

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 416 of 2022 (DB)

- (1) Sourabh Nago Dahagaonkar,
Aged about 26 years, Occ. Student,
R/o C/o Shankar Kanhu Dahagaonkar, Gadaheri, Aheri,
Dist. Gadchiroli.
- (2) Bhagwan Budhaji Madewar,
Aged about 26 years, Occ. Student,
R/o At Kotgal Post Pardi,
Tal and Dist. Gadchiroli.
- (3) Hemant Dadaji Bawankar,
Aged about 31 years, Occ. Student,
R/o At Wakdi, Kurkehda, Tah. Kurkheda, Dist. Gadchiroli.
- (4) Shreyash Vijay Dhongade,
Aged about 25 years, Occ. Student,
R/o at Post Armori, Samgamwar Layout, Bardi, Ward No.3,
Armori, Dist. Gadchiroli.

Applicants.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Home Department, Mantralaya,
Mumbai-400 032.
- 2) The Add. Director General of Police,
State Reserve Police Force,
Maharashtra State, Mumbai.
- 3) Deputy General of Police,
State Reserve Police Force,
Nagpur Range, Nagpur.
- 4) The Commandant,
State Reserve Police Force,
(Bal Gat) Group No.9, Amravati.

Respondents.

Shri P.J. Mehta, Advocate for the applicant.

Shri V.A. Kulkarni, learned P.O. for respondents.

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

Date of Reserving for Judgment : 15/11/2022

Date of Pronouncement of Judgment : 16/11/2022

JUDGMENT

Per : Shri Shree Bhagwan, Vice-Chairman

(Delivered on this day of 16th Nov., 2022)

Heard Shri P.J. Mehta, learned counsel for the applicants and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. The respondent no.4 published advertisement for filling 176 posts of Police Constable in State Reserved Police Force (SRPF) in the year 2019 (A-1,P-21&22). They then published Corrigendum which is at Annex-A-2,P-23. Out of 176 posts, there are 32 posts of horizontal reservation for ex-serviceman quota. The applicants applied in response to the said advertisement. The applications of applicant nos.1 to 4 are at Annex-A-3,P-25,P-27,P-29 and P-31 respectively. The applicant no.1 belongs to SC, the applicant no. 2 belongs to NT (C), applicants 3 & 4 belong to OBC category as per their applications.

3. As per the advertisement Annex-A-1,P-21, total ex-serviceman quota is 32. Out of which, in SC category it is 4 and in OBC category it is 6.

4. The learned counsel for the applicants relied on the G.Rs. dated 16/04/1981 (R-V,P-91) and 16/03/1999 (P-137). These G.Rs. are regarding procedure of filling vertical and horizontal category posts. However, it has been made clear in both the G.Rs. that while filling the horizontal category quota, vertical reservation compartment should be kept intact.

5. The respondent no.4 has filed reply on 01/06/2022 (P-76 to 83). In para-18 (P-82) in which it is mentioned -

“(18) The answering respondent has in fact no right to obtain the non-availability service of ex-serviceman candidates from the concerned department without waiting for a period of one year as mentioned in Clause No.2 of the Circular dated 16/04/1981.”

6. The learned counsel for applicants has relied on the Judgment of Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Nikhil Santosh Chaudhari Vs. the State of Maharashtra and others** in Writ Petition No.6064/2014, decided on 05/09/2018. The learned counsel for the applicants also relied on the Division Bench Judgment of M.A.T., Bench at Nagpur in O.A.No.279/2022, decided on 16/09/2022. As submitted by the learned counsel for the applicants, ex-serviceman reservation is a horizontal reservation and

since ex-serviceman candidates were not available, as per the Judgment of Hon'ble Bombay High Court, Bench at Aurangabad Bench as quoted supra, the applicants can be adjusted from the same vertical quota as per merit, after getting the clearance from the respective Departments. The main reliefs are reproduced below –

“8 (1) Direct the respondent no.4 to scrupulously follow the procedure prescribed under the Govt. G.Rs. dated 16/04/1981 and 28/12/2018, by obtaining the non-availability Certificate from the concerned departments as mentioned in the Clause No.II of the Govt. G.R. dated 16/04/1981, as has been done by various other units in their recruitment process.

8 (2) Be further pleased to direct the respondent no.4 to act in accordance with law and consider the candidature of the applicants for selection and thereafter appointment, from their respective category from the post reserved for the ex-serviceman category, due to non-availability of the ex-serviceman category, if otherwise found eligible.”

7. In the G.R. dated 16/03/1999 (P-137), the relevant para-6 (P-138) is as under –

“ (६) सर्वोच्च न्यायालयाच्या न्याय निर्णयात उल्लेखिलेल्यानुसार विशेष आरक्षण हे प्रत्येक उभ्या आरक्षणाच्या कक्षांतर्गत राहिल. म्हणजेच विशेष आरक्षण हे एका सामाजिक आरक्षण प्रवर्गातून दुस-या सामाजिक आरक्षण प्रवर्गात स्थानांतरीत करता येणार नाही.”

8. While deciding the O.A.No. 279/2022 (P-139), this Tribunal has observed in para-6 as under –

“6. The ld. Counsel for the applicant has relied on the Judgment dated 05.09.2018 delivered by the Hon'ble High Court Bombay, Bench at Aurangabad in W.P. No. 6064/2014 (Nikhil Santosh Chaudhari Vs. State of

Maharashtra and 2 Ors.). In this case G.Rs. dated 16.04.1981 and 16.03.1999 were considered and it was held:-

“Considering the above, two remaining posts from the O.B.C. category meant for Ex-serviceman and part time shall be filled in from the persons of O.B.C. category as per the final list published. The respondent no. 3 has secured 109 marks and the petitioner has secured 108 marks. The petitioner and respondent no. 3 are required to be considered for the appointment.”

The Hon’ble High Court then proceeded to grant the relief as follows:-

“(ii) Respondent nos. 1 & 2 shall consider the petitioner and respondent no. 3 for appointment to the post of Measurer from the O.B.C. category as the persons from the O.B.C. Ex-serviceman and O.B.C. part time are not available, pursuant to the said advertisement. Same shall be considered within a period of four weeks.”

9. In the instant O.A., the only difference is that the applicants belong to SC and OBC category, whereas, in the case before the Hon’ble Bombay High Court candidates were from the OBC category only. Relying on the same Judgment, we pass the following order –

ORDER

(i) The applicant no.1 belongs to SC category, the applicant no.2 belongs to NT (C), applicant no.3 belongs to OBC category and applicant no.4 belongs to OBC category. If in these vertical reservation categories, ex-serviceman candidates are not available,

the candidates from the same vertical category quota should be taken on the vacant posts of ex-serviceman as per merit list of respective vertical quota.

(ii) The respondents must ensure that ex-serviceman candidate is not available in SC, NT (C) and OBC category of vertical reservation, then only the applicants should be considered for appointment as per merit. They must ensure that in any case vertical reservation is not breached.

(iii) No order as to costs.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice- Chairman

Dated :- 15/11/2022.

dnk.

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

Name of Steno : D.N. Kadam

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

Judgment signed on : 15/11/2022.

Uploaded on : 16/11/2022.

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