

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD.**COMMON ORDER IN ORIGINAL APPLICATION NOS. 378,**
38, 39 & 40 ALL OF 2016**1. ORIGINAL APPLICATION NO. 378 OF 2016****DIST.: JALNA****Shri Shivaji s/o Nivruti Wagh,**
Age: 42, Occu: Police Naik Constable,
R/o : Ramnagar Police Colony,
Jalna, Tq. & Dist. Jalna.

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APPLICANT**VERSUS**

1. The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai.
Copy to be served on Presiding
Officer M.A.T. Bench at Aurangabad.
2. The Addl. Director General of Police,
Training & Special Squad,
Maharashtra State, Mumbai-400001.
3. The Spl. Inspector General of Police,
Aurangabad Range, Aurangabad.
4. The Superintendent of Police,
Police Headquarters, Jalna.

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RESPONDENTS**WITH****2. ORIGINAL APPLICATION NO. 38 OF 2016****DIST.: AURANGABAD****Shri Laxman s/o Narayan Sormare,**
Age: 42, Occu: A.S.I. (PTC),
R/o : Sukhshanti Nagar, Mantha Road,
Jalna Tq. & Dist. Jalna.

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APPLICANT

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai.
Copy to be served on Presiding
Officer M.A.T. Bench at Aurangabad.
2. The Director General of Police,
Maharashtra State, Mumbai-400001.
3. The Spl. Inspector General of Police,
Aurangabad Range, Aurangabad.
4. The Superintendent of Police(Principal),
Police Training Centre, Jalna.

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RESPONDENTS**WITH****3. ORIGINAL APPLICATION NO. 39 OF 2016****DIST.: AURANGABAD**

Shri Nanasaheb s/o Laxman Gaikwad,
Age: 42, Occup: Police Naik Constable (PTC),
R/o : Sainath Nagar Mantha Chaufulli,
Jalna, Tq. & District Jalna.

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APPLICANT**VERSUS**

1. The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai.
Copy to be served on presiding
Officer M.A.T. Bench at Aurangabad.
2. The Director General of Police,
Maharashtra State, Mumbai-400001.
3. The Spl. Inspector General of Police,
Aurangabad Range, Aurangabad.

4. The Superintendent of Police (Principal),
Police Training Centre, Jalna.

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RESPONDENTS**WITH****4. ORIGINAL APPLICATION NO. 40 OF 2016****DIST.: AURANGABAD****Shri Abba s/o Gopal Borade,**

Age: Major, Occu: Police Head Constable,

R/o : Saravaibhav Reaighad Jatwada Road,

Tq. & Dist. Aurangabad.

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APPLICANT**VERSUS**

1. The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai.
Copy to be served on Presiding
Officer M.A.T. Bench at Aurangabad.
2. The Director General of Police,
Maharashtra State, Mumbai-400001.
3. The Spl. Inspector General of Police,
Aurangabad Range, Aurangabad.
4. The Superintendent of Police,
Police Station Sillod (Rural)
Sillod, District Aurangabad. -

RESPONDENTS

APPEARANCE : Shri P.A. Kulkarni, Learned Advocate for
the Applicants in all these O.As..

: Shri N.U. Yadav, learned Presenting
Officer for the Resds in all these O.As.

CORAM: HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN (A)
AND
HON'BLE SHRI B.P. PATIL, MEMBER (J)

DATE : 24.03.2017.

COMMON ORDER

[Per- Hon'ble Shri B.P. Patil, Member (J)]

1. All these Original Applications were heard together and are being disposed of, by this common judgment and order, since the issues involved in all these O.As. are one and the same.
2. The applicants are challenging the results of the examination for promotional post of R.S.I. held on 25.02.2014 in which they were declared as 'failed'.
3. In O.A. No. 378/2016, the applicant is working as a Police Naik Constable at Jalna, in O.A. No. 38/2016 the applicant is working as a A.S.I. (P.T.C.) at Jalna, in O.A. No. 39/2016, the applicant is working as a Police Naik Constable (PTC) at Jalna and in O.A. No. 40/2016, the applicant is working as a Police Head Constable at Rural Police Station, Sillod.
4. Departmental Examination for the post of R.S.I. was conducted on 25.02.2014. The Circular to that effect has been issued on 21.02.2014, wherein it has been mentioned

that the exams shall be conducted in two parts i.e. part-I written examination of 100 marks and part-II practical examination of 200 marks. The candidates appearing for the examination shall have to score 50% marks in each part and 50% in aggregate. The applicant in O.A. No. 378/2016 scored 68 marks in part-I written examination and in part-II practical examination, he scored 58+47 marks i.e. total 105 marks. He scored 51% marks out of total marks. The applicant in O.A. No. 38/2016 scored 60 marks in part-I written examination and in part-II practical examination, he scored 56+47 marks i.e. total 103 marks. The applicant in O.A. No. 39/2016 scored 72 marks in part-I written examination and in part-II practical examination, he scored 53+47 marks i.e. total 100 marks. The applicant in O.A. No. 40/2016 scored 64 marks in part-I written examination and in part-II practical examination, he scored 52+49 marks i.e. total 101 marks. They scored 50% marks in aggregate and therefore, they ought to have been declared as passed, but the respondents have declared them as 'failed' because they scored less than 50% marks in one of the examination of part-II practical examination.

5. It is the contention of the applicants that the respondent no. 2 issued Circular dated 30.1.2014 mentioning that there is no difference as regards Armed and Unarmed policeman. It was one of the condition therein that the candidate appearing for examination has to score 50% marks in aggregate as well as in each part i.e. part-I and part-II. The applicants made representation with respondent no. 2 contending that they scored 50% marks in each examination and therefore, they may be declared as 'passed' in view of the Circulars dated 30.01.2014 and 21.02.2014. The respondent no. 2 rejected the representation made by the applicant in O.A. No. 378/2016, by communication dated 27.01.2016. But the respondent no. 2 has not decided the representation made by the applicants in other O.A. Nos. 38, 39 & 40 of 2016. Therefore, the applicants prayed to direct the respondent nos. 2 & 3 to declare them as 'passed' for Departmental Examination conducted in the year 2014 for the post of R.S.I.

6. The respondent nos. 2 to 4 have filed their affidavit in reply and resisted the applicants' claim. It is their

contention that it is necessary for the candidates to obtain 50% marks in each examination part and 50% aggregate for passing the Departmental Examination. All the applicants scored more than 50% marks in written examination (Part-I) but they have not scored 50% marks in each examinations in part-II. Therefore, they have been declared as 'failed'. There was no irregularity or illegality in the examination conducted by the respondents. Therefore, the representation of the applicant in O.A. No. 378/2016 has been rightly rejected by the respondent no. 2. There is no merit in the present O.As. and therefore, they prayed to dismiss all the O.As.

7. We have heard Shri P.A. Kulkarni, learned Advocate for the applicants in all these O.As. and Shri N.U. Yadav, learned Presenting Officer for the Respondents in all these O.As. We have also perused the affidavit, affidavit in reply and various documents placed on record by the respective parties.

8. The learned Advocate for the applicants submitted that the Circular regarding Departmental Examination for the post of R.S.I. has been issued on 21.02.2014 (Annexure

A-1) at paper book page nos. 10 & 11 (both inclusive). The applicants in all these O.As. appeared for the examination. He has submitted that in view of the Circular dated 21.02.2014 examinations were conducted in two parts i.e. part-I i.e. written examination for 100 marks and part-II i.e. practical examination for 200 marks. He has submitted that in view of the paragraph no. 4 (c) of the Circular candidate appearing for the examination has to score 50% marks in each part and to score aggregate 50% marks. The candidate who secures 50% marks in part-I and part-II and 50% marks in aggregate shall be declared as 'passed'. He has submitted that there is no mention in the Circular that the practical examination will be conducted again in two parts and candidate will have to secure 50% marks in each part. He has submitted that the applicants scored more than 50% marks in part-I and part-II examination conducted by the department and they scored more than 50% marks in aggregate also. Therefore, they ought to have been declared as 'passed' candidates. He has submitted that the respondents conducted two examinations of 100 marks each in part-II i.e. practical examination, in which all the

applicants scored less than 50% marks, in one of exams in part-II examination and therefore, they were declared as 'failed' by the respondents. He has submitted that in fact, each applicant scored more than 50% marks in aggregate out of two examinations conducted in part-II practical examination and therefore, they ought to have been declared as 'passed'. He has argued that the respondent nos. 2 and 3 never informed them that two separate examinations in part-II examination will be conducted and each candidate has to score 50% marks in each examination conducted in part-II i.e. practical examination. Therefore, the decision of respondent no. 2 is against the Rules and in contravention of Circulars dated 30.01.2014 and 21.02.2014.

9. The learned Presenting Officer submitted that in view of the Circular dated 30.01.2014 and 21.02.2014 the candidates appeared for the examination has to score 50% marks in each exam and 50% in aggregate. He has submitted that the applicants appeared for the part-I i.e. written examination of 100 marks and have scored more than 50% marks. They have also appeared for part-II i.e.

practical examination of 200 marks, which consisted two examinations of 100 marks each. All the applicants in the present O.As. scored more than 50% marks in first examination but they scored less marks in the second examination of the part-II i.e. practical examination. As they have not scored 50% marks in the second examination of part-II i.e. practical examination, they have been declared as 'failed'. He has submitted that the decision taken by the respondents is not in contravention of the Circulars dated 30.01.2014 and 21.2.2014 and therefore, the order under challenge is perfectly legal.

10. On perusal of the Circular dated 30.01.2014 which has been referred in the Circular dated 21.02.2014, it is crystal clear that in order to pass the examination each candidate has to obtain 50% marks in each part i.e. written examination and practical examination. Similar condition is incorporated in the Circular dated 21.02.2014 (Annexure A-1) in paragraph no. 4 (A, B & C) reads as under:-

“४. अ) लेखी परीक्षा भाग-१ ही १०० गुणांची घेण्यात येईल. लेखी परीक्षेमध्ये प्रत्येकी ४ गुणांचे २५ प्रश्न राहतील. सदर लेखी परीक्षा ओ एम आर शीटवर घेण्यात येईल.

ब) लेखी परीक्षा भाग-१ प्रश्नांची OMR Sheet वर उत्तरे देण्याकरीता फक्त काळ्या शाईच्या बॉलपेनचाच वापर करावा. लेखी परीक्षेची उत्तरपत्रिका ही संगणकाद्वारे केंद्र प्रमुख तपासतील व त्याचा निकाल लेखी परीक्षा संपल्यानंतर शक्यतो त्याच दिवशी किंवा उशीरात उशीरा दुस-या दिवशी जाहीर करतील. केंद्रप्रमुख सदर निकाल पोलीस महासंचालकांच्या संकेतस्थळांवर उपलब्ध करून देतील.

क) प्रात्याक्षिक परीक्षा भाग -२ कार्यक्रम संबंधित विशेष पोलीस महानिरीक्षक, हे जाहीर करतील. प्रात्याक्षिक परीक्षा संपल्यानंतर भाग-२ चे गुण त्याच दिवशी संबंधित विशेष पोलीस महानिरीक्षक, हे पोलीस महासंचालक यांचे संगणक संकेतस्थळावर उपलब्ध करून देतील. अर्हता परिक्षेमध्ये उत्तीर्ण होण्यासाठी प्रत्येक भागामध्ये ५० टक्के गुण व एकुण ५० टक्के गुण मिळविणे आवश्यक आहे. ”

11. In the Circular dated 21.02.2014, nowhere it has been mentioned that three exams will have to be conducted and candidate has to secure 50% marks in each examination. On the contrary, it has been mentioned that the examination will be conducted in two parts i.e. written examination part-I and practical examination part-II and the candidates who scored 50% marks in each part and 50% in aggregate will be declared as 'passed'. Had it been a fact that, it was decided by the respondents that each candidate has to score 50% marks in each examinations and part-II consists two examinations and the candidate appearing for the examinations have to secure 50% marks in each exams

then definitely such condition would have been incorporated in the Circular dated 21.02.2014. But no such condition was incorporated in the Circular dated 21.02.2014. This fact falsifies the contentions of the respondents.

12. The respondents all of a sudden changed the condition and decided to declare the candidates who scored 50% marks in each examination as 'passed' candidate. The decision of the respondents in that regard is not in accordance with the conditions mentioned in the Circulars dated 30.01.2014 and 21.02.2014. Therefore, the decision of the respondents declaring the applicants as 'failed', as they failed to score 50% marks in the second examination of part-II i.e. practical examination. In fact, the applicants scored 50% marks in part-I i.e. written examination and 50% marks in practical examination i.e. part-II examination. They scored more than 50% marks in aggregate also. Therefore, they have fulfilled the conditions as mentioned in the paragraph no. 4 (C) of the Circular dated 21.02.2014. The respondents ought to have declared the applicants as 'passed' as they fulfilled

the required criteria but the respondents have declared them as 'failed' in violation of the conditions contained in the Circulars dated 30.01.2014 and 21.01.2014. The impugned order passed by the respondent no. 2 declaring the applicants as 'failed' is not legal and proper. Therefore, it requires to be quashed and set aside.

13. In view thereof, we pass the following order:-

ORDER

1. The O.A. Nos. 378, 38, 39 & 40 all of 2016 are allowed.
2. The decision of the respondent no. 2 declaring the applicants as failed is quashed and set aside.
3. The applicants are passed in the departmental examination held in the year 2014.
4. The respondents are directed to act upon accordingly to consider the applicants for the promotion on the post of R.S.I.
5. There shall be no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)