IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO 168 & 1115 OF 2018

DISTRICT : SATARA

1) ORIGINAL APPLICATION NO 168 OF 2018

Shri Ananda Vitthal Patil)
Occ-Ex Servicemen, R/o At Post Saveed,)
Tal-Shahuwadi, Dist-Kolhapur)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Home [State Excise] Department,)
Mantralaya, Mumbai 400 032.)
2. The Secretary,)
M.P.S.C, 5th, 7th & 8th floor,)
Cooperage Telephone Nigam Bldg,)
M.K Road, Mumbai 400 021.)
3. Shri Amrut Shivaji Patil)
At post Sangvade, Tal-Hatkangle,)
Dist-Kolhapur 416 202.)
4. Shri Dhanaji Shankar Shinde,)
Through the Commissioner of State)
Excise, M.S, Old Custom House,)
Fort, Mumbai 400 023.)
Office of State Excise, 14-A,)
Sadhu Waswani Road, Pune Station,)
Near HDFC Bank, Pune 411 001.)
5. Shri Surendrakuma G. Dubey,)
Through M.P.S.C, Mumbai.)
QTR No. 2238, HAL Township,)
Type IIA, Ozar, Nasik 422 206.)
6. Shri Ramesh Vijay Kore,)
Warden, Govt. Boy's Hostel,)
Yervada, Pune 411006.)
7. Shri Rajesh Shantaram Salekar,)
Through M.P.S.C, Mumbai.)
At post Dhutroli, 415, Tanaji)
Malusare Marg, Samajiwadi,)
Village Dhrutoli, Tal-Mandgad,)
Dist-Ratnagiri.)

8. Shri Suresh Radhu Kale,)
At Post Chas Bhoyare,)
Pathar Road, Chas Kale Mala,)
Ahmednagar 414 005.)...**Respondents**

2) ORIGINAL APPLICATION NO 1115 OF 2018

1. Shri Madhukar S. Jadhav,)
Occ-Ex-Servicemen,)
R/o : Ganeshwadi, Post-Nagthane,)
Tah-Satara, Dist-Satara 415 519.)...**Applicant**

Vs.

1. The Commissioner,)
State Excise, Maharashtra State,)
2nd floor, Old Custom House,)
Fort, Mumbai 400 023.)
2. The Secretary,)
Maharashtra Public Service)
Commission, 5, 7 & 8th floor,)
Cooperage Telephone Nigam Bldg,)
M.K Road, Mumbai 400 021.)
3. The Director,)
Sainik Kalyan Vibhag, M.S.,)
Raigad Bld,g Rashtriya Yudha)
Smarakajawal, Ghorapadi,)
Pune 411 001.)
4. Shri Amrut Shivaji Patil,)
At Post-Sangvade, Tal-Hatkangle,)
Dist-Kolhapur 416 202.)
5. Shri Surendrakumar G. Dubey,)
Quarter No. 2238, HAL Township,)
Type-II-A, Ozar, Nasik 422206.)
6. Shri Suresh Radhu Kale,)
At Post-Chass, Bhoyare Pathar Rd,)
Kale Mala, Ahmednagar 414 005.)...**Respondents**

Shri A.A Gharte, learned advocate for the Applicant in O.A 168/2018.

Shri S.K Hande, learned counsel for the applicant in O.A 1115/2018.

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

Shri S.S Dere, learned counsel for Respondent no. 3

CORAM : Justice Mridula Bhatkar (Chairperson)
Mrs Medha Gadgil (Member) (A)

DATE : 17.02.2023

PER : Justice Mridula Bhatkar (Chairperson)

J U D G M E N T

1. The applicants in both the O.As pray that the impugned merit list dated 8.1.2018 be quashed and set aside. In O.A 168/2018 the names of applicants no 1 to 4 are deleted by order dated 13.3.2019. Hence application of Shri Ananda V. Patil only survives.

2. In O.A 1115/2018 the name of Respondent no. 5, Shri N.D Kachare, is deleted by order dated 7.2.2023. On instructions learned counsel Mr Gharate in O.A 168/2018, also seeks permission that the name of Respondent no. 4, Shri N.D. Kachare be deleted. Permission granted. Amendment to be carried out forthwith.

3. Respondents Shri Surendrakumar S. Dubey, Shri Suresh R. Kale and Shri Amrut S. Patil are common in both the Original Applications. Learned counsel Mr Gharte, in O.A 168/2018 informs that Respondent-M.P.S.C has disqualified all the other private Respondents except Respondents Shri Surendrakumar S. Dubey, Shri Suresh R. Kale and Shri Amrut S. Patil. Learned counsel Mr Gharte, further submits that these three Respondents Shri Surendrakumar S. Dubey, Shri Suresh R. Kale and Shri Amrut S. Patil, are not Ex-Servicemen as per definition of Ex-Servicemen in Notification dated 27.10.1998 and are not entitled.

4. The short issue is that firstly whether the three Respondents mentioned above are eligible to get selected in the category of Ex-Servicemen and secondly whether the applicants fulfill the criterion of Ex-Servicemen and are eligible to get appointed for the post of Sub-Inspector, State Excise as prayed for pursuant to the advertisement dated 13.1.2017. There is no dispute about the posts reserved in the category of Ex-Servicemen and the applications given by the applicants.

5. Learned counsel Mr Gharate in his elaborate submissions has well assisted us by giving the charts of each of the applicants and the Respondents about their factual details and date of appointment, retirement etc.

6. Applicant Shri Ananda V. Patil in O.A 168/2018 was enrolled on 3.11.1995 as Havaldar and he was discharged from service on 1.12.2016 on medical grounds. Madhukar S. Jadhav, applicant in O.A 1115/201 was appointed on 3.7.2000 and he was discharged from service on 1.9.2016 and he has completed 16 years of service and he was not in service. The date of advertisement is 13.1.2017. The last date for applying for the post of Sub-Inspector, State Excise was 2.2.2017. Hence, both the applicants were not in service when they applied for the post of Sub-Inspector, State Excise, and are covered under the definition of Ex-Servicemen as per Notification issued by the Government dated 27.10.1986. Respondent no. 3, Mr Amrtu S. Patil was appointed in Armed Force on 7.1.1999 as Havildar. The date of retirement is 31.1.2023. As per law he can apply for Civil appointment one year before retirement.

7. Respondent no. 6, Shri Surendrakumar G. Dubey was appointed in Indian Air Force on 24.3.1998. He retired on

31.3.2018. He can apply for Civil appointment after 31.3.2017. Last date for submitting application was 2.2.2017. Therefore, he was in service and cannot apply.

8. Learned counsel Mr Dere for Respondent no. 3, Shri Amrut S. Patil submits that on the date of application he was in service.

9. Learned C.P.O has submitted that the Respondent-State is unable to take any decision and the matter is referred to G.A.D. We are unable to understand why G.A.D took so much time to decide this matter. In fact, considering the factual details of each of the candidates and the definition of Ex-Servicemen which is issued by the Government by Notification dated 27.10.1986, the private Respondents Shri Surendrakumar S. Dubey, Shri Suresh R. Kale and Shri Amrut S. Patil, do not come under the category of Ex-Servicemen.

10. Learned C.P.O has pointed out to the letter dated 04.12.2019 the following conditions are prescribed for Ex-Servicemen.

> "माजी सैनिक प्रवर्गामध्ये मोडणा-या उमेदवारांसंबंधी खालील मुद्यांबाबतची तपासणी करणेबाबत साप्रविने कळविलेले आहे.
> a)माजी सैनिक व्याख्येनुसार आर्मी, नेव्ही किंवा वायुदलातील निवृतीवेतनार्ह सेवा पूर्ण झाली पाहिजे. सैनिकी सेवेच्या निवृतीवेतन नियमानुसार (Defence services pension regulation २००८, Rule ४७) आर्मीमधील १५ वर्षे सेवा ही निवृत्तीवेतनार्ह सेवा गणण्यात येते. तसेच वायूदलामध्ये प्रथमत : २० वर्षांसाठी सैनिकी सेवेमध्ये पवेश देण्यात येतो. परंतु १५ वर्षे पर्यंत Corporal Rank न मिळाल्यास सैनिकी सेवेतून मुक्त केले जाते. (Air Force instruction corrigenda Nos.१५.१६, dated ०१.१०.१९७९) सदर १५ वर्षे सेवा निवृत्तीवेतनार्ह सेवा गणण्यात येते.
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> a) महाराष्ट्र लोकसेवा आयोगाने दुय्यम निरीक्षक (गट-क), राउशु या पदाच्या सन २०१७ च्या परीक्षा जाहिरातीमध्ये माजी सैनिक संवर्गासाठी वयोमर्यादेची सवलत घेण्यासाठी परिशिष्ट-८ मधील नमुन्यात प्रमाणपत्र विहीत केले आहे. सदरहू ५ उमेदवारांपैकी वयोमयादेत सवलत घेतलेल्या उमेदवारांनी विहीत प्रमाणपत्र सादर केले आहे किंवा कसे याची तपासणी करणे आवश्यक आहे.
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> b) सदरहू उमेदवारांना नियुक्ती देण्याअगोदर ते सैनिकीसेवेतून सेवानिवृत्त झाले आहेत किंवा कसे याची तपासणी करणे आवश्यक आहे. त्याकरिता Discharge book/ Pension Payment Order याची तपासणी करणे आवश्यक आहे.

c) संबंधित उमेदवारांकडून NOC/Discharge Order तपासण्याबाबत प्रचलित नियमांमध्ये कोणतीही तरतूद दिसून येत नाही.''

11. It is necessary to reproduce the definition of 'Ex-Servicemen' and the eligibility criterion as per Government Notification dated 27.10.1986.

> 'Ex-servicemen' means a person who has served in any rank (whether as a combatant or as a non-combatant) in the Regular Army, Navy and Air Force of the Indian Union but does not include a person who has served in the Defence Security Corps, the Central Reserve Engineering Force, the Lok Sahayak Sena and the Para Military Forces; and
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> (i) who has retired from service after earning his/her pension; or
> (ii) who has been released from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension; or
> (iii) who has been released, otherwise than on his own request from such service as a result of reduction in establishment; or
> (iv) who has been released from such service after completing the specific period of engagement otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency, and has been given a gratuity; and includes personnel of the Territorial Army."

12. The word 'Ex-Servicemen' means that a person should be an Ex-Servicemen, i.e., not in the service when he applies for any job. From this point of view, the Notification is required to be understood and interpreted.

13. Today learned Advocate for the Applicant produces a chart which is updated till 17.02.2023 for the post of Sub-Inspector, State Excise Main Examination – 2017 showing meritorious wise select list in respect of Ex-servicemen (Open). The Applicants in these O.As. are show at Sr. Nos 25 & 26 respectively. Candidate who is appearing at Sr. No. 24 admittedly is meritorious and

shown above them for which the Applicants have no grievance. However, the Applicant at Sr. No. 24 – Mr. Shirish Shivaji Maind is not before the Tribunal and thus we do not know whether he has taken another job or still he is waiting. Respondents to verify the position. However, we make it clear that three Respondents i.e. Mr. Patil Amrut Shivaji, Mr.Dubey Surendra Kumar Girja Shankar for reasons given above are not coming under the definition of Ex-servicemen which is contemplated in relevant G.R. and notification. However, the Applicant Mr. Jadhav Madhukar Shivaji & Mr.Patil Ananda Vitthal do fall within the definition of Ex-servicemen as contemplated in G.R. and notification dated 27.10.1986.

14. In view of the above, following order is passed:-

(a) The Original Applications are allowed.

(b) As three persons, i.e., Shri Surendrakumar S. Dubey, Shri Suresh R. Kale and Shri Amrut S. Patil are removed from the select list on the point of ineligibility the Respondent – MPSC is directed to take further requisite steps in order to recommend the names as per waitlist.

(c) MPSC to take note that this matter was subjudice and name of the Applicants was appearing on the waitlist. So far as, the Applicants are concerned they are to be treated as waitlisted and authority to take decision and recommend the name of the Applicants within 15 days to the Government for appointment to the post of Sub-Inspector, State Excise.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 17.02.2023
Dictation taken by : A.K. Nair.