mention of giving age relaxation to Government servants. Thus, there is no age relaxation given to the Government servants, unless they are specifically provided. Hence, the prayer of the applicant for interim relief be rejected.

5. Considered the submissions of both the learned counsel and the learned C.P.O. Age relaxation is to be given in the Rules. The Government can take a policy decision to grant age relaxation to the persons in Government service or not to provide the same. The Rules of 1939 does not say anything about selection by nomination because at the relevant time the mode of selection by nomination was not introduced. The avenue of appointment by nomination was made available in Government service Post Independence.

Thus, it is necessary to consider what is the policy adopted by the State Government, as on today through its legislation of the Recruitment Rules. It is not necessary to look into the Circular dated 1.11.2003. By the Rules of 1986 the State of Maharashtra with a view to regulate upper age limit for recruitment by nomination in Class-I, Class-II, Class-III and Class-IV posts in Maharashtra Civil Services framed the rules. In the said Rules, there is no mention of providing age relaxation to the Government servants. Moreover, the Rules of 1939, even after considering Rule 7, clearly states that no relaxation is to be given in age and relaxation in age is an exceptional case for which reasons in each case are to be separately recorded. Thus, the submissions of the learned C.P.O that the Government has provided age relaxation to the persons in Government service for some post in some cadre, but such provisions is made in the Recruitment Rules of those respective cadres are correct and accepted. The Recruitment Rules dated 13.9.2013 and the Recruitment Rules dated 8.6.2022, which are framed by the State of Maharashtra for the recruitment to the post of Assistant Commissioner, (Food)-cum-Designated Officer, (Group-A) are very clear. It is rightly pointed out by the learned C.P.O that Rule 4 in both the Rules state about the appointment to the post of Assistant Commissioner, (Food)-cum-Designated Officer, (Group-A) by nomination. In the earlier Recruitment Rules dated 13.9.2013, the age relaxation up to 50 years were provided in the case of the candidates already in Government service and in the later Recruitment Rules of 8.6.2022, in Rule 4, in case of appointment by nomination to the same post, age limit provided is 38 years in case of general candidates and 43 years in case of persons belonging to reserved category. The provision which was made earlier of age relaxation up to age of 50 years to Government servants is absent in the Recruitment Rules dated 8.6.2022. The Recruitment Rules dated 8.6.2022 is framed in exercise of powers

conferred by proviso to Article 309 of the Constitution of India and in supersession of all the existing rules, orders or instructions issued earlier. Thus, there is no doubt that for the purpose of recruitment to the poste of Assistant Commissioner, (Food)-cum - Designated Officer, (Group-A), as on today only the Rules of 2022 are to be looked into. When no age relaxation is provided to the candidates in service which was provided earlier, it is undoubtedly a conscious legislation which is to be accepted.

6. Thus, prima face, no case is made out by the applicant to grant permission to appear for the examination which is going to be held on 4.6.2023.

7. In view of the above, the prayer of the applicant for grant of interim relief is rejected.

8. S.O to 14.6.2023.

Sd/-

**(Mridula Bhatkar, J.)  
Chairperson**

**Place : Mumbai**

**Date : 10.05.2023**

**Dictation taken by : A.K. Nair.**



# 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 style="text-align: center;"><u>12.05.2023</u></p> <p style="text-align: center;"><u>O.A 552/2023</u></p> <p>Shri A.P Shete ... Applicant Vs. The State of Maharashtra &amp; Ors ... Respondents</p> <p>1. Heard Shri U.V Bhosle, learned advocate for the applicant and Ms Archana B.K, learned P.O for the Respondents.</p> <p>2. The applicant who was working as Superintendent is reverted to the post of First Clerk in Public Works Circle, Satara, challenges the orders dated 28.4.2023 and 4.5.2023 issued by Respondent no. 2 and so also he prays that the seniority list dated 12.4.20023 as on 1.1.2023 issued by Respondent. No. 2 be quashed and set aside qua the applicant.</p> <p>3. Learned counsel submits that the applicant has been reverted by order dated 28.4.2023. He was issued show cause notice on 13.4.2023 and reply was given by the applicant on 26.4.2023. Learned counsel for the applicant has submitted that he was selected directly to the post of Senior Clerk in the year 1998 and his name is at Sr. No. 6 of the recommendation list, whereas the name of Ms Rekha Satpute is at Sr. No. 10. Learned counsel has submitted that Ms Satpute is given promotion to the post of Superintendent on 28.4.2023 though she is junior to the applicant in the merit list. Learned counsel further submitted that juniors to the applicant are promoted to the post of Superintendent or they are being given deemed date of promotion, while the applicant is illegally reverted to the post of First Clerk.</p> <p>4. Learned counsel for the applicant seeks permission to implead Ms Rekha Satpute as party Respondent. Allowed. Amendment to be carried out forthwith the copy be served on all the Respondents.</p> <p>5. No case is made out to grant interim relief at this stage.</p> <p>6. The office objections, if any, are to be removed and court fees to be paid, if not already paid.</p> <p>7. Issue notice before admission returnable on 18.5.2023.</p>

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>8. 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.</p> <p>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.</p> <p>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.</p> <p>11. In case notice is not collected within <b>seven</b> days or service report on affidavit in not filed <b>three</b> days before returnable date, the Original/Miscellaneous Application shall be placed on board before the concerned Benches under the caption '<b>for Dismissal</b>' and thereafter on the subsequent date the Original/Miscellaneous Applications shall stand dismissed."</p> <p>12. S.O to 18.52023.</p> <div data-bbox="1145 1624 1516 1713" style="border: 1px solid black; padding: 5px; text-align: center;">Sd/-</div> <p data-bbox="1177 1742 1492 1814" style="text-align: right;"><b>(Mridula Bhatkar, J.) Chairperson</b></p> <p data-bbox="734 1818 774 1841">Akn</p>



**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 537 OF 2023**

**DISTRICT : PALGHAR**

Shri Dipak T. Chaudhari )...**Applicant**

**Versus**

The State of Maharashtra & Ors )...**Respondents**

Ms Purva Pradhan i/b Shri D.B Khaire, learned advocate for the Applicant.

Ms Archana B.K, learned Presenting Officer for the Respondents.

**CORAM** : **Justice Mridula Bhatkar (Chairperson)**

**DATE** : **12.05.2023**

**ORDER**

1. Pursuant to order dated 11.5.2023, Mr Mahesh Sudalkar, Sub Divisional Officer, Jalgaon is present along with the record disclosing the Proforma of Caste Certificate which was issued in the years 2006, 2007 & 2008.

2. Learned counsel for the applicant pointed out that the Caste Certificate dated 12.7.2012 was issued by the competent authority, i.e., Sub Divisional Officer, Jalgaon, and which Proforma is to be used for the purpose of issuing the Caste Certificate is a decision taken by the concerned S.D.O. She further submits that this Certificate was treated at that time as Caste Certificate. She drew attention to page no. 47, which is Non-Creamy Layer Certificate dated 24.4.2013 issued by S.D.O, Jalgaon in favour of the applicant. She points out that this particular Certificate in Part-B is N.C.L Certificate and Part-A is Caste Certificate which was issued earlier on 12.7.2007 in favour of the applicant. She further submitted that on the top of the Certificate dated 24.4.2013 the



description of the documents verified by the authority while issuing the N.C.L Certificate are mentioned and at Sr. No. 2, it is mentioned as follows:-

“Applicant Caste Certificate issued by : S.D.O, Jalgaon. Sr No. 2115 Dt. 12.7.2007.”

Thus, she submitted that the same Caste Certificate was considered authentic at the time of issuance of the N.C.L Certificate on 24.4.2013. She, therefore, submits that the applicant be granted interim relief by allowing him to appear for the medical examination which has started from today.

3. Learned P.O submits that on 1.5.2006, one Circular was issued and Proforma was given for the purpose of Caste Certificate and Non-Creamy Layer Certificate. Subsequently, on 30.6.2006, another Circular was issued thereby prescribing different proforma showing separate Certificate for Caste Certificate and N.C.L Certificate. Learned P.O further submitted that this particular Certificate which is relied on by the applicant is dated 12.7.2007, should have been issued in a proper Proforma which was in force at the relevant time, i.e., a separate Caste Certificate pursuant to the Circular dated 30.6.2006. She further submitted that the Respondents have given the applicant three chances to produce the Caste Certificate in proper Proforma. However, he failed to do so. Therefore, the decision taken by the Respondent no. 1, Superintendent of Police, Palghar, in not considering him eligible for medical examination is correct.

4. Considered the submissions made by the learned counsel for the applicant and learned P.O today and also the submissions made on the earlier dates of hearing. The decisive factor in this matter is whether in the year 2007, the Competent Authority has issued the Caste Certificate which is at page no. 16, in the same Proforma. The Government from time to time by various orders directed the authority to issue the Certificate for different purposes in different Proforma. It is admitted position by the Respondents that before 30.6.2006, the Caste Certificate

stopped of issuing the Caste Certificate in the earlier Proforma and should have been given in a separate Proforma as prescribed by Circular dated 30.6.2006. The submissions of the learned P.O to that effect is accepted as a ideal situation. There is no dispute that Caste Certificate is to be issued in the prescribed Proforma by the Competent Authority. However, if in peculiar case, where the Caste Certificate is issued in the old Proforma, that cannot be attributed as fault of the applicant, who has considered it as authentic as it was issued by the Competent Authority. Moreover, his Caste is shown as Hindu Teli-181, which cannot be changed even after 25 years. His financial condition may vary from Non-Creamy Layer to Creamy Layer depending on his income. Further the N.C.L Certificate dated 24.4.2013 issued by the S.D.O, Jalgaon is verified and found proper at this stage as the competent authority itself while issuing the N.C.L Certificate in the year 2013 has considered the very same Caste Certificate issued at Sr. No. 2115 dated 12.7.2007. The issuance number 2115 of the Caste Certificate which is mentioned in the N.C.L Certificate dated 24.4.2013, which is relied on by the applicant is also found to be the same and it is issued on 12.7.2007. It is the same Caste Certificate which is referred and relied at the time of verification of documents in the year 2013. All these Certificates are issued by the Competent Authority.

5. Under these circumstances, I am of the view that prima facie case is made out by the applicant and the balance of convenience lies in favour of the applicant as the medical examination is going to commence from today.

6. In view of the above, Respondent no. 1 is directed to add the name of the applicant in the final select list and he should be allowed to appear for the medical examination, which will be subject to the outcome of this Original Application.

7. I appreciate the assistance rendered by learned counsel for the applicant Ms Purva Pradhan and learned P.O for the Respondents, Ms Archana B.K



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

9. Issue notice before admission returnable on 12.6.2023.

10. 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.

11. 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.

12. 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.

13. In case notice is not collected within **seven** days or service report on affidavit is 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."

14. S.O to 12.6.2023.

Sd/-

(Mridula Bhatkar, J.)  
Chairperson

**Place : Mumbai**

**Date : 12.05.2023**

**Dictation taken by : A.K. Nair.**