

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 464/2018 (D.B.)**

Nitesh Gurudas Kunghadkar,
Aged about 26 years, Occ. Nil,
At & P.O. Kunghada (Rai),
Tah. Charmoshi, Dist. Gadchiroli-441 209.

Applicant.

Versus

- 1) The Secretary of Maharashtra,
through the Secretary (Home), Mantralaya, Mumbai.
- 2) The Superintendent of Police,
Gadchiroli, Dist. Gadchiroli.
- 3) Pursushottam Ashok Yelmule, Aged : Adult, Occ. Pvt.
R/o At. Tanbodi, P.O. Khamnacheru,
Tah. Aheri, Dist. Gadchiroli.

Respondents.

S/Shri T. Parmar, S. Bagade, K. Nandeshwar, Advs. for the applicant.

Shri V.A. Kulkarni, P.O. for respondent nos.1&2.

Shri Rohit Joshi, M. Deo, Advocates of respondent no.3.

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

Date of Reserving for Judgment : 16th June,2022.

Date of Pronouncement of Judgment : 4th July,2022..

JUDGMENT

Per : Vice Chairman.

(Delivered on this 4th of July, 2022)

Heard Shri Tarun Parmar, learned counsel for the applicant, Shri V.A.Kulkarni, learned P.O. for the respondent nos.1 & 2 and Shri Rohit Joshi, learned counsel for the respondent no.3.

2. The respondent no.2 published an advertisement dated 06.02.2018 for recruitment of the Police Constables in Gadchiroli District and invited the applications online, the details were given on the www.mahapolice.gov.in as per page no.14. Altogether, 6 vacancies were reserved for the Home Guard out of total 129 vacancies. There was no reservation for the OBC, 5 posts were in open category and 1 post was reserved for ST category. The applicant had filed the application for the post of Home Guard in Open category and respondent no.3 had filed the application for the post of Home Guard in Other Backward Caste (OBC) category.

3. The relevant Chart of the advertisement dated 6/2/2018 at page no.14 is as under -

महाराष्ट्र राज्य पोलीस शिपाई भरती सन २०१८

पोलीस अधिक्षक गडचिरोली

जाहिरात क्रमांक- पोअग/डि-२७/पो.भ.-१८/२०१८ गडचिरोली, दिनांक ०६/०२/२०१८

महाराष्ट्र पोलीस शिपाई (सेवाप्रवेश) नियम २०११ (शा.नि.क्र.जेएलई-१०१५/१६६६/प्र.क्र.३०२/तुरुंग-१, दि.१५/०१/२०१६ अन्वये), महाराष्ट्र राज्य राखीव पोलीस बलातील सशस्त्र

पोलीस शिपाई (पुरुष)(सेवाप्रवेश) नियम-२०१२ व शासनाने यासंदर्भात वेळोवेळी निर्गमित केलेल्या अटी व शर्तीनुसार पोलीस अधिक्षक, गडचिरोली रिक्त असलेल्या पदांपैकी शासनाच्या मंजूरीच्या अधिन राहून १०० टक्के पदेच भरण्यासाठी पोलीस शिपाई पदाची भरती आयोजित करण्यात येत आहे.

१) पोलीस शिपाई :

	खुला	अजा	अज	विज -अ	भज -ब	भज- क	भज- ड	विमा प्र	इमा व	एकुण ।
एकुण										
कणीकृत आरक्षण	१९	-	१४	-	-	९	-	-	७	१२९
सर्वसाधारण	२९	-	४	-	-	५	-	-	४	४२
महिला	३०	-	४	-	-	३	-	-	२	३९
खेळाडू	५	-	१	-	-	-	-	-	-	६
प्रकल्पग्रस्त	५	-	१	-	-	-	-	-	-	६
भुकंपग्रस्त	२	-	-	-	-	-	-	-	-	२
माजी सैनिक	१५	-	२	-	-	१	-	-	१	१९
अंशकालीन पदवीधर	५	-	१	-	-	-	-	-	-	६
पोलीस पाल्य	३	-	-	-	-	-	-	-	-	३
गृहरक्षक दल (होमगार्ड)	५	-	१	-	-	-	-	-	-	६
एकुण	९९	-	१४	-	-	९	-	-	७	१२९

4. On 07.04.2018, the written examination of candidates was held and list of marks obtained by each candidate was published on the web site of the respondent nos.1 & 2 i.e. www.gadchirolipolice.gov.in on 07.04.2018. Based on the marks obtained in the written examination and also Physical test, the respondent no.2 shortlisted the candidates and called them for the

documents verification on 16/17-4-2018. Names of the candidates who were called for the verification of the documents were published on the website of the respondent, i.e., www.gadchirolipolice.gov.in.

5. The name of the respondent no.3 was not included in both the lists dated 16-04-2018 and 17-04-2018 for verification of the documents. Thus, documents verification of the respondent no.3 was not carried out.

6. On 29.04.2018 the applicant made the representation to the respondent no.2 about selection of respondent no.3, when respondent no.3 had not applied for the post of Home Guard in Open Category.

7. Thereafter, the applicant received a letter dated 07.05.2018 from respondent no.2 justifying the selection of the respondent no.3. As per the letter dated 07.05.2018 of the respondent no.2, respondent no.3 applied for the change of the category from OBC to the General Category and hence his application was considered and he was called for the verification of the documents on 20.04.2018

8. As per the special instructions given in the advertisement of the respondent no.2 for the above posts, once the application of the candidates was accepted, if candidates failed to produce the caste certificate claimed in the application form, or candidate were not

selected in the category in which they had applied or for any other reason the application for allowing candidate in Open category, could not be entertained.

9. In the advertisement for the above posts it is clearly mentioned that “candidates should give perfect information in the application form. Application form will be rejected at any stage for providing false information. The documents of the candidates who have been declared selected in the written examination and physical fitness test will be verified. The selected candidate who fails to show the relevant documents will be declared intelligible. Candidate will not be declared eligible only because they passed in the written and physical test”.

10. The learned P.O. has strongly opposed the application. By filing reply he has submitted that the applicant had scored marks which were less than the marks scored by respondent no.3 he was placed in the waiting list at Sr.No.2, on the contrary as the respondent no.3 had scored 169 marks, he was selected for the quota of Home Guard category under the open category. Therefore there is no merit in the O.A. and it is liable to be dismissed.

11. The Government vide G.R. dated 13/08/2014 has given the procedure for selection from starting to end. It is explained below

how to implement both the vertical and horizontal reservation. The relevant portion is as under –

शासन परिपत्रक, सामान्य प्रशासन विभाग, क्रमांक एसआरव्ही १०९७/प्र.क्र.३१/९८/१६-अ, दिनांक १६ मार्च, १९९९ मधील परिच्छेद ५ मध्ये विहित करण्यांत आलेल्या कार्यपध्दतीमध्ये मार्गदर्शनार्थ स्पष्टीकरणाचा समावेश करण्यांत येत असून सुधारित परि.५ खालीलप्रमाणे आहे. शासन सेवेत सरळसेवेने नियुक्ती करताना समांतर आरक्षण कार्यान्वित करण्यासाठी सदर सुधारित कार्यपध्दती अनुसरण्यात यावी :-

(अ) प्रथम टप्पा :- खुल्या प्रवर्गातून समांतर आरक्षणाची पदे भरताना, गुणवत्तेच्या निकषानुसार खुल्या प्रवर्गातील उमेदवारांची निवड यादी करावी (या ठिकाणी खुल्या प्रवर्गात गुणवत्तेच्या आधारावर मागासवर्गीय उमेदवारांचाही समावेश होईल). या यादीत समांतर आरक्षणानुसार आवश्यक खुल्या प्रवर्गाच्या उमेदवारांची संख्या पर्याप्त असेल तर कोणताही प्रश्न उद्भवणार नाही आणि त्यानुसार पदे भरावीत. जर या यादीत समांतर आरक्षणानुसार आवश्यक खुल्या प्रवर्गाच्या उमेदवारांची संख्या पर्याप्त नसेल तर खुल्या प्रवर्गासाठी राखीव समांतर आरक्षणाची पदे भरण्याकरिता सदर यादीतील आवश्यक पर्याप्त संख्येइतके शेवटचे उमेदवार वगळून पात्र उमेदवारांपैकी केवळ खुल्या प्रवर्गाचेच आवश्यक पर्याप्त संख्येइतके उमेदवार घेणे आवश्यक आहे.”

(ब) दुसरा टप्पा :- त्यानंतर प्रत्येक सामाजिक आरक्षणाच्या प्रवर्गातील उमेदवारांच्या निवड याद्या तयार कराव्यात. (जे उमेदवार यापूर्वीच टप्पा “अ” मध्ये सामील झाले असतील त्यांना या यादीतून वगळावे.)

(क) तिसरा टप्पा :- वरील “ब” नुसार तयार करण्यात आलेल्या याद्यांमध्ये सामाजिक आरक्षणातील (Social Reservation) प्रत्येक प्रवर्गाच्या विहित टक्केवारीनुसार “अ” येथे विशद केलेल्या कार्यपध्दतीनुसार समांतर आरक्षणाचे पुरेसे उमेदवार समाविष्ट करावेत. मात्र असे करताना सामाजिक प्रवर्गातर्गत रहावे.

12. Recently, the Hon'ble Supreme Court in the case of **Saurav Yadav & Ors. Vs. State of Uttar Pradesh & Ors.,** in M.A. No. 2641/2019 in SLP (Civil) No.23223/2018 has explained the concept of horizontal reservation given in para-12 which is reproduced as below—

“12. The observations in the Order dated 20.02.2019 passed by the Division Bench of the High Court of Judicature at Allahabad in Pramod Kumar Singh and Others vs. State of

U.P. and Others 8 are also relied upon by the State Government. In that case the horizontal reservation for dependants of Freedom Fighters, Ex. Servicemen and women in the very same selection for Police Constables was in issue. The Division Bench of the High Court dealt with the Note submitted on behalf of the State which indicated the steps undertaken to determine and fill up seats for various categories as under:-

The procedure as set forth for completion of the recruitment exercise is then described in the following terms:

Step 3.1 From List -1 select 19158 candidates in open category in order of their merit (Total Marks). This list may contain candidates from any state or any reserved categories (OBC/SC/ST) also. Let us call this list as List 1-A.

Step 3.2 Now select 10345 candidates of OBC Category from the candidates left after Step 3.1 from the List-1. This will include only OBC candidates with domicile of U.P. Let us call this list as List-1-B.

Step 3.3 Now select 8046 candidates of SC Category from the candidates left after Step 3.1 from the List-1. This will include only SC candidates with domicile of U.P. let us call this list as List 1-C.

Step 3.4 Now select 766 candidates of ST Category from the candidates left after Step 3.1 from the List-1. This will include only ST candidates with domicile of U.P. let us call this list as List 1-D.

Step 3.5 If number of candidates in List-1-C is less than the required number 8046 for SC Candidates from shortage will be filled from ST candidates remaining after step 3.4 if available. If required quota of SC remains unfilled, then number of shortage posts should be shown separately. Similarly if number of for ST candidates then shortage will be filled from SC candidates remaining after Step 3.3, if available. If required of ST still remains unfilled then number of shortage posts should be shown separately.

Step 3.6 In this way four lists of candidates will be prepared as follows:

List-1-A	List-1-B	List-1-C	List-1-D
(OC)	(OBC)	(SC)	(ST)
19158 (will include GEN, OBC, ST of any	10345 (Only OBC, U.P.)	8046 (Only SC, domicile of U.P.)	766 (Only ST, domicile of U.P.)
state)			state)

Step 4 prepare a separate list of remaining candidates from List-1 who are not included in List-1-A,1-B, 1-C and 1-D. Let us call this list as List-1.

Step 4.1 Now count the number of DFF candidates belonging to General Category (having domicile of U.P.) from the List-1-A. The candidates should not be OBC/SC/ST category. If number of candidates is 383 or more, then nothing needs to be done, otherwise select the shortfall of candidates of general category belonging to DFF on merit from the List-2 (Only candidates not belonging to OBC, SC & ST category) and adjust/insert them in after removing equal number of candidates from the bottom of List-1-

A except General Category DFF, Ex-Servicemen, female and home guard candidates (any candidate who is eligible for horizontal reservation).

13. As discussed above the first step of selection itself is that if any candidate of any category comes as per the merit in the open category, he/she will be considered to be selected in open category irrespective of his/her category. In para-B (C) guideline of social reservation is discussed.

In this case the Hon'ble Supreme Court has held that more meritorious candidates cannot be ignored as against less meritorious candidates. Since the respondent no.3 has secured 169 marks and the applicant has secured 163 marks, so as per the merit, the respondent no.3 has to be considered in open category irrespective of his category. Hence, the following order –

ORDER

The O.A. is dismissed. No order as to costs.

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

(Shree Bhagwan)
Vice-Chairman.

Dated :- 04/07/2022.

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 Hon'ble V.C. and Member (J).

Judgment signed on : 04/07/2022.

Uploaded on : 04/07/2022.