

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 137 OF 2017**

DISTRICT : - NANDED

**Namdeo s/o Sopan Arsale,** )  
 Age- 43 years, Occu. : Service, )  
 as Jail Guard at Nanded District )  
 Prison, Grade-II, )  
 R/o Govt. Jail Quarters, )  
 Mill Gate Road, Nanded, )  
 Dist. Nanded. ) .. **APPLICANT**

VERSUS

1. **The State of Maharashtra,** )  
 Through : the Secretary, )  
 Home Department, Mantralaya, )  
 Mumbai - 32. )
2. **The Additional Director General of )**  
**Police and Inspector General of )**  
**Prisons,** (Maharashtra State), )  
 Old Central Building No. 2, )  
 Pune. )
3. **Chandrakant s/o Rambhau Sangale, )**  
 Age – Major, Occu. Service as )  
 Jailor Grade-II at Central Prison, )  
 Thane, Dist. Thane. )
4. **Amarsingh s/o Devsingh Karghe, )**  
 Age – Major, Occu. – service, )  
 O/o Superintendent, )  
 Mumbai Central Jail, )  
 Arthar Road, Mumbai – 400 011. )
5. **Vijay s/o Ramkrishna Solanke, )**  
 Age – Major, Occu. – Service, )  
 O/o Superintendent, )  
 Nagpur Central Jail, )  
 Wardha Road, Nagpur. ).. **RESPONDENTS.**

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APPEARANCE :- Shri S.D. Joshi, learned Counsel for the  
applicant.  
Shri V.R. Bhumkar, learned Presenting  
Officer for the respondents.  
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**CORAM : Hon'ble Shri Justice P.R. Bora, Vice Chairman  
AND  
Hon'ble Shri Bijay Kumar, Member (A)**  
**DATE : 05.05.2022**  
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**ORAL ORDER**

**(Per : Justice P.R. Bora, Vice Chairman)**

Heard Shri S.D. Joshi, learned counsel appearing for the applicant and Shri V.R. Bhumkar, learned Presenting Officer appearing for the respondent authorities.

2. The applicant has filed the present Original Application seeking quashment of the order dated 13/16.5.2016 passed by respondent no. 2, thereby confirming the earlier order dated 20.11.2014. The applicant was promoted to the post of Jailor Grade-II vide order dated 20.3.2014. Vide order dated 20.11.2014 respondent no. 2 cancelled the order dated 20.3.2014 and reverted the applicant to the post of Jail Guard.

3. The applicant claims to be belonging to Mahadeo Koli caste, which falls in the S.T. category. The applicant entered into the

service of respondent no. 2 as Jail Guard on 7.2.2002. In the year 2013, the process was commenced for filling up 34 posts of Jailor Grade-II out of which 03 posts were reserved for S.T. candidates. The applicant successfully went through the selection process and his name was included in the list of selected candidates more particularly 3<sup>rd</sup> candidate from the S.T. category. The applicant was thereafter sent for training for the promotional post. While under said training, the applicant was served with order dated 20.11.2014.

4. It is the contention of the applicant that his order of promotion has been illegally cancelled. According to the applicant, even while issuing order of promotion in favour of Shri Chandrakant Rambhau Sangale in pursuance of the order passed by the principal Bench of this Tribunal at Mumbai on 24.9.2014 in O.A. No. 354/2014 filed by said Shri Sangale, it was not necessary to cancel the order of promotion passed in favour of the applicant and consequently to revert him to the post of Jail Guard. It is the further contention of the applicant that the candidate namely Shri Amarsingh Devsingh Karghe though belongs to the S.T. category, since he has secured more meritorious position and was at sr. no. 11 in order of merit, he must have been selected as the Open category candidate. It is the further contention of the applicant that if the selection of said Shri Amarsingh Devsingh Karghe is held to be an Open category candidate, a right will accrue in favour of the applicant to claim the appointment on the 3<sup>rd</sup> seat reserved for S.T. candidate.

5. In the affidavit in reply filed on behalf of respondent nos. 1 & 2, the contentions raised in the application are opposed on various grounds. It is the contention of the respondents that it was decided to fill up only 20 posts of Open category against 23 posts shown to be available for the said category for the reason that at the relevant time 03 Jailor Grade-II Officers were reverted / dismissed from the service and as per rule 75 of the Maharashtra Civil Services (Joining Time, Foreign Service And Payments During Suspension, Dismissal And Removal) Rules, 1981 the said 03 posts could not have been filled up till one year. It is further contended that as per the directions given by the principal Bench of this Tribunal at Mumbai in O.A. No. 354/2014 the roster has been pressed into service for effecting promotions and on the basis of the said direction the merit list is treated as seniority list and as per the criteria of promotion, from amongst first 30 candidates the reserved posts are fixed on their respective roster points. It is further contended that on the remaining posts the candidates from Open category were appointed. It is further contended that as directed by the M.A.T. Mumbai in O.A. No. 354/2014, the S.T. candidates initially shown to be selected in the Open category were adjusted against S.T. category and consequently the order of promotion issued in favour of the applicant was required to be cancelled since there were 04 candidates at Sr. Nos. 11, 20, 30 & 59 in ST category having more marks than the applicant. According to the respondents, they have therefore not

committed any illegality in reverting the applicant to his original post of Jail Guard. It is also the contention of the respondents that earlier the promotions were effected as per the roster of direct recruitment, whereas while giving promotions roster was liable to be followed. It is further contended that in the order passed in O.A. No. 354/2014 the Tribunal has held that no reservation was liable to be granted to the O.B.C. candidates in promotion, and as such, the eligible O.B.C. candidates were considered from the Open category and as directed by the Tribunal the candidates belonging to S.T. category at Sr. nos. 11 & 20 were directed to be adjusted against the seats reserved for S.T. category.

6. Shri S.D. Joshi, learned counsel appearing for the applicant assailed the order dated 20.11.2014 and 13/16.5.2016 passed by respondent no. 2 alleging the same to be erroneous and contrary to the provisions of law. The learned counsel submitted that aggrieved by the order passed in O.A. No. 354/2014 the applicant had preferred Writ Petition No. 11143/2014 before Aurangabad Bench of Hon'ble Bombay High Court. The learned counsel submitted that the Hon'ble Division Bench of the High Court has set aside the order passed in O.A. no. 354/2014 on the ground of non-adherence of principles of natural justice by respondent no. 2. The learned counsel submitted that the law is well settled that the party should be put on notice of the case before any adverse order is passed against him and it is one of the most important principles of natural

justice. The learned counsel further submitted that the order passed in O.A. no. 354/2014 was challenged on some other grounds also. The Hon'ble High Court, however, set aside the said order on the ground of violation of principles of natural justice without touching to the other objections raised in the said petition.

7. The learned counsel further submitted that in the representation made by the applicant subsequent to the order passed by the Hon'ble High Court in Writ Petition No. 11143/2014 it was categorically submitted by the applicant that the candidate namely Shri Amarsingh Devsingh Karghe (130.85 marks) and Shri Vijay Ramkrishna Solanke (124.15 marks) must have been selected as the Open category candidates and not as the S.T. candidates. The learned counsel relying on the judgment of the Hon'ble Supreme Court in the case of **Saurav Yadav & Ors. Vs. State of Uttar Pradesh & Ors., (2021) 4 SCC 542**, submitted that the Open seats are available for all the candidates irrespective of their castes and the said seats are to be filled only on the basis of merit. The learned counsel submitted that the candidates belonging to the Backward Class can compete for the posts meant for Open category candidates on the basis of their merit. The learned counsel submitted that total 20 candidates were to be selected from Open category as per the contentions of the respondents. In the circumstances, according to him, Shri Amarsingh Devsingh Karghe, who stands at sr. no. 11 in the merit list and Shri Vijay Ramkrishna Solanke, who stands at sr.

no. 20 in the merit list must have been selected against the Open category candidates and their selection could not have been shown against the S.T. category candidates. The learned counsel submitted that had it been done, there was no reason for cancelling the order of promotion issued in favour of the present applicant.

8. The learned counsel further submitted that during pendency of the present Original Application the candidate by name Shri Santosh Balaram Bhuyal, who was promoted as the S.T. category candidate has obtained voluntary retirement and thus the said post has become vacant. The learned counsel submitted that injustice caused to the applicant on the erroneous grounds can be removed by restoring his promotion. The learned counsel further brought to our notice the information which has been placed on record by the respondents on the directions issued by this Tribunal revealing that 02 S.T. seats are vacant in the cadre of Jailor Grade-II. The learned counsel submitted that the applicant can be very well be accommodated against the said vacant seats. The learned counsel further submitted that no process for promotion has been conducted or carried out till date subsequent to the process which was conducted in the year 2013-14. The learned counsel submitted that there is no other S.T. candidate having more meritorious position than the present applicant and hence no prejudice is likely to be caused if the order of promotion issued in favour of the applicant is restored.

9. The learned Presenting Officer resisted the arguments advanced on behalf of the applicant. The learned P.O. submitted that a mistake had occurred at the hands of respondent no. 2 in implementing the roster which has resulted in reserving 06 seats for O.B.C. candidates. The learned P.O. submitted that in promotion no reservation was liable to be provided for O.B.C. candidates and in the circumstances 06 seats, which were shown to be reserved for O.B.C. candidates were declared to be Open seats. The learned P.O. further submitted that the candidates at Sr. nos. 11 & 20 from the list of selected candidates were directed to be considered against the seats reserved for the caste to which said candidates belong i.e. S.T. The learned P.O. submitted that accordingly 03 seats reserved for S.T. candidates were duly filled in. The applicant was 5<sup>th</sup> candidate in order of merit insofar as S.T. candidates are concerned. In the circumstances, according to the learned P.O., there was no possibility of his selection from the S.T. category. The learned P.O. submitted that the judgment delivered by the Hon'ble Supreme Court in the case of **Saurav Yadav & Ors.** (cited supra) may not be of any help to the applicant. The learned P.O. further submitted that the judgment was delivered by this Tribunal in O.A. No. 354/2014 as per the law prevailing at the relevant time and accordingly the applicant was reverted to his original post. The learned P.O. in the circumstances prayed for dismissal of the present O.A.



10. We have carefully considered the submissions advanced on behalf of the applicant and the respondents. We have perused the documents filed on record. It is not in dispute that out of 34 posts to be filled in by way of promotion, 03 posts were reserved for S.T. candidates and 23 posts were for the Open category. There is further no dispute that the respondents have decided to fill only 20 posts from Open category for the reason that there were 03 pending Court matters pertaining to the candidates belonging to Open category. As is revealing from the affidavit in reply filed on behalf of the respondents, 03 posts of the Open category were not filled up in view of provisions under rule 75 of the M.C.S. (Joining Time, Foreign Service And Payments During Suspension, Dismissal And Removal) Rules, 1981. There is further no dispute that one Shri Chandrakant Rambhau Sangale filed O.A. No. 354/2014 before the principal Bench of M.A.T. at Mumbai for setting aside the order dated 3.3.2014 passed by respondent no. 2 under which it was decided to fill up only 20 posts as against 23 posts of Open category in view of pending 03 court cases.

11. The applicant has filed on record copy of O.A. No. 354/2014 filed by said Shri Sangale. Copy of the order passed by the Tribunal in the said O.A. is also placed on record. According to the learned counsel appearing for the applicant, the Tribunal has granted the relief to the applicant in O.A. no. 354/2021, which was not asked for by him. It has also been argued by the learned counsel that the

issue of roster to be followed in the process of recruitment and promotion was also not raised by applicant Shri Sangale in his O.A., but the same has been dealt with by the Tribunal and accordingly on the said basis the order has been passed by the Tribunal. It was further contended by the learned counsel that if at all in the opinion of the Tribunal no reservation was liable to be provided for the O.B.C. category and 06 seats shown to be reserved for O.B.C. category were liable to be converted into Open seats, the Tribunal should have directed to adjust the said applicant against any of the O.B.C. candidate and not against the S.T. candidate.

12. We may however not indulge in the merit of the order passed by this Tribunal in O.A. No. 354/2014. The said order was challenged by the applicant before the Hon'ble High Court in Writ Petition No. 11143/2014 and the Hon'ble High Court while deciding the said Writ Petition has set aside the order passed by respondent no. 2 on 20.11.2014. The Hon'ble High Court in the said order has further directed respondent no. 2 to issue formal notice to the petitioner i.e. the present applicant for hearing and to take final decision afresh after hearing the applicant. Respondent no. 2, however, vide order dated 13/16.5.2016 rejected the request of the applicant to promote him on the post of Jailor Grade-II from the S.T. category. In the said order the respondent no. 2 has observed that in order of merit the applicant stands at sr. no. 67 and there are other 04 S.T. candidates, who are above the applicant in order of merit,

and in the circumstances, the applicant cannot be considered for his promotion on the post of Jailor Grade-II.

13. It has been argued by Shri Joshi, learned counsel appearing for the applicant that though the post of Jailor Grade-II is stated to be a promotional post to be filled in from amongst the suitable departmental candidates, factually it is as good as a fresh recruitment, since the regular recruitment process has been carried out for selecting the candidates for the said post.

14. We find substance in the argument so advanced by the learned counsel for the applicant. The record reveals that a regular recruitment process was carried out for filling in the posts of Jailor Grade-II. The record reveals that the candidates desirous of securing appointment on the said post were subjected for written examination, ground test / field examination and viva. It is further revealed that no weightage has been given to the merit which the candidate may be possessing attached to the post which he may be holding at the time of appearing for his selection to the post of Jailor Grade-II. It is thus evident that though the post of Jailor Grade-II is a promotional post, for selection to the said post the recruitment process is being carried out as if it is the direct recruitment. In the circumstances, while filling in the Open posts, the only aspect which was liable to be considered by the respondents was the merit of the candidate i.e. total marks received by the said candidate irrespective of his caste.

Had been the said criteria applied, at least 02 candidates from S.T. category who are at sr. nos. 11 & 20 in the Merit List were liable to be considered as the Open candidates. However, as directed by this Tribunal in the order passed in O.A. No. 354/2014 filed by one Shri Chandrakant Rambhau Sangale, the candidates at sr. nos. 11 & 20, who were initially considered to be Open category candidates were directed to be adjusted against S.T. category vacancies and consequently the applicant, who was 3<sup>rd</sup> S.T. candidate, was required to be reverted to his original post.

15. We may not indulge in making any discussion on the legality and correctness of the order so passed by a co-ordinate Bench of this Tribunal. It is however the matter of record that the Hon'ble High Court in Writ Petition No. 11143/2014 has set aside the order dated 20.11.2014 passed by respondent no. 2. In the said order Hon'ble High Court had further directed the respondents to take a fresh decision by giving opportunity of hearing to the present applicant. As has been submitted by the applicant it was strenuously urged by the applicant in the hearing so given to him under the orders of the Hon'ble High Court that Shri Amarsingh Devsingh Karghe and Shri Vijay Ramkrishna Solanke both S.T. candidates having at sr. nos. 11 & 20 in order of merit be held to have been selected as the Open candidates and if so happens the applicant can be considered on his merit as 3<sup>rd</sup> S.T. candidate. However, the request so made by the applicant was turned down by the respondents.

16. The respondents have placed on record the minutes of the meeting held on 19.11.2014 wherein the discussion was held and decision was taken in view of the order passed by the M.A.T., Mumbai in O.A. No. 354/2014. The said minutes reveal that the candidates at sr. nos. 24, 25 and 27 in the merit list, who were initially shown to have been selected in the category of O.B.C. candidates, were held to have been selected as the Open class candidates. In view of the decision so taken, it appears unconscionable that the candidates at sr. nos. 11 & 20, who were earlier shown to be selected as Open candidates were subsequently shown to have been selected against the seats reserved for S.T. candidates. When the O.B.C. candidates were permitted to compete for Open posts, there was no reason for applying a different yardstick for the candidates at sr. nos. 11 & 20 belonging to the S.T. category. As per the law settled by the Hon'ble Supreme Court in the case of **Saurav Yadav & Ors.** (cited supra) the reserved category candidate can compete for Open post (non-reserved post) and in the event of his appointment to the said post his number cannot be added and taken into consideration for working out the seats reserved for the backward class to which he belongs. It, however, appears that since in the order passed in O.A. No. 354/2014 there was specific direction by this Tribunal to adjust the candidates at sr. nos. 11 & 20 against S.T. category vacancies, the said candidates were shown to be

selected against seats reserved for S.T. category. Thus, the injustice caused to the applicant could not be removed.

17. However, during pendency of the present O.A. the events, which have occurred have been brought on record by the applicant. One of the selected S.T. candidates namely Shri Santosh Balam Bhuyal has obtained the voluntary retirement and the said post has become vacant. The respondents were directed to submit the information as regards to the vacancies of the S.T. candidates and to submit whether the post which has become vacant because of voluntary retirement opted by said Shri Santosh Balam Bhuyal has been filled in or what. The respondents have submitted information, which reveals that 02 S.T. seats are vacant. It is not in dispute that no another fresh process for promotion to the post of Jailor Grade-II has taken place after conduction of the recruitment process in the year 2014. In the recruitment process carried out in the year 2014 all 03 seats reserved for S.T. candidates were filled in. Now one of such post has become vacant because of voluntary retirement obtained by Shri Bhuyal. G.R. dated 18.10.1997, placed on record by the applicant, provides that roster is to be followed in making the appointments till prescribed number of seats for particular caste or tribe as per roster points are filled in; however, once the roster points are exhausted, any seat becoming vacant thereafter shall be filled in by appointing the candidate of the same caste / tribe. In fact, the said G.R. also prescribes that any backward class candidate securing

meritorious position and getting the appointment on the said merit in the Open category shall not be counted against the seats reserved for caste / tribes to which said candidate belongs. It appears that aforesaid G.R. was not brought to the notice of the Tribunal while deciding O.A. No. 354/2014. In premise of the fact that one S.T. seat has become vacant because of voluntary retirement obtained by Shri Santosh Balaram Bhuyal, the said vacant seat can be filled in by giving promotion to the present applicant, who admittedly belongs to the S.T. category. It is the matter of record that earlier he was selected and was also sent for training, but subsequently was reverted during the period of training itself. According to us on principles of equity also the applicant deserves to be granted the said relief. As has been submitted on oath by the applicant there is no other candidate from S.T. category having secured more marks than the present applicant. Thus, no prejudice is likely to be caused to anybody if the applicant is given promotion to fill in the vacant post reserved for the S.T. candidate.

**Per : Hon'ble Shri Bijay Kumar, Member (A)**

18. I, humbly and respectfully record additional facts involving this matter in order to submit my point of view, however, at the end concurring with the operative part of the order passed by Hon'ble Vice Chairman, in order to remove difficulty.

19. The original applicant Shri Namdeo Sopan Arsale has approached this tribunal as per the order passed on 31.01.2017 by Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition No. 12780/2016, Namdeo Sopan Arsale Vs. the State of Maharashtra &Ors.-

*“The petitioner is aggrieved by an order passed by the Director General of Prisons dated 16.05.2016. By the order, he has been demoted to the post of Jail Guard. Learned counsel appearing on behalf of the petitioner submits that the said order has passed as consequence of order passed by the Maharashtra Administrative Tribunal in Original Application No. 354/2014 dated 24.09.2014.*

*In our view, the petitioner has an alternative efficacious remedy, firstly of challenging the impugned order demoting him to the post of Jail Guard and secondly he can challenge the order of MAT dated 24.09.2014, by virtue of the judgment of the Apex Court in the case of K. Ajit Babu & Ors. Vs. Union of India &Ors.(1997) 6 SCC 473.*

*We are of the view that the petitioner should first exhaust the alternative remedy, which is available to him in law. Reserving the right of the petitioner, the petition is disposed of. All contentions of all the parties are kept open. No costs.”*

20. It is therefore, in my considered opinion, the Original Applicant has approached this Tribunal for relief against the order passed by the Principal Bench of this Tribunal in O.A. No. 354/2014 passed on 24.09.2014, which can be decided under provisions of Review as provided under S. 22 (3) (f) of the Administrative Tribunals Act, 1985.



21. Upon considering facts on record and oral submissions made by the contesting sides, following issues emerge in the present matter which has been analyzed in following paras.

**Issue No. 1-** Whether the argument advanced by the learned senior counsel for the applicant that the process of selection of meritorious candidates has been **akin** to 'Nomination' hold good?

**Analysis-** It is mentioned in the order of the Principal Bench of this Tribunal in O.A. No. 354/2014 in unambiguous terms that the process of recruitment has been under 'Promotion' Quota. This view is substantiated by the fact that as per recruitment rules for Jailor Group- II, one-third of the total number of posts fall under the 'Promotion' quota, and accordingly, out of the total number of posts of Jailor Group II under this process of recruitment has been calculated as one-third of 274 i.e. 91. Moreover, only in-house candidates, having basic eligibility criteria for promotion as per Recruitment Rules, have been allowed to participate in the selection process and the roster for reservation for 'Promotion' has been followed. Therefore, in my considered view, the ground advances by the learned counsel for the applicant that the recruitment process is **akin** to 'Nomination' is devoid of merit.

**Issue No. 2-** Whether the following observations of the Principal Bench of this Tribunal made in its order dated 24.09.2014 in O.A. No/ 354/2014 suffers from infirmity and needs to be modified?

*“As the number of open posts is 29, the applicant is clearly eligible for being appointed from open category as admittedly his rank is 21 as per select list prepared on 03.03.2014. Whether three open posts which are subject matter of litigation are filled or not, the applicant is clearly eligible to be promoted. As the backward class candidates to which they belong are to be adjusted against that category, the candidate at Sr. No 11 & 20 has to be adjusted against S.T. category vacancies. That will take the Applicant No. 19 in the select list.”*

**Analysis-** In my considered opinion, there is nothing on record which substantiates merit in the above observations made by the Principal Bench of this Tribunal. A candidate under social reservation category,

in this case it is S.T., has right to be considered under Open category if such a candidate has higher position in final merit list. Denying this right will be against the settled law in this regard. Therefore, above findings of the Principal Bench of this Tribunal in O.A. No. 354/2014, dated 24.09.2014 deserves to be recalled and suitable orders needs to be passed in exercise of powers under provisions of Review under S. 22 (3) (f) of the Administrative Tribunals Act, 1985.

**Issue No. 3-** Whether the respondent authorities can be legally directed to appoint the applicant against vacancies which have occurred about seven years after conclusion of the selection process, that too, by way of resignation of one employee from the cadre in question.

**Analysis-** Conceding to this proposition may amount to appointing the applicant against vacancy which was not a part of originally notified vacancies in the cadre of Jailer Class-II under promotion quota. As per service jurisprudence, any appointment against the vacancy which occurred subsequently can only be undertaken by drawing a fresh process of recruitment in accordance with Recruitment Rules and other relevant rules.

22. **CONCLUSION-** In my considered opinion, the order of the Principal Bench of this Tribunal in O.A. No. 354/2014, dated 24.09.2014 deserves to be recalled in exercise of powers of Review under provisions of S. 22 (3) (f) of the Administrative Tribunals Act, 1985. Though, Hon'ble vice chairman has opined differently, I consider it prudent to resolve the difficulty by concurring with operative part of order passed by Hon'ble Vice Chairman.

23. In the result, following order is passed :-

**ORDER**

- (i) Order dated 13/16.5.2016 passed by respondent no. 2 is quashed and set aside.

(ii) Respondent no. 2 is directed to issue order of promotion in favour of the present applicant on the vacant seat reserved for S.T. candidate within 8 weeks from the date of uploading of this order on the official website of this Tribunal

(iii) The Original Application is allowed in the aforesaid terms, however, without any order as to costs.

**MEMBER (A)**

**VICE CHAIRMAN**

**The present order is uploaded on website on 12.7.2022**