

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 95 OF 2020
CORRECTED COPY BY ORDER DATED 23.3.2022**

DISTRICT : SATARA

Shri Praful Dilip Sakunde,)
Occ : Nil, R/o : 117, B/3 Laxmiganga Apt,))
Shukrawar Peth, Satara 415 002.)...**Applicant**

Versus

1. The Secretary,)
Maharashtra Public Service)
Commission, [M.S], Mumbai,)
Office at Cooperage Telephone)
Nigam Bldg, M.K Road, Cooprage,)
Mumbai 400 021.)
2. The State of Maharashtra,)
Through Principal Secretary,)
[Transport], Department of Home,)
Mantralaya, Mumbai 400 032.)
3. The Transport Commissioner,)
[M.S], Mumbai,)
Having office at 5th floor, MTNL,)
Fountain Bldg, M.G Marg,)
Hutatma Chowk, Mumbai 400 001.)
4. The State of Maharashtra,)
Through Principal Secretary,)

- School Education & Sports &)
 Youth Services Department,)
 Mantralaya, Mumbai 400 032.)
 5. The Divisional Deputy Director of)
 Sports and Youth Services,)
 Having office at Divisional Sports)
 Complex, Sambhaji Nagar,)
 Kolhapur.)...**Respondents**

Shri B.A Bandiwadekar learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

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

DATE : **08.03.2022**

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

J U D G M E N T

1. The applicant prays that he be declared as entitled for the appointment in the post of Assistant Motor Vehicles Inspector by Respondents No 1 to 3 in a vacancy meant for Open Category simplicitor, on the basis of the decision of the Hon'ble Bombay High Court dated 8.8.2019 in CHARUSHILA TUKARAM CHAUDHARI & ORS Vs. STATE OF MAHARASHTRA & ORS, W.P 4159/2018.

2. The applicant, pursuant to the advertisement dated 30.1.2017 by the Respondent no. 1, M.P.S.C, has applied for the post of Assistant Motor Vehicles Inspector from Open Sports

Category. However, his application was rejected on the ground that when he was called for the verification of documents, his Sport Validity Certificate was obtained subsequently and not before the date of submission. Learned counsel for the applicant submitted that the applicant though has applied in the Sports Category, seeks relief on the basis of the decision of the Hon'ble Bombay High Court dated 8.8.2019 in CHARUSHILA TUKARAM CHAUDHARI's case.

3. Learned counsel for the applicant pointed out the chronological events after the advertisement was issued. The result of the Preliminary Examination of Assistant Motor Vehicles Inspector of 2017 was declared on 30.6.2017 and the applicant was declared pass in the Open Category. M.P.S.C declared the date of Main Examination on 1.7.2017. Thereafter, the applicant applied for verification of his Sport Certificate in Boxing. The applicant filled up the form for the Main Examination on 4.7.2017 and submitted his Sport Certificate for verification on 3.7.2017. He got the Sport Certificate verified on 23.8.2017 issued by the Regional Deputy Director of Sports, Youth and Services, Kolhapur. The result of the Main Examination was declared by Respondent no. 1, M.P.S.C on 31.3.2018. The name of the applicant was shown at Sr. No. 163 in the merit list. M.P.S.C issued the recommendation letter on 12.7.2018 wherein the name of the applicant was recommended. The M.P.S.C again sent letter on 9.9.2019 revising the final results of the Main Examination. However, the State of Maharashtra, i.e. Respondent no. 2, issued show cause notice as to why the applicant was not to be treated as ineligible on the ground that the Sports Certificate was submitted after the fixed date, i.e. 15.7.2017. The Respondent no. 2, cancelled the recommendations of the applicant from the Open

Sports Category on the ground of not holding valid Sport Certificate at the time of submission of Certificate, i.e. 15.7.2017.

4. Learned counsel for the applicant has submitted that the applicant in fact is eligible in both the Sports Category as well as Open General Category as he has secured 192 marks and his name appears in the merit list at Sr. No. 163. Learned counsel for the applicant has argued that M.P.S.C has also recommended the name of the applicant that his name can be considered in the Open General category as he is found eligible. However, the Government has turned down this recommendation on a very technical ground that once the applicant has applied under the Open Sports Category, he is not permitted to shift to Open General Category. Learned counsel for the applicant has submitted that the applicant's case is to be tested on the ground of sole yardstick of merit in the open general category. He further submitted that ultimately his candidature can be considered in Open Sports Category because he was meritorious sports person in Boxing. He has played State level tournaments and secured Silver Medals.

5. Learned counsel for the applicant has relied on the following judgments:-

- (i) CHARUSHILA TUKARAM CHAUDHARI & ORS Vs. STATE OF MAHARASHTRA & ORS, W.P 4159/2018.
- (ii) SAURAV YADAV & ORS Vs. STATE OF UTTAR PRADESH & ORS, M.A. 2641/2019 in SLP (Civil) 23222/2018 dated 18.12.2020.
- (iii) SADHANA S. DANGI & ORS. Vs. PINKI ASATI & ORS, CIVIL APPEAL NO. 7781 OF 2921 (Arising out of SLP [Civil] No. 7811 OF 2020).

6. Learned P.O has submitted that the case of the applicant is not to be considered as he has filed the Sports Validity Certificate

after the due date i.e. 15.7.2017. Learned P.O relied on the affidavit in reply dated 6.9.2021 filed by the Deputy Transport Commissioner. She also relied on the instructions 3.5, 3.6 & 3.7 of the M.P.S.C and submitted that it was made clear to all the candidates and the candidates were aware that they should possess the valid Sports Certificate when they appear for the Preliminary Examination. The applicant was not diligent in procuring the Sport Validity Certificate in time and he was not having the same at the relevant time, hence he cannot be considered in the Open Sports Category. Similarly, his request for migration to Open General Category cannot be accepted due to compartmentalized Horizontal Reservation. Learned P.O has further submitted that once the applicant has filled the application form in the Open Sports Category, then there is no provision for the applicant to shift to Open General Category. Therefore, the applicant's revised request for appointment through Open General Category simplicitor was not possible. Thus, the Respondents cancelled the candidature of the applicant for having failed to comply with the eligibility criterion set out for appointment through Open Sports Category.

7. Following are the admitted facts:-

The applicant has moved application in Open Sports Category. He has secured 192 marks. The cut-off marks in the Sports category is 142 and for Open General Category cut off marks is 188 marks. Thus, the applicant is eligible in both categories. The total number of posts available in open category are 220 and name of the applicant is appearing in the merit list of open category at Sr. No. 163. The last date of submission of application forms along with valid Sports Certificate was 15.7.2017 and the applicant has secured the Sports Certificate verified by the

competent authority on 23.8.2017. Thus, there was a delay of nearly 40 days to produce the Sport Validity Certificate.

8. We accept the submissions of the learned P.O that as per instructions 3.5, 3.6 & 3.7 of the Assistant Motor Vehicles Inspector of 2017, the applicant should have procured the Sports Certificate verified by the competent authority earlier to submission of his application. We also accept that in the General Instructions of the M.P.S.C for this Examination at Serial No. 11, it is specifically mentioned that when the applicant has submitted claiming reservation in any category, then there won't be any shifting or change from such reservation. Thus, it is a consistent stand of the M.P.S.C that when a candidate claims reservation in Sports Category, he should possess a valid Sports Certificate. It means a Sports Certificate which is verified and approved by the competent Sports Authority. Thus, there is no challenge to the merit of the applicant, a fact that he was a meritorious Sportsman in Boxing and has acquired some special merit of securing 2 silver medals. Thus, the Sports Certificate is neither false nor fabricated; it is a genuine Sports Certificate. However, the applicant was negligent in procuring the same by giving the application immediately after the advertisement was issued. He applied for the Sports Certificate when he cleared the Preliminary Examination and the date of the Main Examination was declared on 1.7.2017. The applicant after two days of declaration of the date of the Main Examination, applied for verification of the Sports Certificate on 3.7.2017. The last date for submission of Sports Validity Certificate was 15.7.2017. Thus, he has only 10 to 12 days for getting the validity Certificate. It is an admitted fact that the competent authority in Sports Department are generally allowed 20 days to verify the Certificate. Thus, there was some possibility and chance of procuring the Validity Certificate as he had moved the

application 10 to 12 days prior to the date of submission of his application for the Main Examination. However, unfortunately, he failed to get the validity Certificate within the stipulated period of 10 to 12 days. The authority gave the Sports Validity Certificate to the applicant on 23.8.2017, nearly 40 days late than the scheduled date.

9. Learned P.O though has opposed that the applicant's case cannot be considered in the Sports category because he has submitted the Sports Validity Certificate late than the due date is correct, we are unable to appreciate the resistance of the State in considering the case of the applicant in Open General Category, especially when there are 220 posts available in the Open Category. The applicant, who secured 192 marks against the cut off marks of 188, stands at Sr. No. 163 in the merit list. We consider that the applicant's case is very peculiar, who is eligible on merit in both the categories, i.e. Open Sports Category and Open General Category. The applicant genuinely is a Sportsman, so also having a genuine Sports Certificate.

10. In **CHARUSHILA TUKARAM CHAUDHARI & ORS (supra) & SAURAV YADAV & ORS (supra)**, the applicants belong to a reserved category and they claim horizontal reservation, wherein the decision in respect of interpretation of the principles of reservation was challenged. All the candidates were from the reserved category claiming horizontal reservation prayed for migration in the open category. In the said case, the Hon'ble Supreme Court and so also the Hon'ble High Court has held that if the candidates have not availed of any benefits of reservation and if they are desirous of competing in general category, they should be permitted to migrate and claim the seat/posts available in the open category. It held that a reserved category candidate claiming

reservation as and by way of horizontal and vertical are always entitled to claim seat from open category as per his/her individual merit. The principle underlying these two decisions is that open category is meant to be filled from amongst all categories and only on the basis of merit. We rely on para 15 of SAURAV YADAV's case:-

“I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. These are not to be seen as rigid “slots”, where a candidate's merit, which otherwise entitles her to be shown in the open general category, is foreclosed, as the consequence would be, if the State's argument is accepted. Doing so, would result in a communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. The open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him.”

Though the judgment in both the cases are about permitting the migration of the reserved candidates claiming horizontal reservation, if the criterion of merit is considered, then there is no bar in applying the same ratio to the candidates in the open category to claim horizontal reservation in open category.

11. We also rely on **SAURAV YADAV's** case (supra) on the point of merit. We have not come across any judgment of the Hon'ble Supreme Court or the Hon'ble High Court, though we called upon both the parties to assist on that point. We find that the case of the applicant is very peculiar and it is to be considered in Open General Category as a special case for the reasons given above. The applicant though was not that diligent, he should not suffer disproportionately for applying late for the verification of the Sports Certificate.

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

- (a) The Original Application is allowed.
- (b) Respondents No. 2 and 3 are directed to consider the candidature of the Applicant in Open General Category and Respondent No. 1, M.P.S.C to recommend it accordingly within two weeks and seniority is also to be maintained accordingly.
- (c) We apply the principle of no work no pay in respect of the seniority and therefore he will get the pay from the date of his joining.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 08.03.2022
Dictation taken by : A.K. Nair.