

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 429/2015

Sanjay Madhavrao Sirsath,
Aged about 25 years, Occ. Nil,
R/o 'Sirsath Niwas', Gangakhed Road,
Sirsathwadi, Tah. Ahmadpur, Latur.

Applicant.

Versus

- 1) State of Maharashtra
through its Secretary Department of
Home, Mantralaya, Mumbai-32.
- 2) Superintendent of Police,
Akola.
- 3) Alam R. Pyarewale,
Aged major,
R/o C/o Superintendent of Police,
Akola.
- 4) Pandurang R. Shirshikar,
Aged major,
R/o C/o Superintendent of Police,
Akola.
- 5) Jivan U. Landge,
Aged major,
R/o C/o Superintendent of Police,
Akola.
- 6) Deleted.
- 7) Gorakh S. Bhavar,
Aged major,
R/o C/o Superintendent of Police,
Akola.

- 8) Datta S. Bondre,
Aged major,
R/o C/o Superintendent of Police,
Akola.
- 9) Yogesh K. Hodgir,
R/o C/o Superintendent of Police,
Akola.

Respondents

Shri R.V. Shiralkar, Advocate for the applicant.

Shri A.M. Ghogre, P.O. for respondent nos. 1&2.

Shri A.P. Sadavarte, Advocate for R-3,5,8 & 9.

None for R-4&7.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGEMENT

(Delivered on this day 16th of June,2017)

Heard Shri R.V.Shiralkar, Id. Counsel for the applicant,
Shri A.M. Ghogre, Id. P.O. for respondent nos. 1&2 and Shri A.P.
Sadavarte, Id. Counsel for respondent nos. 3,5,8 & 9. None for
respondent nos. 4 & 7.

2. The applicant Sanjay Madhavrao Sirsath has responded to
the advertisement dated 2/5/2014 for the post of Police Constable.
The advertisement was for 248 posts of Police Constables. Out of 92
posts were reserved for open category and out of these 92 posts, 24

posts were for open general category, 28 posts for ladies, 5 posts for sport persons, 5 posts for project affected persons, 2 posts for earthquake affected category, 14 posts were for ex-serviceman, 9 posts were for part time employee of state government and 5 posts were for Home Guard category. Admittedly, the applicant and private respondents were called for written as well as physical test. The respondent no.2 conducted written test on 22/6/2014. The final select list was published from which it is clear that the applicant as well as private respondent nos. 3 to 9 got 162 marks each. It is admitted fact that the educational qualification of applicant and all private respondent nos. 3 to 9 is also same, i.e., HSC. It is submitted that since the applicant is older in age than that of respondent nos. 3 to 9, he should have been given preference in the appointment in view of the G.R. dated 27/6/2008. However, the applicant was kept on waiting list at sr.no.1 from open general category though he secured equal marks as that of respondent nos. 3 to 9. The applicant has therefore prayed for a declaration that the select list prepared by respondent no.2 of open category from sr.no. 83 to 89 is contrary to the G.R. dated 27/6/2008. He is also claiming direction to respondent no.2 to modify said select list and to adjust the applicant at sr.no.83 and to quash and set aside the appointment orders in respect of

respondent no.3 to 9 since the same is illegal, arbitrary and contrary to the G.R. dated 27/6/2008.

3. The respondent no.2 resisted the claim, i.e., Superintendent of Police, Akola and submitted that the G.R. dated 27/6/2008 has been followed in later and spirit and no illegality has been committed. The private respondents also resisted the claim and justified their appointments.

4. Shri R.V. Shiralkar, Id. Counsel for the applicant submits that it is admitted fact that the applicant and as well as private respondent nos. 3 to 9 are equally qualified and all of them got equal marks i.e. 162 each and therefore the applicant being older in age should have been considered on merits as against the claim of respondents nos. 3 to 9. The learned P.O. Shri A.M. Ghogre however submitted that as per G.R. dated 27/6/2008 preferential treatment is to be given as per clause-6 of the said G.R. The fate of the O.A. depends on the interpretation of clause-6 of the G.R. dated 27/6/2008 and therefore it is necessary to reproduce clause-6 which reads as under :-

^6- menokjuk l eku xqkfeGW; kl &

lkjh{kpk fudky r; kj djrkuk ijh{kr T; k menokjuk l eku xqk
vl rhy v'kk menokjuk xqkOrrk dæ [kkyhy fud"kkj dæokj ykoyk tkbzy %&

- 1- vtZl knj dj.; kP; k vfire fnukokkl mPp 'kqkf.kd vgrk /kkj.k dj.kkjs menokj; R; kurj
- 2- ekxkl oxh; menokj; k ckrhr iEke vuhr tekrrh e/khy urj vuhr for trrh] fo'k'k ekxkl iox] foeDr trrh ¼14 o rRl e trrh] HKVD; k tekrrh tkusokjh 1990 iohP; k 28 o rRl e tekrrh] HKVD; k tekrrh ¼/kuxj o rRl e] brj ekxkl oxL; k dækus; R; kurj
- 3- 'kkjhfd n"V; k viæ vl ysysmenokj ; R; kurj
- 4- Ekkrh I sud vl ysysmenokj ; R; kurj
- 5- Lokra; I sudkpsi kY; vl ysysmenokj ; R; kurj
- 6- Ok; ¼o; kustsB vl yY; k menokjok dæ ojrh ykxy-½
ojhy iR; d l oxkè/; sefgykuk vxæ ns; kr ; bÿ-**

5. The plain reading of the aforesaid clause-6 shows that in case the candidates get equal marks, their cases have to be considered on the touch stone of 6 sub clauses referred in clause-6 as referred above and all the 6 sub clauses are to be considered one after another, i.e., if the case falls within sub clause 1 then sub clause 2 need not be considered and so on. In this sequence sub clause 6 is as regards the age of the applicant and states that the candidate having older in age will have to be considered in sequence above the other candidates. Howe ever that does not mean that sub clause 6 can be considered without considering other 5 sub clauses. In fact the candidates' merits will have to be considered one after other sub clauses. Amongst the candidates getting equal marks one who is having higher qualification will have to be considered first. If all the

candidates are having equal qualification, then the candidates falling in reserved category will have to be considered. If all the candidates are in reserved category, then physically handicapped candidate will have to be considered. If all candidates are physically handicapped then the candidate who belongs to ex-servicemen category will have to be given preference. If all the candidates are ex-servicemen, then the candidates having legal heirs of freedom fighters will have to be preferred and if all the candidates are equal in all aforesaid 5 sub clauses then the candidate older in age will have to be given preference.

6. In the present case, the applicant though belongs to reserved category has admittedly applied for the post from open category. The candidate at sr.nos. 83 to 89 in the final select list i.e. respondents nos. 3 to 9 belong to different categories other than open. The said category of respondents nos. 3 to 9 is as under :-

Sr. No	Chest no.	Name	Agency	Sex	Category	Birth date	Education	Grand Total
83.	2992	A.R. Pyarewale	Gen	Male	NT-B	6/6/92	HSC	162
84.	1664	D.S. Bondre	PAP	Male	NT-C	4/5/90	HSC	162
85.	2977	Y.K. Hodgir	PAP	Male	NT-C	15/5/93	HSC	162
86.	3721	S.P. Ramrao	Gen	Male	OBC	1/4/87	HSC	162
87.	1315	J.U. Landge	Gen	Male	OBC	18/5/88	HSC	162
88.	3447	P.G. Deshmukh	Gen	Male	OBC	12/6/90	HSC	162
89.	4406	G.S. Bhavar	Gen	Male	OBC	18/10/90	HSC	162

7. From the aforesaid Chart it will be cleared that the aforesaid candidates, i.e., respondent nos. 3 to 9 belong to category other than open, whereas the applicant who stands in waiting list is from open category. If therefore makes no difference as to which caste the applicant belongs. The applicant has applied from open category and therefore the criteria of age in clause 6 of the G.R. dated 27/6/2008 only would not be applicable to the applicant since the respondent nos. 3 to 9 were rightly given preference as per sub clause 2 of clause 6 of the said G.R.

8. The learned counsel for the applicant submits that one of the candidates namely Parmeshwar Gorkhnath Deshmukh who got 162 marks i.e. equal to the applicant and who was initially added as respondent no.6, has not been appointed and therefore his post is vacant and the applicant can very well be accommodated in place of Shri Deshmukh. In view of the submission made by the learned counsel for applicant, a detailed order was passed on 5th June,2017 and the Id. P.O. was directed to take instructions as to whether the respondent no.6 has joined the service or not.

9. The learned P.O. has placed on record one communication dated 8/7/2017 at Annex-X from which it seems that

Shri Parmeshwar Gorkhnath Deshmukh has not yet been appointed to the post of Police Constable since criminal case under sections 324,323,504,506 r/w 34 & 420 of the IPC was pending against him. However, since B sumery has been issued in respect of the crime against Shri Deshmukh, his case is under consideration before the competent authority. Shri Deshmukh has been acquitted from the criminal charges. Thus the case of Shri Deshmukh is yet under consideration and it cannot be said that the post of Shri Deshmukh is vacant. The respondents however will be at liberty to consider the claim of the applicant in case Shri Deshmukh is not appointed.

10. In view of the discussion in forgoing paras, I therefore do not find any merits in the O.A. Hence the following order :-

ORDER

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

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

dnk.