

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 929/2018 (D.B.)

Vishal S/o Rajendra Gore,
Aged 30 Years, Occ. Nil,
R/o Mohate, Tq. Pathardi,
District Ahmednagar.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.
- 2) The Additional Commissioner,
Tribal Development, Nagpur,
Tribal Development Building,
Near R.T.O. office, Amravati Road,
Nagpur – 440 010.

Respondents

Shri K.D.Pote, Id. Advocate for the applicant.

Shri A.P.Potnis, Id. P.O. for the respondents.

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

JUDGMENT

Judgment is reserved on 03rd Jan., 2023.

Judgment is pronounced on 06th Jan., 2023.

(Per:-Vice Chairman)

Heard Shri K.D.Pote, learned counsel for the applicant and
Shri A.P.Potnis, learned P.O. for the Respondents.

2. Case of the applicant is in brief as follows.

3. The respondent no. 2 published an advertisement dated 20.02.2014 (A-1, PP. 15 to 18) for several posts including Clerk-Cum-Typist for working in Offices/ Government Ashram Schools/ Government Hostels for projects undertaken in Nagpur, Bhandara, Devari, Chandrapur, Chimur, Gadchiroli, Aheri and Bhamaragad. In the said advertisement Clerk-Cum-Typist post was at Sr. No. 11 and total posts shown were 146. Out of 146 posts, 03 posts were reserved for handicapped persons in the category of blindness (Andhatava) or Visual Impairment (Kshin Drishti) or hearing impaired (Shravan Shakti Dosh).

4. The Id. Counsel for the applicant submitted that as per the said advertisement issued by the respondent no. 2, the applicant submitted an application for the post of Clerk-Cum-Typist in handicapped category. Copy of application form with requisite documents for the post of Clerk-Cum-Typist as per the advertisement are annexed as A-2, PP. 19 to 30. At P. 29 certificate of disability is submitted in which it is shown that the applicant has Visual Impairment of both eyes - both eyes high myopia with degeneration and the disability is 40%.

5. The Id. Counsel for the applicant submits that, as per exam schedule, the applicant appeared in written examination held on 05.07.2014 at Nagpur with Seat No. 8255065532 which was conducted

under direction of the respondent no. 2. Copy of admit card of the applicant is attached as A-3, P. 31.

6. Ld. Counsel for the applicant submitted that respondent no. 2 i.e. Additional Commissioner, Tribal Development Department, Nagpur published General Merit List for above said post on concerned website. In this list Physically Handicapped Candidates are following:-

i) First is at Sr. No. 308, Seat No. 823105918458917 (NT-B Category - Hearing problems) and marks obtained is 125.

ii) Second candidate is at Sr. No. 397, Seat No. 8242062496287966 (O.B.C. - P.H. category, Ortho) marks obtained is 123.

iii) Third candidate is at Sr. No.408, Seat No. 820405037253833 (O.B.C.-P.H. Category, Blindness) marks obtained is 123.

iv) Fourth candidate is applicant at Sr. No. 418, Seat No. 8255065532247502 (Open Category - P.H. category Blindness) marks obtained is 123.

Copy of the General Merit List is at A-4, PP. 32 to 34.

7. Specific details of Handicapped candidates are given in the following table:-

No.	Sr. No. in merit list	Seat No.	Birth Date	Type of Handicap	Marks
1.	308	8231059184	10.08.1989	Hearing	125
2.	397	8242062496	04.04.1983	Ortho	123
3.	408	8204050372	25.10.1989	Blind	123
4.	418 (Applicant)	8255065532	02.09.1988	Blind	123

8. The respondents have filed reply on 16.11.2019 and pleaded as follows:-

*“4. It is submitted that the entire Process of recruitment right from collection of Application Forms till preparation/declaration of final selection list of the said recruitment was outsourced by the answering respondent through Pariksha Parishad, Pune, which is the Government Agency. Therefore, the Pariksha Parishad, Pune was conducted written examination on 05.07.2014 and submitted the general merit list to the answering respondent, which was in toto published by the answering respondent. A copy of general merit list is annexed herewith and marked as **Annexure-R-1**. Thereafter, all the candidates of the general merit list, who were applied for*

*the post of Clerk-cum-Typist' were called for verification of documents on 21.01.2015. A copy of notice dated 03.01.2015 is annexed herewith and marked as **Annexure-R-2**.*

5. It is submitted that the list of candidates, whose document verification has been done, was sent to the Pariksha Parishad, Pune and on the basis of written examination and document verification the Pariksha Parishad, Pune submitted the final selection list for the post of Clerk-cum-Typist, which is already annexed with the O.A. at annexure-A-6

6. It is submitted that the Pariksha Parishad has selected following 03 candidates under "Handicapped Category":-

<i>Sr. No.</i>	<i>Seat No.</i>	<i>Qualification</i>	<i>Marks</i>	<i>Type of Category/ Handicap</i>
<i>1</i>	<i>8231059184</i>	<i>B.A.</i>	<i>125</i>	<i>NT-B/Hearing</i>
<i>2</i>	<i>8242062496</i>	<i>B.A.</i>	<i>123</i>	<i>OBC/Ortho</i>
<i>3</i>	<i>8204050372</i>	<i>B.A.</i>	<i>123</i>	<i>OBC/Blind</i>

As Sr. No. 1 and 3 were not present at the time of document verification, they were shown 'Absent' in the selection list by the Pariksha Parishad, Pune. Further, the

name of the applicant has not been included in the selection list or waiting list which was submitted by the Pariksha Parishad, Pune. Therefore, the appointment order has only been issued to the above Sr.No.2 candidate (Seat No. 8242062496) under OBC/Ortho category and rest 02 posts under 'Handicapped (Apang)' category were kept vacant."

9. Respondent no. 2 has published selection list dated 03.01.2015 (A-5, PP. 35) and list of Clerk-Cum-Typist is A-6, PP. 37 to 41. In the list, first Physically Handicapped Candidate is shown as Sr. No. 96, Roll No. 8231059184, Marks - 125, Category-NT-B/Hearing-1 who was absent. Second is at Sr. No. 99, Roll No. 8242062496, Marks - 123, Category-OBC/Ortho-1 who was selected. Third is at Sr. No. 100, Roll No. 8204050372, Marks-123, Category-OBC/Blind-1 who was absent. After publication of Selection list the applicant submitted representation dated 31.01.2015 (A-7, PP. 43 to 45). On P. 44 he has given all the details. However, he was not considered by the respondents. Again he sent a representation dated 19.05.2015 (P. No. 46). Both these representations were not considered by respondent no. 2. While filing reply respondent no. 2 has mentioned that two posts under Handicapped Category were kept vacant. However, no

reason has been assigned for keeping two posts vacant in selection list dated 03.01.2015 when candidates were available.

10. Ld. P.O. canvassed arguments related to G.A.D., G.R. dated 27.06.2008 (para no. 7) and submitted that the list was valid only for the period of one year. This argument cannot be accepted. In this case when the list was published on 03.01.2015 at that time the applicant was available for appointment and when the list was found to be erroneous, the applicant submitted representation dated 31.01.2015 itself and again on 19.05.2015 (P. 46). So, this G.R. cannot be taken as shelter to defend failure to take a decision by respondent no. 2 in time. Respondent no. 2 was duty bound to take decision by preparing the selection list or atleast decide the representations in time. It was not in the hands of the applicant to get the appointment letter issued, rather it was duty of respondent no. 2 to first include the applicant in the selection list dated 03.01.2015 and if not then the mistake should have been corrected while deciding the representations. In this situation, the argument put forth by ld. P.O. regarding G.R. dated 27.06.2008 (para no. 7) is not acceptable. Hence the following order:-

O R D E R

- I) The O.A. is allowed in terms of prayer clause C.

- II) Respondent no. 2 is directed to comply with this order within three months from the date of receipt of this order.
- III) No order as to costs.

(M.A.Lovekar)
Member(J)

aps

Dated - 06/01/2023

(Shree Bhagwan)
Vice Chairman

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

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman
& Hon'ble Member (J).

Judgment signed : 06/01/2023.
on and pronounced on

Uploaded on : 09/01/2023.