

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI, BENCH AT AURANGABAD
ORIGINAL APPLICATION NO. 483 OF 2016**

DISTRICT : PARBHANI

Shri Govind Dattatrayrao Phulware)
Occ : Service, R/o : Lokmanya Nagar,)
Parbhani. **...APPLICANT**

VERSUS

1. The State of Maharashtra,)
Through the Secretary,)
Ministry of Home Department,)
Mantralaya, Mumbai.)
2. The Collector,)
Parbhani, Collector Office Premises,)
Parbhani, Dist-Parbhani.)
3. The District Superintendent of Police))
District Superintendent of Police)
Premises, Parbhani, Dist-Parbhani.)
4. The Director General of Police,)
Office of Director General of Police,)
State of Maharashtra, Mumbai.)..**RESPONDENTS**

Shri M.M Bhokrikar, learned Advocate for the Applicant.

Mrs Sanjivani Ghate-Deshmukh, learned Presenting Officer
for the Respondents

CORAM : **Shri Rajiv Agarwal, (Vice-Chairman) & Shri B.P Patil, (Member) (J)**

DATE : **08.03. 2017**

PER : **Shri Rajiv Agarwal, (Vice-Chairman)**

ORDER

1. Heard Shri M.M Bhokrikar, learned Advocate for the Applicant and Mrs Sanjivani Ghate-Deshmukh, learned Presenting Officer (P.O) for the Respondents.

2. This Original Application has been filed by the Applicant challenging the letter dated 5.5.2016 issued by the Additional Director General of Police, Training and Special Units, Maharashtra State, Mumbai (Exhibit A-5) regarding number of posts to be filled and seeking appointment of the Applicant to the post of Police Constable pursuant to advertisement dated 2.2.2016 issued by the Respondent no.

3.

3. Learned Counsel for the Applicant argued that the Respondent no. 3 has issued an advertisement on 2.2.2016 inviting applications to fill 50 posts of Police Constables. 5 posts each were to be filled by Bandsmen and by compassionate appointment. The Applicant had applied from S.C category for a post reserved horizontally for Ex-Serviceman. One post was so reserved. Learned Counsel for

the Applicant contended that the Applicant was the most meritorious candidate from S.C Ex-Serviceman category. However, the Respondent no. 3 has not selected him claiming that there was no vacancy for S.C Ex-Serviceman category. The Applicant was never informed that he was not selected as the vacancy from S.C Ex-Serviceman category did not exist. Learned Counsel for the Applicant argued that even if 5 candidates from Bandsmen and 5 from compassionate category are appointed, the reservation cannot be disturbed. In fact, letter dated 5.5.2016 from Additional Director General of Police, will increase the number of posts to be filled from 50 to 64, with corresponding increase in the posts reserved for S.C category.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that first advertisement was issued by the Respondent no. 3 on 2.2.2016, to fill up 50 vacancies. One post was reserved accordingly for Ex-serviceman from S.C category. The Applicant scored 166 marks out of 200 marks in the selection process. The number of posts to be filled (50) was on the basis of 50% of the vacancies which were allowed to be filled. By letter dated 5.5.2016, 75% of the vacancies could be filled. A total of 84 vacancies were available, so 64 posts could be filled. There were 6 vacancies from S.C category. As per G.R dated 1.3.2014, 10% of the vacancies, i.e. 6 vacancies were filled by compassionate appointment. In this list 2 candidates belonged to S.C category, leaving 4 posts from S.C category. 4 posts were

filled from Bandsmen category. One candidate selected as Bandsman was from S.C category, thereby leaving 3 posts from S.C category. No reservation could therefore be provided from S.C category to Ex-Servicemen (15%), as 15% of 3 posts is less than $\frac{1}{2}$ and has to be ignored.

5. We are astounded by the calculations made by the Respondent no. 3. The Respondent no. 3 has not understood the methodology of reservation at all. The posts to be filled were 64 and 13% posts are reserved for S.C category. That will come to 8 posts for S.C category. How the Respondent no. 3 has calculated 6 posts from S.C category is not understood. Similarly 15% out of 8 posts would come to 1.20, which is 1 for Ex-Serviceman category as per Circular dated 16.3.1999 (Exhibit R-5). One post, therefore, was required to be filled from S.C Ex-Serviceman category. The averment made in para 3 of the affidavit in reply dated 19.8.2016 in this regard is palpably wrong. It is mentioned that 10% of the post were to be filled by compassionate appointment as per G.R dated 1.3.2014. However, copy of that G.R is not placed on record. Without going further, into that issue, it is obvious that the horizontal reservation is required to be calculated on the total vacancies from a vertical reservation category (S.C in this case) and not after deducting vacancies of Bandsman and compassionate appointment filled from S.C category. They probably could have been counted from S.C category as a whole. But,

horizontal reservation was required to be calculated by considering all vacancies from S.C category.

6. We are afraid that methodology used by the Respondent no. 3 is not correct and she should have sought guidance from the Respondent no. 2 or from her higher authorities, if she was not sure how to calculate posts reserved vertically and horizontally for various categories. One thing is however, clear, the Applicant has evidentially scored the highest marks from S.C Ex-Serviceman category and he is eligible to be selected for one post, which was reserved from that category.

7. In view of the above the Respondent no. 3 is, directed to give the appointment to the Applicant as Police Constable from S.C Ex-Servicemen category, if he is otherwise found fit, within four weeks from the date of this order. This Original Application is allowed accordingly with no order as to costs.

**B.P. PATIL
(MEMBER. J)**

**RAJIV AGARWAL
(VICE-CHAIRMAN)**

**Date : 08.03.2017
Place : Aurangabad
Dictation taken by : A.K Nair**