

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 312 OF 2021

DISTRICT:- AHMEDNAGAR

Subodh S/o Babasaheb Dhonde
Age: 27 years, Occu. Education as BSc.
Graduate, R/o. At Post Sade, Tq. Rahuri,
Dist. Ahmednagar.

.. **APPLICANT**

V E R S U S

- 1) The State of Maharashtra,
Through it's Secretary,
Public Health Department,
Mantralaya, Mumbai-32.
- 2) The Deputy Director,
Public Health Department,
Circle Pune, Pune.
- 3) Vijay S/o Vasant Patil
Age: 39 years, Occ: Service as a
X-Ray Scientific Officer,
R/o: At Post: Kumthe Dattanagar,
Tq. Mahabaleshwar, Dist. Satara.
- 4) Anand S/o Namdeo Yelave
Age : 27 years, Occ: Service as a
X-Ray Scientific Officer,
R/o. At Ameni, Post: Akurle,
Tq: Shahuwadi, Dist. Kolhapur. .. RESPONDENTS

APPEARANCE : Shri Avinash S. Khedkar, learned
counsel for the applicant.

: Shri S.K. Shirse, learned Presenting
Officer for the respondents.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI BIJAY KUMAR, MEMBER (A)**

DATE : 06.09.2022

ORDER

[Per : Hon'ble Justice P.R. Bora, Vice Chairman]

Heard Shri Avinash S. Khedkar, learned counsel appearing for the applicant and Shri S.K. Shirse, learned Presenting Officer appearing for respondent nos. 1 & 2. No one has caused appearance for respondent nos. 3 & 4, though both the said respondents are duly served respectively on 27.7.2021 and 13.7.2021.

2. **The facts of the case :-**

The Deputy Director, Health Services, Pune Circle, Pune has issued an advertisement dated 22.2.2019 for various posts including X-Ray Scientific Officer. Total 22 posts were though initially advertised, only 50% of the said posts were resolved to be filled in. Out of said 11 posts, 02 were reserved for Scheduled Caste, 01 for Scheduled Tribe, 01 for Nomadic Tribe, 03 for Other Backward Class, 01 for Economically Weaker Section and 03 were for Open category candidates. The applicant claims to be belonging to O.B.C. category. He applied for the said post from O.B.C. category. As mentioned

in the application the applicant is holding required qualification for the said post. The applicant participated in the selection process and secured 138 marks out of 200 marks in the Main Examination. The applicant was also called for verification of the documents. However, his name did not appear in the final select list. As mentioned in para 07 of the O.A. at the time of counseling the applicant was informed orally that his recommendation was cancelled since respondent no. 3 had secured more marks than the applicant. As averred in the O.A., respondent no. 3 had applied from E.W.S. category and in the final select list he was shown to have been selected in Open General category.

3. It is the grievance of the applicant that since respondent no. 3 had availed the benefit of age relaxation, the said respondent could not have been selected, as the Open Category candidate even though he had secured higher position in merit. It is the further grievance of the applicant that having regard to the marks secured by him he was liable to be selected in the O.B.C. category. As further contended in the application after the final select list was published, the applicant had raised his objection with the respondent no. 2,

but his request was not considered. In the circumstances, the applicant has approached this Tribunal.

4. The applicant has come out with the case that since respondent no. 3 namely Shri Vijay Vasant Patil is wrongly shown to have been selected as a Open General candidate, his opportunity of being selected from the Open category has been taken away. It is the contention of the applicant that respondent no. 3 had applied from EWS category. It is the further contention of the applicant that on the date of filing the application respondent no. 3 was of the age more than 38 years. In the circumstances, according to the applicant, respondent no. 3 could not have been selected as Open candidate even though he had secured highest marks. Learned counsel appearing for the applicant submitted that 02 posts were reserved for Open General candidates. Respondent no. 3 and one Sachin V. Shinde are shown to have been selected from Open General category. Both have received 148 marks out of 200. It is the further case of the applicant that had respondent no. 3 been not shown to have been selected as Open General candidate, Sachin V. Shinde would have been then in the final select list as First Open

Merit candidate and one Ninad Nandkumar Chindankar, who is shown to have been in the merit list as First O.B.C. General candidate would have been shifted to Open General candidate. Had so happened, according to the applicant, he being next candidate in order of merit in OBC Category, he was liable to be selected.

5. The contentions so raised by the applicant are opposed by respondent nos. 1 & 2. Respondents have contended that the final select list has been correctly prepared by the respondents. According to the respondents, the applicant has not been selected since there were more meritorious candidates in OBC General category.

6. We have carefully considered the submissions advanced by the learned counsel appearing for the applicant and the learned Presenting Officer appearing for respondent nos. 1 & 2. As noted hereinabove, though respondent nos. 3 & 4 have been duly served, have failed to appear in the matter and to file their affidavit in reply. In fact, respondent nos. 3 & 4 have not caused appearance in the matter.

7. It is not in dispute that the applicant had applied for the post of X-Ray Scientific Officer from the OBC category. It is

further not in dispute that he had secured 138 marks out of 200 in the Main Written examination. It is also not in dispute that the applicant belongs to OBC category. It is also not in dispute that out of 11 posts to be filled in, 03 were reserved for OBC candidates. It is also not in dispute that the applicant has secured 138 marks out of 200. Following 11 candidates were included in the list of selected candidates :-

त्याअनुषंगाने M/s Ginger web pvt. ltd.यांच्यामार्फत या कार्यालयास प्राप्त झालेल्या गुणवत्तेच्या आधारे खालीलप्रमाणे निवड यादी तयार करण्यांत आली.

Sr. No.	Name of the candidate	Male/ Female	Category	Parallel Reservation	Marks
१.	Vijay Vasant Patil	Male	Open	General	148
२.	Sachin Vishram Shinde	Male	Open	General	148
३.	Ninad Nandkumar Chindankar	Male	OBC	General	142
४.	Anand Namdeo Yelave	Male	EWS	General	140
५.	Sarita Dilip Jadhav	Female	Open	Female	128
६.	Nitin Vitthalrao Patil	Male	OBC	Ex-Serviceman	126
७.	Aniruddha Manikrao Sul	Male	NT-C	General	126
८.	Seema Balwant Kamble	Female	SC	Female	126
९.	Ankita Balkrishna Patil	Female	OBC	Female	116
१०.	Pandurang Vyankati Burkule	Male	ST	General	98
११.	Prashant R. Chandanshive	Male	SC	General	120

8. The list of selected candidates shows that respondent no. 3 Vijay V. Patil is the candidate at sr. No. 01 and is shown

to have been selected from Open General category. He has received 148 marks out of 200. One Ninad Nandkumar Chindankar is shown to be First OBC General candidate and has received 142 marks out of 200. Respondent no. 4, Anand Namdeo Yelave, is shown to be selected from EWS category, who has received 140 marks out of 200.

9. The aforesaid list of selected candidates for the post of X-ray Technician is published on 6.10.2021 by the Deputy Director of Public Health Department, Circle Pune i.e. respondent No. 2. Below the names of the selected candidates in the tabular form as reproduced hereinabove, there is some explanation given by respondent No. 2 insofar as selection of respondent No. 3 Vijay V. Patil is concerned. It is stated that though respondent No. 3 had applied from the EWS category since he has secured highest marks, in view of the Government Resolution dated 12.2.2019 and more particularly clause 2(ka)(5) thereof, giving him age relaxation, he has been selected from the Open General Category.

10. It is the precise objection raised by learned Advocate Shri A.S. Khedkar appearing for the applicant that no such age relaxation could have been granted to respondent No. 3

and his selection must have been in the category of or for the seat reserved for EWS candidate. In support of his contention, learned counsel has relied upon the judgment of the Hon'ble Apex Court in the case of **Niravkumar Dilipbhai Makwana Vs. Gujrat Public Service Commission & Ors., AIR 2019 SC 3149**. Learned counsel pointed out that in the aforesaid case the Hon'ble Apex Court has held that,

“a candidate belonging to backward category, at any stage of recruitment, if avails relaxation, exemption, concession, which is not available to the open category candidates, then in such circumstances, such candidate cannot migrate to the merit list of general category on the basis of his individual merit.”

11. Learned counsel pointed out that the judgment of the Hon'ble Apex Court in the case of Niravkumar (cited supra) is referred to, discussed and relied upon by the Division Bench of the Hon'ble Bombay High Court, Bench at Aurangabad, in the case of **Charushila and Ors. Vs. The State of Maharashtra and Ors., Writ Petition No. 4159/2018 dated 8.8.2019**. In the case of Niravkumar (cited supra) appellant therein had submitted an application in the category of SEBC. He successfully passed the examination conducted by

the Gujrat Public Service Commission (for short 'GPSC'). In the list of selected candidates published on 25.9.2014, he was shown at Sr. No. 138. It was the case of the appellant that while preparing the merit list, GPSC has ignored the judgment of the Hon'ble Apex Court in the case of **Jitendra Kumar Singh & Anr. Vs. State of Uttar Pradesh & Ors., (2010) 3 SCC 119**, the appellant, therefore, filed the petition before the learned Single Judge of Hon'ble High Court of Gujarat challenging correctness of the aforesaid select list. Learned Single Judge by his order dated 11.6.2015 allowed the application in the following terms: -

"The action of considering the meritorious reserved category candidates (who secured their position in general/open category on account of their performance) in their respective reserved category only because they availed benefit of "correctness" which cannot be considered as "relaxation in merits" also set aside since it is found to be contrary to the decision of Hon'ble Apex Court in the case of Jitendra Kumar Singh (supra).

12. Being aggrieved and dissatisfied with the order of the learned Single Judge, GPSC filed Letters Patent Appeal praying for setting aside of the order passed by the learned Single Judge. The Division Bench of the High Court by order

dated 15.03.2017 allowed the appeal and set aside the order of the learned Single Judge with the following observations:

“Keeping in view the decisions rendered by the Hon’ble Supreme Court as well as this Court discussed hereinabove and in view of the discussion made by us in the aforesaid paragraphs, we are of the opinion that the State of Gujrat has framed the reservation policy by Government Resolution dated 11.2.1986 and circulars dated 29.1.2000 and 23.7.2004 as well as in view of the statutory provisions i.e. Recruitment Rules of 1967, Rules of 2007, Rules of 2008 and 2009, we hold that all those candidates belonging to a reserved category, if they avail the benefit of age relaxation, the same is to be considered as relaxation in the standard and therefore such candidates who got the benefit of age relaxation are not entitled to be considered in general category and their cases are required to be considered for reserved category cases only. Thus, the decision rendered by the Hon’ble Supreme Court in the case of Jitendra Kumar Singh (supra) would not be applicable to the facts of the present case and the relaxation of age in view of the policy of the State Government can be said to be relaxation in standard and the same cannot be considered to be concession. We answer the question posed for consideration accordingly.”

13. The applicant, therefore, approached the Hon'ble Apex Court and challenged the legality and correctness of the aforesaid order of the Division Bench of the Hon'ble Gujrat High Court. The Hon'ble Apex Court after having considered the earlier decisions on the subject dismissed the appeal and confirmed the decision rendered by the Division Bench of the Hon'ble Gujrat High Court holding it to be a correct view.

14. In the matter before the Division Bench of this High Court in the case of **Charushila and Ors.** (cited supra) the judgment in the case of **Niravkumar Makwana** (cited supra) and two more judgments of the Hon'ble Apex Court one in the case of **Deepa E.V. Vs. Union of India and Ors., 2017 (12) SCC 680** and another in **Gaurav Pradhan and Ors. Vs. State of Rajasthan and Ors. 2018 (11) SCC 352** were cited. On consideration of the aforesaid judgments the Division Bench, held that,

“When a relaxed standard is applied in selecting SC/ST/OBC candidates, for example in the age-limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates, etc., the ST/ST/OBC

candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies. In the same context, when candidates availed of the {48} relaxed standards, they are not entitled to claim migration to the open category.

The candidates, who have applied from amongst the open category and who have not availed of any benefits of relaxed standards such as relaxation in age limit, qualification, percentage of qualifying marks, experience, etc., are entitled to be considered on the basis of their individual merit from amongst open competition category, as candidates belonging to open category.”

15. In the instant matter as is revealing from the merit list published on the Ginger web (Exhibit 'A-4', page-77 of the paper book), age of respondent No. 3 as on the date of filling the application for the subject post was 38 years, 3 months and 1 day. As provided in the advertisement the upper age limit prescribed for the Open Category candidates as on the date of the application was 38 years. Respondent No. 3 had thus, crossed the said age limit and, as such, his application could not have been entertained and accepted as the Open Category candidate. For the reserved category candidates the upper age limit was 43 years. The

application of respondent No. 3 thus seems to have been accepted he being the candidate from EWS category.

16. We reiterate that respondent No. 3 despite due service of notice of the present application did not cause his appearance in the matter and has preferred to remain absent. In the circumstances, the facts stated by the applicant in the present Original Application as about the age and category of the applicant have remained unchallenged. Moreover, the other documents on record support the contentions as are taken by the applicant in his O.A. It is thus, evident that respondent No. 3 has been shown to have been selected as Open Category Candidate on his individual merit though he belongs to EWS category by giving him age relaxation on the said ground.

17. After having considered the law down by the Hon'ble Apex Court in the case of Niravkumar (cited supra) and the judgment delivered by the Division Bench of the Hon'ble Bombay High Court in the case of Charushila and Ors. (cited supra), it is quite clear that once respondent No. 3 had availed the age relaxation, his candidature could not have been considered on his individual merit in Open Category. Respondent No. 3 must have been shown to have been selected from EWS category having secured highest marks in the said category in

place of respondent No. 4 namely Anand Namdeo Yelave, who is shown to have been selected having secured 140 marks.

18. Respondent No. 4 has also preferred to remain absent though he has been duly served in the present matter. Since the said respondent remained absent nothing has come on record from his side. In the advertisement published, 3 posts were reserved for the candidates belonging to OBC category out of which 1 was General, 1 was reserved for OBC (Female) and 1 was reserved for OBC (Ex-serviceman). In the select list published on 6.10.2021 which we have reproduced hereinabove, the candidate at Sr. No. 3 Ninad Nandkumar Chindankar is shown to have been selected as OBC candidate. He has secured 142 marks. It is the contention of the applicant that if the selection of the respondent No. 3 from Open Category is set aside and if he is shown to have been selected from EWS category in place of respondent No. 4, who has received less marks than him, then 1 post in Open Category will become vacant. According to further contention of the applicant, in such circumstances the candidate No. 2 namely Sachin Shinde, who is shown as 2nd meritorious candidate from Open General Category will shift to candidate

No. 1 in Open General Category having received highest marks i.e. 148.

19. It is the further contention of the applicant that the candidate at Sr. No. 3 viz. Ninad Nandkumar Chindankar, who is shown to have been selected from OBC category being the 2nd highest meritorious candidate in the list will occupy the seat from Open General Category and the seat occupied by him in the OBC quota will become free. It is the contention of the applicant that having secured 138 marks, he will be thus the highest meritorious candidate in OBC General Category and he, therefore, deserves to be accommodated against the said seat and, as such, respondent Nos. 1 & 2 are liable to offer him the appointment against the seat reserved for OBC General. We may not be however, able to accept the request so made by the applicant for the following reasons: -

20. The applicant has not placed on record any information that candidate namely Ninad Nandkumar Chindankar, who is shown to have been selected against the OBC General seat has not availed any relaxation in age, qualification, experience etc. or in payment of examination fees. The

advertisement shows that for the candidates in the Open Category examination fees prescribed was Rs. 500/-, whereas for the candidate belonging to the reserved class, the examination fees was Rs. 300/-. From the available documents on record though we tried to ascertain whether any such information is there in the documents filed on record, we did not find any such information. In absence of any concrete information undoubtedly showing that the candidate namely Ninad Nandkumar Chindankar, did not avail any relaxation for the reserved class, by applying the same criteria as laid down in the case of Niravkumar (cited supra) selection of said Ninad cannot be shown against the Open General Candidate though he appears to have secured 142 marks. In absence of any such information, the selection of said Ninad shown from the category of OBC General cannot be disturbed. For OBC General Category, admittedly, only one seat was available and the same has been gone in favour of said Ninad. The applicant who has secured 138 marks cannot be a claimant for that post.

21. The applicant has also not placed on record any concrete information as about respondent No. 4 Anand Yelave. The said candidate has received 140 marks i.e. he has secured more

meritorious position than the applicant. Respondent No. 4 is shown to have selected from EWS category. In absence of any information placed on record by the applicant the possibility of the said candidate having not availed any benefit i.e. relaxation in the age, educational qualification and the examination fees cannot be ruled out and if he had not really availed any relaxation then he will be entitled for securing the 2nd Open General seat having secured 140 marks and having no other candidate securing more number of marks than him.

22. In fact, the applicant must have placed on record all such information. In absence of such information we are unable to accept the case of the applicant. The applicant has thus, failed in bringing on record the concrete and unimpeachable information proving his claim on the seat reserved for OBC category by shifting respondent No. 3 from the Open General Category to EWS category by shifting Ninad Chindankar from OBC category to Open General Category and in place of the said Chindankar to get appointment for himself.

23. For the reasons stated above though the view taken by the Government justifying the selection of respondent No. 3 as Open Category Candidate has not been found legally sound by us, we deem it necessary not to cause any interference in the selections already made.

24. In the result, the O.A. deserves to be dismissed and is accordingly dismissed however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

O.A.NO.312-2021 (DB)-2022-HDD