

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 204 OF 2022

DISTRICT : AHMEDNAGAR

Shri Tushar Sanjay Bitake)
R/at Post Bitakewadi, Tal-Karjat,)
Dist-Ahmednagar 414 402.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. Superintendent of Police,)
Pune Railways, CID Compound,)
Shivajinagar Road, Shivajinagar,)
Near GOAP Engineer College,)
Pune 411 005.)
3. The Director General of Police,)
S.B S. Road, Colaba,)
Mumbai 400 032.)
4. Additional Director General of Police)
[Training & Special Unit],)
Office of the D.G.P,)
S.B.S Road, Colaba,)
Mumbai 400 032.)...**Respondents**

Shri S.S Dere, learned advocate for the Applicant.

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

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

DATE : **14.07.2022**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. The applicant aspiring to be Police Constable, Railways challenges the Circular dated 19.1.2022 issued by Respondent no. 2, and prays that the provisional list issued by Respondent no. 2 for the post of Police Constable, Railways be quashed and set aside.

2. Respondent no. 1, Home Department, issued the advertisement for the post of Police Constable, Railways on 3.9.2019. Pursuant to the said advertisement the applicant filled up the application form in Open category. The written examination was conducted on 17.10.2021. The applicant cleared the said examination and he also cleared the physical test which was conducted on 18.1.2022. However, his name did not figure in the provisional select list dated 23.1.2022 in view of the Circular issued by Respondent no. 2 dated 19.1.2022.

3. Learned counsel for the applicant submitted that the applicant has filled up the form from the open category. However, it is necessary for all the candidates to disclose the Caste, and so he mentioned his Caste as NT(C). The applicant has secured 95

marks out of 100 marks in the written examination and 46 marks out of 50 marks in the physical test. Thus, the applicant has secured total 141 marks out of 150 marks. Learned counsel for the applicant submits that the candidature of the applicant was rejected on the ground that he has filled up the form from NT (C) category and the post under that particular category was not reserved and available. Therefore, the candidature of all such candidates is rejected after the physical test. This decision was communicated to the applicant by Respondent no. 2, Superintendent of Police, Railways, Pune, on 19.1.2022. Learned counsel for the applicant has submitted that the applicant is entitled to get into open general category because he has secured more marks, i.e. 141 marks than the cut-off marks of 139. Learned counsel for the applicant further relied on Article 16(2) of the Constitution of India which reads as under:-

“16. Equality of opportunity in matters of public employment.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.”

4. Learned C.P.O opposed the application and relied on the affidavit in reply dated 6.4.2022 of Shri Chandrakant D. Bhosale, working as Home Deputy Superintendent of Police, in the office of Superintendent of Police, (Railways), Pune. Learned C.P.O has submitted that the Circular was issued on 19.1.2022 and the provisional select list was issued on 23.1.2022 and therefore the applicant should have raised the objections and approached the Tribunal. There is delay in approaching the Tribunal and therefore on this ground the Original Application is to be dismissed.

5. Considered the submissions and perused the record. The cut-off marks in the open category is 139 marks. Undisputedly, the applicant has secured 141 marks, which is above the cut-off marks in the open general merit list. The applicant in view of the ratio laid down in the decision of the Hon'ble Supreme Court in the case of **R.K SABHARWAL & ORS Vs. STATE OF PUNJAB & ORS, AIR 1995 S.C 1371**, wherein the migration to the general category of the candidates from any other category is allowed if found meritorious, which is a settled legal position. If it is so, then no person can be denied the opportunity on the basis of Caste, if he is found meritorious. It is true that the applicant should have challenged the said list immediately when the provisional list was published on 23.1.2022. However, the applicant was filed on 3.3.2022. Thereafter, it was moved before the Tribunal on 7.3.2022 and on that day we directed the Respondents that no candidate who has secured less than 141 marks be given an appointment. After this interim order, the Respondents moved the application seeking modification in the said interim order. By order dated 5.5.2022, we modified the interim order dated 7.3.2022 and directed the Superintendent of Police, Railways, Pune, Respondent no. 2 to keep one post of Police Constable (Railways) vacant till the final disposal of this Original Application.

6. In view of the above, we pass the following order:-

- (a) The Original Application is allowed.
- (b) The Circular dated 19.1.2022, especially the bar mentioned in the said Circular will not come in the way qua the applicant as he is found meritorious and has approached the Tribunal without delay.

- (c) The Respondent no. 2 is directed to give appointment to the applicant in open category as per his merit and send him for training along with other selected candidates forthwith.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 14.07.2022
Dictation taken by : A.K. Nair.