

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 143/2015

Tushar S/o Manoharrao Watane,
Aged about 27 years, Ex-Serviceman,
R/o 33, Samta Colony, Near Naleen Milk Dairy,
Kathora Road, Amravati. -----**Applicant.**

Versus

1. The State of Maharashtra,
Through its Secretary,
Department of Agriculture,
Animal Husbandry, Milk Dairy Development
& Fisheries Deptt.,
Mantralaya, Mumbai.

2. Maharashtra Public Service Commission,
Through its Chairman, Bank of India
Bldg. 3rd Floor . M.G. Road, ,
Near Hutatma Chowk Mumbai. ----- **Respondents.**

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1. Shri N.R. Saboo, Advocate for the applicant.
2. Shri A.P. Sadavarte, Presenting Officer for the Respondents.
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CORAM : B. Majumdar : Vice Chairman
and
Justice M.N. Gilani : Member (J)

DATE : 21st January, 2015

ORDER**PER VICE-CHAIRMAN**

The applicant is aggrieved that he has not been appointed as a Live Stock Development Officer (LDO), Group-A. The MPSC (R/2) on 5/2/2014 issued an advertisement for 372 posts of LDO comprising 264 posts reserved for the 'Open' categories which included 172 from Open (General), 79 from Open (Female) and 13 for Sports-persons. There were also 7 posts from the category of OBC. The applicant applied from the category of OBC. However, as he did not have a Non-creamy layer (NCL) certificate he was considered from the category of Open (General). Respondent no. 2 published the select list on 12/3/2015. As per the list, 128 candidates were selected from the Open (General). In addition 42 candidates were appointed from this category by de-reserving 29 posts from Female and 13 from Sportspersons categories and treating them as Open (General). The applicant's score was 113 . He is not in the select list. He has challenged this list in the

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O.A. On 19/3/2015, Respondent no. 2 published the "not recommended" list of candidates in which the applicant is at Sr. No. 51. On 1/1/2016, the R/2 informed the applicant that his name is being recommended to Govt. for appointment from the wait list.

2. It is the applicant's submission that 29 posts from the categories of Open (Female) and 13 Open (Sports-persons) were de-reserved and added to Open (General). As a result, candidates who had scored less than him had been selected from the category of Open(General). Thus, he has been unfairly denied selection for the post.

3. MPSC (R/2) in its reply submits as follows :-

(a) The applicant belongs to OBC. However, he does not belong to NCL and he paid the fee of Rs. 265/- , i.e., for the Open category. He was considered from the Open (General) category.

(b) The last recommended candidate for the Open (General) category had scored 115 marks while the applicant

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had secured 113 marks. Hence he did not find a place in the select list for the Open (General) category.

(c) Posts from Open (Female) category were treated as Open (General) as female candidates were not available. However, the applicant cannot be considered from Open (Female) and Open (Sports) categories.

4. Shri N.R. Saboo, the Id. Counsel for the applicant referred to the select list which shows that as many as 170 candidates have been selected from the category of Open (General), after de-reserving certain number of posts meant for Open (Female) and Open (Sports). A number of candidates who were selected against these 170 posts had secured marks much below to those of the applicant. Thus, the respondents having considered the applicant's application from the category of Open (General), could not have excluded him from selection.

5. Shri A.P. Sadavarte, the Id. P.O. reiterated the submissions of R/2. He however fairly conceded that as a

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number of candidates have been selected from Open (General) although they had scored less than the applicant, the applicant's case also deserves to be considered favourably.

5. We find that as per the advertisement there were 264 posts in the category of Open. R/2 has stated that posts reserved for Open (Female) and Open (Sports) were required to be de-reserved as suitable candidates were not available. Thus, after such de-reservation 170 candidates are selected from Open (General) which included 29 posts from Female and 13 posts from Sports converted to the General category. We further find that the last candidate(29th) on de-reservation of 29 posts from Open (Female), is at Sr. No. 173 (Ladukar Neeta Onkarrao) and she has scored 110. Similarly the last candidate on de-reservation of 13 posts from Open (Sports), Choure Kuldeep Kalyanrao, who is at Sr. No.192, has scored 108. R/2 has stated that the applicant was considered from the category of Open (General). As he had scored 113, we find no reason as to why he could not

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have been selected from the category of Open (General). In this regard we refer to the communication dtd. 7/1/2016 addressed to the Id. C.P.O. by R/2. Para 3 of this communication states as below :-

“ अमागास(महिला) वर्गवारीसाठी राखीव असलेल्या एकूण ७९ जागांपैकी ५० जागांसाठी अराखीव (महिला) उमेदवार शिफारसपत्र ठरल्या असून सदर वर्गवारीसाठी ५९ गुणांचा Cut-off लागला आहे. अराखीव (महिला) वर्गवारीच्या उर्वरित २९ जागांसाठी अराखीव (महिला) उमेदवार उपलब्ध झाल्या नाहीत. दिनांक १३ ऑगस्ट २०१४ रोजीच्या शासन निर्णयातील तरतुदीनुसार केवळ अराखीव वर्गवारीचा दावा केलेल्या अराखीव वर्गवारीतील सर्वसाधारण वर्गवारीतील २९ उमेदवारांची शिफारस Open Female against या रिक्त जागांवर करण्यात आली आहे. तसेच Open Female against च्या २९ जागांसाठी शिफारस करण्यात आलेल्या शेवटच्या अराखीव (सर्वसाधारण) वर्गवारीतील उमेदवारास ११० गुण मिळाले आहेत. आयोगाकडून पदे De-reserve करत नाही तर कमी पडलेल्या महिला उमेदवारांसाठी त्याच सामाजिक प्रवर्गातील पुरुष (सर्वसाधारण) उमेदवारांची (Against Female post) शिफारस करण्यात येते.”

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7. As per communication dtd. 1/1/2016, R/2 has informed the applicant that he has been cleared for appointment from the waiting list.

8. In view of the above considerations, we direct the R/1 to appoint the applicant forthwith from the category of Open (General). This will be done within 6 weeks of receipt of this order. The O.A. stands allowed in terms of the above directions. There is no order as to costs.

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(Justice M.N. Gilani)
Member (J)

sd/-

(B. Majumdar)
Vice-Chairman.

Skt.