

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO. 1001 OF 2016**

**DISTRICT: NASHIK**

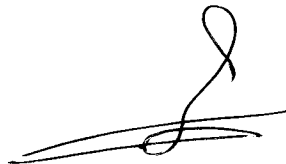
Shri Vinod Bhaskar Kulkarni, )  
Shri. Kulswamni Niwas Srafaline, )  
Budke Gali, in front of Vaidhya Bua's, )  
Ram Mandir, Beed-431122. )...**Applicant**

**Versus**

1. Chief Presenting Officer, )  
Maharashtra Administrative Tribunal, )  
Mumbai. )  
2. District Collector, )  
Chairman District Selection Committee,) )  
District Collector Office, Agra Road )  
Nashik. )...**Respondents**

V.B. Kulkarni, Applicant in Person.

Smt. Archana B.K., learned Presenting Officer for the Respondents.



**CORAM** : **SHRI JUSTICE A.H. JOSHI,**  
**CHAIRMAN**

: **SHRI RAJIV AGARWAL,**  
**VICE-CHAIRMAN**

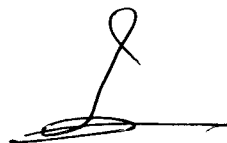
**RESERVED ON** : **23.06.2017**

**PRONOUNCED ON** : **07.08.2017**

**PER** : **SHRI RAJIV AGARWAL,**  
**VICE-CHAIRMAN**

### **J U D G E M E N T**

1. Heard the Applicant in person and Smt. Archana B.K., learned Presenting Officer for the Respondents.
2. By present O.A. Applicant has prayed for direction to the respondents to take an affirmative action on his application dated 28.08.2016 as per G.R. dated 04.03.1991, which governs the procedure and rules of employment of Freedom Fighters in Government. Applicant has also prayed that the selection process commenced by the Respondent No.2 for selection of candidates for the posts of Drivers by advertisement dated 16.08.2016 in disregard to the provision of the said G.R., be stopped.
3. The Applicant argued in person as follows:
  - (a) The Respondent No.2 has issued an advertisement on 16.08.2016 inter-alia, to fill up one post of Driver.

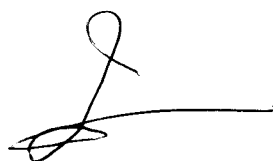


The Applicant is a nominee of a Freedom Fighter. He has been applying for appointment in a suitable post in the Government as a nominee of a Freedom Fighter for quite some time, but was unsuccessful. The post advertised on 16.08.2016 is from open category, and that the Applicant has applied for that post.

(b) The written examination consisted of only 10 questions which were relevant, and all other questions were very tough/ difficult and were of such higher standard that such questions are generally asked by Maharashtra Public Service Commission in its competitive examination.

(c) The Applicant was allowed by the Respondent No. 2 to appear for the written test (Screening test). On the basis of correct answers given by the Applicant, he was entitled to get 64 out of 100 marks. The Respondent No.2 actually allotted/awarded to the applicant, only 60 marks. This act of awarding lesser marks is done by the respondent No.2 by omitting to award to the applicant, marks for two answers which he had written correctly.

(d) The Respondent No.2 was expected to act in accordance with G.R. dated 04.03.1991 and the judgement of Hon'ble Bombay High Court dated 14.03.2008 in W.P. No. 7955/2006. Government has issued another G.R. dated 25.10.2005, which provides for giving preference to various categories including to the nominees of Freedom Fighters, however the



Respondent No.2 has totally disregarded this government resolution.

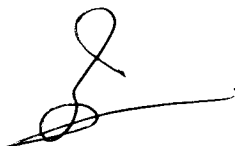
4. Learned P.O. argued as follows:

(a) No prejudice is suffered by the applicant due to difficult questions or due to alleged grant/award of lesser marks

(b) G.R. dated 04.03.1991 was issued for consolidating earlier instructions regarding employment for the Freedom Fighter and their nominees. Freedom Fighters were allowed to apply directly to the appointing authority. This G.R. only provided that application of the Freedom Fighters or their nominees should be considered sympathetically.

(c) As per G.R. dated 31.05.1993, the nominees of Freedom Fighters were to be given preference for ad-hoc appointment after reserved posts were filled. G.R. dated 25.10.2005 talks about Social Reservation, Special or Horizontal Reservation and preferences to be given in appointment. The nominees of the Freedom Fighters are to be given preference along with some other categories.

(d) In Hon'ble Bombay High Court in W.P. No. 7955/2006 by judgement dated 21.11.2011 which is relied on by applicant, Hon'ble High Court has held that the object behind the scheme of giving preference to the nominee of the Freedom Fighters in Government



employment was to ensure that such a nominee will look after the Freedom Fighter or his widow, and if both of them are not alive, there is no question of nominee looking after them and in such a case, the nomination does not survive. Government has issued G.R. dated 28.02.2014 furtherance to aforesaid judgement of Hon'ble High Court.

(e) In the present case, the Applicant was nominated by a relative, who was a Freedom Fighter. In case, the Freedom Fighter and his wife, both are no longer alive, the nomination done by the Freedom Fighter, and in present case, the certificate of the Applicant is therefore, no longer valid.

(f) Horizontal reservation is not provided for Freedom Fighters and giving the preference will means that after reserved posts were filled, such candidates may be preferred over open-general candidates, if their performance was otherwise equal.

(g) There is horizontal reservation for PAP while horizontal reservation for Freedom Fighters is not prescribed.

(h) In the Full Bench of Bombay High Court in the case of **Rajendra P. Pagare & Another Vs. State of Maharashtra & Others : 2009 (s) ALL MR 830** it is held that Project Affected Persons (P.A.P.) have no right to be appointed without competing with candidates from



that category, and same ratio would govern applicant's case.

(i) The nominee of Freedom Fighters cannot be considered for appointment without competing with other (Open) candidates and they can only be given preference, if such a candidate and an open candidate score equal marks.

5. Now we shall proceed to examine various issues raised by the Applicant and replied by the respondents, as hereinafter.

6. The Applicant claims that the standard of questions in the written test held by the Respondent No.2 consisted of a very difficult questions, and due to those difficult questions, the applicant had suffered prejudice, It is an admitted fact that the applicant as well all other competitors were asked the same questions. The issue raised by the Applicant about the standard of questions in the written examination held by the Respondent No. 2 is not relevant, as the same question papers were given to all the examiners and no prejudice was caused to the Applicant.

7. The Applicant claims that he was not given four marks, though he had given correct answers to two questions. This



also will not make any difference as the marks scored by the Applicant (64 as per his own claim) are much less than mark scored by others, highest being 78. The claim of the Applicant that he should have been awarded 64 of 100 marks will not make any difference to the final outcome, as the person who was selected had actually scored 78 marks. Therefore the Applicant can have no grievance on this count.

8. The Applicant is claiming the benefit of G.Rs dated 04.03.1991, and 25.10.2005. Both these G.Rs provide for preference to be given to nominee of a Freedom Fighter in Government service. The Applicant claims that the Respondent No.2 has not acted as per clause 4 of G.R. dated 25.10.2005. This clause is reproduced below:

“४. पसंतीक्रम

सामाजिक आरक्षण तसेच विशेष आरक्षणाव्यतिरिक्त इतर काही प्रवर्गांना (घटकांना) शासन सेवेत प्रतिनिधित्व देण्यासाठी जसे स्वातंत्र्य सैनिकांचे नामनिदेशीत व्यक्ती, संपकालीन कर्मचारी, १९८१ चे जनगणना कर्मचारी, १९९९ चे जनगणना कर्मचारी आणि आंशकालीन पदवीधारक बरोजगार यांच्याकरिता संवाभरतीमध्ये पसंतीक्रम दर्शविले आहेत. यासंदर्भात शासन निर्णय, सामान्य प्रशासन विभाग, क्र. एईएम. १०१२/३६५५/प्र.क्र. ९०/९२/१६अ, दिनांक ३१ मे १९९३ आणि पअंक. १०९७/१७९३/प्र.क्र. ४/९८/१६अ, दिनांक १९ मार्च १९९८ (सहपत्र १५ व १६) विचारात घ्यावेत.”


On going through this G.R., it is seen that the preference (पसंतीक्रम) is to be given after social and special reservation is provided. Obviously there is no reservation for nominees of Freedom Fighters. Preference cannot be applied



in a manner which will amount to reservation. Limiting the selection to nominees of Freedom Fighters for a post in terms of applicant's interpretation will amount to **de facto** reservation. The only way the preference can be applied, is by making the nominees of Freedom Fighters compete with open candidates and if a nominees of Freedom Fighters and an open candidate perform equally well, nominee of the Freedom Fighters would be preferred. On this touchstone, the grievance of the Applicant that no preference was given to him by the Respondent No.2 for selection to the post of Driver is unfounded. Rather, applicant's submission is based on an expectation, than a duly created or crystallized right.

9. The other important fact to be considered is the validity of certificate issued to the Applicant as a nominee of a Freedom Fighter. Hon'ble High Court in the case of **Mr. Sachin Hundekari Vs. State of Maharashtra in W.P. No. 7955 of 2006** has held as follows:

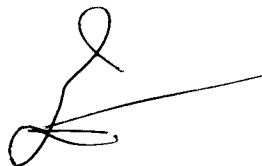
"7. From the object behind the scheme, it is clear that the scheme was formulated with the object that the widow of the freedom fighter should be looked after in his lifetime. Therefore, in the absence of the freedom fighter, the widow was also allowed to nominate a relative for government service. However, when the freedom fighter or his wife are not alive, then there is no question of looking after





the freedom fighter or his widow and in such case, once the widow dies, the nomination made by the widow of the freedom fighter would not survive.”

The Scheme of giving preference in employment is meant for Freedom Fighters themselves, however, if a Freedom Fighter for some reason is not able to accept or avail the employment himself, he (and after his death, his widow) can nominate a person as his nominee. In our view, basic purpose of the scheme is that such a nominee should shoulder the responsibility to maintain the Freedom Fighter or his widow. No right is created and vested in the nominee of a Freedom Fighter for preference in appointment in employment of the Government. There is no reason to extend the benefit meant for Freedom Fighter to his nominee after the death of the Freedom Fighter &/or wife of Freedom Fighter. The Applicant's certificate as a nominee of Freedom Fighter has lost efficacy or force after the death of the Freedom Fighter/his widow, who had nominated him. In the light of foregoing discussion we hold that the Applicant is not entitled to get any benefit as a nominee of a Freedom Fighter. The certificate has out lived its object and purpose.

A handwritten signature in black ink, consisting of a stylized, cursive letter 'L' with a long horizontal stroke extending to the right.

10. The Applicant has failed to make out any case warranting our interference, This O.A. is accordingly dismissed with no order as to costs.

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**



Sd/-

**(A.H Joshi J.)**  
**Chairman**

**Place : Mumbai**

**Date : 07.08.2017.**

**Dictation taken by: N.M. Naik.**