

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.534 OF 2016

DISTRICT : NASHIK

Shri Prashant Rajendra Ingle.)
Age : 30 years, Occu: Service,)
R/o. Shriram Parvati Niwas, Behind)
Tarwala Nagar, Lamkhede Mala,)
Dindori Road, Meri, Nashik - 422 004.)...Applicant

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Water Resources Department,)
Mantralaya, Mumbai - 400 032.)
2. Superintending Engineer.)
Central Design Organization (GATES))
& Zonal Officer, Nashik Zone,)
Dindori Road, Nashik 422 004.)
3. Superintending Engineer and)
Administrator, Command Area)
Development Authority, Sinchan)
Bhavan, Tryambak Road,)
Nashik 422 002.)
4. Shri Sandesh Balgir Gosavi.)
Kalwa Choukidar, working in the)
Office of the Superintending Engineer)



And Administrator, Command)
 Area Development Authority,)
 Sinchan Bhavan, Tryambak Road,)
 Nashik - 422 002.)...Respondents

Shri C.T. Chandratre, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents 1 to 3.

Smt. Ashwini Reddy, Advocate for Respondent No.4.

CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)

R.B. MALIK (MEMBER-JUDICIAL)

DATE : 28.07.2016

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

JUDGMENT

1. The Applicant belonging to NT(B) category was appointed as Canal Chaukidar and served as such for about four years before being abruptly terminated in the purported compliance of the order dated 21st November, 2014 in **OA 246 of 2013 (Amol Sitaram Gangawane Vs. State of Maharashtra and one another (Aurangabad Bench of this Tribunal)**. That order of termination dated 26.05.2016 (Exh. 'A-1', Page 12 of the paper book (P.B.) is being questioned in this Original Application (OA) under Section 19 of the Administrative Tribunals Act, 1985.

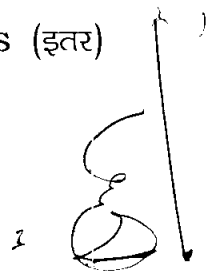


2. The Respondent No.1 is the State of Maharashtra in Water Resources Department. The Respondent No.2 is Superintending Engineer and Zonal Officer, Nashik Zone. The 3rd Respondent is Superintending Engineer and Administrator Command Area Development Authority, Nashik. The 4th Respondent is private party Respondent working as Canal Chaukidar under the 3rd Respondent. We have perused the record and proceedings and heard Mr. C.T. Chandratre, the learned Advocate for the Applicant, Ms. N.G. Gohad, the learned Presenting Officer (P.O.) for Respondents 1 to 3 and Ms. Ashwini Reddy, the learned Advocate for Respondent No.4.

3. The Applicant and the 4th Respondent (private party Respondent) belong to NT (B) category by birth. The 2nd Respondent invited applications vide Advertisement no.3 of 2011 for various posts. We are, in this O.A., concerned only with the post of Canal Chaukidar Nashik. One post was for NT(B) others (इतर) and one was for NT(B) Sports (horizontal Reservation). The combined yield of the perusal of the affidavits, with due regards to admissions, constructive admissions and the manner of meeting with the averments, circumstances emanating therefrom and the documents is that the Applicant having scored 77 marks outscored the private Respondent who got 71.50



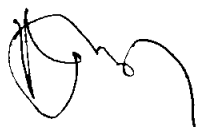
marks. The Applicant did not apply from Sports Category. But inexplicably he was appointed from NT(B) Sports Category (खेळाडू-१). The private Respondent was appointed from इतर-१ which was in the context NT(B) general. The aggrieved Applicant went on protesting in vain. He (Applicant) came to be appointed vide Exh. 'A-4' (paper book page 24) dated 28.06.2012 as Canal Chaukidar. The documentary evidence to prove the category that the Applicant applied from could not be produced by him. But as mentioned above the other facts and circumstances including the manner of traverse by the Respondents 1 to 3 and 4 would prove the fact in favour of the Applicant. The Private Respondent in effect wanted the Applicant to prove the negative that the Applicant did not apply from NT(B) Sport. This stand of the private Respondent is unacceptable. Further the official Respondents could safely have produced the original form of the Applicant. The party in possession of best evidence must produce it regardless of abstract burden of proof. In support of this proposition useful reliance could be placed on **Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif and others, AIR 1968 SC 1413.** We must therefore conclude by holding that the Applicant applied from NT(B) others (इतर) category and not from NT(B) Sports.



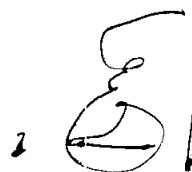
4. Mr. Chandratrre, the learned Advocate for the Applicant was bitter and critical on instructions against the placement of the Applicant in NT(B) Sports Category. We quite see his point. The Applicant did not apply from Sports Category. He did better than the private Respondent in scoring higher marks. There was, therefore, no reason to subordinate clear merit as between the two and make them to swap places in the list. We do not think we can condone or gloss over this kind of an action. Necessary directions will therefore have to be given.

5. However, worse is still in store. We are not just unable to comprehend the justification or reason for the Applicant being sent out packing. In the first place he had put in about four years of service. There cannot be any action severer than termination. But still, the Applicant was not shown the basic consideration of at least a show cause notice much less was any enquiry held. The Respondents keep on citing the order of the Aurangabad Bench in that OA in support of their action. It seems that it is their case that once this Tribunal had ordered in a particular way, it was not necessary for them to give any show cause notice etc. to the Applicant. We must quite clearly mention that we are totally aghast at the cause assigned. At Page 29 of the paper book, there is that order

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of the Aurangabad Bench of this Tribunal which the Respondents had been talking about. One of us (Shri Rajiv Agarwal, Vice-Chairman) was the Member of the Division Bench which spoke through him in that OA. The Applicant herein was not impleaded thereto. The Applicant therein was one Shri Amol S. Gangawane and the Respondents were the Secretary, Irrigation Department and the 2nd Respondent was Member Secretary, Regional Selection Committee and Superintending Engineer. The Applicant Shri Gangawane applied for the same post of Canal Chaukidar for horizontal reservation for Sports. There were various centers for which he gave his choice at Dhule. It is not really necessary for us to delve there into any further and suffice to mention that all that was done therein was a direction to the Respondents to call that Applicant for the test and if he obtained more marks in the written test as compared to the others, then call him for interview for the said post from NT(B) Sports category. If he was the only candidate from NT(B) Sports, he should be called for interview with a view to ascertain whether he could be selected for the said post. Now, one is completely baffled by the conduct of the Respondents of terminating the service of the Applicant based on the above referred directions. In fact, we have already held that the Applicant had applied from NT(B) General and not NT(B) Sports. But



it is very very clear that there is absolutely nothing therein, even to direct the removal of the private party Respondent herein much less the Applicant and still the Superintending Engineer and Administrator, Command Area Development Authority – Respondent No.3 ended up making the following order in Marathi.

“संदर्भीय पत्रानुसार मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, औरंगाबाद खंडपीठ, मूळ अर्ज क्र.२४६/२०१३ च्या संदर्भात दिलेला निर्णय व शासन पत्रातील प्राप्त सुचानानुसार व तसेच संदर्भ क्र.१ मधील अट क्र.८ नुसार या प्राधिकरणाते अधिपत्याखालील कार्यकारी अभियंता, नाशिक पाटबंधारे विभाग, नाशिक अंतर्गत गोदावरी डावा तट कालवा उपविभाग, कोपरगांव/सिंचन शाखा, नांदूरमाधमेश्वर येथे कार्यरत असलेले श्री. प्रशांत राजेंद्र इंगळे, कालवा चौकीदार (भ.ज. (ब) खेळाडू) यांची सेवा तात्काळ समाप्त करण्यात येत आहे.”

6. In our view, not only will this order have to be set aside and the Applicant ordered to be reinstated with full back-wages, but cost will have to be imposed. The prayer clause could have been tidier and focused. But then in whichever manner the prayer clause is phrased an appropriately moulded final order could still be made without in any manner offending the relevant Rule of the relief being consistent with the claim.

7. The order herein impugned and hereinabove quoted is hereby quashed and set aside. The Applicant will

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have to be reinstated with full back-wages to the post, he had been removed from within four weeks from today and he will have to be treated to have been appointed from NT(B) General (NT(B) Others) and not NT(B) Sports. The Respondents shall within the above referred period do everything required to effectuate this order. The Original Application is allowed with cost of Rs.10,000/- (Rs. Ten Thousand) to be paid by the 3rd Respondent within a period of four weeks from today by way of deposit in the Office of this Tribunal which shall be paid over to the Applicant on proper identification.

Sd/-

(R.B. Malik)
Member-J
28.07.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
28.07.2016

Mumbai

Date : 28.07.2016

Dictation taken by :

S.K. Wamanse.

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