

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 384 OF 2019

**DISTRICT : AURANGABAD,
OSMANABAD, ETC.**

1. **Vinayak s/o Bhagwat Kapse,**)
Age : 30 years, Occu. : Service,)
R/o : Aurangabad City Police Station,)
Aurangabad.)
2. **Sandeep s/o Gulab Salunke,**)
Age : 29 years, Occu. : Service,)
R/o : Chikalthana Police Station,)
Aurangabad, Dist. Aurangabad.)
3. **Poonam Shivaji Patil,**)
Age : 30 years, Occu. : Service,)
R/o : CIDCO Police Station,)
Aurangabad, Dist. Aurangabad.)
4. **Heena Kausar Mohd. Afsar Shaikh,**)
Age : 28 years, Occu. : Service,)
R/o : Police Station, Naldurg,)
Tq. Tuljapur, Dist. Osmanabad.)
5. **Anusaya Rajendra Mane,**)
Age : 30 years, Occu. : Service,)
R/o : Sambhaji Nagar Police Station,)
Parli, Tq. Parli, Dist. Beed.)
6. **Ranjana Walmikrao Patil,**)
Age : 32 years, Occu. : Service,)
R/o : Badnapur Police Station,)
Tq. Badnapur, Dist. Jalna.)
7. **Abhijeet s/o Subhash Chaugule,**)
Age : 29 years, Occu. : Service,)
R/o : Vishrant Wadi Police Station,)
Pune, Tq. & Dist. Pune.)

8. **Ajeetkumar s/o Bhagwan Patil,**)
Age : 31 years, Occu. : Service,)
R/o : Police Help Center, Kotgul,)
Gadchiroli, Tq. & Dist. Gadchiroli.)
9. **Priynka Suresh Wanjale,**)
Age : 33 years, Occu. : Service,)
R/o : Shivaji Park Police Station,)
Mumbai, Dist. Mumbai.)
10. **Savita Uttam Thorat,**)
Age : 31 years, Occu. : Service,)
R/o : Aare Police Station, Mumbai,)
Dist. Mumbai.)
11. **Narendra s/o Nandkishor Jagdale,**)
Age : 31 years, Occu. : Service,)
R/o : Police Help Center, Katezari,)
Gadchiroli, Dist. Gadchiroli.)
12. **Nivrutti s/o Ashok Bawanskar,**)
Age : 33 years, Occu. : Service,)
R/o : MHB Colony Police Station,)
Mumbai, Dist. Mumbai.)
13. **Kalyani Vithal Sakunde,**)
Age : 30 years, Occu. : Service,)
R/o : BKC Police Station, Mumbai.)
14. **Shobha Popatrao Shelar,**)
Age : 32 years, Occu. : Service,)
R/o : Dongri Police Station, Mumbai,)
Dist. Mumbai.)
15. **Amol s/o Pandurang Sonwane,**)
Age : 31 years, Occu. : Service,)
R/o : Ramnagar Police Station,)
Gondiya, Dist. Gondiya.)
16. **Ravikiran Agatrao Kadam,**)
Age : 35 years, Occu. : Service,)
R/o : Police Help Center, Ghodraj,)
Gadchiroli, Dist. Gadchiroli.)

17. **Gaurav s/o Suhas Deo,**)
Age : 24 years, Occu. : Service,)
R/o : Police Help Center Bharnoli,)
Gondiya, Dist. Gondiya.)
18. **Bhagyashri Shivaji Jadhav,**)
Age : 29 years, Occu. : Service,)
R/o : M.I.D.C. Police Station,)
Solapur, Dist. Solapur.)
19. **Chandrahar Sambhajirao Patil,**)
Age : 34 years, Occu. : Service,)
R/o : Devri Police Station, Gondiya,)
Dist. Gondiya.)
20. **Rajani Ankushrao Tumsure,**)
Age : 35 years, Occu. : Service,)
R/o : Office of Superintendent of Police,)
Gondiya, Dist. Gondiya.)
21. **Sonali Siddeshwar Kathale,**)
Age : 31 years, Occu. : Service,)
R/o : Mahim Police Station, Mumbai.)
22. **Sonali Balasaheb Kokate,**)
Age : 32 years, Occu. : Service,)
R/o : MIDC Police Station, Mumbai,)
Dist. Mumbai.)
23. **Chhaya Manohar Borkar,**)
Age : 31 years, Occu. : Service,)
R/o : Dehuroad Police Station,)
Pimpri Chinchwad, Dist. Pune.)
24. **Varsha Sahadeo Dalimbkar,**)
Age : 32 years, Occu. : Service,)
R/o : Station City Police Station,)
Satara, Dist. Satara.)
25. **Shamal Prakash Pawar,**)
Age : 30 years, Occu. : Service,)
R/o : Commissioner Officer, Pune.)

- 26. Poonam Machindra Mirgane,**)
Age : 30 years, Occu. : Service,)
R/o : DN Nagar Police Station,)
Andheri, Mumbai.)
- 27. Sujata Chandrashekhar Chavan,**)
Age : 32 years, Occu. : Service,)
R/o : R.C.F. Police Station, Mumbai.)
- 28. Nutan Arvind Patil,**)
Age : 31 years, Occu. : Service,)
R/o : R.C.F. Police Station, Chembur,)
Mumbai-400074.)
- 29. Atul s/o Andnd Navale,**)
Age : 34 years, Occu. : Service,)
R/o : Police Station, Dhanora,)
Tq. Dhanora, Dist. Gondiya.)

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APPLICANTS**V E R S U S**

1. **The State of Maharashtra,**)
Through The Secretary,)
Department of Home,)
Mantralaya, Mumbai – 32.)
2. **The Director General of Police,**)
Shahid Bhagatsing Road, Kulaba,)
Mumbai-400001.)

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RESPONDENTS

APPEARANCE : Shri M.B. Kolpe, Advocate for the Applicants.

: Shri M.S. Mahajan, Chief Presenting Officer for respondents.

CORAM : **Justice Shri P.R. Bora, Member (J)**
and
Shri Bijay Kumar, Member (A)

DATE : **11.01.2022.**

ORDER**(Pronounced on 11th January, 2022)****(Per : Shri Bijay Kumar, Member (A))**

1. This Original Application has been filed by Shri Vinayak S/o Bhagwat Kapse and 28 others on 20.04.2018 by invoking the provisions of Section 19 of the Administrative Tribunal Act, 1985, challenging the seniority list of direct recruit Police Sub-Inspectors applicable as on 01.01.2017, published by respondent No. 2, dated 24.01.2018. These Police Sub-Inspectors were recruited by respondent No. 1 based on advertisement No. 71/2011 issued on 05.05.2011. The said seniority list is appended as Annexure A-5 at page Nos. 138 to 322 of the paper-book. Representations made by applicant Nos. 4 and 9 to Respondent No. 2 and to the Administrative Officer, office of the Police Commissioner, Mumbai on 21.01.2019 and 16.08.2018 respectively have been appended as Annexure A-6, page Nos. 323 and 325 respectively of paper-book as evidence towards having exhausted alternative remedy. Leave to sue jointly by 29 co-applicants had been granted by this Tribunal vide order dated 24.04.2019 passed in M.A. No. 848 of 2019 (St. No. 847/2019 in O.A. (St.)). Interim Relief prayed for by M.A. No. 239 of 2019 in

O.A. (St.) No. 848 of 2019 was also granted on 04.06.2019 in terms that-

“The present M.A. is disposed of with following direction. Promotions, if any, ordered furtherance to ensuing DPC shall be subject to outcome of the present O.A. No. 384 of 2019. There shall be no order as to costs.”

2. Gist of the background facts of the matter may be stated as follows :-

a) Maharashtra Public Service Commission (in short, “MPSC”) had issued advertisement No. 71/2011 on 05.05.2011 inviting applications for 1869 posts of police sub-inspectors through direct recruitment. After the results of the competitive examination was declared by the “MPSC”, the same was challenged by some of the female candidates by filing O.A. No. 437 of 2012 before the Maharashtra Administrative Tribunal, (in short, “The Tribunal”), at its Principal Bench at Mumbai challenging selection and appointment of 347 candidates. However, during the pendency of O.A. No. 437 of 2012, the said 347 candidates whose selection and appointments had been under challenge had completed their training at Maharashtra Police Academy, Nashik (in short, “Nashik

Academy”) in 108th batch and had been issued appointment orders on 01.01.2012.

b) “The Tribunal” essentially had issue of implementation of “Horizontal Reservations” for women before it for adjudication and passed orders in O.A. No. 437/2012 on 02.04.2014 giving directions to “MPSC” to prepare fresh select list and to issue appointment orders to the candidates whose names figured in the revised list. This Tribunal decided the case adopting interpretation of Horizontal Reservation for Open Category in a different manner as compared to the manner in which the same had been applied by “MPSC”.

c) Following the orders passed by this Tribunal in O.A. No. 437/2012 dated 02.04.2014, MPSC prepared the revised select list and recommended the names of all the original applicants in the O. A. No. 437/2012 to the State Government. Accordingly, the respondent No. 1 had issued letters to about 192 candidates on 21.11.2014 directing them to attend training at “Nashik Academy”. Upon completion of training by these additional 192

candidates on 08.06.2016 in 113th batch of trainees, these candidates were issued appointment letters on 15.06.2016.

d) Respondent No. 1 published seniority list of Police Sub-Inspectors as on 01.01.2017, in which the trainees of 113th batch (who were selected as per Tribunal's Order in O.A. No. 437/2012) have been shown junior to rest of the batch, who underwent training in 108th batch.

e) Being aggrieved by loss of seniority for no fault of the applicants, the original applicants have approached this Tribunal by filing the present O.A. No. 384 of 2019.

3. **Relief Sought by the Applicants** :- The applicants have sought relief in terms of prayer clause VII of the O.A., which is reproduced below :-

"A. Original Application may kindly be allowed.

B. By issuing appropriate directions the respondent No. 1 and 2 may kindly be directed to decide the representations given by the applicants within stipulated time.

C. By issuing appropriate directions the respondents No. 1 and 2 may kindly be directed to modify the seniority list published by

respondent No. 2 dated 24.01.2018 for the year 01.01.2017.

D. Any other appropriate relief Hon'ble Tribunal deems fit and proper may kindly be granted."

4. **Interim Relief Sought** :- The original applicant also prayed for interim relief in para VIII of the Original Application in following terms :-

"A. Pending hearing and final disposal of this original application, the respondent No. 1 and 2 may kindly be directed not to act on the seniority list published on 24.01.2018.

B. Any other appropriate relief this Hon'ble Tribunal deems fit and proper may kindly be granted."

5. **Pleadings and Arguments** :-

a) After notices had been duly served on the two respondents; affidavit in reply on behalf of respondent No. 2 was filed. The respondents were represented mainly by the Chief Presenting Officer however, on occasions, the respondents were also represented by different Presenting Officers namely, Shri N.U. Yadav, Smt. Sanjivani Deshmukh-Ghate, Shri B. S. Deokar Shri I.S. Thorat. On 07.12.2019, representing the Respondents,

the learned P.O. Shri B.S. Deonar submitted that the affidavit in reply of respondent No. 1 was not necessary. The learned senior Counsel for the applicant also submitted that affidavit in rejoinder to affidavit in reply on behalf of respondent No. 2 was not necessary. Thereafter, this matter could not be taken on Board during period after 24.02.2020 until 17.06.2021 due to lockdown due to COVID-19 pandemic. By that time written notes of argument had already been submitted by the two contesting parties. Though the case was part-heard on 11.10.2021, the same was heard again on 23.12.2021 upon change in Member (J) on the Division Bench hearing the case.

b) The Respondent No. 2 has opposed proposal of giving deemed date benefit to the applicants on the following grounds :-

i) Claims made by the applicants are with delay of two years and ten months. Therefore, the application is barred by limitation.

ii) The Tribunal had ordered selection of the applicants with eligibility to get pay and allowances only prospectively.

iii) The applicants were not borne on the cadre of PSI as on 01.10.2012 along with those selected by MPSC originally. The applicants were borne of cadre of PSI on 27.04.2015 and therefore, given seniority after the first batch. The seniority of PSI is governed by Clause 89 (3) (a) of the Maharashtra Police Manual, Volume-I, 1959 w.e.f. from their date of appointment in the cadre of PSI i.e. 27.04.2015. For accuracy and ready reference the extracts in Marathi of Clause 89 (3) (a) of the Maharashtra Police Manual, Vol.-I, 1959 is as follows :-

“८९(३)(अ) स्पर्धा परीक्षेद्वारे सरकसेवा भरती झालेले पालीस उपनिरीक्षक आणि पोलीस उपनिरीक्षकांना प्रशिक्षण उत्तीर्ण झालेले हवालदार यांची ज्येष्ठता त्यांच्या परिवीक्षाधीन पोलीस फौजदार म्हणून नियुक्तीच्या तारखेपासून मोजली पाहिजे.....”

iv) For this, the applicant placed reliance on judgment delivered by Hon'ble Apex Court in **2019 SCC Online SC 1494 K. Meghachandra Singh and Ors. Vs. Ningam Siro & Ors**, dated 19.11.2019.

v) The provisions of Rule 4 of the MCS (Regulation of Seniority) Rules, 1982 are not applicable to the Police personnel in view of proviso of the said Rules. The proviso is reproduced below :-

“Provided that, where any separate rules or orders are prescribed for regulating seniority in any particular posts, cadre or service, the seniority of holders of such posts or members

of such cadres or service shall be regulated in accordance with such rules or orders.”

vi) No provisions of MCS (Regulation of Seniority) Rules, 1982, as has been relied upon by the applicants confer to the authority to give the deemed seniority, of such a date, on which the government employee was not borne in that cadre, as is being canvassed by the applicants herein, although the said set of rules are not applicable in the cases of the applicants in view of legal provisions of separate set of rules under Maharashtra Police Manual, Vol- I, 1959.

vii) No candidate selected on 01.10.2012 and whose selection is under challenge, have been impleaded as respondents who are necessary party in this case.

viii) The learned Chief Presenting Officer has cited following judgment of Hon'ble Apex Court in written notes of arguments :-

- I) (2003) SCC (L&S) 808 in Dr. ChdnaraPrakash & Ors Vs. State of U.P. & Anr.
- II) (2006) 3 SCC 375, in Tikaram Vs. Union of India & Ors.
- III) (2006) 10 SCC 346 in Uttaranchal Forest Rangers Association (Direct Recruits) & Ors.Vs. State of U.P & Ors.
- IV. (1975) 3 SCC 503, in Amarjit Singh Ahluwalia Vs. The State of Punjan & Ors.

(c) The Applicants have contended that their selection was for training batch No. 108 and delay caused in adjudication of the O.A. No. 437/2012 is not attributable to the applicant. The applicants have further contended that the clause 89 (3) (a) of the Maharashtra Police Manual, Vol-I, 1959 do not have over-riding effect on Rule 4 (2) (b) proviso of the the MCS (Regulation of Seniority) Rules, 1982, the later not having effect of law, nor the same has any binding effect. Moreover, the judgment of the Hon'ble Apex Court in **2019 SCC Online SC 1494 K. Meghachandra Singh and Ors. V/s Ningan Siro and Ors.**, dated 19.11.2019 is not applicable in the present case as the same deals with the situation in respect of seniority of direct recruits and promotes. The applicants have made following citations :-

- i. O.A. No. 192 and 538, both of year 2009, Eknath R. Patil Vs. State of Maharashtra and Ors. dated 23.03.2010.
- ii. O.A. No. 1052/2016 in case of Devidas Prabhakar Kathale & Ors. Vs. the Government of Maharashtra & Ors., with M.A. No. 3 of 2017, dated 08.05.2019.
- iii. 2015 (14) SCC 221, Civil Appeal No. 5862 of 2007 in case of A. Raghu Vs. Government of

Andhra Pradesh and Ors., with Civil Appeal No. 6002-6005 of 2007, in Vasam Surender, S/o Veeraswamy and Ors. Vs Government of Andhra Pradesh and Ors., dated 26.03.2015.

iv. *(2004) 12 SCC 58 in case of Suman Verma Vs. Union of India and Ors. in Civil Appeal No. 6275 of 2004, decided on 24.09.2004*

d) After the pleadings and arguments were complete, the matter was reserved for orders.

6. **Analysis and Conclusion** :- Whether the Female candidates coming from the backward class can be considered to be selected as the Open Female candidates, if such candidates have secured more marks than the Open Female candidates, was the issue for consideration before the Tribunal in O.A. No. 437/2012. It is the matter of record that the Tribunal has answered the said issue by observing that the seats reserved for Open Female candidates have to be filled by Open Female candidates and even Female candidates from Backward class though secured more marks than Open Female candidates cannot be considered for their appointment from the said Open Female category. No doubt, the order passed in O.A. No. 437/2012 has not been challenged further and has thus attained

finality, however, at the relevant time the law on the issue was not settled and there were divergent views in existence. Now the law stand settled that the Female candidates from the reserved class can be considered for their appointment from the Open Female category, if such candidates have secured more meritorious position than the Open Female candidates. As such, the prayer made in the present application by the applicants may not withstand the legal position, which now stands settled. In the circumstances, it appears to us that the applicants in the present application shall feel contended with the relief already given to them in O.A. no. 437/2012. Moreover, the candidates, whose seniority is likely to be disturbed are not made parties in the present application. For aforesaid both the reasons we are not inclined to accept the prayer made in the Original Application. Hence, the following order :-

ORDER

- (A) The Original Application No. 384 of 2019 is hereby, dismissed for reason of being devoid of merit.
- (B) No orders as to costs.

MEMBER (A)

MEMBER (J)