

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 105 /2017**

Nitin S/o Panjabrao Gawande,  
Aged about 29 years, Occ. Education,  
R/o Saoli, Post Kolha,  
Tq. Achalpur, Dist. Amravati.

**Applicant.**

**Versus**

- 1) The State of Maharashtra through  
its Secretary Department of Technical Education,  
Mantralaya, Mumbai-400 032.
- 2) The Joint Director for Technical Education,  
Nagpur Division, Nagpur  
Government Polytechnic Campus,  
Sadar, Nagpur-440 001.
- 3) Sewakrao S/o Sitaram Belsare,  
Aged about 29 years, Occ. Education,  
R/o Ramtek, Tq. Ramtek, Dist. Nagpur.

**Respondents**

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**Shri V.G. Bhamburkar, V.J. Raut, Advocates for the applicant.**

**Shri A.M. Ghogre, Id. P.O. for the respondent nos.1&2.**

**None for R-3.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

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## **JUDGEMENT**

**(Delivered on this 28<sup>th</sup> day of July,2017)**

Heard Shri G.G. Bade, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents. The O.A. is heard finally with consent of ld. counsel for parties.

2. The applicant Nitin Panjabrao Gawande participated in the selection process for the post of Welder for Technical Education, Nagpur Division, Nagpur in response to the advertisement issued by respondent no.2 on 22/12/2016. Admittedly, the applicant as well as respondent no.3, Sevakrao Sitaram Belsare participated in the process of selection. The applicant got 86 marks out of 120 in the written test, whereas, the respondent no.3 got 68 out of 120 in the said test. In practical test, however, the applicant as well as respondent no.3 got 57 marks each out of 80.

3. The selection list was published on 7/2/2017 as per Annex-A-4 and surprisingly the respondent no.3 is shown to be selected though he got less marks than the applicant and the applicant has been shown at sr.no.1 on waiting list. The reason for selection of respondent no.3 is shown in the remarks column as under:-

*“k-fu-dz ifue# 1215@ %i:dz55@15½@ 13 v fn-  
5@10@2015 vll; so; kust\$B vI Y; keG\*\**

4. Though the applicant got more marks than the respondent no.3, the respondent no.3 is selected and the applicant has been shown on waiting list and therefore this O.A.

5. In the O.A. the applicant has claimed that the waiting list dated 7/2/2017 published by respondent no.2 (Annex-A-4) for the post of Welder be quashed and set aside and the respondents be directed to select the applicant on the post of Welder and allow him to join.

6. The respondent no.2 has filed reply-affidavit. All the averments, except that the applicant has been wrongly kept in waiting list and that respondent no.3 has been wrongly selected, are admitted by the respondents. According to respondent no.2, the Govt. has issued a G.R. dated 5/10/2015 which states that the screening test shall be only for short listing the candidates and that the marks obtained in screening test shall not be considered. The respondents also referred to one G.R. dated 5/6/2014 and submitted that the selection of respondent no.3 is legal and proper. It is stated that the selection was done only on the basis of marks obtained by the candidates in practical test and since the respondent no.3 was elder than the applicant, the respondent no.3 is selected.

7. The learned P.O. has invited my attention to the G.R. dated 5/10/2015 which is a G.R. regarding procedure to be followed for selection. It is stated that the procedure was followed for selection as per this G.R. The learned P.O. also referred to one G.R. dated 5<sup>th</sup> June, 2014. Copy of which is placed on record along with the reply-affidavit at P.B. page nos. 41 to 43 (both inclusive). I have carefully gone through those G.Rs. and in my opinion those G.Rs. are not relevant so far as process conducted by the applicant is concerned. The process vide which the selection was to be made has been incorporated in the advertisement itself. The advertisement is at Annex-A-1 at P.B. page nos. 10 to 17 (both inclusive). The condition nos.6 (a), (b), (c) & (d) is material and it reads as under :-

^6- tkghjkrhrhy I ozi nka kbh ys[th i jh{kk vfuok; Zvkgj menokjkauk ejkBh Hkk"lps Kku vl .ksvko'; d vkg

v- ofj"B fyi hd] iz lxx'kkGk I gk; d] I gk; d xafi ky ; k i nkdjhrk ys[th i jh{ksyk ejkBh] baxth] I kedu; Kku] vadxf.kr] I ax.kd] foHkkxkph ekfgrh o fo"k; kph ekfgrh ; koj vk/kkjhr iz ukadjhrk I eku xqk Bawu 200 xqkph oLrfu"B cgu; ; kz h vklluykbZu i jh{kk ?ks ; kr ; bzy o R; k vk/kkjsxqkoRruu kj fuoM dsh tkbzy-

c- dk; ZkkGk foHkkx 1/4dkrkjh] tkllkj] I d'kkrk1/2] I ozi k/kj.k ; ka=dh] mi dj.k ; ka=dh] fo tra=h ; k i nkdjhrk ys[th i jh{ksyk ejkBh] baxth] I kedu; Kku] vadxf.kr o foHkkxkph ekfgrh ; k fo"k; kojhy iz ukadjhrk I eku xqk Bawu 120 xqkph oLrfu"B cgu; ; kz h vklluykbZu i jh{kk o 80 xqkph i kR; f{kd i fj{kk ?ks ; kr ; bzy o R; k vk/kkjsxqkoRruu kj fuoM dsh tkbzy-

d- rka=d iz lxx'kkGk I gk; d ; k i nkdjhrk ys[th i jh{ksyk ejkBh] baxth] I kedu; Kku] vadxf.kr o foHkkxkph ekfgrh rka=d o vfhk; ka=dh iz ukoj vk/kkjhr fo"k; kojhy iz ukadjhrk I eku xqk Bawu 200 xqkph oLrfu"B cgu; ; kz h vklluykbZu i jh{kk ?ks ; kr ; bzy o R; kvk/kkjsxqkoRruu kj fuoM dsh tkbzy-

*M- xV M varxr iz lxx'kkGk i fjpj ; k i nkadjhrk ejkBh] l kedu; Kku] Hkkskfyd  
Kku b- fo"k; kojhy iz ukadjhrk l eku xqk Bou 100 xqkph oLrfu" B cqi ; k' h  
ys[ kh i jh{kk ?ks ; kr ; bdy-*

*; k i nkadjhrk tsmenokj ys[ kh i jh{kr 45 VDdso R; ki s[kk tklr xqk feGorhy  
rl p fu; qrlh kBh ik= vl rhy] xqkka; k xqkoRrsul kj vure xqkoRrk ; knh r; kj  
dsh tkby-*

*iz lxx'kkGk i fjpj ; k i nkadjhrk tsmenokj ys[ kh i jh{kr 45 VDdso R; ki s[kk tklr  
xqk feGorhy rl p menokj fu; qrlh kBh ik= vl rhy- xqkka; k xqkoRrsul kj  
vure xqkoRrk ; knh r; kj dsh tkby- \*\**

8. The aforesaid procedure clearly shows that the candidates will have to appear for written test of 120 marks and practical test (screen test) of 80 marks and total marks to be considered will be thus 200 marks. There is no rule in the said advertisement that only skill test will be considered. Had it been a fact that marks obtained only in skill test were to be considered, there was no reason to conduct written test of 120 marks. Admittedly the applicant got 86 marks out of 120 in the written test and 57 marks in the skill test. Thus he got total 143 marks out of 200. As against this, the respondent no.3 got 68 marks in the written test and 57 marks in the skill test / practical test. Thus he got total 125 marks out of 200 and therefore the applicant got more marks than the respondent no.3 and should have been considered.

9. The learned P.O. has invited my attention the G.R. 5/10/2015 (Annex-R-1) at P.B. at page nos. 38 to 40 (both inclusive).

He invited my attention to the decision taken by the Govt. The said relevant decision is as under :-

*^iLrkour uem ik'ozhnehuit kj l anHkizkhu dz2 ; fky 'kkl u fu.kz] fn-27@06@2008 e/khy epnk dz6 e/khy rjrmh, oth vkrk [kkyhyiek.ksl wkkjhr rjrm dj.; kr ; s vks-*

*^ ijh{kpk fudky r; kj djrkauk ijh{kr T; k ik= menokjauk l eku xqk vl rhy v'kk menokjpk xqkorrk ; knhe/khy ik/kku; dz i qhyiek.ksfuf'pr dj.; kr ; kok &*

*v- o; kustsB vl yŷ; k menokjkl ik/kku; ns; kr ; kos*

*c- l eku o; vl yŷ; k menokjkl; k ckcrhr] vtZl knj dj.; kp; k vŷre fnukadkl mPprj 'kŷkf.kd vgrk ½i no; rj inoh/kj] inoh/kj] mPp ek/; fed 'kkykar ijh{kk mRrh.kj ek/; fed 'kkykar ijh{kk mRrh.kz v'kk izkjs ½ /kkj.k dj.kk&; k menokjkl ik/kku; dz ns; kr ; kok-*

*d- ojhy vuwdz 1 o 2 ; k nklgh vVhæ/; sl eku Bjr vl yŷ; k menokjkl; k ckcrhr] l nj inkofjrk vko'; d vl yŷ; k fdeku 'kŷkfkd vgræ/; s mPprj xwk iklr menokjkl ik/kku; dz ns; kr ; kok-<sup>\*\*</sup>*

10. The aforesaid decision does not state that the person who has obtained less marks, shall be considered first only on the ground that he is older than the meritorious candidate. Plain reading of the said decision shows that where the candidates to be selected are having equal marks, one who is older shall be preferred. Admittedly, the applicant got more marks than the respondent no.3 and therefore this G.R. is not applicable.

11. On a conspectus of discussions in forging paras, it will be thus crystal that the impugned communications whereby the applicant's claim for appointment to the post of Welder has been rejected is not legal and proper and it seems that the G.Rs. have been

wrongly interpreted by the respondent no.1. The reason given for not selecting the applicant and selecting the respondent no.3 in the Minutes of the Meeting dated 10/3/2017 (A-R-2) are thus not legal and proper. Hence, the following order :-

**ORDER**

The Selection list / waiting list dated 7/2/2017 published by respondent no.2 (A-A-4) so far as it pertains to selection of the post of Welder is concerned is quashed and set aside. The respondent no.2 is directed to select the applicant for the post of Welder as per its own merits instead of respondent no.3. The appointment order accordingly be issued in favour of applicant and respondent no.3 be kept in waiting list in place of applicant. No order as to costs.

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

dnk.