

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NOS.399/2023, 400/2023,
401/2023 & 402/2023**

DISTRICT:- AHMEDNAGAR/NANDED

O.A.NO.399/2023,

Aniket Bandu Rathod,
Age : 23 years, Occ. Education,
R/o. Nirala Tanda, Tq. Kinwat,
Dist. Nanded.

O.A.NO.400/2023,

Mahesh Balasaheb Gavhane,
Age : 23 years, Occ. Education,
R/o. Takali Bhan, Tq. Shrirampur,
Dist. Ahmednagar.

O.A.NO.401/2023,

Shahadeo Maruti Bhaware,
Age : 23 years, Occ. Education,
R/o. Mohari, Tq. Pathardi,
Dist. Ahmednagar.

O.A.NO.402/2023,

Sunny Natha Dhangar,
Age : 23 years, Occ. Education,
R/o. Vaidwadi Bhistbag, Road Sawedi,
Tq. & Dist. Ahmednagar.

...APPLICANTS

V E R S U S

1. The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Director General of Police,
D.G.P. Office, Shahid Bhagatsing Marg,
Kulaba, Mumbai.
3. The Superintendent of Police,
S.P. Office, Ahmednagar...**COMMON RESPONDENTS**

APPEARANCE : Shri D.K.Dagadkhair, Advocate for Applicants.
: Shri M.S.Mahajan, Chief Presenting Officer, Shri V.R.Bhumkar, Smt. M.S.Patni and Smt. Deepali Deshpande, learned Presenting Officer for respondent authorities in respective O.As.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

DATE : 16-02-2024

ORDER

1. Heard Shri D.K.Dagadkhair, learned Counsel for applicants in all cases, Shri M.S.Mahajan, learned Chief Presenting Officer, Shri V.R.Bhumkar, Smt. M.S.Patni and Smt. Deepali Deshpande, learned Presenting Officers for respondent authorities in respective cases.

2. In all these matters since the grievance raised and prayers made are identical, we have heard the common arguments in these matters and deem it appropriate to decide the O.As. by this common order.

3. Facts in brief are thus:

[a] Respondent no.3 had issued an advertisement on 06-11-2022 for recruitment of 129 posts of the Police

Constables. In pursuance of the said advertisement applicants applied for the said posts claiming reservation from their respective categories. Particulars of which are as follows:

Sr. No.	O.A.NO.	NAMES OF APPLICANTS	CASTE/ TRIBE
1	399/2023	Aniket Bandu Rathod,	VJ(A)
2	400/2023	Mahesh Balasaheb Gavhane,	NT(B)
3	401/2023	Shahadeo Maruti Bhaware,	ST
4	402/2023	Sunny Natha Dhangar,	NT(B)

Total 18 seats were for Ex-serviceman. Relevant particulars in relation to the present applicants are thus:

ST – 1 seat, VJ(A)-1 seat, NT(B)-2 seats.

[b] Applicants passed written examination as well as the physical tests successfully. The names of the applicants were included in the common waiting list against their respective categories. Name of the applicant in O.A.No.399/2023 is at Sr.No.2. Applicant in O.A.No.400/2023 is at Sr.No.34, applicant in O.A.No.401/2023 is at Sr.No.61 and applicant in O.A.No.402/2023 is at Sr.No.35 in common waiting list. Applicant in O.A.No.399/2023 is at Sr.No.1, applicants in

O.A.No.400/2023 & 401/2023 are at Sr.No.1 & 2 and applicant in O.A.No.402/2023 is at Sr.No.1 in their respective caste/tribe categories.

4. Present Original Applications are filed by the applicants claiming appointment on the post of Police Constable against the seats reserved for Ex-serviceman from their respective categories. It is the contention of the applicants that since the Ex-serviceman candidates have not become available, the seats reserved for them are lying vacant/unfilled. It is the contention of the applicants that if candidates from the horizontal reservation do not become available the said posts are to be filled in from out of the persons of the respective vertical category. The applicants have accordingly made representations to the respondent no.3, however, since the said respondent has not considered the said representations, and acceded to the request of the applicants, applicants have preferred the present O.A.

5. The respondents have resisted the contentions raised and prayers made in the O.As. The factual aspects are not disputed by the respondents. It is, however, contention of the respondents that as per the existing policy

of the Government, the seats reserved for Ex-serviceman are to be carried forward for one year if Ex-serviceman candidates do not become available. It is further contended that the seats reserved for Ex-serviceman are not released to the General or respective reserved category unless the certificate is obtained by the appointing authority regarding non-availability of Ex-serviceman from the Employment Exchange, Zilla Sainik Board, Regional Selection Board or MPSC, as the case may be. It is their further contention that the respondent no.3 has made communication with the office of Director, Sainik Welfare, Maharashtra State, Pune vide letter dated 15-04-2023. Director, Sainik Welfare has informed that "No Objection Certificate" can be issued if the Ex-serviceman candidates do not become available up to the period of one year after the recruitment process is over. In view of the communication as such from the Director, Sainik Welfare, respondents have declined to accept the request of the applicants for their appointment against the seats reserved for Ex-serviceman.

6. Shri Dagadkhair, learned Counsel appearing for the applicants submitted that in the similar circumstances as are existing in the present matters, the Nagpur Bench of this Tribunal has given directions to issue the

appointments in favour of the candidates belonging to the respective categories while deciding O.A.No.416/2022 as well as O.A.No.720/2018. Learned Counsel has further referred to and relied upon the judgment of the Division Bench of the Hon'ble Bombay High Court Bench at Aurangabad delivered in Writ Petition No.6064/2014. Learned Counsel submitted that the Division Bench has considered the G.R. dated 16-04-1981 while passing the order in the said Writ Petition. Learned Counsel submitted that in the said Writ Petition, Hon'ble High Court has directed the respondents to consider cases of the petitioner and respondent no.3 in the said matter for their appointment to the posts involved therein from OBC category as the persons from OBC Ex-serviceman had not become available. In view of the order passed by the Division Bench of the Hon'ble Bombay High Court and by Nagpur Bench of the Tribunal, learned Counsel for the applicants prayed for allowing the O.As.

7. We have gone through the order passed by the Hon'ble Bombay High Court in Writ Petition No.6064/2014 decided on 05-09-2018 as well as the orders passed by the Nagpur Bench of this Tribunal in O.A.No.416/2022 as well

as in O.A.No.720/2018 decided on 15-11-2022 and 21-02-2023, respectively.

8. Writ Petition before the Hon'ble Bombay High Court was in respect of advertisement dated 31-12-2011 issued for the recruitment on the post of Measurer from the OBC category. One Badgular Gajanan Eknath was selected and one Kapadne Mahendra Popat who had secured 112 marks, was included in the list of OBC category as no Female candidate from said OBC category was available. Still there were two posts; one for OBC Ex-serviceman and second for OBC Part Time. Said posts meant for horizontal reservation were not filled in. The petitioners, therefore, had approached the Maharashtra Administrative Tribunal by filing O.A.No.939/2012. Tribunal in its judgment dated 07-01-2014 observed that, post of OBC Ex-serviceman cannot be filled in from OBC General category. The observation of the Tribunal was based on G.R. dated 16-04-1981. The Tribunal further observed that, other posts meant for OBC Part Time would go to the Vertical reservation as from the said Horizontal reservation Part Time candidate was not available.

9. Tribunal's order was assailed before the Hon'ble High Court. It was argued on behalf of the State that in view of the G.R. dated 16-04-2018, the post for OBC Ex-serviceman cannot be filled unless there is compliance of clause 2 of the said G.R., which states that posts for Ex-serviceman cannot be filled in if the candidate is not available. The Counsel appearing for the petitioners in the said matter referred to and relied upon the G.R. dated 16-03-1999 to submit that if the candidates from the horizontal reservation are not available, said posts are to be filled in from the member of Vertical reservation. Upon the submission made as aforesaid, the Hon'ble Bombay High Court by making following observations allowed the Writ Petition. We deem it appropriate to reproduce hereinbelow the order passed by the Hon'ble High Court with the observations made in paragraphs 6, 7 and 8 of the said judgment (Paper book page 84-85 of O.A.):

"6. Government Resolution dated 16.03.1999 is subsequently issued based on the judgment of this Court and the Apex Court. The reference to the said judgments is given in the said Government Resolution itself. Naturally the said Government Resolution has to be implemented.

7. Considering the above, two remaining posts from the OBC category meant for EX-serviceman and part time shall be filled in from the persons of OBC category as per the final list published. The

respondent No.3 has secured 109 marks and the petitioner has secured 108 marks. The petitioner and respondent No.3 are required to be considered for the appointment.

8. In the light of above, we pass the following order.

ORDER

I. The order passed by the tribunal is set aside.

II. Respondent Nos. 1 and 2 shall consider the petitioner and respondent No.3 for appointment to the post of Measurer from the OBC category as the persons from the OBC EX-serviceman and OBC part time are not available, pursuant to the said advertisement. Same shall be considered within a period of four weeks.

III. The writ petition is, accordingly, allowed. No costs."

Nagpur Bench of the Tribunal has decided the aforementioned O.As. relying on the aforesaid judgment of the Hon'ble Bombay High Court.

10. In the present matter, the candidates have not become available from the Ex-serviceman category to fill up the posts reserved for them in the categories of Scheduled Tribes, VJ(A) as well as NT(B). As mentioned hereinabove, the applicant in O.A.No.399/2023 belongs to VJ(A), applicants in O.A.No.400/2023 & 402/2023 are from NT(B) category and applicant in O.A.No.401/2023 comes from ST category. Names of all these applicants are included in the

final waiting list from their respective categories. Relying on the judgment of the Division Bench of the Hon'ble Bombay High Court, it has been argued that when the Ex-serviceman candidates have not become available to fill up the posts reserved for them, said posts which are horizontally reserved can be filled in by giving appointments to the applicants who are the members of the respective vertical reservation.

11. Documents on record show that the Sainik Kalyan Board has communicated to respondent no.3 vide communication dated 18-04-2023 that since the advertisement of Police Recruitment, 2021 is issued on 06-11-2022, it would be advisable to wait and in next year if the Ex-serviceman candidates do not become available, after expiry of the said one year period, No Objection Certificate can be asked from the said office.

12. Period of one year as mentioned in the said letter has already been over. It is not the case of the respondents that, during the said period, Ex-serviceman candidates have become available. It has also not been clarified by the respondents as to when the next recruitment process is likely to be undertaken. In the

circumstances, it appears to us that as per the decision rendered by the Hon'ble Bombay High Court in case of **Nikhil Santosh Chaudhari [Writ Petition No.6064/2014]**, cited supra, the directions can be issued to the respondents to fill in the posts reserved for Ex-serviceman from VJ(A), ST and NT(B) category (total 4 posts) from the persons of the said social reservation categories as per the final merit list/wait list published.

13. Name of the applicant in O.A.No.399/2023 is at Sr.No.2 in the common waiting list and he is the senior-most VJ(A) candidate in the order of merit; similarly, the applicants in O.A.No.400 & 402 are senior-most in the NT(B) category and applicant in O.A.No.401/2023 is the senior-most candidate in the ST category in the said wait list.

14. In view of the discussion made by us hereinabove and more particularly in light of the judgment delivered by the Hon'ble Bombay High Court (*cited supra*), the following order is passed:

ORDER

[i] Respondents shall consider the applicants for appointment to the post of Police Constable from their respective caste/tribe categories, as provided

hereinbelow, as the Ex-servicemen candidates from the respective caste/tribe categories have not become available pursuant to the advertisement no.01/2021, dated 06-11-2022.

(1) Applicant Aniket Bandu Rathod in O.A.No.399/2023 against the seat for Ex-serviceman VJ(A).

(2) Applicant Mahesh Balasaheb Gavhane in O.A.No.400/2023 and applicant Sunny Natha Dhangar in O.A.No.402/2023 against the seats for Ex-serviceman NT(B).

(3) Applicant Shahadeo Maruti Bhaware in O.A.No.401/2023 against the seat for Ex-serviceman ST.

[ii] The aforesaid exercise is to be carried out within 8 weeks from the date of this order.

[ii] The Original Applications stand allowed in the aforesaid terms, without any order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 16-02-2024.