

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 550 OF 2012

DIST. : HINGOLI

Shamrao s/o Vakil Dhage,
Age 34 years, Occ. Nil,
R/o Irrigation Camp, Basmat,
Tq. Basmat, Dist. Hingoli. --

APPLICANT

V E R S U S

1. The State of Maharashtra,
(Through its Principal Secretary,
Water Resources Department,
Mantralaya, Mumbai – 431 032.)
2. The Superintendent Engineer,
Vigilance Cell, Aurangabad Circle,
Irrigation Department,
Aurangabad.
3. Rajabhau s/o Dudhagiri Giri,
Age. Major, Occ. Nil,
R/o At Po. Pingali,
Tq. & Dist. Parbhani. --

RESPONDENTS

APPEARANCE : Shri S.K. Mathpati, learned Advocate for
the applicant.

: Shri N.U. Yadav, learned Presenting
Officer for respondent nos. 1 & 2.

: Shri P.S. Agarwal, learned Advocate for
respondent no. 3 (**absent**).

CORAM : HON'BLE SHRI RAJIV AGARWAL,
VICE CHAIRMAN
AND
HON'BLE SHRI B.P. PATIL, MEMBER (J)

O R D E R**(Passed on 4th August, 2017)****(PER :- SHRI RAJIV AGARWAL, VICE CHAIRMAN)**

1. Heard Shri S.K. Mathpati, learned Advocate for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondent nos. 1 & 2. Shri P.S. Agarwal, learned Advocate for respondent no. 3 **(absent)**.

2. This Original Application has been filed by the Applicant seeking appointment to the post of Chowkidar from Open – Sports category pursuant to the advertisement issued by the Respondent no. 2 on 29.12.2011.

3. Learned Counsel for the Applicant argued that the Respondent no. 2 issued an advertisement on 29.12.2011 to fill up, inter-alia, posts of Chowkidar. The Applicant had applied from Open – Sports category for the post of Chowkidar. The Respondent no. 2, however, selected the Respondent no. 3, though he was from N.T. (2) category and was not eligible to be selected from Open – Sports category. Learned Counsel for the Applicant argued that the sports certificate of the Respondent no. 3 was found to be invalid and by order dated 21.12.2014, the services of the Respondent no. 3 were terminated. The post is

still vacant and the Applicant being the most meritorious from Open – Sports category is eligible to be appointed as Chowkidar.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents no. 1 & 2 that the selection list was declared on 12.7.2012. The waiting list was valid for one year and now that has expired. As such the Applicant is not eligible for appointment to the post of Chowkidar.

5. We find that the Applicant had applied for the post of Chowkidar from Open – Sports category. It is an admitted fact that one post of Chowkidar was reserved horizontally for sports person from Open category and the Respondent no. 3 was selected for that post. As the Sports certificate of the Respondent no. 3 was found to be invalid, he was terminated by order dated 22.12.2014 (Exhibit 'K' page 59-R of the Paper Book). It is also an admitted fact that Applicant was found qualified from Open – Sports category but was not recommended, as there was only one vacancy from Open – Sports category (page 30 of the Paper Book). It is clear that the Applicant was placed at Sr. No. 1 in the waiting list from Open – Sports category. We are not getting in the issue of whether a N.T. category Home – Guard can be appointed to Open – Home Guard post (Though there is a

judgment of this Tribunal in Irfan Shaikh's case on that issue, confirmed by Hon'ble Supreme Court). The fact remains that the respondent no. 3 did not have a valid Sports certificate and was ineligible to be considered from Sports category. On that basis, the Applicant was fully eligible to be appointed from Open – Sports category (provided his sports certificate is found to be valid). The selection list was published by the Respondent no. 2 on 9.7.2012. The present Original Application was filed on 25.7.2012, during the validity of the selection / waiting list. It now transpires that the Respondent no. 3 was not eligible at all to be selected from Sports category and the Applicant was the person, who should have been selected. The Respondent no. 2 took more than one year to decide about the validity of Sports certificate of the Respondent no. 3. The Applicant cannot be made to suffer for that lapse of the Respondent no. 2. He is eligible to be appointed as Chowkidar from Open – Sports category. As the matter was pending before this Tribunal, it cannot be said that the validity of the waiting list has expired.

6. This Original Application is allowed accordingly with the direction to the Respondent no. 2 to give appointment to the Applicant as Chowkidar within a period of 4 weeks from the date

of this order, if he is otherwise found eligible. There will be no order as to costs.

MEMBER (J)

VICE CHAIRMAN

ARJ-OA NO.550-2012 HON. R. AGARWAL (SELECTION)