

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
AURANGABAD BENCH, AURANGABAD**

**TRANSFER APPLICATION NO.6 OF 2016
(Subject : Selection Process)**

DISTRICT : JALNA

Vinayak Uttamrao Banchod,)
R/o. Shakuntam, Row House No.F-28,)
Gopikishan Nagar, Jalna,)
Taluka and District Jalna) **..APPLICANT**

VERSUS

1. Maharashtra Public Service Commission,)
Bank of India Building, 3rd floor,)
Mahatma Gandho Road,)
Hutatma Chowk, Mumbai -04)
Through its Deputy Secretary)
2. The State of Maharashtra,)
Through its Principal Secretary,)
Skill Development & Entrepreneurship)
Department, Mantralaya, Mumbai 32.)
3. The Director,)
Directorate of Vocational Education and)
Training, Maharashtra State,)
Mumbai.)

....RESPONDENTS

Shri S.S. Jadhavar, learned Counsel for the Applicant.

Shri N.U. Yadav, learned Presenting Officer (P.O.) for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN
SHRI J.D. KULKARNI, MEMBER (J)

DATE : 18.10.2016.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

J U D G M E N T

1. Heard Shri S.S. Jadhavar, learned Counsel for the Applicant and Shri N.U. Yadav, learned Presenting Officer for the Respondents.

2. This Transfer Application was originally filed as Writ Petition No.2534 of 2015 before the Aurangabad Bench of Hon'ble Bombay High Court. On transfer to this Tribunal, it has been renumbered as T.A.No.6 of 2016. The Applicant in this T.A. is seeking further participation in the selection process by way of interview from NT-B category.

3. Learned Counsel for the Applicant argued that the Applicant has applied for the post of Principal of the Industrial Training Institute (I.T.I.) and equivalent Group-A post in Maharashtra Education Service, Group 'A' (Technical) pursuant to advertisement No.89/2013 issued by the Respondent No.1 viz. Maharashtra Public Service Commission (M.P.S.C.) on 01.11.2013. The Applicant belongs to NT-B

category. One post out of a total of 32 posts advertised by the Respondent No.1 was reserved for NT-B category. As the number of candidates, who applied for these posts were quite large, the Respondent No.1 conducted a screening test. The Applicant was qualified for being called for interview as per list published by the Respondent No.1 on 23.07.2014 on the basis of cut off marks of 90 for NT-B category. However, the Respondent No.1 declared a revised eligibility list on 13.08.2014 with cut off marks of 102. The Applicant's name was deleted. Learned Counsel for the Applicant argued that rules of games cannot be allowed to change mid-way. Once the selection process was started by advertisement dated 01.11.2013, the Respondent No.1 could not have acted as per circular dated 13.08.2014 issued by the State Government.

4. Learned Presenting Officer (P.O.) argued that there was no change in the selection process by M.P.S.C. Government of Maharashtra in the General Administration Department (G.A.D.) has issued Circular dated 13.08.2014 regarding procedure to apply horizontal reservation. This circular is in the nature of clarification to the earlier circular on this subject that 16.03.1999. The basic principles of horizontal reservation viz. that such reservation is compartmentalized within vertical reservation and it cannot traverse from one vertical reservation category to another remain the same. It is specifically mentioned that for open posts which are horizontally reserved, only open candidates can be appointed. This is based on judgment of this Tribunal

in O.A.No.301/2009 dated 26.08.2009, which was confirmed by Hon'ble High Court and Hon'ble Supreme Court. As such, Circular dated 13.08.2014 does not change the selection process required to be adopted by M.P.S.C. Learned P.O. argued that in the present case, the Applicant had applied from NT-B category. Initially, on the basis of result of screening test, for one post from NT-B category, it was decided to call 5 candidates for interview. As 7 candidates have scored more than or equal to the cut off marks of 90, 7 candidates, including the Applicant were held eligible to be called for interview. However, later, it was decided to call 3 candidates for every post and the revised cut off for NT-B category came to 102 and the Applicant was not found eligible for the being called for interview. Learned P.O. argued that no prejudice is caused to the Applicant, as those called for interview has scored more marks than the Applicant in the screening test and the formula of 1:3 candidates for interview was applied across all the reservation categories.

5. We find that in the affidavit-in-reply filed by the Respondent No.1 dated 13.07.2015 has made averments that M.P.S.C. decided to apply horizontal reservation as per circular dated 13.08.2014. We agree with the contention of the learned P.O. that this circular dated 13.08.2014 is essentially not different from earlier circular dated 16.03.1999. However, the list of eligible candidates for interview was revised due to number of candidates being called for interview. Earlier, it was decided to call in the ratio

of 1:5 treating the post as single. Later, considering that the post reserved for NT-B category was part of the larger selection process, the number of candidates for interview was restricted to 1:3. That subject is dealt with in the Maharashtra Public Service Commission Rules of Procedure, 2014. For direct recruitment, rule 9 provides that for more than 3 posts, number of candidates to be called for interview has to be 3 times the number of posts advertised. While publishing the list of candidates eligible to be called for interview, published on 09.03.2014, posts from different category were separately considered while deciding the number of candidates to be called for interview. As there was one post from NT-D category, it was treated as solitary post and 5 candidates (which actually resulted in 7 candidates being called as some candidates probably scored equally marks in screening test) were called. For S.T. category, for 2 posts, 8 candidates (actually 10) were called. However, M.P.S.C. apparently decided that all these posts were part of the same selection process and decided to call 3 candidates for each post. This is essentially short listing process in accordance with Rules of Procedure of M.P.S.C. The Applicant was not found to be eligible for being called for interview on the basis of this formula of 1:3. As all candidates, from NT-D category called for interview scored more marks than the Applicant in the Screening Test, we are of the opinion that no prejudice is caused to the Applicant.

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

(J.D. KULKARNI)
MEMBER(J)

(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 18.10.2016
Typed by : PRK

D:\PRK\2016\10 OCT\13.10\T.A.6-16 SELECTION PROCESS (AURANGABAD BENCH).doc