

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 720/2018 (D.B.)

Pandharinath Kisan Joshi,
Aged about 28 years,
R/o. C/o. Shri Vatuji Shende,
Mangal Pande Ward,
Near Sakure House,
Bhandara-441904.

Applicant.

Versus

- 1) State of Maharashtra,
Through the Secretary,
Department of Home,
Mantralaya, Mumbai-400032
- 2) Director General of Police,
Maharashtra State,
Bhagatsingh Marg,
Mumbai -400001.
- 3) The Additional Director General of Police &
Director Police Wireless, Maharashtra State,
Dr. Homi Bhabha Road, Chavan Nagar,
Pashan Road, Pune-411 008.

Respondents.

Shri P.S.Verma, Id. Advocate for the applicant.

Shri H.K.Pande, Id. P.O. for respondents.

**Coram :- Shri Shree Bhagwan, Vice-Chairman and
Shri M.A.Lovekar, Member (J).**

Date of Reserving for Judgment : 28th November, 2022.

Date of Pronouncement of Judgment : 21st February, 2023

JUDGMENT**Per : Vice-Chairman.****Judgment is reserved on 28th November, 2022.****Judgment is pronounced on 21st February, 2023.**

Heard Shri P.S.Verma, learned counsel for the applicant and Shri H.K.Pande, learned P.O. for the respondents.

2. The case in brief is as follows:-

The applicant applied for the post of Police Hawaldar (Wireless Operator) in response to the advertisement published by respondent no.3 i.e. Additional, Director General and Director Police Wireless dated 16.12.2015 (Annexure A-2, Page 29 जाहिरात क्रमांक - आस्था -१/ई-५/सरळसेवा भस्ती/२०१५/८७२४, पुणे दिनांक १६/१२/२०१५) 432 posts of Police Hawaldar (Wireless Operator) were advertised. Horizontal and vertical reservations as given on P.30 were provided. The online application form of the applicant is at Annexure A-1, page 31 and he filled the form and he wrote the category as open (male) and sub-caste as Dhangar. His caste certificate is at page 26 issued by S.D.O., Buldana. He deposited fee of Rs.450/- (receipt attached at page no. 34) and at Annexure A-4, page 35 his category of caste is shown as NT(C). On page no. 30 in NT(C) category, total posts for male candidates is 10, out of them 4 for General, 1 for Sports Quota, 1 for project affected, 2 for Ex-serviceman, 1 for

Home Guard and 1 for part time. So, out of total 432 posts advertised, 324 were for male and 108 for female. Select list is placed on record from pp.41 to 70. Waiting list is from pp.71 to 74. On select list it appears that against the male candidates in open category vacancies are 172 and candidate at Sr.No.172 has got 52 marks (at page 62). The select list of NT(C) candidates is at page 67 and cut-off is 45 marks. The applicant has been shown in the waiting list of NT(C) category at page 73 and he is at Sr.no.71 with 51 marks. It is crystal clear that the last candidate in the select list of NT(C) at page no. 67, has got 45 marks and that applicant though got 51 marks has been shown in the waiting list at Sr.no.71 at page 73. Thus, he is eligible for selection in the NT(C) category.

4. Now it is crystal clear that the applicant could have been selected in the NT(C) category, but that was not done. Respondents have filed reply on 16.11.2018. In para 9 of the reply, respondents have pleaded-

9. It is clearly mentioned that, out of 12 posts from NTC category 4 posts who have OPEN category marks they are selected in OPEN category, and next to those 9 posts are filled from NTC category, and 2 posts of ex-serviceman are kept reserved while not getting ex-servicemen as per Annexure R-2. It is also submitted that, as per

Annexure R-4 Waiting List is lapsed, so the Applicant is not entitled for any relief.

5. Learned counsel for the applicant has relied on the judgment of Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.6064/2014 delivered on 05.09.2018.

6. In para 5, 6 and 7 (on page 335), Hon'ble High Court has discussed the issue of common policy regarding filling all the posts of Ex-serviceman category and finally it has been observed in para 7 that if Ex-servicemen or part time candidates are not available, candidates from the same vertical category as per merit should be taken for those posts. Based on this judgment Maharashtra Administrative Tribunal, Nagpur Bench decided O.A.No.279/2022 on 16.09.2022 on the same line. Learned counsel has relied on both the judgments. When O.A. was closed for orders on 28.11.2022 learned counsel was asked to file pursis about existing vacancies of the said recruitment. Learned counsel had filed pursis on the same day on 28.11.2022 mentioning therein in the last para (page 346) which is reproduced below-

That, further the Applicant has filed Pursis at Page No.215 along with annexures which demonstrates that the waiting list cannot be lapsed as the Respondent

Departments have utilized 2-3 years old waiting list of earlier recruitments (page No.217 to 245).

7. Learned counsel for the applicant has also filed letter dated 10.08.2016 (Annexure-16, at page 130N) issued by Sainik Welfare Board in which direction is given to the respondent no.3.

8. Learned counsel for the applicant has also filed G.R. dated 18.08.2016 on page 307 and in para 2 of said G.R. it is mentioned that in sports quota also, if candidate is not available from same vertical reservation, non-sportsman candidate can be taken.

9. Respondents have filed reply on 09.10.2019 from pp.246 to 249. On page 247 they have mentioned that in the final selection list instead of filling proposed posts of 432 of Wireless Operator, the final selection list was published only for 402 posts. They kept vacant posts in the category of Ex-serviceman and also in sports quota. As per the G.R. dated 18.08.2016 at page no. 307 filed by learned counsel for the applicant, in case of sports quota, in absence of suitable sports quota candidate, non sports quota candidate can be taken. Similar view has been taken in case of Ex-serviceman quota as per the judgment of Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.6064 of 2014. In this situation there was no need to keep the posts vacant and declining selection to the applicant. As per chart given with the advertisement on

page 30 in NT(C) category male sports post is 1 and in case of Ex-serviceman male quota is 2.

10. In view of all these facts, we pass the following order.

ORDER

1. The O.A. is allowed.
2. Respondent no.3 shall appoint the applicant pursuant to the advertisement dated जाहिरात क्रमांक - आस्था -१/ई-५/सरळसेवा भस्ती/२०१५/८७२४, पुणे दिनांक १६/१२/२०१५ to the post of Police Hawaldar (wireless operator).
3. No order as to costs.

(M.A.Lovekar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 21/02/2023.

rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde.

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 21/02/2023.

Uploaded on : 23/02/2023