

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 658 OF 2018

DISTRICT : KOLHAPUR

Shri A.V Patil)
Occ-Nil,)
R/o: Kkandalgaon, Post R.K Nagar,)
Tal-Karvee, Dist-Kolhapur.)...**Applicant**

Versus

1. The In-charge Deputy Director,)
Sports & Youth Services,)
Kolhapur Division, Kolhapur.)
Having office at Administrative Bldg,)
Bawada Road, Kolhapur)
2. The Joint Director,)
Sport & Youth Services,)
[M.S], Pune, having office at)
Shivchatrapati Sports University,)
Mhalunge Balewadi,)
Pune.)
3. The State of Maharashtra,)
Through Principal Secretary,)
School Education & Sports Dept,)
Mantralaya, Mumbai 400 032.)
4. The Commissioner of Police,)
Brihan Mumbai, having office at)
Mumbai Police Commissionerate,)
L.T Marg, Fort, Mumbai 400 001.)...**Respondents**

Shri B.A Bandiwadekar, 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 : **19.04.2022**

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

J U D G M E N T

1. The applicant has filed the present Original Application pursuant to the advertisement dated 5.2.2018 for the post of Constable in the Open Sports Category. In the said advertisement, 32 posts were kept reserved for Open Sports Category, Group-C for Constable. The applicant has played the game Tug of War and won first position in the Tug of War State Championship Competition held at Sangli in the year 2011. The candidature of the applicant was rejected on the ground that the game Tug of War which he has played and got the Championship is not recognized in the Olympic Games, Asian Games or Common Wealth Games, as per the requirement of G.R dated 1.7.2016. The applicant has therefore challenged the impugned order dated 30.8.2017 rejecting his Sports Validity Certificate and also order dated 14.2.2018, i.e. the order passed by the Appellate Authority and the order dated 10.7.2018 cancelling the selection of the applicant as Constable.

2. Learned counsel for the applicant has relied on the earlier G.R dated 30.4.2005, wherein the game Tug of War was included in Group-C category as approved game for the purpose of 5% reservation. Learned counsel has submitted that that State

Government by G.R dated 1.7.2016 has excluded the game Tug of War as an approved game for reservation. This act of the Respondent-State is discriminatory, arbitrary and unconscionable. The applicant has played this game in the year 2011 and has secured the Championship. Learned counsel for the applicant has submitted that the persons who have played the game Tug of War between the period 30.4.2005 and 1.7.2016, they are to be given the benefit of 5% reservation in the Sports category. Learned counsel has submitted that the applicant has a legal claim to get selected in the Sports category, because he is holding a valid Certificate of the Sports Championship in the game Tug of War, which was recognized by the State Government as per G.R dated 30.4.2005. Learned Advocate for the Applicant has further submitted that the game Tug of War is excluded only for Group-A post and it is available for Group-C and Group-D posts.

3. Learned counsel for the applicant has further relied on the G.R dated 19.1.2017, wherein the Respondent-State has taken a policy decision to consider the Sports Certificate of the Sportsman who have played the game through the Institute or Association, whose approval was withdrawn by the State Government by G.R dated 1.7.2016. Learned counsel for the applicant has submitted that the G.R dated 19.1.2017, is to be made applicable to the applicant as he also is entitled to get the benefits of the validity of his Sports Certificate for the game of Tug of War which was excluded subsequently in the year 2016.

4. Learned C.P.O has submitted that the Government has taken a policy decision to include the game for the purpose of reservation if the games are played in Olympic Games, Asian Games and Common Wealth Games in order to promote Sportsman for playing games at International level. The policy

decision of the reservation is taken with a view to provide better Sportsmen to the Country to compete at International level. The game Tug of War is not included in either of these three competitions, i.e. Olympic Games, Asian Games and Common Wealth Games. Therefore, the Respondent-State by G.R dated 1.7.2016 has taken a policy decision to exclude the game Tug of War. The applicant has no right to claim reservation in 5% under the Sports category as the said game is excluded.

5. We are of the view that to include only the games which are played in Olympic Games, Asian Games and Common Wealth Games for the purpose of 5% reservation, is entirely a policy decision and prerogative of the State Government. We are unable to appreciate the arguments advanced by the learned counsel for the applicant on the point of discrimination or arbitrariness. The learned counsel for the applicant pointed out that nearly 7 candidates though they have played Power Lifting, which was excluded in G.R dated 1.7.2016, were treated eligible and were given appointment and they are working in the office of the Commissioner of Police, Greater Mumbai, hence this amounts to discrimination. He cannot establish his claim or legal right of those seven persons may be wrong and illegal, however, that is not a subject matter. The applicant could not prove that his exclusion is illegal.

6. In view of the above, we call upon the Respondent-State to meet the arguments of the learned counsel for the applicant and we also made query independently that if the game Power Lifting was excluded from the 5% reservation by G.R dated 1.7.2016, how these seven persons were given appointment.

7. The Respondent-State is directed to furnish the information as to how and why the 7 candidates whose names appear in the chart submitted along with the affidavit in rejoinder by the learned counsel for the applicant were given the benefit of 5% reservation and given appointment in the office of the Commissioner of Police, Greater Mumbai.

8. Learned C.P.O. informs that pursuant to the order dated 19.04.2022 the Respondents have issued show cause notice to those 7 candidates who were appointed by validating their certificate in the game namely power lifting, though it was excluded in G.R. dated 01.07.2016. She further relies on the judgment of the Full Bench of the Bombay High Court **dated 15.11.2021 in Writ Petition No.4832/2018 (Umesh Devaji Burande Versus State of Maharashtra &Anr.)** wherein the Full Bench has taken view that the G.R. dated 01.07.2016 is made applicable prospectively and it has superseded the G.R. dated 30.04.2005.

9. We make it clear that the submissions of learned Advocate has no substance because the game selected for reserved should be included in the Olympic Game, Common Wealth Game or Asian Game and they are to be played either as hierarchy in International, National and District level as per A, B, C, D category.

10. Further learned counsel for the applicant argued that what is the statement of object behind including games namely, Chess, Kho-Kho and Kabbadi when these three games are not played in Olympic Game, Common Wealth Game or Asian Game. These submissions cannot be sustained because it is completely the matter of policy of the State and State is empowered to form such policy. The Tribunal need not go into the purpose or object of the policy of the State in such matters.

11. Be that as it may. In view of the reasons stated above by us the Applicant cannot prove his legal right that he is entitled to get the benefit of 5% reservation in Open Sports Category on the basis of his excellence in Sports namely, Tug of war, as it is excluded in the list in G.R. dated 01.07.2016.

12. We find no merit in the Original Application and hence dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 21.04.2022
Dictation taken by : A.K. Nair.