

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.309 OF 2015  
WITH  
ORIGINAL APPLICATION NO.937 OF 2015  
(Subject :Cancellation of Appointment)**

**District :Sangli**

**O.A.No.309/2015**

1. Shri Ankush Sadashiv Galande, )  
Aged : 27 years, Occ. Nil. )  
R/at.A/P. Karnal, Tal.Miraj, )  
Dist. Sangli. )
2. Shri Ganesh Tatyaso Desai, )  
Aged : 25 years, Occ. Nil, )  
R/at.A/P. Karnal, Tal.Miraj, )  
Dist. Sangli. )
3. Shri Yogesh Narayan Sutar, )  
Aged : 24 years, Occ. Nil, )  
R/at.A/P. Malgaon, Tal.Miraj, )  
Dist. Sangli. )
4. Shri Ganesh SakharamJadhav, )  
Aged : 22 years, Occ. Nil, )  
R/at.A/P. Malgaon, Tal.Miraj, )  
Dist. Sangli. )
5. Shri Kiran Sanjeev Kamble, )  
Aged : 22 years, Occ. Nil, )  
R/at.A/P. Budhgaon, Tal.Miraj, )  
Dist. Sangli. )

6. Shri EknathKeshav Mali, )  
 Aged : 25 years, Occ. Nil, )  
 R/at.A/P. Chinchani, Tal.Tasgaon, )  
 Dist. Sangli. )

Address For Service of Notice : )  
 Shri Arvind V. Bandiwadekar, )  
 Advocate, having office at 9, "Ram-Kripa", )  
 Lt. DilipGupte Marg, Mahim, Mumbai 400 016. )

**....APPLICANTS.**

**VERSUS**

1. The Commissioner of Police, )  
 Pune, Through Police Recruitment Chief )  
 cum Additional Commissioner of Police )  
 (Administration), Pune City. )

2. The Additional Director, )  
 General of Police (Special Training and Unit), )  
 Having office at Old Council Hall, )  
 ShahidBhagatsingh Marg, Mumbai 400 039. )

3. The State of Maharashtra, )  
 Through Additional Chief Secretary, )  
 Home Department, having office at Mantralaya, )  
 Mumbai 32. )

**....RESPONDENTS**

**WITH**

**O.A.No.937/2015**

Kum. Nikita TukaramKamble, )  
 Aged :23 years, Occ. Nil, )  
 R/o. Milind Nagar, A/p. Budhgaon, )  
 Tal. Miraj, Dist. Sangli. )

**.....APPLICANT.**

**VERSUS**

1. The Commissioner of Police, )  
Pune, Through Police Recruitment Chief )  
cum Additional Commissioner of Police )  
(Administration), Pune City. )
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3. The State of Maharashtra, )  
Through Additional Chief Secretary, )  
Home Department, having office at Mantralaya, )  
Mumbai 32. ) **...RESPONDENTS**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

**CORAM** : **SHRI P.N. DIXIT, VICE-CHAIRMAN**  
**SHRI A.P. KURHEKAR, MEMBER(J)**

**RESERVED ON** : **05.02.2020.**

**PRONOUNCED ON** : **25.02.2020**

**PER** : **SHRI P.N. DIXIT, VICE-CHAIRMAN**

### **J U D G M E N T**

1. Heard Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. O.A.No.309 of 2015 and O.A.No.937 of 2015 are taken up together as the cause in both is identical.

3. The controversy arose whether the period of three years or 1095 days of working in Home Guard should be counted up to the date of issuance of advertisement or up to the last date of submission of application forms.

4. Respondent No.1 published advertisement for the post of Police Constable on 29.04.2014. The advertisement was in Marathi and among other things mentioned as under :-

"७.सर्व प्रमाणपत्र अर्जभरावयाच्या शेवटच्यादिनांकापर्यंत (दि. २५-०५-२०१४) प्राप्तकरून घेणेआवश्यक आहे.

८ (२) यापोलीसशिपाईभरतीचेसर्वनियम व अर्जकरण्याचीपध्दत, इत्यादी<http://mahapolice.mahaonline.gov.in> यासंकेतस्थळावरउपलब्ध आहे."

(Quoted from page 31, Exhibit I of P.B. of O.A.NO.309/2015)

5. Accordingly, the Applicants submitted their applications before 25.05.2014. The Applicants were allowed to participate in the Recruitment process and they cleared the same. Their names figured in list of selected candidates in the vacancies meant for Home Guards in horizontal reservation category with corresponding vertical reservation category. They were also subjected to medical examination except Applicant No.1. However, on 30.01.2015 pronouncement was made and displayed on the web-site of Respondent No.1 stating that on verification of their original documents it is noticed that the Applicants were not eligible since they have not completed requisite period of three years as Home Guards (H.G.) on the date of advertisement namely 29.04.2014 as required under Rule 8(iii) of Recruitment Rules. Rule 8(iii) reads as under :-

"३ (iii) गृहरक्षक दल (Home Guards) -पोलीसशिपाईपदांवरनियुक्तीकरताना एकुणपदांच्या ५ टक्के पदे होमगार्डमध्ये जाहिरातीच्यादिनांकासकमीतकमी ३ वर्ष (१०९५ दिवस) एकत्रित सेवाझालेल्या व या नियमानुसारपोलीसशिपाईपदासाठीआवश्यक शैक्षणिक व शारीरिकपात्रतापुर्णकरणा-या, विहितवयोमर्यादेतीलहोमगार्डसमधूनभरण्यात येतील."

(Quoted from page 21, Exhibit-A of the P.B. of O.A.No.309/2015)

6. Similarly, Kum. N.T. Kamble, Applicant in O.A.No.937/2015 is declared as non-eligible, since she did not complete 3 years as Home Guard on the date of advertisement.

7. Applicants in O.A.No.307/2015 and O.A.No.937/2015 have therefore prayed to set aside the impugned order dated 30.01.2015 and 25.03.2015 respectively and be granted consequential service benefits.

**GROUND'S SUBMITTED BY APPLICANTS :**

8 In support thereof learned Advocate for the Applicants has referred to English version of Recruitment Rules which are at page 49, Exhibit I published on 16.06.2011, [from page 49 to page 49(E)]. The relevant portion is at 8 (iii). The same reads as under :

*"8. Reservation-*

*(iii) Home Guard – Out of the total posts available for recruitment to the post of Police Constable in the Police Force, 5% posts shall be filled in from amongst the members of Home Guards who have completed minimum three years' service i.e. 1095 days of consolidated service as Home Guards and possess the requisite educational and physical qualifications and age limit as per these rules."*

(Quoted from page 49 of P.B. of O.A.No.309/2015)

9. Marathi version of the Recruitment Rules is as under :-

*"३ (iii) गृहरक्षक दल (Home Guards) -पोलीसशिपाईपदांवरनियुक्तीकरताना एकुणपदांच्या ५ टक्के पदे होमगार्डमध्ये जाहिरातीच्यादिनांकासकमीतकमी ३ वर्ष (१०९५ दिवस ) एकत्रित सेवाझालेल्या व या नियमानुसारपोलीसशिपाईपदासाठीआवश्यक शैक्षणिक व शारीरिकपात्रतापुर्णकरणा-या, विहितवयोमर्यादेतीलहोमगार्डसमधूनभरण्यात येतील."*

(Quoted from page 21, Exhibit-A of the P.B. of O.A.No.309/2015)

10. According to the Applicants, English version of Recruitment Rules is silent about cutoff date by which the Applicants are expected to complete three years' service in Home Guards.

11. Learned Advocate for the Applicant submits that Marathi version is contrary to English version of Rule 8(iii) of Recruitment Rules, and hence is arbitrary. According to Applicants, mention in Marathi version; namely "on the date of advertisement" as cutoff date has been unnecessarily added. Hence, it is illegal and arbitrary.

12. As the Recruitment Rules namely(8) (iii) does not fix any particular cut-off date for counting of 3 years' experience as Home Guard, date of submission of the application form namely 25.05.2014 should be considered as cutoff date for counting the period of three years.

13. Fixing the date as 29.04.2014 which is the date of advertisement as cutoff date is arbitrary, and hence illegal.

14. Various other districts including Kolhapur, Sangli, Pune (Rural), Thane Commissionerate, Mumbai Commissionerate have appointed candidates who completed three years before 25.05.2014 and not 29.04.2014. However, Respondent No.1 has held otherwise.

15. This is discriminatory and violative of provisions of Article 14 and 16 of the Constitution of India.

16. In support of the same, learned Advocate for the Applicant has relied on the judgment delivered by Hon'ble Supreme Court in **Civil Application No.6116 of 2013 (Rakesh Kumar Sharma Versus Govt. of NCT of Delhi &Ors.)decided on 29.07.2013**. Relevant portion of which is at paragraph 6 of the judgment.

*“There can be no dispute to the settled legal proposition that the selection process commences on the date when applications are invited. Any person eligible on the last date of submission of the application has a right to be considered against the said vacancy provided he fulfills the requisite qualification.”*

(Quoted from page 141 of the P.B. of O.A.No.309/2015)

17. Learned Advocate for the Applicant has also relied on judgment given by this Tribunal in **O.A.No.607/2014 (Shri SagarSinguWaghmode Versus The Superintendent of Police), decided on 29.10.2015**, wherein the application was rejected as the Applicant did not complete three years experience before last date of filing application namely 25.05.2014. The judgment further stated as under (page 195, paragraph 5) :-

*“This Tribunal by judgment dated 10.10.2013 in O.A.No.1031 of 2011 has held that once cut-off date for production of a certificate is prescribed in the advertisement, it is required to be adhered to and no relaxation is permissible.”*

(Quoted from page 195 of P.B. of O.A.No.309/2015)

### **SUBMISSIONS BY THE RESPONDENTS :**

18. On the other hand, Respondents have contested the claims made by the applicant and filed their affidavit. According to the Respondent No.1, advertisement and Marathi version of Recruitment Rules 8(iii) states that the Applicants should complete three years or 1095 days as Home Guard on the date of publication of the advertisement. Following this directive, scrutiny was made and Applicants were found to be not eligible.

19. Since Applicants did not complete 1095 days on the date of advertisement i.e. 29.04.2014, they have been correctly judged as not eligible.

20. Respondent No.2 has filed his affidavit and states that the advertisement and Recruitment Rules (Marathi), version is legally valid. Units which allowed candidates who did not complete 3 years i.e. 1095 days on the date of advertisement have been served with notice and their explanation have been called up. The affidavit further mentions that action would be taken against the concerned for irregularities.

21. During hearing, learned P.O. for the Respondents has tendered copy of opinion by Law and Judiciary Department stating that in case there is dispute, English version would be considered as valid. The same reads as under :-

“... the Home Department is informed that in the present case since the cutoff date of service experience is not mentioned in the Recruitment Rules published in English, the department may rely on the ratio laid down by the Hon’ble Supreme Court in the case of Bhupinder Singh and Ors. Vs. State of Punjab and Ors. Reported on **2000(5) SCC 262**. In the case of Bhupinder Singh the Hon’ble Supreme Court upheld the decision of the Hon’ble Punjab and Haryana High Court which reads as under :-

“(i) *that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications;* (ii) **that if there by no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority.**”



*The Home Department to take appropriate stand before the Hon'ble Tribunal on the basis of the ratio laid down by the Hon'ble Supreme Court in the case of Bhupinder Singh."*

**ISSUE FOR CONSIDERATION :**

22. The issue for consideration is whether the cutoff date for counting of 3 years or 1095 days on the date of issuance of advertisement is legally valid?

**OBSERVATIONS AND FINDINGS :**

23. The advertisement published on 29.04.2014 mentions that the relevant Recruitment Rules are available on the web-site. Marathi version of Recruitment Rules 8 (iii) mentions that on the date of advertisement the Applicant should have completed three years or 1095 days.

24. Recruitment Rules in English states as under :-

All Home Guards who have completed minimum three years or 1095 days are eligible.

25. The advertisement is silent about the cutoff date. There is also no consistency in the rules in Marathi and in English. The English rules as stated above, mentions Home Guards should complete minimum three years for eligibility. As observed by the Hon'ble Supreme Court in **Rakesh Kumar's case** supra :-

*"Any person eligible on the last date of submission of the application has a right to be considered against the said vacancy provided he fulfills the requisite qualification."*

26. Respondent no. 2, Additional D.G.P (Special Training and Unit), has filed affidavit stating units which have held candidature valid till the last date of submission, have been directed to submit their explanations and

action would be initiated against concerned. However, different implementation in different units amounts to discrimination and is violative of provisions of Articles 14 & 16 of the Constitution.

27. For the reasons stated above, prayers made at 9(a) and (b) deserve to be granted. The impugned orders are, therefore, quashed and set aside. Respondents are therefore directed to take action as prayed in prayer clause 9(a) and (b).

28. Necessary action should be completed within four weeks from the date of this order and applicant should be informed within 10 days thereafter.

29. Both Original Applications, therefore, are allowed in terms of prayer clause 9(a) & 9(b). No order as to costs.

Sd/-

SD/-

**(A.P. Kurhekar)**  
**Member(J)**  
**25.02.2020**

**(P.N. Dixit)**  
**Vice-Chairman**  
**25.02.2020**

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