

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

PRINCIPAL BENCH, MUMBAI

ORIGINAL APPLICATION NO.1100/2012.

(D.B.)

Lata Shyamrao Sangolkar,
Aged about 31 years,
Occ- Nil,
R/o 301, Guru Nivas Cooperative Housing Society,
Sector 12, Kharghar,
Navi Mumbai-410 210.

Applicant.

-Versus-

- 1) The State of Maharashtra,
Through its Additional Director General of Police
and Inspector General of Prisons,
(M.S.), Old Administrative Building,
2nd floor, Pune-411 001.
- 2) Sujata Sanjay Joshi,
Resident at TELCO Society No.2,
Tinhewadi Road, Rajurunagar, Tq. Khed,
Distt. Pune.
- 3) Nirmala Baburao Bandal,
Resident at Survey No.14, Thite Vasti,
At and Post Khardi, Tq. Haveli, Dist. Pune.
- 4) Asha Subhashrao Sonwane,
Resident at Jalgaon Bypass Road,
Behind Bharat Gas, Azadnagar, Sillod,
Distt. Aurangabad.
Working as Jailor (Grade-II),
Nashik Central Jail, Nashik Road,
Nashik- 422 100.

5-A) Santoshi Sayaji Kolekar,
Working as Jailor (Grade-II),
Nashik Central Jail, Nashik Road,
Nashik- 422 100.

5-B) Neha Yogesh Gujrathi,
Working as Jailor (Grade-II),
Nashik Central Jail, Nashik Road,
Nashik- 422 100.

5-C) Surekha Dadabhau Waghchoure,
Through Additional Director General of Police
and Inspector General of Prisons,
(M.S.), Old Administrative Building,
2nd floor, Pune-411 001.

5-D) Secretary,
General Administration Department,
Mantralaya, Mumbai-400 032.

Respondents

Shri L.S. Deshmukh, the learned counsel for the applicant.
Smt. Kranti S. Gaikwad, the learned P.O. for respondent
No. 1 and 5-D.
None for respondent Nos. 2 to 4 and 5-A to 5-C.

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J) and
Shri P.N. Dixit, Member (A)

JUDGMENT

(Passed on this 23rd day of January 2019.)

PER:- Vice-Chairman (J)

Heard Shri L.S. Deshmukh, the learned counsel for
the applicant and Smt. Kranti S. Gaikwad, the learned P.O. for the

respondent No. 1 and 5-D. None for respondent Nos. 2 to 4 and 5-A to 5-C.

2. The petitioner applied from OBC (Female) category in response to the advertisement issued on 18.2.2000 for the post of Jailor, Grade-II. Total number of posts to be filled in, was 100. Out of which, 52 posts were filled in from Open category. There were 14 reserved posts for OBC category in vertical (social) reservation. In horizontal reservation, candidates were required to indicate the category viz. Ex-Serviceman, Project Affected Persons (PAP) etc. to which they were applying, in the application form vide G.R. dated 16.3.1999 provided for the horizontal reservation. This G.R. prescribed the procedure that preparation of select list on the basis of judgment of the Hon'ble High Court in case of **Anil Kumar Gupta V/s State of Uttar Pradesh and others reported in 1995 (5) SC-505.**

3. This Tribunal delivered a judgment in O.A. on 19.3.2014. It was of the opinion that 16 posts which are reserved for Open (Female) candidates have to be filled in from amongst Open (Female) candidates, while candidates from other vertical reservation category are not eligible to be counted as Open (Female). If adequate number of eligible candidates or any other horizontal reservation are not available, those posts have to be transferred to

Open (General) category and to Female candidates from other social reservation. Open (General) to open to all candidates regardless of social reservation. But the same principle does not apply to horizontal reservation. The Tribunal therefore, held that the petitioner could not get selected from Open (Female) category and she was eligible to compete only from OBC (Female) or a General candidate without any consideration of reservation.

4. In view of the aforesaid observation, this Tribunal was pleased to dismiss O.A. No. 1100/2012 on 19.3.2014. Being aggrieved by the said judgment, the petitioner / applicant approached the Hon'ble High Court of Bombay by filing W.P. No.10769/2015. The Hon'ble High Court of Bombay in the said writ petition was pleased to remand the case to this Tribunal vide order dated 22.2.2018. The Hon'ble High Court has observed in para 5 and 6 as under:-

“5. The learned counsel for the petitioner invited our attention to the decisions of this Court in case of,

- (I) Kanchan Vishwanath Jagtap V/s Maharashtra Administrative Tribunal, Nagpur and others reported in (2016) 1 Mh.L.J. 934 and in case of

(II) Asha Ramnath Gholap V/s President, District Selection Committee / Collector, Beed and others reported in (2016) 3 ABR 376.

which lays down the principle that if SC candidates get selected in open competition on the basis of their own merit, they will not be counted against the quota reserved for SC. It is further held that meritorious candidates in women category belonging to reserved category cannot be denied benefit of their meritorious position. Learned AGP supports the order passed by the Tribunal.

6. We are of the view that there is some substance in the contention of the learned counsel for the petitioner that the decisions of this Court in the case of **Kanchan Vishwanath Jagtap** (supra) and in case of **Asha Ramnath Gholap** (supra) referred to hereinabove will have some bearing on the facts of this case. However, decision of this Tribunal is rendered prior in point of time to these decisions of this Court. In the interest of justice, we are therefore of the opinion that the matter needs to be

remitted back to the Tribunal for considering the matter afresh in the light of the decisions rendered by this Court in the case of **Kanchan Vishwanath Jagtap** (supra) and in case of **Asha Ramnath Gholap** (supra).”

5. In view of the aforesaid directions of the Hon’ble High Court, this Tribunal has to consider the matter afresh in view of decision rendered by the Hon’ble High Court in case of **Kanchan Vishwanath Jagtap V/s Maharashtra Administrative Tribunal, Nagpur and others reported in (2016) 1 Mh.L.J. 934 and Asha Ramnath Gholap V/s President, District Selection Committee / Collector, Beed and others reported in (2016) 3 ABR 376.**

6. We have perused the judgment reported in **Kanchan Vishwanath Jagtap** (supra). In the said case, only question which falls for consideration before the Hon’ble High Court was whether this Tribunal has rightly considered the law laid down by the Hon’ble Apex Court in case of **Rajesh Kumar Daria V/s Rajasthan Public Service Commission and others reported in (2007) 8 SCC-785.** In the case of **Rajesh Kumar Daria** (supra), petitioners are belonging to SC and OBC categories and were not eligible for competing from Open (Female) category. In para Nos. 9

and 10 of the judgment, the Hon'ble High Court has observed as under:-

“9. It could thus be seen that the case that fell for consideration before Their Lordships of the Apex Court was regarding the compartmentalized reservation. In the said case, reservation was provided for various categories including SC, ST, OBC and within that reservation, particular number of posts were reserved for women category. In that view of the matter, Their Lordships held that the women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women.

10. However, the facts in the present case are totally different. In the present case, there is no compartmentalized reservation. Out of the six posts available, two are reserved for women. No doubt that it would have been more appropriate that in the light of the observations of Their Lordships in the case of Anil Kumar Gupta V/s State of U.P. reported in (1995) 5 SCC 173, the State ought to have provided reservation for women in particular vertical reservation category. However, that has not been done. In the advertisement, two posts are reserved for women category.”

7. The Hon'ble High Court has further observed in para 13 that the case before it would not be governed by law laid down by the Hon'ble Apex Court in case of **Rajesh Kumar Daria** (supra). From the said observation, it is clear that the case of **Kanchan Vishwanath Jagtap** (supra) was not in respect of compartmentalized reservation and, therefore, the Hon'ble High Court came to the conclusion that, though the applicant belongs to SC category, she can be considered for appointment on her own merit from Open (General) category.

8. We have also perused the judgment reported in **(2016) 3 ABC-736 in case of Asha Ramnath Gholap V/s President, District Selection Committee / Collector, Beed and others.** In the said case also, in para No. 29 of the judgment, the Hon'ble High Court has observed as under:-

“29. Thus, in both the aforesaid judgments, the aspect dealt within by the Hon'ble Apex Court was pertaining to filling up the horizontal quota “under vertical (social) reservation”. In the instant case, the question for determination is how to fill up the horizontal quota for women not prescribed within the social reservation but under open category. We have elaborately discussed hereinbefore that there is no separate category like “open category” and the

expression “open category” includes therein persons belonging to all categories irrespective of their caste, class or community or tribe. It is thus evident that when three posts were notified to be filled in by the female candidates belonging to open category, it was open for the petitioner to compete for the said post irrespective of the fact that she belongs to the reserved category and when she had secured meritorious position amongst the female candidates and had secured 2nd highest marks, her selection could not have been denied by the respondents on the ground that she belongs to SC and does not fall in the Open category. As per the observations of the Hon’ble Apex Court in the case of V.V. Giri (AIR 1959 SC 1318) (cited supra), which we have reproduced hereinabove, though the petitioner had applied from SC category, that does not mean that she had given up her right to be selected to the unreserved post or to the post for Open category. The claim of eligibility for the reserved post does not exclude the claim for general seat. It is an additional claim.”

9. In the said case, 23 posts of Pharmacists were to be filled in. Out of which, 10 were filled in from candidates belonging to Open category, whereas remaining 13 were reserved for

candidates belonging to reserved category and admittedly the petitioners therein are belonging to SC category. Admittedly, it was not a case of compartmentalized reservation.

10. The case before-hand is admittedly the case of compartmentalized reservation. In the present case, out of 100 posts, 52 posts were to be filled in from Open category wherein 42 posts were to be filled in from OBC (Female) category under social reservation. Social reservation is provided for different categories, such as SC, ST, VJ (A), VJ (B), VJ (C) and VJ (D), OBC etc. Thus, it is a clear cut case of compartmentalized reservation. From both the judgments of the Hon'ble High Court, it will be clear that the case of **Rajesh Kumar Daria** (supra) decided by the Hon'ble Apex Court, matter for compartmentalized reservation was considered. This case was also considered by the Hon'ble High Court in case of **Kanchan Vishwanath Jagtap** (supra) and vide interpreting the judgment, the Hon'ble High Court has observed as under:-

“6. The only question that falls for consideration in the present writ petitions is as to whether the learned Tribunal has rightly considered the law laid down by the Apex Court in the case of **Rajesh Kumar Daria** (supra) or not.

7. Their Lordships of the Apex Court were considering the selection to the post of Munsiff-Magistrate in the Rajasthan Judicial Service made by the Rajasthan Public Service Commission. In the said case, it can be seen that in the advertisement issued, the advertisement specifically provided for number of posts available for male as well as female in various categories including Open, SC, ST and OBC. It will be relevant to refer to the observations of the Apex Court in the case of **Rajesh Kumar Daria** (supra) in paragraph Nos. 8 and 9 :-

“8. We may also refer to two related aspects before considering the facts of this case. The first is about the description of horizontal reservation. For example, if there are 200 vacancies and 15% is the vertical reservation for SC and 30% is the horizontal reservation for women, the proper description of the number of posts reserved for SC, should be : For SC : 30 posts, of which 9 posts are for women.” We find that many a time this is wrongly described thus: “For SC : 21 posts for men and 9 posts for women, in all 30 posts”. Obviously, there is, and there can be, no reservation category of ‘male’ or ‘men’.

9. The second relates to the difference between the nature of vertical reservation and horizontal reservation in favour of SC, ST and OBC under Article 16 (4) are ‘vertical reservations’, Special reservations in favour of physically handicapped, women etc., under Articles 16(1)

or 15(3) are 'horizontal reservations.'. Where a vertical reservation is made in favour of backward class under Articles 16(4), the candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. [Vide Indira Sawhney (supra), R.K. Sabharwal V/s State of Punjab, 1995 (2) SCC 745, Union of India V/s Virpal Singh Chauhan, 1995 (6), SCC 684 and Ritesh R. Sah V/s Dr. Y.L. Yamul, 1996 (3) SCC 253]. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for SCs, the proper procedure is first to fill up the quota for SCs in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes Women'. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if

there is any shortfall, the requisite number of SC women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to SCs. To this extent, horizontal (special) reservations differs from vertical (social) reservation. Thus, women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example :

If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC women candidates, then there is no need to disturb the list by including any further SC women candidates. On the other hand, if the list of 19 SC candidates contains only two women candidates, then the next two SC women candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four women SC candidates. (But if the list of 19 SC candidates contains more than four women candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess women candidates on the ground that 'SC-women' have been selected in excess of the prescribed internal quota of four.]

The perusal of the aforesaid observations of Their Lordships would reveal that the Apex Court has held that the reservations in favour of SC, ST and OBC under Article 16 (4) were vertical reservation, whereas special reservations in favour physically handicapped, women etc., under Articles 16 (1) or 15 (3) are horizontal reservations. It has been held that where a vertical reservation is made in favour of a backward class under Article 16 (4), the candidates belonging to such backward class, may compete the non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. It is further held that, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. It has been further held that, the entire reservation quota will be intact and available in addition to those selected under Open Competition category.

8. However, insofar as horizontal reservation is concerned, Their Lordships held that the said principle would not be applicable to it. It has been held that, where a special reservation for women is provided within the social reservation for SCs, the proper procedure is first to fill up the quota for SCs in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Castes-Women". It has been further held that, if the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. It has been further held that only if there is any shortfall, the requisite

number of SC women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to SCs. Their Lordships held that thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women.

9. It could thus be seen that the case that fell for consideration before Their Lordships of the Apex Court was regarding the compartmentalized reservation. In the said case, reservation was provided for various categories including SC, ST, OBC and within that reservation, particular number of posts were reserved for women category. In that view of the matter, Their Lordships held that the women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women.

10. However, the facts in the present case are totally different. In the present case, there is no compartmentalized reservation. Out of the six posts available, two are reserved for women. No doubt that it would have been more appropriate that in the light of the observations of Their Lordships in the case of Anil Kumar Gupta V/s State of U.P., reported in (1995) 5 SCC 173, the State ought to have provided reservation for women in particular vertical reservation category. However, that has not been done. In the advertisement, two posts are reserved for women category.”

11. We have perused the general merit list and merit list of Open (Female) and OBC (Female) candidates in the present case. It seems that Supriya Narayan Channe belonging to OBC

(Female) category and stands at Sr. No.1 in General merit list of female. She also stood in General merit list and, therefore, she was taken up as General merit candidate. So far as OBC (Female) candidates are concerned, there are in all ten candidates in order of merit and Supriya Narayan Channe stands at merit list No.1 whereas the applicant stands at Sr. No.8. Supriya Narayan Channe also stands in Open (General) merit list and, therefore, she was appointed from Open (General) category and remaining five candidates were appointed from OBC (Female) category. Thus, the applicant neither falls on merit in OBC (Female) category nor in the Open (General) category. Had the applicant obtained highest marks or marks sufficient to be included in General category list, she should have been appointed from Open (General) category.

12. The learned P.O. submits that the respondent No.1 has prepared a select list strictly as per the G.R. dated 16.3.1999. Admittedly, the applicant applied from OBC (Female) category and her name figures at Sr. No.312 in the select list / general merit list of all candidates. Total number of candidates from Open (General) category was 52 and 30% reservation for Open (Female) category would come to 16. In the general merit list of all candidates, there was only one female viz. Channe Supriya Narayan from OBC. Since

there are 16 posts under horizontal reservation from Open (Female) category, last 16 candidates from the list of 52 candidates at Sr. Nos. 45, 82, 136, 189, 195, 196, 198, 199, 202, 203, 216, 219, 220, 222, 225 and 238 were included and they found place in the first 52 candidates in the list of Open candidates.

13. It seems that the applicant could not find place in the list of 36 (52-16) candidates in Open (General) category, she could not be considered against Open (Female) category. It was necessary for her to find place in the OBC category candidates. Out of which, 4 posts were vertically reserved for OBC (Female) candidates. Accordingly, the candidates at Sr. No. 115, 168, 185 and 187 were selected and since the applicant is at Sr. No.206, she could not find place in OBC (Female) category. Even on merit in OBC (Female) list, she is at Sr. No.8. There are four posts which are to be filled in from OBC (Female). Obviously, she could not find place on merit in OBC (Female) also. Though the applicant belongs to OBC (vertically reserved category), she could not get selected, since more meritorious OBC (Female) candidates were available.

14. In view of discussion in foregoing paras, we are of the view that the present case being a case of compartmentalized reservation falls within the ambit of observations made by the Hon'ble

Apex Curt in case of **Rajesh Kumar Daria** (supra). The applicant, therefore, cannot claim appointment from Open (Female) category. In fact, even under OBC (Female) category, the applicant is not eligible, since she does not stand on merit in the said category. She also cannot be considered from Open (General) category, since she does not stand on merit in that category also. In the result. O.A. has no merit. Hence, we proceed to pass the following order:-

ORDER

The O.A. stands dismissed with no order as to costs.

(P.N. Dixit)
Member (A)

(J.D.Kulkarni)
Vice-Chairman (J)

Dt. 23.1. 2019.
pdg