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IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

ORIGINAL APPLICATION NO.1067 OF 2014

DISTRICT : PUNE

Shri Rajendra Gangaram Jadhav. )  
120/23, SRPF Group II, Ramtekadi, )  
Pune - 411 022. )...Applicant

**Versus**

1. The Director General of Police. )  
Maharashtra State, Shahid )  
Bhagatsing Marg, Mumbai. )
2. The Addl. Director General of )  
Police, SRPF, M.S, Goregaon, )  
Mumbai - 400 065. )
3. Special Inspector General of Police. )  
SRPF, Pune Range, PUnE. )
4. Commandant. )  
SRPF Unit No.2, Ramtekadi, )  
Pune - 411 022. )
5. Shri S.A. Wante. )  
Constable, M.T. Section, SRPF, Gr-II )  
Ramtekadi, Pune 411 022. )
6. Shri M.S. Terdal. )  
Constable, Admn. Company, SRPF )  
Gr-II, Ramtekdi, Pune - 411 022. )

  
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7. Shri A.S. Khutwad. )  
Constable, G. Company, SRPF, )  
Gr-II, Ramtekadi, Pune - 22. )
8. Shri S.D. Shinde. )  
Constable, Wireless Section, SRPF, )  
Gr-II, Ramtekadi, PUNE 411 022. )
9. Shri A.C. Pawar. )  
Constable, E Company, SRPF, Gr-II, )  
Ramtekadi, Pune 411 022. )
10. Shri P.P. Suryawanshi. )  
Constable, Wireless Section, SRPF, )  
Gr-II, Ramtekadi, Pune 411 022. )...**Respondents**

**Smt. Punam Mahajan, Advocate for Applicant.**

**Ms. N.G. Gohad, Presenting Officer for Respondents.**

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)**  
**R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 15.07.2016**

**PER : R.B. MALIK (MEMBER-JUDICIAL)**

### **JUDGMENT**

1. The Applicant in seeking the quashing and setting aside of waiting list dated 25.9.2014 prepared on the basis of seniority in effect prays for the criteria of higher marks to be applied and in that connection, the appointments of the Respondents 5 to 10 are sought to be



quashed. The 1<sup>st</sup> Respondent is the Director General of Police, the 2<sup>nd</sup> Respondent is the Additional Director of Police, SRPF, the 3<sup>rd</sup> Respondent is the Special I.G, SRPF, Pune Range and the 4<sup>th</sup> Respondent is the Commandant, SRPF Unit-2.

2. We have perused the record and proceedings and heard Smt. Punam Mahajan, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.

3. The Applicant came to be appointed initially as an Armed Police Constable on 1.8.2006 and was then promoted as Police Naik, Class-III on 24.3.2012. The Commandant, SRPF issued orders on 19.7.2013 asking the Police Constable desirous of appearing for the examination to the post of Writer Head Constable (Assistant Sub-Inspector) to submit the application by 31.7.2013. On 1.1.2014, the results were declared. The Applicant claims to have scored the highest marks (85) and his name was at Serial No.17. It is clear that according to the Applicant, the list ought to have been prepared on the basis of performance namely the marks secured. The office of the 4<sup>th</sup> Respondent - Commandant, SRPF addressed a communication to the Director General of Police -



Respondent No.1 seeking guidelines for making appointments to the said post of Head Constable/ASI. Guidance was sought as regards the criteria on whether it should be seniority-cum-merit. This guidance was conveyed by the communication of 20.9.2014 *inter-alia* mentioning as follows in Marathi (Annexure 'A-5', Page 23 of the paper book).

“उपरोक्त विषय व संदर्भास अनुसरून सर्व समादेशक यांना कळविण्यांत येते की, यापुढे लेखनिक हवालदार पदाची परिक्षा घेतल्यानंतर उत्तीर्ण झालेल्या उमेदवारांची सेवाजेष्ठता लावून, त्यांची गटात रिक्त असलेल्या लेखनिक हवालदार (ग्रेड-१) या पदावर सेवाजेष्ठतेप्रमाणे नियुक्ती करणेबाबत कार्यवाही करण्यांत यावी.

अपर पोलीस महासंचालक,  
रारापोबल यांचे आदेशान्वये

(संदेश श्री.मोहित)  
कार्यालय अधीक्षक  
अ.पो.म.सं, रा.रा.पो.बल, महाराष्ट्र राज्य, मुंबई  
यांचे करिता.”

(emphasis supplied)

4. It is clear from the above communication that thenceforth (यापुढे) the criteria would be seniority. In this behalf, we may usefully refer to a detailed communication from Shri Sanjay Jadhav, Commandant – Respondent No.4 to the 1<sup>st</sup> Respondent. It is in Marathi. It was mentioned therein that for Writer Head Constable, the examination was held on 31.12.2013 and for future appointments to the post of Writer Head Constable, the steps would have to be taken. Thereafter, earlier orders were taken note of. The

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position such as it emerges as a result of the communication of 31<sup>st</sup> May, 1963, the instructions for the post of Writer Head Constable was to maintain a waiting list according to seniority, who would pass the prescribed test. Thereafter, another guidelines came to be issued on 15<sup>th</sup> September, 1982 wherein it was directed that the 1<sup>st</sup> Grade Writer Head Constables would be posted according to principles of seniority-cum-merit from amongst available qualified Head Constables. The next communication was of 11<sup>th</sup> July, 1983 wherein it was directed that the appointment to the said post would be made according to the seniority-cum-merit, and therefore, the principle of seniority-cum-merit was applied. On 19.1.1988, the guidelines were issued inter-alia mentioning that in as much as the appointments for the said post were in large number and the posts were only 10 comprising of 9 AHCs, Grade-I and 1 AHC, Grade-II, the waiting list should be of only 10 Policemen in order of merit according to marks obtained. Then on 20.2.1995, the guidelines were issued that all HCs, Grade-I or II who had passed SSC examination or above should be allowed to appear for the test only in cases where sufficient number of HCs did not appear for the test in order to fulfill the waiting list of 10 personnel having minimum of 5 years of service and having passed SSC or above. On 15.4.2005, further

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guidelines were issued pegging the minimum qualifying marks at 50% from amongst successful candidates. After preparing the merit list, the first 10 would be in the waiting list. Those in the said list should have scored at least 50% marks and in case, 10 candidates were not available with that kind of a score, then only those who scored 50% of minimum marks would be there in the list. It was opined in the said letter that the seniority was the better principle. It concluded by observing that in the absence of clear rules with regard to the said post, different types of instructions were given at different points of time resulting in a situation where in some cases, seniority and in some other cases merit would be the dominant consideration and in order to have consistency and uniformity, directions be given as to whether it should be seniority or merit and it was in this particular background that the above quoted Marathi communication apparently came to be issued.

5. A natural fallout, however, is that at the time, the selection process in question commenced, the criteria was higher mark based. No doubt in future (यापुढे), the criteria would be seniority but the present facts would be governed by the position such as it existed at the point in time when merit as a criteria ruled the roost.

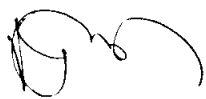


6. In the Affidavit-in-reply filed by the Commandant, SRPF – Respondent No.4 who got it filed by one Police Inspector Shri A.E. Jagtap. In Para 13, it is pleaded as follows :

“With reference to para 6.11, I say that though previously the list of successful candidates used to be made on the basis of merit in examination but as per the letter dtd. 20.9.2014 the Respondents have prepared the select list as per the seniority list.”

7. We do not think any more needs to be mentioned to buttress the conclusion that at the point of time relevant hereto, the criteria of higher marks (merit) was the only one that should have been applied. On facts herein, the criterion was applied probably because of the communication which has been reproduced above of seniority which will make the impugned action completely vulnerable to be interfered with by us.

8. A copy of an order of this very Bench in **OA 234/2014 (Shri Pradeep Shahu Kadukar Vs. The Additional Director General of Police and one another, 27.8.2014)** was furnished to us in which this Bench spoke through the Hon'ble Vice-Chairman. The issue was pertaining to the promotion to the post of PSI in SRPF.

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There, Rule 56 of the Bombay State Reserve Police Force Rules, 1954 was involved. In fact, the said Rule was verbatim the same in 1959 Rules, a copy of which has been furnished to us. The said Rule provided *inter-alia* that the promotion to the rank of Naiks, Hawaldars, Jamadars and Sub-Inspectors would be made on the basis of fitness for which record of service, character and ability, etc. would have to be examined. It was observed that a candidate has to be fit in that regard and should have passed the qualifying examination also. But in that matter, it was further held that qualifying examination was not the sole criteria. The Circulars and memoranda which were relevant in that matter were considered.

9. Quite pertinently, however, in this particular matter which has to be decided no doubt on application of the principles, but on its own facts, the situation was clear that admittedly at the time the process began, merit (higher marks) was the criterion. The authorities were longing to work out a proper criteria which ultimately for future was worked out as seniority but as far as this process of selection is concerned, it would be higher marks, and therefore, that judgment is clearly distinguishable. This OA, therefore, will have to be allowed and the waiting list of 25<sup>th</sup> September, 2014 will have to be

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quashed and set aside. Those who are likely to be affected were impleaded hereto as private Respondents 5 to 10, but they have decided against contesting this OA and nothing could be done thereabout.

10. For the foregoing, the impugned waiting list of 25<sup>th</sup> September, 2014 is quashed and set aside and the Respondents 1 to 4 are directed to prepare a waiting list on the basis of the marks obtained in the written examination held on 31<sup>st</sup> December, 2013 and if the name of the Applicant could be included on the basis thereof, it be done accordingly and if the names of Respondents 5 to 10 need to be deleted, the same be done accordingly. The Original Application is allowed in these terms with no order as to costs.

Sd/-  
**(R.B. Malik)**  
**Member-J**  
**15.07.2016**

Sd/-  
**(Rajiv Agarwal)**  
**Vice-Chairman**  
**15.07.2016**

Mumbai  
Date : 15.07.2016  
Dictation taken by :  
S.K. Wamanse.