

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

ORIGINAL APPLICATION NO. 620 OF 2022

DISTRICT : JALNA

Uddhav S/o Asaram Chavan,)
Age : 46 years, Occu. : Unemployed,)
R/o : Shri. Swami Smartha Nagar, Ghati Road,))
Old Jalna, Jalna, Tq. & Dist. Jalna.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through the Principal Secretary,)
Department of Home , Mantralaya,)
Mumbai.)
2. **The Commissioner,**)
State Intelligence Department,)
Maharashtra State, Police Head Quarters))
Of Maharashtra, Old Vidhan Bhavan,)
2nd Floor, Shahid Bhagat Singh Marg,)
Colaba, Mumbai-400001.)
3. **Sagar S/o Hanumandas Vaishnav,**)
Age- Major, Occu-AIO,)
R/o C/o The Commissioner,)
State Intelligence Department,)
Maharashtra State, Police Head Quarters))
Of Maharashtra, Old Vidhan Bhavan,)
2nd Floor, Shahid Bhagat Singh Marg,)
Colaba, Mumbai-400001.)
4. **Rahul S/o Vijay Markad,**)
Age- Major, Occu-AIO,)
R/o C/o The Commissioner,)
State Intelligence Department,)
Maharashtra State, Police Head Quarters))
Of Maharashtra, Old Vidhan Bhavan,)
2nd Floor, Shahid Bhagat Singh Marg,)
Colaba, Mumbai-400001.)

... **RESPONDENTS**

APPEARANCE : Shri A.R. Rathod, Counsel for the Applicant.
: Shri M.S. Mahajan, Chief Presenting Officer for
respondent authorities.
: Shri S.R. Shirsat, Counsel for respondent
Nos. 3 & 4

CORAM : **Hon'ble Justice Shri P.R. Bora, Vice Chairman
and
Hon'ble Shri Vinay Kargaonkar, Member (A)**

RESERVED ON : **05.01.2024**

PRONOUNCED ON : **10.01.2024**

ORDER

(PER : Hon'ble Justice Shri P.R. Bora, Vice Chairman)

1. Heard Shri A.R. Rathod, learned counsel for the applicant, Shri M.S. Mahajan, learned Chief Presenting Officer for respondent authorities and Shri S.R. Shirsat, learned counsel for respondent Nos. 3 & 4.

2. The present applicant had applied for the post of Assistant Intelligence Officer, Group-C in pursuance of the advertisement No. 1/2018 dated 25.05.2018 issued by the Commissioner State Intelligence Department (respondent No. 2). The said advertisement was published for the recruitment of 204 posts of Assistant Intelligence Officer, Group-C, out of which 09

posts were reserved for candidates belonging to VJ-A category. In the 09 posts of VJ-A category, 03 were reserved for Women, 01 for Ex-serviceman, 01 for Part Time employee and 04 were for VJ-A General. For the candidates belonging to NT-B 05 posts were reserved, of which 02 for Women, 01 for Ex-serviceman, 01 for Part Time and 01 for NT-B General. For the NT-C candidates 08 posts were reserved, of which 02 were for Women, 01 for Ex-serviceman, 01 for Part Time and 04 were reserved for NT-C General. Insofar as NT-D candidates are concerned, 03 posts were reserved for them, of which 01 was for Women and 02 were for NT-D General.

3. The applicant belongs to VJ-A category and also claims to be a Part Time employee. In the written examination, the applicant secured 35 marks out of 200. The name of the applicant was included in the provisional merit list. It is the grievance of the applicant that against the seats reserved for NT-B Part Time, as well as, NT-C Part Time, he was liable to be selected instead of respondent No. 3 or respondent No. 4. In the circumstances, the applicant has preferred the present Original Application seeking following reliefs :-

“c) By issue of appropriate order or direction kindly hold and declare that, the appointment of respondent No. 3 and 4

to be post of Assistant Intelligence Officer from NT(B) and NT(C) part time / temporary employee category of Horizontal Reservation for purpose of recruitment to the post of Assistant Intelligence Officer, Grade-C direct recruitment 2018 as per advertisement No. 1/2018 dated 25.05.2018 is illegal on account of illegal application of internal convertibility of reserved seats of VJNT category (Horizontal Reservation) and for that purpose issue necessary directions.

d) By issue of appropriate order or direction kindly direct the Respondent Authorities to appoint the applicant to the post of Assistant Intelligence Officer from VJNT category in Horizontal Reservation of part time /temporary employee category for purpose of recruitment to the post of Assistant Intelligence Officer, Grade-C direct recruitment 2018 as per advertisement No. 1/2018 dated 25.05.2018 and for that purpose issue necessary directions. ”

4. The contentions raised in the Original Application and the prayers made therein are resisted by the respondents. The respondent No. 2 has filed the affidavit in reply amongst the State authorities.

5. Shri A.R. Rathod, learned counsel appearing for the applicant vehemently argued that respondent Nos. 3 and 4 have been illegally given orders of appointment against the seats respectively reserved for NT-B and NT-C part time candidates. Learned counsel submitted that the seat reserved for part time

worker (अंशकालीन) falls in the category of horizontal reservation and as such, if the NT-B or NT-C candidates were not available for filling in the post reserved for part time NT-B or NT-C candidates, the aforesaid posts must have been filled in from amongst the part time candidates coming from the said reserved class and as such, the applicant alone was liable to be recommended since he falls in the category of part-time worker and also belong to VJ-A.

6. Learned counsel submitted that as per the reservation policy adopted by the State Government, the seats reserved for a particular reserved class in the horizontal reservations are to be filled in as far as possible from amongst the candidates coming from the same reserved class and in the event of non-availability of such candidates, the said seat is to be filled in from amongst the same category person i.e. category for which the post is reserved by way of horizontal reservation.

7. The contentions as are raised on behalf of the applicant are opposed by learned Chief Presenting Officer, as well as, learned counsel appearing for respondent Nos. 3 and 4. On behalf of respondents it has been argued that the respondent No. 2 has not committed any error in selecting respondent Nos. 3 and 4 against the seats reserved for NT-B and NT-C part time

candidates respectively. Learned C.P.O. submitted that the respondent No. 3 has secured 158 marks out of 200, whereas respondent No. 4 has secured 161 marks out of 200. Learned C.P.O. submitted that comparing to the marks scored by respondent Nos. 3 and 4, the applicant has earned too less marks i.e. 35 out of 200. Learned C.P.O. submitted that the respondent No. 2 has appropriately considered respondent Nos. 3 and 4 for to be appointed against the post reserved for part time NT-B and NT-C candidates. Learned C.P.O. submitted that even on merit the respondent Nos. 3 and 4 only were liable to be considered.

8. Learned C.P.O. and the learned counsel appearing for respondent Nos. 3 & 4 have further argued that the respondent Nos. 3 and 4 have been appointed in the year 2018 itself and have been thus working on the respective posts from last 05 years. It is further argued that the applicant had approached this Tribunal beyond the period of limitation and has also not prayed for condonation of delay, which has occasioned in approaching the Tribunal. According to learned C.P.O. and learned counsel appearing for respondent Nos. 3 & 4, the present Original Application is liable to be dismissed being barred by limitation and is not liable to be considered on merits.

9. We have duly considered the submissions made on behalf of the applicant, learned C.P.O. and learned counsel appearing for respondent Nos. 3 and 4. We have also perused the documents filed on record. It is not in dispute that in the horizontal reservations provided in the advertisement concerned for the part time employees, one post each was shown to be reserved from amongst the candidates belonging to VJ-A, NT-B and NT-C social reservation category. There is further no dispute that the applicant applied from VJ-A category and is also claiming reservation for part time employee. The applicant has admittedly received 35 marks out of 200. List of recommended candidates revealed that since there was more meritorious candidate available from part time VJ-A category, obviously the said candidate was selected for the sole post reserved for that category. It is thus evident that in any case the post, which was reserved for part time employee coming from VJ-A category could not have been allotted to the applicant.

10. The question arises, for the posts reserved in the horizontal reservation for part time employees coming from NT-B and NT-C class, whether the applicant could have been considered for his appointment. As has been noted by us hereinabove, the applicant has asserted that he alone was liable

to be considered for the said post. The contention of the applicant is wholly unacceptable. It is well settled that if the quota fixed in horizontal reservation is not satisfied for non-availability of candidate of the social reservation category for which the said special reservation is provided, the said special reserved seat is to be filled in from amongst the candidates belonging to the respective social reservation category, for which the said post is reserved. It appears to us that the respondent No. 2 has therefore, rightly selected responded Nos. 3 & 4 against the seats reserved for part time employee coming from NT-B and NT-C social reservation class respectively. We, therefore, see no error on part of respondent Nos. 1 and 2. As such, the claim as has been raised by the applicant is liable to be rejected and it is accordingly rejected.

11. It has been argued that the applicant has approached the Tribunal belatedly. Admittedly the appointment orders were issued in favour of respondent Nos. 3 and 4 some times in the year 2018. It is the contention of the applicant that he was agitating the grievance with the respondent authorities by making representations. As has been contended in the Original Application, first of such representation was made by the applicant on 11.03.2019 and the last representation was made

by him on 12.03.2022. It is the further contention of the applicant that cause of action for filing the present Original Application occurred when the respondents vide communication dated 13.06.2022 rejected the contention of the applicant and as such, the O.A. filed by him is well within the limitation.

12. The contention of the applicant is liable to be rejected. The cause of action had in fact accrued for filing the present Original Application in March, 2019 when the names of respondent Nos. 3 & 4 were recommended for their appointment. The objection was first raised by the applicant on 11.03.2019. Though the applicant went on making repeated representations till the year 2022 that certainly would not save the period of limitation. The cause of action for approaching the Tribunal by the applicant had arisen in March, 2019 itself and the applicant must have thereafter approached this Tribunal within the stipulated period. The applicant has approached this Tribunal on 27.06.2022. The applicant has also not filed any application seeking condonation of delay. The Original Application submitted by the applicant is therefore, apparently barred by limitation. Thus, on this count also, the Original Application deserves to be dismissed. In the result, the following order is passed :-

ORDER

The Original Application is dismissed. However, without any order as to costs.

MEMBER (A)**VICE CHARIMAN****PLACE : Aurangabad.****DATE : 10.01.2024****KPB S.B. O.A. No. 620 of 2022 PRB Appointment**