

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 703 of 2016 (D.B.)

Sachin S/o Govindrao Bawane,
Aged about 37 years, Occ. Lawyer,
R/o Yashwant Colony, near Hanuman Temple,
Karanja (Lad), District Washim.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Law and Judiciary,
Mantralaya, Mumbai-32.
- 2) The Maharashtra Public Service Commission,
through the Secretary, 5th, 7th and 8th floor,
Cooperage Telephone Exchange Building,
Maharshi Karve Road, Cooperage, Mumbai-400021.
Fort Office :
3rd floor Bank of India Building,
Fort, Mumbai-400 001.
- 3) The Director of Prosecution, Mumbai,
through the Assistant Director of Prosecution,
Barrack no.6, Free Press Journal Marg,
Nariman Point, Near Manora MLA Hostel,
Mumbai-400 021.

Respondents

S/Shri N.S. Khandewale, B.M. Kasare, S.V.Sohoni, V.G. Bokare,
Advocates for the applicant.

Smt. S.V. Kolhe, Id. P.O. for the respondents.

Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).

JUDGEMENT

(Delivered on this 17th day of November,2017)

Heard Shri S.V. Sohoni, Id. Counsel for the applicant and Smt. S.V. Kolhe, Id. P.O. for the respondents. The O.A. is heard finally with consent of Id. counsel for parties.

2. The applicant is a Law Graduate and practicing as Lawyer in District Court at Karanja (Lad), District Washim. The respondent no.2. MPSC issued an advertisement for the post of Assistant Public Prosecutor in Maharashtra State. These posts were of Group-A category. As per the advertisement No.71/2015 as stated, there were 166 posts advertised and 9 posts of backlog. 3% quota was reserved for physically handicapped persons which comes to six posts which were reserved for handicapped persons and three posts were reserved for visually impaired / Low Vision candidates. The applicant participated in the process of recruitment and was declared qualified in the list of screening test on 26/5/2016. The applicant was directed to appear before Interview Committee on 22/6/2016 at 9.45 a.m.

3. The applicant accordingly appeared along with relevant documents and certificates. He is suffering from low vision and as such should have been considered in the reserve quota for physically handicapped persons. The visual impairment

suffered by the applicant is 40% permanent disability. The applicant's name was however not shown in the final list though there is no other qualified candidate in the category of visually impaired persons. The applicant has therefore filed this O.A. and has prayed that it shall be declared that he is eligible to be appointed on the post of Assistant Public Prosecutor, Maharashtra State in Group-A category and appointment order be issued in his favour in the category of Physically Handicapped (Blind/Low Vision) in general category.

4. The respondents admitted that the applicant has qualified for screening test. It is stated that there were 3 posts reserved for visually impaired / Low vision candidates. The final result for the said posts was published on 16/9/2016 and in the said result candidates at sr.nos. 165&166 are recommended as partially handicapped (Blind/Low Vision). No other person was found eligible for the 3rd post reserved Blind / Low Vision candidate.

5. According to the respondents, the Rule 9 (ix) of the Rules of Procedure of the Commission provides that notwithstanding anything contained in these rules, only those candidates securing at least 41% marks in the interview / viva voce conducted for all types of direct recruitment shall be eligible

for final recommendation. This provision was also brought to the notice of applicant vide para no.11 of the interview call letter. According this condition the candidate must secure at least 21 marks out of 50 marks so as to be eligible for appointment in the oral interview. It is stated that the applicant has secured only 14 marks out of 50 which is below 41% as required as per rules and therefore the applicant's name was not recommended. It is stated that the securing 41% marks in the interview is mandatory and it makes no difference as to what marks are obtained by the candidate in the written test. It is stated that for 3 posts reserved for Blind / Low Vision category, in all seven candidates were called for interview and out of seven candidates interviewed, two candidates qualified and were recommended. The remaining five candidates including the applicant scored less than 41% marks in the interview and as such were not eligible.

6. The applicant filed rejoinder to the affidavit filed by the respondents and has placed on record the G.R. dated 19/3/2010 and the office memorandum issued by the Government of India Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training dated 29/12/2005 which gives guidelines regarding reservation for the persons with disabilities. The learned counsel for the applicant submits that as per these

guidelines the respondent authorities have every right to give concession to the proper candidates and in proper and appropriate cases the norms for obtaining bench marks in the examination can be relaxed. The respondent authorities ought to have relaxed such norms.

7. The material question to be considered in this case will be whether the applicant was eligible to be recommended for the post of Assistant Public Prosecutor as per the rules and if not whether the norms in the rules should have been relaxed in case of applicant.

8. It is material to note that in the present case the applicant has secured 70 marks in the written test out of 100, whereas in the oral test he has obtained 14 marks out of 50. Thus the total marks obtained by the applicant are 84 out of 150. The learned counsel for the applicant submits that the candidate at sr.no.302&303 in the merit list have obtained 84&81 marks respectively. The candidate at sr.no.302 has secured 60 marks in written test out of 100 and 24 marks in oral test out of 50, whereas the candidate at sr.no.303 has obtained 59 marks in written test and 22 marks in the oral test, thus total marks 81 and both these candidates have been recommended. The applicant in fact obtained more than marks than the candidate at sr.no.303

as the total marks obtained by the applicant are 84 which is equal to 84 marks obtained by the candidate at sr.no.302. Both these candidates at sr.nos. 302 & 303 are from physically handicapped (Blind / Lower vision) category and one post has been kept vacant.

9. The learned P.O. has invited my attention to the rules The Maharashtra Public Service Commission Rules of Procedure, 2014 (In short "Rules of 2014) and submitted that as per rule 9 (ix) which reads as under :-

"Notwithstanding anything contained in these rules, only those candidates securing at least 41% marks in the interview / viva voce conducted for all types of direct recruitment shall be eligible for final recommendation."

10. The learned P.O. submits that as per this rule, the candidate must obtain at least 41% marks in the interview / viva voce and since the applicant has obtained only 14 marks out of 50 marks, he was not recommended since he should have obtained at least 21 marks in the oral interview.

11. The learned P.O. also invited my attention to the list of candidates who have obtained less marks than the required equal to 41%. He submits that the candidate at sr.no.18 is from physically handicapped blind / low vision capacity has obtained

17 marks in oral interview, the candidate at sr.no.102 has obtained 16 marks in the oral interview and the candidate at sr.no.120 has obtained 18 marks in the oral interview. All these candidates have obtained more marks than the applicant in oral interview still they were not considered because they have not obtained 41% marks in the oral interviews. It is material to note that the candidate at sr.no.18 has obtained only 23 marks, a candidate at sr.no.102 obtained 21 marks, whereas a candidate at sr.no.120 has obtained 59 marks in the written test which is for less than the marks obtained by the applicant. The applicant has obtained 70 marks in the written test and his total marks are equivalent to the person selected from the category at sr.no.1. The question therefore is whether the respondent authorities should have relaxed the condition of obtaining bench marks.

12. The Maharashtra Public Service Commission Rules of Procedure 2014 are placed on record at Exh-R-5 at P.B. page nos. 80 to 89 (both inclusive). The rule 8 (vi) to (viii) of the said rules reads as under :-

“(vi) The candidates securing minimum 35 percentile marks in open category, 30 percentile marks in the backward class category, 20 percentile marks in the meritorious sports persons category and physically handicapped category in the Main examination shall only be considered to be called for the

interview. The candidates to be shortlisted under physically handicapped category or meritorious sports persons' category shall be eligible to avail only one facility, either as physically handicapped or as meritorious sports persons. Similarly candidates belonging to Ex-Servicemen category securing minimum 20% percentile in the main examination shall only be called for interview. They shall also be able to avail only one facility either as that for Ex-Servicemen, physically handicapped or that for meritorious sports persons.

However, the total number of candidates to be called for interview for a category shall not exceed three times the number of vacancies reserved for that particular category :

Provided that the number of candidates to be called for the interview for a particular category may exceed three time the number of vacancies of that category only in the contingency that more candidates secure equal cut off percentile;

Explanation – “ Percentile” means the percentage of marks arrived by treating the marks of the candidate / candidates securing highest marks in that particular main examination as 100%.

Notwithstanding anything contained in the text above, if the number of candidates available for interview are less than the number of vacancies reserved for that particular category for the reason that the adequate number of candidates could not secure minimum percentile marks prescribed for the particular category, the Commission may for such an examination consider to reduce the minimum percentile prescribed to the extent that at least

candidates equal in number to the vacancies reserved for that particular category are available.

(vii) The marks secured by these eligible candidates in the main examination shall be counted for the final result.

(viii) For certain recruitment, the physical test may have to be held. Passing in the physical test in accordance with the scheme shall be obligatory. Where such physical test is to be conducted, the number of candidates shortlisted for physical test, shall be four times the number of vacancies. The candidates who do not pass the physical test shall not be called for the interview.”

13. The rule 9 (viii) to (x) of the aforesaid rules reads as under :-

“(viii) Whenever a screening test is held for selection by direct recruitment for the post/ cadre which is :-

- (a) the lowest feeder / entry level, or*
- (b) not specifying special qualifications, or*
- (c) not seeking experience*

the marks of the screening test shall be considered only for short listing of the candidates and final recommendation shall be made on the basis of the marks obtained by the candidates in the interview / viva voce and for all other selections by direct recruitment to the posts/ cadre other than those specified in a,b,c above, if a screening test is held the marks of the screening test shall be considered for final recommendation, so however that, the marks allocated for interview shall not exceed 25% of the marks allocated for the screening test.

Provided that the Commission shall determine as to which of the types mentioned above, a Screening Test falls in and notify accordingly before the conduct of the Screening Test:

Provided further that, if any question arises as to the type in which a particular Screening Test falls, the decision of the Commission shall be final.

(ix) Notwithstanding anything contained in these rules, only those candidates securing at least 41% marks in the interview / viva voce conducted for all types of direct recruitment shall be eligible for final recommendation :

(x) Provided that in respect of the direct recruitment where marks of the screening tests are required to be considered for the recommendation, the final merit list shall be drawn for each category by adding marks obtained in the Screening Test by such eligible candidates to the marks secured by them in the interview / viva voce and in respect of all the other direct recruitments only on the basis of the marks obtained by such eligible candidates in interview / viva voce for each category.”

14. From the aforesaid provisions it will be cleared that when the respondent decides to conduct written test as well as oral test, the competent authority has every right to relax the rule considering the availability of the candidate of particular cadre. It seems that when the competent authority takes decision to conduct written test and oral test, the marks obtained in written as well as oral test are to be considered and considering the non availability of the candidates the competent authority has every

right to relax the norms. In the present case for the Blind / Lower vision category, three posts were available and only seven candidates were available. The applicant has obtained 70 marks in written and 14 marks in oral interview. The candidate at sr.no.1 recommended has obtained 84 marks, i.e., 60+24 and he is recommended only because he has secured more than 41% marks in the oral test. The candidate at sr.no.2 has obtained 81 marks, i.e., less than applicant but he is recommended because he obtained more than 41% marks in the oral interview. The rule 9 (x) as referred above states that where the marks of the screening test are required to be considered for the recommendation, the final merit shall be drawn for each category by adding marks obtained in this screening test by such eligible candidates to the marks secured by them in the interview / viva voce and in respect of all the other direct recruitments only on the basis of marks obtained by such eligible candidates in interview / viva voce for each category.

15. The learned counsel for the applicant submits that in the advertisement it was clearly stated that the marks obtained by the candidate in oral and written test, will be considered. The particular clause no.13 of the advertisement reads as under :-

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f'kQkjI dj.; kr ; bly-**

16. This condition clearly shows that the applicant's recommendation will be made considering the marks obtained by him in the written and oral test. Thus in this case it seems that the marks in oral as well as written test were to be considered and the marks were to be considered together for recommendations.

17. Perusal of the rules as aforesaid clearly shows that the competent authority has right to relax the rules in case of reserved category candidates considering the availability of the candidates and such relaxation can be considered in the oral test and as well as written test. The rule of bench marks of 41% can be strictly followed only in case the candidates are to be selected on the basis of oral test / interviews.

18. The applicant has also invited my attention to one G.R. dated 19/3/2010. The copy of which is placed on record at P.B. page no.114 to 116 (both inclusive). The said G.R. however shows that the physically handicapped is independent category and same cannot be considered from any SC/ST or OBC category. The category of handicapped is therefore an

independent category and therefore three posts are to be filled in from such category as per advertisement.

19. The learned counsel for the applicant also invited my attention to one office memorandum issued by the Government of India Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training dated 29/12/2005. This G.R. is at P.B. page no.117 onwards till page no.133 of the P.B. The clause 7 of the said G.R. states about adjustment of the candidates selected on their own merits and states that the person with disabilities selected on their own merits without relaxed standard along with other candidates will not be not adjusted against the reserved share of vacancies and that the reserved vacancies will be filled up separately from amongst the eligible candidates with disabilities which will thus comprise physically handicapped candidates who are lower in merit than the last candidate in merit list but otherwise found suitable for appointment, if necessary by relaxed standards.

20. Clause 16 of the office memorandum dated 29/12/2005 states that if the vacancy reserved for any category of disability cannot be filled due to non availability of a suitable person with that disability or for any other sufficient reason, such vacancy shall not be filled and shall be carried forward as a

backlog reserved vacancy to the subsequent recruitment year. Sub clause (c) of Clause 16 states that in the subsequent recruitment year the backlog reserved vacancy shall be treated as reserved for the category of disability for which it was kept reserved in the initial year of recruitment. However, if a suitable candidate with that disability is not available, it may be filled by interchange among the three categories of disabilities. In case no suitable person with disability is available for filling up the post in subsequent year also, the employer may fill up the vacancy by appointment of a person other than a person with disability. The clause 16 (c) states as follows :-

“16 (c) In the subsequent recruitment year the ‘backlog reserved vacancy’ shall be treated as reserved for the category of disability for which it was kept reserved in the initial year of recruitment. However, if a suitable person with that disability is not available, it may be filled by interchange among the three categories of disabilities. In case no suitable person with disability is available for filling up the post in the subsequent year also, the employer may fill up the vacancy by appointment of a person other than a person with disability. If the vacancy is filled by a person with disability of the category for which it was reserved or by a person of other category of disability by inter-se exchange in the subsequent recruitment year, it will be treated to have been filled by reservation. But if the vacancy is filled by a person other than a person with disability in the subsequent recruitment year, reservation shall be carried forward for a further period upto two

recruitment years where after the reservation shall lapse. In these two subsequent years, if situation so arises, the procedure for filling up the reserved vacancy shall be the same as followed in the first subsequent recruitment year.”

21. Clause 22 of the said memorandum states about relaxation of standard of suitability and the said clause reads as under :-

“(22) Relaxation of Standard of suitability - *If sufficient number of persons with disabilities are not available on the basis of the general standard to fill all the vacancies reserved for them, candidates belonging to this category may be selected on relaxed standard to fill up the remaining vacancies reserved for them provided they are not found unfit for such post or posts. Thus, to the extent the number of vacancies reserved for persons with disabilities cannot be filled on the basis of general standards, candidates belonging to this category may be taken by relaxing the standards to make up the deficiency in the reserved quota subject to the fitness of these candidates for appointment to the post / posts in question.”*

22. The aforesaid provisions in the memorandum thus clearly state that the competent authority may relax the standard required for competing particular test in case of physically handicapped persons such as the applicant. No reply has been filed to the counter affidavit filed by the applicant dated 18/8/2017. It is therefore not known as to whether the respondents

authorities have ever tried to relax the standard required or whether it has considered the availability of posts etc. while relaxing/ not relaxing such standard. In my opinion the Tribunal cannot go into the merits of the decision taken by the competent authority, if it is otherwise legal. From the facts and circumstance discussed in the forgoing paras, it can be said that the respondent authorities have applied the Rules of 2014 and have rejected all those candidates who have obtained less than 41% marks in the oral interview which includes the applicant as well as other candidates who have obtained less than 41% in the oral interview. However, the aspect of relaxation has not been considered by the competent authority. In such circumstances, it will be in the interest of justice and equity to direct the respondent authorities to re-consider the case of the applicant if the norms for oral interview are relaxed, considering the non availability of the candidates for partially handicapped (Blind/Low Vision). It may therefore give a second thought whether to consider the case of the applicant for relaxation or whether it wants to carry forward the vacancy as per rule 16 (b) of the Rules of 2014. In view of the discussions in forgoing paras, I therefore pass the following order:-

ORDER

- (i) The application is partly allowed.
- (ii) The respondent authorities are directed to re-consider the case of the applicant on the point as to whether the applicant's case can be considered for relaxation of the norms given under the Rules of 2014 coupled with directions issued in the office memorandum dated 29/12/2005. The decision on such aspect shall be taken within three months from the date of this order and shall be communicated to the applicant in writing. No order as to costs.

(J.D. Kulkarni)
Vice-Chairman (J).

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