

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.581/2013.

Niranjan Shivchand Barapatre,
Aged about 33 years,
Occ- Nil,
R/o Sant Lahari Baba Ward,
Bhandara.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Irrigation,
Mantralaya, Mumbai-32.
2. The Superintending Engineer & Circle Officer,
Vigilance Squad (Nagpur Circle),
Water Resources Department, 2nd floor,
Administrative Building No.1, Civil Lines,
Nagpur.-1.

Respondents.

Shri B.M. Kharkate, Ld. Advocate for the applicant.
Smt. S.V. Kolhe, Ld. P.O. for the respondents.

**Coram:- B. Majumdar, Vice-Chairman and
Justice M.N. Gilani, Member (J).**

Dated:- 3rd September, 2014.

Order

Per: Member (J)

The applicant seeks intervention of this Tribunal in the matter of appointment to the post of Canal Inspector on the establishment of respondent No.2.

2. 56 posts of Canal Inspectors (Kalve Nirikshak) were advertised and in response to that, the applicant submitted application. He belongs to Special Backward Class category. Three posts were

reserved for the candidates belonging to this category. Written test was conducted on 26.2.2012. The applicant was declared successful. It is the case of the applicant that following three candidates viz. (1) Jagdish Damodhar Sonkusare, (2) Anil Chintaman Hedau and (3) Rashmi Haribhau Sadawarti were selected against the posts reserved for Special Backward Class category. Out of them, only two candidates viz. Jagdish Damodhar Sonkusare and Rashmi Haribhau Sadawarti joined. Simultaneously, the respondents published a waiting list of two candidates. The applicant is placed at Sr. No.1 whereas Ashmita Ghanshyam Nimje is at Sr. No.2. (Annexure A-3). Since Anil Chintaman Hedau did not join, his post fell vacant since August 2012. Therefore, the applicant expected that he being waitlisted candidate and at Sr. No.2, in natural course, he should have been appointed. Since his expectation did not come true, he filed this O.A.

3. The respondents submitted reply. It is admitted that out of the three candidates selected in Special Backward Class category, only two joined and one post fell vacant. It is further admitted that applicant's name figured in the wait list at Sr. No.1. According to the respondents, on 3.5.2013, the respondents sent communication to the respondent No.1 giving names of the candidates who did not join the post of Canal Inspector. In this very

communication, permission was sought to fill up the vacant posts by appointing the candidates from waiting list. In turn, the respondent No.1, vide communication dated 30.5.2013 permitted the respondent No.2 to fill up 44 vacant posts by appointing the candidates from the waiting list. The name of the applicant did not figure in it. It is further pleaded that as per the G.R. dated 27.6.2008, the waiting list/select list remains valid only for a period of one year. Therefore, the respondent No.2 have initiated recruitment afresh and, therefore, the applicant has no case.

4. There being no dispute over the facts pleaded by the applicants, the controversy seems to have considerably narrowed down. Annexure A-3 is the select list. Anil Chintaman Hedau who is at Sr. No.2 did not join. The waiting list is at page 34. In that, the name of the applicant appears at Sr. No.1. Annexure R-1 is the communication dated 3.5.2013. By this communication, the respondent No.2 apprised the respondent No.1 about the vacancy position categorywise.. In that, it is shown that one post meant for Special Backward Class (General) is lying vacant. In response to that, the respondent No.1, vide communication dated 30th May 2013 permitted the respondent No.2 to fill up the vacancies (Annexure A, Page 38). However, the vacancy for the post of Canal Inspector in the category of Special Backward Class (General) was not allowed to be

filled in. For this omission, no reasons have been assigned in the reply. It was expected of the respondents to explain as to why despite the proposal from the respondent No.2 about existing vacancies in the cadre of Canal Inspector and in the category of Special Backward Class (General), why permission was not accorded to fill up the said vacancies and that too despite the existing waiting list.

5. The stand taken by the respondents that the select list / wait list expired after one year, cannot come to their rescue. It is pertinent to note that the vacancy because of not joining of Anil Chintaman Hedau occurred, in the very beginning. When the proposal dated 3.5.2013 (Annexure R-1) was submitted to the respondent No.1, vacancy was existing. Arbitrarily and for no reasons, the respondents did not agree to the said proposal to fill up the vacancy in the category of Special Backward Class (General). Although, such permission was granted in respect of 44 vacancies in other different cadres and in different categories. This was all done within one year of the preparation of the select list. Truly speaking, the right accrued to the applicant being the waitlisted candidate at Sr. No.1, when the vacancy occurred. Just by causing administrative delay and arbitrarily denying the appointment, right already accrued, cannot be abridged or taken away merely on the ground one year has been elapsed. Limitation of one year may apply when there did not occur any vacancy and the

question of picking up any candidate from the wait list, did not arise during the period of one year from the date of preparation of the select list.

6. For the reasons stated above, we are of the view that the O.A. deserves to be allowed in the following terms:

(i) The respondents are directed to appoint the applicant to the post of Canal Inspector (Kalwe Nirikshak) against the Special Backward Class (General), in place of the vacancy occurred because of non joining of Anil Chintaman Hedau, with immediate effect.

(ii) There shall be no order as to costs.

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

(B.Majumdar)
Vice-Chairman