

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI, BENCH AT NAGPUR  
ORIGINAL APPLICATION NO. 219 OF 2016**

**DISTRICT : AMRAVATI**

Sneha Gajananrao Farkade )  
@Sneha Sumit Watkar )  
Aged 29 Years, Occ-Nil )  
R/o Benoda, Warud, )  
Dist: Amravati )...**Applicant**

**VERSUS**

1. The State of Maharashtra )  
Through its Secretary, Ministry )  
Of Higher & Technical Education )  
Mantralaya, Extension, )  
Mumbai-400032. )
2. Maharashtra Public Service )  
Commission, 5 ½ th, 7<sup>th</sup>, 8<sup>th</sup> Floor, )  
Cooperage Telephone )  
Exchange Building, )  
Maharshi Karve Road, )  
Cooperage, Mumbai -400021. )
3. Nikita Ravindra Shetty )
4. Pooja Kalidas Shinde )  
Through, Maharashtra Public Service )  
Commission, Through its Secretary )  
5 ½ th, 7<sup>th</sup>, 8<sup>th</sup> Floor, Cooperage )  
Telephone Exchange Building, )  
Maharshi Karve Road, )  
Cooperage, Mumbai -400021. )...**Respondents**

Mrs. M Chandurkar, the learned Advocate for the Applicant.

Shri M.I. Khan, learned Presenting Officer for the Respondent Nos.1 & 2.

Shri H.D. Dangre, learned Advocate for the Respondent No.4.

None for the Respondent No.3.

**CORAM : Shri Rajiv Agarwal, Vice-Chairman (A)**

**Shri J.D. Kulkarni, Vice-Chairman (J)**

**DATE : 25 .04.2017**

**PER : Shri Rajiv Agarwal, Vice-Chairman (A)**


**ORDER**

1. Heard learned Advocate Mrs. Chandurkar, <sup>for the Applicant,</sup> Shri M.I. Khan, learned Presenting Officer for the Respondent Nos.1 & 2 and Shri H.D. Dangre, learned Advocate for the Respondent No.4. None for the Respondent No.3.

2. This Original Application has been filed by the Applicant who is challenging the select list dated 2.12.2015 issued by the Respondent No.2 for selection to the post of Assistant Professor in Government Engineering Collages on the ground that for Open-Female post, Females belonging to reserved category are not eligible to be considered.

3. Learned Counsel for the Applicant argued that the Respondent No.2 had issued advertisement on 3.4.2014 for selection to the post of Assistant Professor in Government Engineering Colleges in Maharashtra. The Applicant had

applied for the post of Assistant Professor in Computer Engineering. Out of 12 posts, 6 posts were open and out of Open posts, 2 posts were horizontally reserved for females. The Applicant belongs to O.B.C. category and scored more marks than the Respondent Nos.3 & 4 but was not selected. Learned Counsel for the Applicant stated that Government circular dated 13.08.2014 about horizontal reservation has been issued by the Respondent No.1 after the advertisement was issued on 3.4.2014. This circular dated 13.08.2014, therefore, cannot be applied to the present selection process. Circular dated 16.3.1999 should have been applied. The Respondent No.2 had issued a 'corrigendum' dated 2.5.2014, informing the candidates that those backward class candidates who have availed of any concession in fee, age etc. while applying for selection to any post, would not be eligible to be selected from Open category. It was specifically mentioned in the 'corrigendum' dated 25.9.2014 that it would be applicable for selection pursuant to advertisement issued after that date. The Applicant appeared for written examination on 27.7.2014 and was called for interview. The result was declared on 2.12.2015 and the Applicant had scored 83 marks, while the Respondent Nos.3 & 4 scored 74 and 51 marks respectively. The Applicant has a right to be considered for selection to an Open post, though she belongs to O.B.C. category. Learned Counsel for the Applicant relied on the judgment of Hon'ble High Court (Nagpur Bench) in W.P.Nos.1930 of 2014 and 1925 of 2014 dated 16.12.2015 wherein Hon'ble H.C. has held that females from for SC/OBC



category were eligible to be considered for post reserved for Open-Female category.

5. Learned Presenting Officer (P.O.) argued on behalf of the Respondent Nos.1 & 2 that the circular dated 13.8.2014 is qualitatively the same as earlier circular dated 16.3.1999. These circulars provide that if a post is reserved horizontally, and if no suitable candidate from that vertical reservation category is eligible for the horizontally reserved post, the post has to be added to the respective vertical reservation category, from which horizontal reservation was provided. In a series of judgments, Hon'ble S.C. has held that for vertical reservation, even open category is a separate vertical reservation category and there is water-tight compartment, in so far as transfer of horizontal reservation from one vertical reservation category to another is concerned. If an Open female is not available for selection, the post will have to be added to open-general category, and cannot be offered to females from other reservation category. Learned P.O. argued that this Tribunal has to follow the ratio-decidenti of the judgments of Hon'ble S.C. in Anil Kumar Gupta Vs. State of U.P. & Others (1995) 5 SCC 173 and Rajesh Kumar Daria Vs. Rajasthan Public Service Commissioner & others (2007) 8 SCC 785.

6. Learned Advocate Shri Dangre argued on behalf of the Respondent No.4 that the decision of the Respondent No.2 is legally correct and is in conformity with various judgments of Hon'ble S.C. He argued that the judgment of

Sh

Hon'ble S.C. would prevail over judgment of any other court and the same are law of the land as per Article 141 of the Constitution of India. Learned Counsel for the Respondent No.4 argued that there are a number of judgments of Hon'ble S.C. on the issue of horizontal reservation, where Hon'ble S.C. has specifically held that the principals applicable for vertical reservation as held by Hon'ble S.C. in Indra Sawhney's case are not applicable to horizontal reservation. It is also held in Anil Kumar Gupta's case (supra) that 'Open' is also a distinct vertical reservation category like S.C./O.B.C. etc. and there is Water-tight compartment between these categories for horizontal reservation. Learned Counsel for the Respondent No.4 argued that the Applicant had admitted that she has availed of concession in fee while applying for the post. She is, therefore, not eligible to be considered for selection to an Open post. The 'corrigendum'/notice issued by M.P.S.C. may be dated 25.9.2014, but the same is based on the practice being followed by the Union Public Service Commission, based on judgment of Hon'ble S.C. viz. Union of India Vs. Ramesh Ram & Others etc. in Civil Application Nos.13571-13572 etc. and O.M. issued by Government of India on 1.7.1998. The Respondent No.2 has to follow the judgment of Hon'ble S.C. and it has no authority to decide the date from which the decision of Hon'ble S.C. will be applied.

7. This Tribunal has considered the issue of horizontal reservation in the case of **Irfan Mustafa Shaikh Vs. State of Maharashtra & Others (O.A.No.301 of 2009,**

RH

**Aurangabad Bench) in the judgment dated 26.8.2009.**

The issue of horizontal reservation as per Govt. Circular dated 16.3.1999 was examined. The Applicant in this O.A. belonged to Open-Home Guard category and he had challenged the selection of persons, who were Home Guards, belonging to reserved category, against the Open-Home Guard Category posts. This Tribunal observed that:-

“Sr.Nos.3,7,8 and 10 who are more meritorious than Applicant in Home Guard Category belong to V.J., O.B.C., S.C. and O.B.C. respectively. They cannot be counted as Open Home Guard Candidates.” (emphasis supplied).

8. It is clear that this Tribunal held that for post reserved for Open-Home Guard category, Home Guard from Open Category can only be considered. Candidates, who may be Home-Guards from other vertical reservation category like S.C., O.B.C., V.J. etc. cannot be appointed in posts reserved for Open-Home Guard Category, though they may be more meritorious. The judgment of this Tribunal was challenged before Aurangabad Bench of Hon'ble H.C. in W.P.No.272 of 2010. By judgment dated 15.11.2010, Hon'ble H.C. held as follows:-

“4. The learned Tribunal, while allowing the Original Application has held that in so far as horizontal reservation is concerned, the candidates from particular category are only entitled to be considered against posts reserved for such category. It has further been held that the candidates from one category for which horizontal reservation is provided, cannot be considered for selection against the post reserved for another horizontal reservation. The view taken by the learned

Tribunal is in consonance with the law laid down by the Apex Court in the case of **Rajesh Kumar Daria Va. Rajasthan Public Service Commission & Others, reported in AIR 2007 SC 3127**, wherein it has been held that while filling the post reserved for horizontal reservation, firstly the candidates from that particular category only be taken into consideration and only if there is a shortfall then the recourse could be taken to go to another candidate for fulfilling the said quota.”

9. Hon'ble H.C. decided not to interfere in the matter and the judgment of this Tribunal was upheld. The judgment of Hon'ble H.C. was challenged in special leave petition no.15802 of 2011. Hon'ble S.C., by judgment dated 27.9.2011 upheld the judgments of Hon'ble H.C. as well as that of this Tribunal. Hon'ble S.C. held that:-

“Even on merits, we are satisfied that the reasons assigned by the Tribunal for issuing a direction for appointment of Respondent No.1 were legally correct and the High Court did not commit any error by declining to interfere with the Tribunal's order.”

It would be clear that Hon'ble S.C. held that the order of this Tribunal was legally correct. What applies to Open- Home Guard posts, equally applies to Open- Female posts.

10. Let us now examine some other important judgments of Hon'ble S.C. mentioned in Govt. Circular dated 16.3.1999 and the judgment of Hon'ble H.C. cited above. The circular dated 16.3.1999 is based on the judgment of Hon'ble S.C. in the case of Anil Kumar Gupta (supra). In the

judgment Hon'ble S.C. has distinguished between the nature of vertical and horizontal reservations. The case before Hon'ble S.C. was regarding admission to Medical Colleges in the State of Uttar Pradesh. Following vertical reservation was provided, viz.

(i)	S.C.	21%	
(ii)	S.T.	2%	
(iii)	O.B.C.	27%	
	Total =	50%	

In addition 15% horizontal reservation was provided for different categories. It was not clear whether the horizontal reservation was 'overall' reservation <sup>or</sup> ~~of~~ 'compartmentalized reservation', Hon'ble S.C. had observed as follows:-

"As against this, what happens in the overall reservation is that while allocating the special reservation students to their respective social reservation category, the overall reservation in favour of special reservation categories has yet to be honoured. This means that in the above illustration, the twenty remaining seats would be transferred to OC category which means that the number of special reservation candidates in OC category would be  $56+20=76$ . Further, if no special reservation candidate belonging to S.C. and S.T. is available then the proportionate number of seats meant for special reservation candidates in SC and ST also get transferred to OC category. The result would be that 102 special reservation candidates have to be accommodated in the OC category to complete their quota of 112. The converse may also happen, which will prejudice the



candidates in the reserved categories. It is, of course, obvious that the inter se quota between OC, OBC, SC and ST will not be altered.”

Rh  
to Hon'ble S.C. has observed that horizontal reservation could be of two types viz. 'overall' or 'compartmentalized'. However, if such reservation is 'overall', it may result in a situation either where most of the reservation may have to be applied to Open (word used is Open-Competition- OC) category or to any one of the vertical reservation category. It is quite clear that Hon'ble S.C. has favored 'compartmentalized' horizontal reservation. The circular dated 16.3.1999 and G.R. dated 25.5.2010 make it absolutely clear that in Maharashtra, horizontal reservation is 'Compartmentalized' and not 'overall'. In that context, the observation of Hon'ble S.C. in Anil Kumar Gupta's case (supra) assumes great importance. Hon'ble S.C. has held that:-

“(i) The special reservation would be a water tight compartment in each of the vertical reservation classes, OC. O.B.C. S.C. and S.T.”

It is clear that for horizontal reservation, it has been held by Hon'ble S.C. that O.C. (Open competition) category is also a distinct vertical reservation category and no migration of a post from one vertical reservation category to another is not permitted. There is another observation of Hon'ble S.C., viz.

Rh  
“(ii) It is, of course, ob S.C. and S.T. will not be altered.”  
(emphasis supplied).

11. In para 18 of the aforesaid judgment, Hon'ble S.C. has held:-

“18. Now, coming to the correctness of the procedure prescribed by the revised notification for filling up the seats, it was wrong to direct the fifteen percent special reservation seats to be filled up first and then take up the OC (merit) quota (followed by filling of OBC, SC and ST quotas). The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If this quota fixed for horizontal is already satisfied – in case it is an overall horizontal reservation – no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted / accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment /accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fitness percent in favour of special categories, overall, may be satisfied or may not be satisfied). Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the OC quota.”

Hon'ble S.C. has deprecated the application of horizontal reservation in a manner, which will result in entire horizontal reservation quota being allocated and adjusted again Open category. If the claim of the Applicant in this O.A. is accepted, than entire horizontal reservation or females will be


Rh

adjusted again Open category, which is not approved by Hon'ble S.C.

12. In the case of Rajesh Kumar Daria (supra) Three Judges Bench of Hon'ble S.C. has interpreted Rule 9(3) of the Rajasthan Judicial Services Rules, 1955, which is per-matera to the G.R. dated 25.5.2001 regarding reservation for women in Maharashtra. Rule 9(3) reads:-

“ Reservation for women candidates shall be 20% category wise in direct recruitment. In the event of non-availability of the eligible and suitable women candidates, in a particular year, the vacancies so reserved for them shall be filled in accordance with the normal procedure and such vacancies shall not be carried forward to the subsequent year and the reservation treated as horizontal reservation i.e. the reservation of women candidates shall be adjusted proportionately in the respective category to which the women candidates belong”.

13. G.R. dated 25.5.2001 issued by Woman and Child Development Department of Govt. of Maharashtra provides for 30% reservation for women in Government service by direct recruitment. Para 1(5) provides that this reservation is 'compartmentalized' reservation and open category is also mentioned as a separate category. Para 1(7), provides that if in a particular year, no suitable female candidates are available, the posts will not be carried forward, but will be filled by male candidates from respective reservation categories. It is quite clear that provisions of this G.R. are peri-materia to the Rule 9(3) quoted above.



14. Coming again to the judgment of Hon'ble S.C. in Daria's case, Hon'ble S.C. has observed in para 9 as below:-

"9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are "vertical reservations". Special reservations in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) are "horizontal reservations". Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category. (Vide Indra Sawhney, R.K. Sabharwal Vs. State of Punjab, Union of India Vs. Virpal Singh Chauhan and Ritesh R. Sah V. Dr. Y.L. Yamul). But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belongs to the special reservation group of "Scheduled Caste Women". If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of candidates from the bottom of the list relating to Scheduled Castes women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To

this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women.” (emphasis supplied).

It is quite clear that Three Judges Bench of Hon'ble S.C. has interpreted judgment of Hon'ble S.C. in Indra Sawhney's case, and held that principles applicable for vertical reservation are not applicable in to to for horizontal reservation. There are significant differences.

15. In the case of Public Service Commission, Uttranchal Vs. Mamta Bisht & Others: (2010) 12 SCC 204, Hon'ble S.C. has observed that:-

“13. In fact the High Court allowed the Writ Petition only on the ground that the horizontal reservation is also to be applied as vertical reservation in favour of reserved category candidates (social) as it is held as under:”

It is held further that:-

“14. The view taken by the High Court on application of horizontal reservation is contrary to the law laid down by this Court in Rajesh Kumar Daria Vs. Rajasthan Public Service Commissioner, wherein dealing with similar issue this court held as under: (SCC pp 790-91, para9)”.

Para '9' of the judgment in Daria's case is quoted in the preceding paragraph.

If the claim of the present applicant is accepted than it will amount to 30% vertical reservation for women. For Open-Female vacancies, women from all categories could be

*Handwritten mark*

appointed. This approach will give rise to following difficulties.

- (i) G.R. dated 25.5.2001 provides that 30% reservation for women in Maharashtra is compartmentalized. There is overall 52% vertical reservation in Maharashtra. 30% of these 52% posts will be reserved for women from respective vertical reservation categories, where no migration from one category to another would be allowed. However, for 48% posts, all women, regardless of the vertical reservation category would be allowed to compete. This will be against the provisions of the G.R.
- (ii) This will also mean that for 52% vertically reserved posts, horizontal reservation for women will be compartmentalized, while for 48% posts, it will be 'overall' horizontal reservation. In Anil Kumar Gupta's case, Hon'ble S.C. has held that horizontal reservation has to be either 'overall' or 'compartmentalized'. It cannot be applied differently for different vertical reservation categories. Pd

Hon'ble S.C. has observed in Gupta's case (supra):

"We are of the opinion that the interest of avoiding any complication and intractable problems, it would be better that in future any horizontal reservations are compartmentalized in the sense explained above." (emphasis supplied).

- (iii) Reservation for women regardless of vertical reservation, would amount to creating another vertical reservation category for women. This will increase overall vertical reservation to 52% + 14% (30% of 48% open posts) which will be against the law laid down by Hon'ble S.C. in Indra Sawhney's case regarding ceiling on vertical reservation. Pd

Hon'ble Rajasthan High Court in the case of Laxmi Kanwar and Another Vs. State & others in S.B. Civil Writ Petition No.11119/2012 & Others has held that unless reservation for women is compartmentalized, it will violate constitutional mandate of equality regardless of gender.

- (iv) Another issue which has come to our attention is the provision in G.R. dated 25.5.2001 regarding Non-Creamy layer certificate. This G.R. provides that for Open- Female candidates, it will be necessary to produce NCL certificate to available benefit of reservation. For OBC candidates also NCL certificate is required. For SC/ST candidates NCL certificate is not required. If, however SC/ST female candidates are seeking appointment as Open-Female candidates, obviously they cannot be considered unless they submit NCL certificate.

16. For OBC women, NCL certificate is based on the income of parents, regardless of the income of the candidate and his/her family like husband/wife etc. For Open Females, NCL certificate as per this G.R. dated 25.5.2001, is required to be based on income of the candidate and her family. If a women from OBC category is seeking appointment as Open-Female, she will have to produce NCL Certificate based on her own income plus income of her family. That may effectively disqualify many women, who are working in posts which carry salary above the prescribed limit for NCL category. Whether the present Applicant will be able to meet this condition will be a relevant factor.

17. Another important issue raised by the Applicant is applicability of 'corrigendum' issued by the Respondent No.2 dated 25.9.2014. This has been issued by M.P.S.C. on 25.9.2014 and it states that it will apply in the following manner:-

“ सदरची सुचना यापूर्वी प्रसिध्द झालेल्या जाहिरातीत जेथे नमूद असेल त्याप्रकरणी व यापुढे प्रसिध्द होणा-या सर्व जाहिरातीसंदर्भात लागू होईल.”

This clarification has been issued by M.P.S.C. based on the judgment of Constitution Bench of Hon'ble S.C. dated 7.5.2010 in the case of Union of India Vs. Ramesh Ram & others etc. in Civil Appeal No.4310-4311 of 2010. The selection process after the date of the aforesaid judgment would squarely be covered by the aforesaid judgment of Hon'ble S.C. The claim of the Applicant that this clarification/ corrigendum will not apply in her case is legally untenable. It was wrong on the part of the Respondent No.2 to not follow the law laid down by Hon'ble S.C. in this regard when U.P.S.C. has been doing it. Government of India had issued O.M dated 1.7.1998 clarifying this issue that if a Backward Class candidate has availed of any concession in age, fee etc. he could not be selected against open vacancy.

18. We will reproduce Article 141 of the Constitution of India, which reads:-

“Law declared by Supreme Court to be binding on all Courts~The law declared by the Supreme Court shall be binding on all courts within the territory of India.”

14




As regards, horizontal reservation, the law is declared by Hon'ble S.C. in Rajesh Kumar Daria's case. Hon'ble S.C. in Mamta Bisht's case has observed as follows:-

"14. In view of the above, it is evident that the judgment and order of High Court is not in consonance with Law laid down by this court in Rajesh Kumar Daria (Supra)." (\*emphasis supplied).

Hon'ble S.C. has clearly held that in the case of Daria (supra) Hon'ble S.C. has laid down the law on horizontal reservation, which according to Article 141 is binding on all courts in the country. In Daria's case (supra) Hon'ble S.C. has referred to the judgment in Anil Kumar Gupta's case (supra) as follows:-

"7. A provision for women made under Article 15(3), in respect of employment, is a special reservation as contrasted from the social reservation under Article 16(4). The method of implementing special reservations, was explained by this court in Anil Kumar Gupta Vs. state of U.P. thus:"

From this para, it is quite clear that in Daria's case, Hon'ble S.C. has fully endorsed the earlier judgment in Anil Kumar Gupta's case. Together, these two Judgments contain the law laid down by Hon'ble S.C. regarding horizontal reservation and how it is different from vertical reservation. We have no option but to strictly follow the law laid down by Hon'ble S.C. in these judgments unambiguously. The Applicant in the present O.A. admittedly belongs to O.B.C.



category. She had availed of concession in fee as backward candidate. She had not submitted NCL certificate based on her own income and income of her family. Considering all these facts, she is not entitled to be considered for appointment against a post reserved for Open-Female category. The Respondents No.2 has not committed any mistake while selecting the Respondent No.3 and 4, whose appointment has been challenged in this O.A.

19. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

sd/-

**(J.D. KULKARNI)**  
**VICE-CHAIRMAN (J)**

sd/-

**(RAJIV AGARWAL)**  
**VICE-CHAIRMAN(A)**

**Date : .04.2017**  
**Place : Mumbai**  
**Dictation taken by : SBA**

E:\savita\2017\March, 2017\Nagpur judgment\O.A.No.640 of 2016 Vc. & M(J) Interview to the post of Director.doc