

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI, BENCH AT NAGPUR**

**ORIGINAL APPLICATION NO.90 OF 2016
(Subject : Appointment)**

DISTRICT : AMRAVATI

Surenderkumar Shrikrushna Dalu,)
Occupation : Service as Lecturer,)
R/o.139, Samta Colony,)
Near Rangoli Lawn, Kathora Road,)
Amravati - 444 604, District Amravati.)

...APPLICANT

VERSUS

1. The State of Maharashtra,)
Through its Secretary,)
Higher & Technical Education Department,)
Mantralaya, Mumbai 32.)
2. The Maharashtra Public Service Commission,)
Through its Secretary,)
Cooperage Telephone Corporation Bldg.,)
Maharshi Karve Road, Cooperage,)
Mumbai 400 021.)
3. Ranjit Krishnarao Sawant,)
Through Respondent No.2,)
Secretary of M.P.S.C., Mumbai.)

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4. Mohan Ramdas Lohokare,)
 Through Respondent No.2,)
 Secretary of M.P.S.C., Mumbai.)
5. Yashwant Vitthalrao Chavan,)
 Through Respondent No.2,)
 Secretary of M.P.S.C., Mumbai.)
6. Sanjay Shriram Chopade,)
 Through Respondent No.2,)
 Secretary of M.P.S.C., Mumbai.)
7. Prashant Shivkumar Sharma,)
 Through Respondent No.2,)
 Secretary of M.P.S.C., Mumbai.)

....RESPONDENTS.

Shri V.A. Kothale, learned Advocate for the Applicant.

Shri M.A. Barabde, learned Presenting Officer for the Respondents No.1 & 2.

None for Respondents No.3 to 7.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN (A)
 SHRI J.D. KULKARNI, VICE-CHAIRMAN (J)

DATE : 25.4.2017.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN (A)

J U D G M E N T

1. Heard Shri V.A. Kothale, learned Advocate for the Applicant, Shri M.A. Barabde, learned Presenting Officer for the Respondents No.1 & 2 and None for Respondents No.3 to 7.

2. This Original Application is filed by the Applicant claiming that he is entitled to be selected for the post of Head of Department (H.O.D.) in Electronics from Open Category, pursuant to the selection process undertaken by the Respondent No.2 by advertisement dated 27.09.2013.

3. Learned Counsel for the Applicant argued that the Respondent No.2 had issued an advertisement dated 27.09.2013 for selection to inter-alia, 38 posts of Head of Department in Government Polytechnics in Maharashtra. A total of 19 posts were open, out of which six posts were horizontally reserved for women and one for sports person. The Applicant belongs to O.B.C. category but he had clearly mentioned in his application form that he did not belong to Non-creamy layer category. He had paid full examination fee of Rs.410/- for open candidates. He should have been considered from Open category. The Applicant was at Serial No.12 in the Open category merit list but the Respondent No.2 did not recommend his name. The Applicant scored 92 marks in interview, while the Respondents No.3, 4, 5, 6, and 7 scored 75, 72, 69, 69 and 67 respectively. The Applicant was more meritorious than the aforesaid Respondents selected from

Open category, but the Respondent No.2 did not recommend his name.

4. Learned Presenting Officer argued on behalf of the Respondents No.1 & 2 that the Applicant was considered from Open category. The merit list was declared on 28.10.2015. The Applicant is placed at Serial No.12. The Respondents No.3 to 7 had applied from Open Category. They were offered posts reserved for Open female and Open 'Sports'. The Respondents No.2 has relied on Government Circular dated 13.08.2014, while deciding eligibility.

5. We find that there were 12 posts of H.O.D. from Open Category, without any horizontal reservation. The Respondent No.2 had admitted that the Applicant was at Serial No.12. It is also admitted that though the Applicant belonged to O.B.C. category, he had admitted in the application form that he did not belong to Non-Creamy Layer (N.C.L.) and was accordingly considered from Open category. This is stated in paragraph 11 of the affidavit-in-reply dated 31.03.2016 filed by the Respondent No.2. The Applicant has appended Annexure A-4 with the O.A., which is the merit list for the post of H.O.D., Electronics, pursuant to the advertisement No.67 of 2013. The Applicant is at Serial No.12 with 92 marks. This is stated in paragraph 6(d) of the O.A. This fact is not denied in paragraph 11 of the affidavit-in-reply filed by the Respondent No.2 on 31.03.2016 dealing with paragraph 6(d) of O.A. As there were 12 vacancies for Open category, and the Applicant was at Serial No.12 from Open

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category, we find no reason as to why the Applicant was not found eligible. It is seen that only 10 candidates have been selected from Open General category and the Respondent No.3 has been selected from Open Female category, though he scored only 75 marks and he is not a female. In fact, if suitable female candidates from Open category were not available, the posts horizontally reserved for women should have been treated as open posts without horizontal reservation. For Open General posts, selection has to be on pure merit, disregarding the vertical reservation category of a candidate. The Respondents, have not applied the provision of horizontal reservation correctly, as the posts for which Open Female or Open Sports persons were not available, such posts should have been added to Open General category. It is not necessary that such posts, on removing horizontal reservation, have to be filled from Open category only. In fact, such posts are required to be filled on pure merit. In any case, the Applicant, though belonging to O.B.C. category, was to be considered from Open general category.

6. The Applicant was clearly eligible to be selected from Open General category. He is more meritorious than the Respondents No.3 to 7, who are selected from Open-Female / Open Sports category, though they do not belong to that category and belong to Open general category. We are not examining their selection closely, as the Applicant can be selected from 2 remaining open vacancies, which were not filled. The Respondent No.2 recommended only 10 candidates for 12 Open General vacancies.



7. The Respondent No.2 is directed to recommend the Applicant for the post of H.O.D. in Electronics from Open General category. This should be done within a period of four weeks from the date of this order. The Respondent No.1 will take action to appoint the Applicant as H.O.D. within a further period of four weeks. This Original Application is allowed accordingly with no order as to costs.

sd/-

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

sd/-

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

**Place : Nagpur
Date : . .2017
Typed by : PRK**