

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.408 OF 2017

DISTRICT : SOLAPUR

Sub.:- Appointment

Shri Prakash M. Rathod.)
Age : 27 Yrs, Occu.: Nil,)
R/o. A/P. Bhasalegaon, Tal.: Akkalkot,)
District : Solapur.)...**Applicant**

Versus

1. The Superintendent of Police)
[Railways], Pune, Having Office at)
Pune.)
2. Shri Dhanaji B. Mane.)
Aged : Adult, Occu.: Nil,)
R/o. A/P Sarafwadi, Tal.: Indapur,)
District : Pune.)
3. The Additional Director General and)
Inspector General of Police)
[Training and Special Unit], in the)
Office of Director General and)
Inspector General of Police, M.S,)
Mumbai and having Office at Old)
Council Hall, Shahid Bhagatsingh)
Marg, Mumbai – 400 039.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DEBASHISH CHAKRABARTY, MEMBER-A

DATE : 10.08.2023

PER : A.P. KURHEKAR, MEMBER-J

JUDGMENT

1. The Applicant has challenged the communication dated 24.04.2017 issued by Respondent No.1 – Superintendent of Police [Railways], Pune whereby his candidature for the post of Police Constable from VJ-A category was rejected and also prayed for cancellation of appointment of Respondent No.2 on the post of Bandsman, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated facts giving rise to this application are as under :-

Respondent No.1 published Advertisement on 23.02.2017 to fill-in 33 posts of Police Constables giving the break-up of vertical as well as horizontal reservation. As per Advertisement itself, only one post for VJ-A was reserved from VJ-A category. Since Applicant fulfilled educational qualification of HSC, he made an application for the post of Police Constable from VJ-A category. Accordingly, Admission Card was issued for considering him from VJ-A category. He participated in the process. Respondent No.1 published select list in which Applicant shown secured 176 marks. However, Selection Committee amidst the process converted 4 posts of Police Constable into Bandsman and converted post of VJ-A category shown reserved for Police Constable into Bandsman. The Respondent No.2 had applied for the post of Bandsman and was belonging to VJ-A category. He secured 148 marks. The Selection Committee in view of their decision to fill-in 4 posts of Police Bandsman appointed Respondent No.2 on the post of Bandsman. Being aggrieved by it, Applicant made representation that though he secured 176 marks which is higher than Respondent No.2, he is deprived of job arbitrarily. The Respondents, however, by impugned communication dated 24.04.2017 informed to the Applicant that out of 33 pots for which recruitment was taken place, 4 posts were filled-in for Bandsman, and therefore, no post from VJ-A category to which Applicant belongs was

left. The Respondent No.1 thus appointed Respondent No.2 on the post of Bandsman.

3. It is on the above admitted facts, the Applicant has filed this O.A. challenging the communication dated 24.07.2017 as well as also challenged the appointment of Respondent No.2 made on the post of Bandsman.

4. Respondent No.1 in Affidavit-in-reply in Para Nos.15, 17, 18 and 21 pleaded as under :-

“15. With reference to Para 6.9, I say as follows : The contents of this para are false and denied by the Respondent No 1. It is true to say that the respondent had published the list of the candidates to be called for verification of the original documents in which the name of the Applicant did not figure. It is pertinent to note that the Applicant is misguiding the Hon'ble Tribunal by stating that he was the single meritorious candidate from VJ(A) Reserved Category. It is pertinent to note here that, there was no competitive examination held amongst the VJ(A) category candidates for Police Constable post. The actual fact is that after securing 96 marks in physical test and as per the recruitment rules 15 candidates to appear for written exam for one post i.e. in the ratio of 1:15. The Applicant was called for written examination from खुला प्रवर्ग. Therefore the question of the Applicant being the only candidate of VJ(A) category does not arise.

17. With reference to Para 6.11, I say as follows : The contents of this para are denied in toto. As it was clearly mentioned in the Advertisement at clause (इ) as under :

“वर दर्शविलेली पदे व आरक्षण यात बदल होण्याची शक्यता आहे. त्यामध्ये बदल करण्याचे अधिकार हे सक्षम प्राधिका-यास राहतील. त्याबाबत उमेदवाराचा कोणताही दावा करण्याचा हक्क राहणार नाही.”

17(i) As the decision was taken by the Selection Committee, the question of illegal action of any person does not arise therefore the same is baseless.

17(ii) I say that, for the Bandsman written and musical instruments examination was held separately as per clause 6 of the Advertisement in that Respondent No.2 scored highest marks.

18. With reference to Ground 6.12, I say as follows : The contents of this para are false and not admitted by the Respondent No 1. That in the advertisement dtd. 23.02.2017, it was clearly mentioned that out of 33 vacancies, 4 vacancies were for the post of Bandsman to be filled from availability of the candidates of any category. The said decision was taken by the selection committee therefore the plaintiff strong hopes and fair chances etc. are just the dreams and not reality.

21. With reference to Ground 6.15, I say as follows : The contents of this para are false, baseless far from law. That the Selection Committee after conducting a meeting had decided to select according to the vertical reservation& availability of candidates.

21(i) One Candidate from open category, two candidates from S.C. category and one from V.J.(A) category was selected for the post of Bandsman and since no candidate from S.T, N.T.(D) and O.B.C. were available for selection of Bandsman post, no candidate from S.T., N.T.(D) and O.B.C. was selected.”

5. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned communication dated 24.04.2017 as well as assailed the appointment of Respondent No.2 on the post of Bandsman *inter-alia* contending that since as per Advertisement dated 23.02.2017, 33 posts were to be filled-in solely from Police Constables, the stand taken by the Selection Committee to fill-in 4 posts of Bandsman is totally arbitrary as Advertisement was specifically for the post of Police Constables. He has further pointed out that for VJ-A category, only one post was reserved and admittedly, Applicant having secured 176 marks as against 148 marks obtained by Respondent No.2, the Applicant ought to have been appointed on the post of Police Constable.

6. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer sought to justify the impugned communication as well as appointment of Respondent No.2 reiterating the stand taken in Affidavit-in-reply as reproduced above. The learned P.O. submits that in Advertisement, there is mention that 4 posts of Bandsman were available, and therefore, Selection Committee is empowered to convert post shown reserved for Police Constable into Bandsman. According to her, since Respondent

No.2 had applied for the post of Bandsman from VJ-A category and there being no other candidate from VJ-A category for the post of Bandsman, the selection of Respondent No.2 is legal and valid.

7. Admittedly, as per Advertisement dated 23.02.2017, 33 posts were to be filled-in for the post of Police Constables. In Advertisement, break-up of vertical as well as horizontal reservation is also specifically mentioned. Notably, only one post from VJ-A category was reserved and that was for the post of Police Constable. True, in Advertisement, there is reference that 4 posts of Bandsman are vacant and available for recruitment. However, admittedly, no such break-up of reservation about those 4 posts is mentioned in the Advertisement. There is only passing reference that 4 posts for Bandsman are available for recruitment. Indeed, if posts of Bandsman were to be filled-in, it must have been shown specifically in the Advertisement with details of its reservation position. However, no such break-up of reservation position for Bandsman is mentioned in the Advertisement.

8. Indeed, as rightly pointed out by learned Advocate for the Applicant in recruitment process initiated by Commissioner of Police, Mumbai in 2017 to fill-in the posts of Police Constables and Bandsman, separate reservation position to fill-in 1717 posts of Police Constables and 39 posts of Bandsman were specifically and distinctly mentioned. However, in the present case, there is no such break-up of reservation position for Bandsman posts. It is only after Advertisement during process, the Selection Committee altered the position and taken decision to fill-in 4 posts of Bandsman with one candidate from Open Category, two candidates from SC category and one candidate from VJ-A category. Thus, they have changed Rules of game after the commencement of recruitment process which is totally impermissible. It has caused serious prejudice to the Applicant. Admittedly, as per Advertisement, only one post of VJ-A category was reserved for Police Constable. The Applicant secured 176 marks as against 148 marks obtained by

Respondent No.2, and therefore, in all fairness, he ought to have been selected from VJ-A category for the post of Police Constable.

9. If Selection Committee thought it appropriate to fill-in 4 posts of Bandsman after the commencement of recruitment process, at the most, they could have done so by taking candidate from other Reserved Category or from Open Category to fill-in 4 posts of Bandsman. Since only one post of VJ-A was reserved for Police Constable, that could not have been taken away and converted to fill-in the post of Bandsman.

10. The stand taken by Selection Committee as reflected in Para No.15 of Affidavit-in-reply as reproduced above that Applicant was called for written examination from Open Category is totally erroneous and arbitrary. Since Applicant had applied from VJ-A category, his candidature ought to have been considered from VJ-A category for the post of Police Constable. Otherwise, it would amount to infringement of breach of reservation policy and violative of Article 16(4) of the Constitution of India.

11. Similarly, the stand taken by Selection Committee that Selection Committee was empowered to make change or alter the post or reservation is totally unpalatable. Once in Advertisement, it is made clear that 33 posts were to be filled-in for the post of Police Constable and only one post was reserved for VJ-A, the decision of Selection Committee to deviate from the reservation position shown in the Advertisement is totally unacceptable. It has caused serious prejudice to the Applicant. His candidature from VJ-A category to which he was legally entitled is wrongly taken away arbitrarily.

12. For the aforesaid reasons, we have no hesitation to conclude that Applicant ought to have been selected and appointed on the post of Police Constable from VJ-A category and the decision of Selection Committee to convert the post of VJ-A category into Bandsman category and offering it to Respondent No.2 though he secured less marks is

totally arbitrary, unjust and needs to be interdicted. However, at the same time, since Respondent No.2 had applied for the post of Bandsman only and he is appointed for Bandsman, we do not think it appropriate to disturb his appointment, especially for one more reason that he is already working on the post of Bandsman for near about 6/7 years.

13. We asked learned P.O. to ascertain vacancy position as of now, since the recruitment in question is of 2017 and all posts seems to have been filled-in from the said process.

14. The learned P.O. on instructions from the Office of Respondent No.1 submits that at present 65 posts for the post of Police Constables are vacant on his establishment and also tendered letter of Respondent NO.1 dated 10.08.2023 on record. It is marked by letter 'X' for identification.

15. In view of above, we do not think it appropriate to disturb Respondent No.2 and Applicant has to be accommodated on the post of Police Constable in view of vacancy available now.

16. The totality of aforesaid discussion leads us to conclude that the impugned communication dated 24.04.2017 rejecting the candidature of the Applicant from VJ-A category is totally arbitrary and unsustainable in law. It is liable to be quashed and set aside. The Applicant is required to be given appointment on the post of Police Constable against present vacancies. Hence, the order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned communication dated 24.04.2017 is quashed and set aside.

- (C) Respondent Nos.1 and 3 are directed to issue appointment order of the Applicant on the post of Police Constable from VJ-A category on the establishment of Superintendent of Police (Railways), Pune within a month from today.
- (D) If there is no vacancy of VJ-A category, in that event also, Applicant should be appointed from Open category and as and when post of VJ-A category falls vacant, he should be given appointment from VJ-A category.
- (E) The claim of the Applicant for back-wages and seniority is rejected.
- (F) No order as to costs.

Sd/-
(DEBASHISH CHAKRABARTI)
Member-A

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 10.08.2023

Dictation taken by :

S.K. Wamanse.

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