

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

NO.MAT/MUM/JUD/ 2877 /2016
Maharashtra Administrative Tribunal
Pay & Accounts Barrack Nos.3 & 4,
Free Press Journal Marg,
Nariman Point, Mumbai 400 021.

Date :

5 AUG 2016

M.A. No. 284/2016 IN O.A. No. 655/2015.
(Sub :- Appointment)

- 1 Shri Deelip L. Anuse,
Add. "Sai-Niwas", Plot No. 15, S. No. 27, Munjoba Vasti, Dhanori, Pune-15.

.....**APPLICANT/S.**

VERSUS

- 1 State of Maharashtra, Through
Chief Secretary, Mantralaya,
Mumbai-32.

- 2 Addl. Chief Secretary, Home Dept.
Mantralaya, Mumbai-32.

- 3 The Chairman, M.P.S.C., Fort,
Mumbai.

- 4 Commissioner of Transport, 4th
Floor, Admin. Bldg., Govt.
Quarters, Wandre (E), Mumbai-51

- 5 Shri Dattatraya K. Deshmukh,
Probationary Assi. Motor Vehicle
Inspector, Deputy R.T.O., Plot No.
18, MIDC Area, Osmanabad-413501

- 6 Shri Prabhakar V. Sawant, Flat
No.104, Bldg. No. 7, Vardhaman
Garden, Balkum, Near Fire
Station, Bhivandi Road, Thane-
400608.

...**RESPONDENT/S**

Copy to : The C.P.O. M.A.T., Mumbai.

The applicant/s above named has filed an application as per copy already served on you, praying for reliefs as mentioned therein. The Tribunal on the 04th day of **August, 2016** has made the following order:-

APPEARANCE : Smt. P. Mahajan, Advocate for the Applicant.
Shri K.B. Bhise, P.O. for the Respondents Nos. 1 to 4.
Shri A.V. Bandiwadekar, Advocate for the Respondents Nos. 5 & 6.

CORAM : **HON'BLE SHRI RAJIV AGARWAL, VICE-CHAIRMAN.**
HON'BLE SHRI R.B. MALIK, MEMBER (J).

DATE : **04.08.2016.**

ORDER : Order Copy Enclosed / Order Copy Over Leaf.

Malik
5/8/2016

Research Officer,
Maharashtra Administrative Tribunal,
Mumbai.

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

MISC. APPLICATION NO.284 OF 2016
IN
ORIGINAL APPLICATION NO.655 OF 2015

Shri Deelip L. Anuse.)...Applicant

Versus

1. The State of Maharashtra & Ors.)...Respondents

Smt. Punam Mahajan, Advocate for Applicant.
Shri K.B. Bhise, Presenting Officer for Respondents 1 to 4.
Shri A.V. Bandiwadekar, Advocate for Respondents 5 & 6.

CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)

DATE : 04.08.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

ORDER

1. This is an application for amendment of the Original Application.

2. We have perused the record and proceedings and heard Smt. Punam Mahajan, the learned Advocate for the



Applicant. Shri K.B. Bhise, the learned Presenting Officer for the Respondents 1 to 4 and Shri A.V. Bandiwadekar, the learned Advocate for Respondents 5 & 6.

The OA such as it stands now is against six Respondents. The last two of them being what can be called private Respondents whose appointment to the post of Assistant Motor Vehicle Inspector has aggrieved the Applicant. In the OA such as it stands, the relief sought *inter-alia* is that the process of verification of eligibility of Ex-Serviceman be completed within one month by Respondents 2, 3 and 4 being the Additional Chief Secretary, Home, the Chairman, MPSC and the Commissioner of Transport respectively. The Applicant further prays for a direction to the Respondents 2, 3 & 4 to consider his appointments against the vacancy arising out of Ex-Serviceman category for the cause set out in Prayer Clause 2. By way of amendment, a declaration is sought that the appointments of Respondents 5 & 6 are illegal.

Now, by way of amendment, what is being sought to be achieved *inter-alia* is addition of one more party private Respondent Mr. Borse, who in case this application would be allowed will be Respondent No.7. Now, the challenge to the selection process in this OA was the subject matter hereof, but a challenge thereto was also posed in OA 289 and 620/2015. It is the case of the Applicant that vide this Bench's order dated 24.11.2015, the said list came to be quashed and set aside and

a fresh list was ordered to be prepared. The same has since been prepared and therein also there have been inclusions which have in the manner of speaking further aggrieved the Applicant. By way of various Paragraphs in the proposed amendment, that objection has been amplified. For the purposes of the decision hereof, we will be guided by the law of amendments, and therefore, the worth of the plea sought to be raised is something which we need not go into herein.

5. Shri Bhise, the learned P.O. right at the outset requested for further time to file Affidavit-in-reply. Since sufficient time was already granted and the Affidavit-in-reply of the private Respondents was already on record, we declined to prolong this MA any further. We have, however, heard Mr. Bhise's submissions also.

6. The main thrust of the resistance to this MA as set up by Mr. A.V. Bandiwadekar, the learned Advocate for the existing private party Respondents *inter-alia* is that the list based on which this OA was earlier brought having been struck down, the cause of action does no more survive because now the challenge is to the list such as it has come into existence post decision of the said OA by this Bench. Therefore, it is according to Mr. Bandiwadekar entirely a fresh cause of action for which the amendment application would not be a competent course of action to be adopted. He explained in

details as to how the Applicant shall not even otherwise be prejudiced were he to bring a fresh OA.

Now, in our opinion, we must repeat that we have to decide this MA basically on the basis of law of amendments and not take into consideration the worth of the plea already raised or sought to be raised hereby. We are inclined to agree with Mrs. Mahajan, the learned Advocate for the Applicant that if the concept of cause of action is properly understood in the context, the governing factor will be the process of selection and naturally, in our opinion, even on a common sense view of the matter, if a fresh OA could be brought in the set of circumstances such as they are, then there is no reason why in the absence of prejudice to the Respondents, the same facts cannot be allowed to be impleaded by way of amendment. In our opinion, in any case no prejudice is going to be caused because the existing Respondents as well as newly added Respondents shall have all the rights in the world to resist the OA post amendment by filing the Affidavits-in-reply and then joining issues with the Applicant regularly at the time of arguments. In our view, the present is a matter where the prejudice aspect of the matter has its own role to play. In that context, we are unable to agree with the submissions on behalf of the Respondents that they are going to be taken by surprise or by way of this amendment, the whole thing will become too vexed to be handled with facility. In our opinion, this MA passes muster with the test of law of amendments and the

same has to be and is hereby allowed. The new party Respondent No.7 be impleaded and the rest of the amendment as herein proposed be also incorporated within one week from today. A consolidated copy of the OA after amendment be filed and such a copy be furnished to both the sets of existing Respondents and the newly added Respondent No.7 be served in accordance with Rules. The existing Respondents shall have a right to file the Affidavit-in-reply/Additional Affidavit-in-reply hereto. While naturally, the 7th Respondent will also have a similar right. The MA is allowed in these terms with no order as to costs and the OA stands adjourned to 1st September, 2016.

sdl
(R.B. Malik)
Member-J
04.08.2016

sdl
(Rajiv Agarwal)
Vice-Chairman
04.08.2016

Mumbai
 Date : 04.08.2016
 Dictation taken by :
 S.K. Wamanse.

E:\SANJAY WAMANSE\JUDGMENTS\2016\8 August, 2016\M.A.284.16 in O.A.655.15.w.8.2016.doc

TRUE COPY

Amal
5/8/2016
 Asst. Registrar/Research Officer
 Maharashtra Administrative Tribunal
 Mumbai.