

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

**ORIGINAL APPLICATION NO. 147 OF 2012**

DIST. : JALNA

- (1) Pramod s/o Vishwanath Nagare,  
Age. 30 years, Occ. Nil,  
R/o Shengaon Jahagir,  
Tal. Devulgaon (Raja),  
Dist. Buldhana.
- (2) Dadasaheb s/o Gorakhnath Khade,  
Age. 27 years, Occ. Nil,  
R/o Rajuri, Tal. Jamkhed,  
Dist. Ahmednagar. -- APPLICANTS.

**VERSUS**

1. The State of Maharashtra,  
Through Secretary,  
Home Department, Mantralaya,  
Mumbai – 32.  
(Copy to be served on  
Presenting Officer, M.A.T.,  
Aurangabad Bench)
2. The Commandant,  
The State Reserve Police Force,  
Jalna, Tal. & Dist. Jalna. -- RESPONDENTS

APPEARANCE : Shri R.D. Khadap, learned Advocate  
holding for Shri S.S. Thombre, learned  
Advocate for the Applicants.

: Shri M.P. Gude, learned Presenting Officer  
for the Respondents.

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**CORAM : Hon'ble Shri Rajiv Agarwal, Vice Chairman**  
**A N D**  
**Hon'ble Shri J.D. Kulkarni, Member (J)**  
**DATE : 21.10.2016**  
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**JUDGMENT**

***{PER : HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN}***

1. Heard learned Advocate Shri R.D. Khadap, holding for Learned Advocate Shri S.S. Thombre for the Applicants and Shri M.P. Gude, learned Presenting Officer (P.O.) for the Respondents.
2. This O.A. has been filed seeking directions to the Respondent no. 2 to consider the Applicant no. 1 from Open category and Applicant no. 2 from N.T.-D category for appointment to the post of Police Constable.
3. Learned Counsel for the Applicants argued that the Applicants had applied for appointment to the post of Police Constable pursuant to the advertisement issued on 1.10.2011 by the Respondent no. 2. A total of 145 posts of Constable in State Reserve Police Force (S.R.P.F.) Group no. 3, Jalna were to be filled. The Applicant no. 1 had applied from Open P.A.P. category and the Applicant no. 2 had applied from N.T.-D / P.A.P. category. Both secured 166 marks in the selection

process. Out of 145 posts, 35 posts were Open and 7 posts were reserved for N.T.-D category. There was 5% reservation for Project Affected Persons (P.A.P.) which was horizontal in nature. In the first selection list, published on 11.12.2011, the Applicant no. 1 was shown from P.A.P. category in the Open list and was selected. The applicant no. 2 was selected from N.T.-D category for the post horizontally reserved for P.A.P. category. However, the Respondent no. 2 later changed the selection list, and both the Applicants were considered from N.T.-D category for the post horizontally reserved for P.A.P. category. As a result, person, who scored less marks than the Applicant viz. Shri Rameshwar Nipte, who scored 164 marks was selected from Open category. Learned Counsel for the Applicant argued that this was done in pursuance to the letter dated 9.1.2012 issued by the Respondent no. 1. Learned Counsel for the Applicant argued that the action of the Respondent no. 2 in removing the name of the Applicant no. 1 from the selection list and including names of Shri Rameshwar Nipte (164 marks) and Shri Akhtar Shah (144 marks) is contrary to Law.

4. Learned Presenting Officer (P.O.) argued that the Applicants admittedly belong to N.T.-D category. They had applied for the post of Police Constable seeking benefit of

horizontal reservation as P.A.Ps. from N.T.-D category. Learned P.O. contended that both the Applicants obtained 166 marks in the selection process. On the basis of their marks, the Applicants were found not eligible for selection to Open posts (without any horizontal reservation). One of them was found eligible to be selected from N.T.-D category. The Applicants are claiming that they should be considered from Open – P.A.P. category. This claim is not admissible as traversing from one vertical reservation category to another for post horizontally reserved is not permissible as per Govt. Circular dated 16.3.1999 dealing with horizontal reservation. Learned P.O. stated that letter dated 9.1.2012 only clarifies the provisions of Govt. Circular dated 16.3.1999 and it is not something new. Learned P.O. argued that this Tribunal in O.A. no. 301/2009 by judgment dated 26.8.2009 has held that for a post horizontally reserved for Home-Guards in Open category can be filled from Open category candidate only. This judgment was confirmed by Hon'ble High Court by judgment dated 16.11.2010 in W.P. no. 272/2010 and this judgment was confirmed by the Hon'ble Supreme Court. Reservation for Home Guards and P.A.Ps. are both horizontal reservations and, therefore, Open posts horizontally reserved for P.A.P. category can be filled by Open

candidates only. Learned P.O. argued that there is no infirmity in the decision of the Respondent no. 2.

5. We find that the Applicants admittedly belong to N.T.-D category. They had applied for the post of Police Constable from P.A.P. category. The claim of the Applicants is that they should be considered for 5% posts reserved for P.A.P. category on merits. In other words, the Applicants claim that for Open – P.A.P. posts, persons from other vertical reservation category can also be considered. This contention of the Applicants cannot be accepted. This Tribunal by judgment dated 26.8.2009 in O.A. no. 301/2009 has held that for Open – Home Guards posts, only Open candidates can be considered. The nature of horizontal reservation is different from that of vertical reservation. It is compartmentalized within vertical reservation. Traverse from one vertical reservation category to another is not permitted for the post horizontally reserved. If reservation for P.A.P. posts is treated without regard to vertical reservation category, it will also become vertical reservation for P.A.P. category and the vertical reservation will breach the ceiling of 50% fixed by Hon'ble Supreme Court. The aforesaid decision of this Tribunal in O.A. no. 301/2009 was upheld by Hon'ble High Court and the Hon'ble Supreme Court. As contended by the learned P.O., it is

not possible for us to take a different view in the present case. The Applicants belong to N.T.-D category and though they are P.A.Ps., they cannot be considered for appointment to the Open post reserved horizontally for P.A.Ps. This is not a case where interference by this Tribunal is warranted.

6. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

**MEMBER (J)**

**VICE CHAIRMAN**