

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 693 OF 2021

(Subject : Recruitment Process)

DISTRICT : JALGAON

Shreyas S/o Pramod Varule,)
Age : 21 years, Occu. : Education,)
R/o : Sona Nagar, Tq. and Dist. Jalgaon.)

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APPLICANT

V E R S U S

1) **The State of Maharashtra,**)
Through its Secretary,)
Home Department,)
Mantralaya, Mumbai – 32.)

2) **The Director and Inspector**)
General of Police,)
Old Council hall, Shaheed)
Bhagatsingh Marg, Maharashtra)
State, Mumbai – 400 001.)

3) **The Superintendent of Police,**)
Jalgaon, Taluka & District Jalgaon.)

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RESPONDENTS

APPEARANCE : Smt. Vaishali Suryawanshi, Advocate for the
Applicant.

: Shri S.K. Shirse, Presenting Officer for
respondents.

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

DATE : **16.02.2022.**

ORDER**(Per : Shri Bijay Kumar, Member (A))**

1. Original Application No. 693 of 2021 has been filed by one Shri Shreyas S/o Pramod Varule, R/o Sona Nagar, Jalgaon, by invoking the provisions of Section 19 of the Administrative Tribunal Act, 1985, thereby, seeking direction to the respondent No. 3 to consider application of the applicant dated 18.09.2019 from 'Open' category for "Jalgaon District Police Constable Recruitment, 2019" and to quash and set aside the impugned notification dated 19.10.2021 issued by Respondent No. 3 based on which the applicant has been disqualified from recruitment process on the ground that the applicant had not applied from 'Open' category, instead applied from "OBC" category in which no vacant posts are available.

2. Gist of facts admitted by the two contesting sides in the present matter may be listed as follows :-

(a) The applicant had filled online application for the post of Jalgaon District Police Constables on MAHA PORTAL on 18.09.2019, in response to the public notice issued relating to "Jalgaon District Police Constable Recruitment, 2019".

(b) It is also admitted that the applicant answered following questions in the said application form as reproduced below for ready reference:-

*“i. Do you belong to reserved category (Social)?-
“YES”*

ii. Category (Category through which you want to apply for the recruitment) – “OBC””

(c) It is also admitted by the two sides that the applicant had signed two types of undertaking clauses in the said application form (page No. 19 of paper book), which are quoted as follows for ready reference :-

“Before Logging on to the Registration Portal

Sr. No.	Undertakings
1.	I have read and understood the advertisement carefully before filling the form.
2.	I have scanned my photograph and signature ready on my desktop confirming to the specified standards mentioned in the Information Brochure.
3.	I have downloaded the advertisement and read it carefully before filling the form.
4.	I have the details for payment (Credit Card/ Internet Banking) available with me for making Online Payment.
5.	I agree that my application form will be treated as complete only if I finally submit the application along with the payment of necessary fees.
6.	I agree to bear the payment gateway additional charges.
7.	<i>Candidates are advised that, before filing online application, they should first check the vacancy statement of the concerned Unit and category in which they wants to apply and should verify that such vacancy exists. Application and candidature of candidates applying to categories which are not available in particular Unit, are liable to be rejected at any stage of recruitment. Such candidates will also not be able to claim any refund of the application fees made in such cases.</i>
8.	I accept to receive messages from MAHA-IT even if my mobile number falls under Opt-In and / or DND (Do Not Disturb)/DNC (Do Not Call) category.

“Before Submitting the Form

Sr. No	Undertakings
1.	I fulfill the conditions as specified in the eligibility criteria and registration guidelines.
2.	All the particulars provided by me in this application are true, correct and complete to the best of my knowledge and belief.
3.	I shall produce all the original documents along with the attested copies as and when required, failing to which I will be considered as blacklisted and debarred.
4.	In case any particulars given by me in this application are found to be false, incorrect and/or misleading, I shall be liable for being blacklisted or debarred from all further examinations and selection process of the Home Department, Police Recruitment -2019.

”

(d) Based on written exam conducted on 09.10.2021, the respondent No. 3 had published merit list which is at Annexure A-4, page Nos. 24 to 28 of the paper book. The name of applicant appeared in the said list at Sr. No. 10, as he secured 97 marks in the written test.

(e) Respondent No. 3 had again published a notice reproducing the criteria of finalizing the list of candidates for ground test and documents verification (Annexure A-5, page No. 29 of paper book). Clause 4 of the said notification is extracted as follows:-

“४. जळगांव जिल्हा पोलीस भरती-२०१९ च्या प्रसिध्द करण्यात आलेल्या जाहिरातीत व जाहिरातीच्या शुध्दीपत्रकात खुला/अजा/अज/ईडब्ल्युएस (Open/ SC/ ST/ EWS) या प्रवर्गाकरिता जागा उपलब्ध आहेत. व इमाव/विमाप्र/भज-ड /भज-क/भज-ब/विजा-अ (OBC/ SBC/ NT-B/ NT-C/ NT-D/ VJ-A) या प्रवर्गासाठी जागा उपलब्ध नाहीत. ज्या उमेदवारांनी जागा उपलब्ध नसलेल्या प्रवर्गात आवेदन अर्ज भरले आहेत. अशा उमेदवारांना भरती प्रक्रियेतून अपात्र ठरविण्यात आले

आहे. तथापि सदरहू प्रवर्गातील उमेदवारांनी त्यांच्या प्रवर्गाच्या जागा उपलब्ध नसल्याने खुला प्रवर्गात आवेदन अर्ज सादर केले असते तर खुल्या प्रवर्गातील गुणवत्ते प्रमाणे त्यांचा सामावेश खुला प्रवर्गात करण्यात आला असता याबाबत अशा उमेदवारांनी व्यक्तीशा नोंद घ्यावी.”

(f) The applicant submitted a representation to the respondent No. 3 dated 20.10.2021, which was received by the respondent No. 3 on the same day, which is as quoted below :-

“ दि. २०.१०.२०२१
प्रति,

मा. पोलीस अधीक्षक कार्यालय,
जळगांव, जि. जळगांव.

विषय :- २०१९ च्या जळगांव जिल्हा पोलिस भरतीत Technical चुक झाल्यामुळे खुल्या प्रवर्गात अर्ज करता आला नाही.

मा. महोदय,

वरील संदर्भीय विषयान्वये मी श्रेयस प्रमोद वारुळे राहणार मु.पो. जळगांव, विनंतीपुर्वक अर्ज करतो की मी जळगांव जिल्हा पोलीस शिपाई भरती-२०१९ या भरतीकरीता सन-२०१९ मध्ये आलेल्या जाहिरातीसाठी अर्ज भरत असतांना पुणे लोहमार्गात इ.मा.व. (OBC) या प्रवर्गासाठी अर्ज केल्यामुळे, जळगांव जिल्हा पोलिस शिपाई हा अर्ज MAHA PORTAL च्या तांत्रिक अडचणीमुळे खुल्या प्रवर्गातुन अर्ज सादर करता येत नव्हता. Helpline नंबर वर संपर्क केल्यास, मला खुल्या प्रवर्गाच्या मिरीट लिस्ट मध्ये ग्राह्य धरण्यात येईल असे उत्तर मिळाले.

परंतु मला आता अपात्र घोषित करण्यात येत आहे. मला १०० पैकी ९७ गुण असुन मला खुल्या प्रवर्गात घेण्यात यावा हि विनंती, तांत्रिक बिघाडीमुळे माझ्या तीन वर्षांच्या मेहनत वर परिणाम होऊ नये हि नम्र विनंती.

आपला विश्वासु
श्रेयस प्रमोद वारुळे

सही/-
सोना नगर, जळगांव

मो. ९४२३८३८८९५
७२७६२४७०६९

सोबत :- १) MAHA PORTAL वरील अर्ज.
२) Merit List मध्ये असलेले गुण.”

(g) Ground test of the short listed candidates was conducted on 09.11.2021 and 10.11.2021 and documents verification was carried out from 09.11.2021 to 11.11.2021. The applicant was not called for ground test and documents verification. Being aggrieved, the applicant has filed the present Original Application.

3. **Relief prayed for by the applicant:-** Relief sought by the applicant is at para 10 of the O.A. and interim relief sought is at para No. 11 of the O.A., which are reproduced verbatim as follows, for ready reference :-

“10. Relief Sought –

(A) *By issue of an appropriate order and direction, the impugned notification dated 19.10.2021 issued by Respondent No. 3 thereby disqualifying the applicant from recruitment process as the technical difficulty arises on the MAHAPORTAL, the applicant could not able to change his category from OBC in which seats are not available to open category in which seats are available, may kindly be quashed and set aside.*

(B) *By issue of an appropriate order or direction, the respondent No. 3. The Superintendent of Police, Jalgaon may*

kindly be directed to consider the application dated 20.10.2021 submitted by the applicant and further to consider the petitioner from open category for the “Jalgaon District Police Constable Recruitment 2019.”

(C) By issue of an appropriate order or direction, the respondent No. 3 Superintendent of Police, Jalgaon may kindly be directed to include the name of the petitioner in the list of qualified candidate and allow him for physical test, as per merit list from general category.

“11. Interim Relief sought by the applicant–

a) Pending hearing and final disposal of this original application, the respondent No. 3 - The Superintendent of Police, Jalgaon may kindly be directed to allow the petitioner to participate in further process of “Jalgaon District Police Constable Recruitment 2019” hence kindly be directed to include the name of the applicant in the list of qualified candidate for physical test, as per merit list from open category.

(b) Any other equitable relief in favour of the applicant may kindly be granted.”

4. **Grounds for relief prayed for :-** The applicant has stated following grounds for seeking reliefs prayed for :-

“(I) The impugned notification is unjust, improper and illegal, therefore liable to be quashed and set aside.

(II) It is pertinent to note that, the respondent No. 3, Superintendent of Police, Jalgaon did not consider that,

the petitioner is unable to change the category option due to technical hurdle of MAHAPORTAL WEBSITE.

(III) The respondent No. 3 Superintendent of Police, Jalgaon has failed to consider that the petitioner has secured 97 marks and stood at Sr. 10 in the merit list, on this count the applicant is entitled to consider from 'open' category.

(IV) It is pertinent to note that the respondent No. 3, Superintendent of Police, Jalgaon has issued impugned notification in hurriedly manner adhering to the clauses mentioned in the advertisement.

(V) It is pertinent to note that, the impugned notification is passed by the respondent No. 3, Superintendent of Police, Jalgaon without applying the judicial mind and thereby disqualified the petitioner from recruitment process, therefore, the impugned notification is liable to be quashed and set aside in the interest of justice.

(VI) It is pertinent to note that there is no law prescribing the reservation for general category candidates in public employment and therefore there is no question of reserved category candidates being selection against "their seats".

(VII) The observations by the Hon'ble Supreme Court is very important in context of the position of law in this issue. In the case of Jitendra Kumar Singh versus state

of U.P. (2010) the Honble Supreme Court in its order stated that –

“If a person belonging to reserved categories is selected on basis of merit in open competition along with the general category candidates then he will not be adjusted towards reserved category, that is, he shall be deemed to have been adjusted against the unreserved vacancies. It shall be immaterial that he shall avail any facility or relaxation (like relaxation in age limit) available to reserved category.”

Similarly, in case of Indra Sawhney versus Union of India popularly known as Mandal case the Constitution Bench of the Hon’ble Supreme Court has held-

“(it) is well to remember that the observations under Article 16(4) do not operate like a communal reservation. It may well happened that some members belonging to, to say, scheduled castes get selected in the open competition field on the basis of their own merit, they will not be counted against the quota reserved for scheduled castes, they will be treated as open competition candidates.”

From this it is very clear that the present applicant belongs to reserved category but has selected in the open competition field on the basis of his own merit hence he must be treated as open competition candidate.

(VIII) Any other ground will be argued at the time of hearing.”

5. **Pleadings and arguments:-**

Affidavit in reply was filed only on behalf of respondent No. 3 on 03.12.2021, though the other two respondents were duly

served notices on 17.11.2021. As the pleadings were complete, the matter was finally heard on 27.01.2022 and the same was closed for orders.

6. Analysis of facts and conclusion:-

(a) On analysis of submissions made by the applicant and the respondents, there are essentially following two points of contention between the applicant and the respondent, as discussed in following paras :-

(i) Firstly, the applicant has claimed that on an earlier occasion he had applied for the post of Constable for Pune Railway Police Force and in that process, he had uploaded his category as 'OBC'. The same data remained in MAHAPORTAL. As a result the applicant was not allowed by the said portal to change his option from 'OBC' or 'OPEN' category, while submitting application for recruitment under advertisement for "Jalgaon District Police Constable Recruitment, 2019". The respondent has contended that the applicant had committed mistake in filling the application form in spite of having been alerted about the implication of indicating choice of category

from which the candidate wishes to be considered for recruitment. As the online application was filled up on 18.09.2018 and the applicant raised the issue of technical problem in MAHAPORTAL for the first time after getting declared “Disqualified” on 20.10.2021, therefore, the act of the applicant seems to be afterthought with the aim of legitimizing his claim in that regard and make a pseudo-valid cause of action. In other words, the respondents have termed the claim of applicant about any technical difficulty in filling correct option in this regard as afterthought as the same has been made after the results of Written Examination had been published and the applicant has not found his name in the merit list.

(ii) Secondly, the applicant has contended to have secured 97 marks and having stood at Sr. No. 10 in the merit list; therefore, is entitled to be considered for the post under ‘Open’ category. He has further contended that the respondent no. 3 has issued the impugned notification dated, 19.10.2021 hurriedly adhering to the clauses and undertakings mentioned in the advertisement for the posts. The applicant has

cited observations made by Hon'ble Apex Court in **Jitendra Kumar Singh Vs. State of U.P. (2010)**,

which is quoted by the applicant in O.A. as follows-

“ If a person belonging to reserved categories is selected on basis of merit in open competition along with the general category candidates then he will not be adjusted towards reserved category, that is, he shall be deemed to have been adjusted against the unreserved vacancies. It shall be immaterial that he shall (have) availed any facility or relaxation (like relaxation in age limit) available to reserved category.”

The applicant has also cited the law laid down by the Constitutional Bench of the Hon'ble Apex Court in **Indira Sawhney Vs. Union of India** which has been reproduced as follows:-

“(it) is well to remember that the observations under Article 16(4) do not operate like a communal reservation. It may well happened that some members belonging to, to say, scheduled castes get selected in the open competition field on the basis of their own merit, they will not be counted against the quota reserved for scheduled castes, they will be treated as open competition candidates.”

In response to the second contention of the applicant on the point of legal validity of grounds of

rejection of his application the respondents have not put forward any legally valid basis for putting a restrictive clause which debars any candidate of backward caste from being considered for the 'Open' category post purely on merit on sole ground that there was no vacancy in caste category chosen for appointment. A catena of judgments of the Hon'ble High Court and Hon'ble Apex Court have settled the law that 'Open' category posts are to be filled solely on merit, any restrictive administrative direction in violation of the settled law is not maintainable.

(b) On perusal of clause No. 3 of the notification dated 01.11.2021 issued by respondent No. 3 which is at Annexure A-7, page 35 of the paper-book, it may be inferred that the respondent No. 3 intended to take 10 candidates for every one vacancy (ration 1:10) for each of the social reservation category for calling the candidates for ground test and documents verification and accordingly, no candidate may come under zone of consideration for social reservation categories for which there were "Nil" vacancies. The stipulation of clause No. 3 of the said notification suffers from yet another shortcoming, i.e. after

limiting number of candidates for ground test to ten times the number of vacancies in each social reservation category, the cut-off marks in any or more of the social reservation category may turn out to be higher than the cut-off marks for the 'Open' category which may cause distortion and which in turn, may result in to deprivation of candidates under reserved categories with marks higher than the cut-off marks for 'Open' category but not coming within ratio of 1:10, from coming even under zone of consideration.

Conclusions :-

(a) Based on above analysis, in our considered opinion, the claim of the applicant regarding technical glitch in filling right choice about his preference for 'category' through which he would prefer recruitment is not substantiated by any circumstantial or documentary evidence. We are also of the considered opinion that the undertaking clause No. 7 under heading of "Undertaking before Logging on to the Registration Portal", which reads as follows is *ultra-vires* to settled laws and deserves to be quashed and set aside :-

“Candidates are advised that, before filing online application, they should first check the vacancy statement of the concerned Unit and category in which they want to apply and should verify that such vacancy exists. Application and candidature of candidates applying to categories which are not available in particular Unit, are liable to be rejected at any stage of recruitment. Such candidates will also not be able to claim any refund of the application fees made in such cases.”

(b) As a corollary to the above, the clause No. 4 of the notification issued by respondent No. 3, which is at Annexure A-5, page 29 of the paper-book too, which reads as follows, deserves to be quashed and set aside:-

“४. जळगांव जिल्हा पोलीस भरती-२०१९ च्या प्रसिध्द करण्यात आलेल्या जाहिरातीत व जाहिरातीच्या शुध्दीपत्रकात खुला/अजा/अज/ईडब्ल्युएस (Open/ SC/ ST/ EWS) या प्रवर्गाकरिता जागा उपलब्ध आहेत. व इमाव/विमाप्र/भज-ड /भज-क/भज-ब/विजा-अ (OBC/ SBC/ NT-B/ NT-C/ NT-D/ VJ-A) या प्रवर्गासाठी जागा उपलब्ध नाहीत. ज्या उमेदवारांनी जागा उपलब्ध नसलेल्या प्रवर्गात आवेदन अर्ज भरले आहेत. अशा उमेदवारांना भरती प्रक्रियेतून अपात्र ठरविण्यात आले आहे. तथापि सदरहू प्रवर्गातील उमेदवारांनी त्यांच्या प्रवर्गाच्या जागा उपलब्ध नसल्याने खुला प्रवर्गात आवेदन अर्ज सादर केले असते तर खुल्या प्रवर्गातील गुणवत्ते प्रमाणे त्यांचा सामावेश खुला प्रवर्गात करण्यात आला असता याबाबत अशा उमेदवारांनी व्यक्तीशा नोंद घ्यावी.”

(c) Further, the clause No. 2 and 3 of the said notification needs modification to the effect that the ratio of number of vacancies under each social reservation category

and the number of candidates from that respective category to be called for ground test may ordinarily be maintained as 1:10, however, at the same time, it shall be ensured that the candidates belonging to a social reservation category for which no vacancy has been notified, shall not be excluded for consideration for Open competition category on merit and also that the cut-off marks for any of the backward caste categories is not more than the cut-off marks for the 'Open' category; in order to fulfill this condition, if need be, additional number of candidates may be called for ground-test from the respective backward caste categories. Accordingly, following order is passed :-

ORDER

The Original Application No. 693 of 2021 is being allowed in following terms:-

- (A) Impugned undertaking clause No. 7 in the online application form, under Heading "Before Logging on to Registration Portal" and Clause No. 4 of the notification issued by the respondent No. 3, dated 19.10.2021 (Annexure A-5, page No. 29 of paper book), are hereby quashed and set aside.
- (B) The respondent No. 3 is directed to modify clause Nos. 2 and 3 of the said notification dated 19.10.2021

(Annexure A-5, page No. 29 of paper book) so as to ensure that while calling candidates for ground test from each of the social reservation category in ratio of 1:10, the candidates belonging to social reservation category for which no vacancy has been advertised are not excluded and their names appear in the list of candidates under 'Open' Social category as per their merit.

(C) The respondents are further directed to get ground test etc., as prescribed, conducted for additional number of candidates shortlisted as per steps mentioned in [A] and [B] mentioned herein and thereafter, get revised select list prepared. Based on the revised select list, appointment orders may be issued following prescribed procedure.

[D] The respondents are also directed to deal with the candidature of the applicant through his application dated 18.09.2019, as per the procedure laid down in (A), (B) and (C) above.

(E) No order as to costs.

MEMBER (A)

MEMBER (J)