

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 437 OF 2012

DISTRICT : SANGLI

1. Kum. Archana Shivaji Khambe)
2. Kum. Savita Uttam Thorat)
3. Tejaswani Sampatrao Patil)
-)
- C/o. Shri M.B. Kolpe,)
- Advocate for the Applicants.)
- Add. C/o. A.S. Shelke, 89,)
- H-Sect. "Krishnakunj")
- N-4, CIDCO, Aurangabad.)...**Applicants.**

V/s.

1. The State of Maharashtra,)
- Through Principal Secretary,)
- Home Department, Mantralaya,)
- Mumbai 32 (Copy to be served)
- on C.P.O. M.A.T., Mumbai))

2/18/12

2. The Maharashtra Public Service)
Commission, Bank of India Bldg)
3rd floor, Mahatma Gandhi Road,)
Hutatma Chowk, Mumbai,)
through its Secretary.)
3. Nimgaonkar Sunil Eknathrao)
4. Mote Sudhir Bhausahab)
5. Vachkal Mansing Baban)
6. Jagdale Eshwar Dhuraj)
7. Morey Nilesh Ramshing)
8. Dule Satish Ashok)
9. Dodmise Bhojling Vishnu)
10. Pathan Salmankhan Yusufkhan)
11. Gundre Ranjeet Sureshreddy)
12. Sirsat Aman Bhimrao)
13. Sonawane Sandipan Mahadeo)
14. Bhasme Sharad Shyamji)
15. Nampalle Abhishek Angad)
16. Kapadnis Bhushan Ramesh)
17. Kadhare Ajay Jaywant)
18. Rokade Umesh Dagadu)
19. Jadhav Gajanan Pralhadrao)
20. Wankhede Pankaj Narseh)
21. Ghodake Balu Sadashiv)
22. Sabale Prafulla Popatrao)
23. Patil Deepak Dagadu)
24. Dalvi Ganesh Mahadev)
25. Patil Dadasahab Pandurang)

26. Dongar Dhanaraj Mahadev)
27. Bhalke Tukaram Kumar)
28. Lamkhade Yogesh Murlidhar)
29. Landge Sajjan Subhash)
30. Waghmare Suresh Deorao)
31. Kadam Vikas Jalandar)
32. Omase Amar Ashok)
33. Kulkarni Amol Hanmant)
34. Thite Mahesh Manohar)
35. Chavan Manoj Namdev)
36. Bastawade Raju Appaso)
37. Alapure Shrinivas Ankush)
38. Jagadale Shailendra Popat)
39. Borkar Sandeep Anandrao)
40. Gosavi Bhausahab Chandrakant)
41. Ghuge Mithun Bhaskar)
42. Byagehalli Santosh Virabhadra)
43. Gaikwad Vikram Sitaram)
44. Jadhav Ganesh Ramesh)
45. Pathak Amol Bhagachand)
46. Kamble Balaji Sauba)
47. Nikam Pankaj Prakash)
48. Khade Ramesh Sampatrao)
49. Rodge Shradchandra Sureshrao)
50. Bade Sominath Rajesh)
51. Kakad Yogesh Trambak)
52. Vhatkar Anjay Ramesh)
53. Bhosale Pravin Shivaji)

54. Mahajan Balaji Govindrao)
55. Petakar Nitin Narayan)
56. Kavade Samadhan Bali)
57. Gosawi Nilesh Tryambakgiri)
58. Patil Sudhir Yograj)
59. Koli Shrikant Ashok)
60. Bade Bhagwat Ramrao)
61. Dahule Praful V.)
62. Deore Hemant Vittal)
63. Kamble Suhas Bhimrao)
64. Patil Shrikant Sudhakar)
65. Shinde Manoj Ankushrao)
66. Kondhare Nanasaheb Chandrakant)
67. Patil Yogesh Bhimrao)
68. Sangavikar Santosh Nagorao)
69. Tigote Santosh Prabhakar)
70. Mot Vilas Vithoba)
71. Patil Vinayak Anna)
72. Raut Suraj Hanmant)
73. Jadhav Shrikant Laxman)
74. Gopinwar Sunil Ashokrao)
75. Chandankar Rajendra Nagannath)
76. Sandanshiv Nileshkumar Suresh)
77. Navale Narayan Raosaheb)
78. Tambe Amol Subrao)
79. Pathan Mohsin Siraj)
80. Jadhav Prashant Dilip)
81. Sawant Tejas Uttam)

82. Kamble Digambar Maroti)
83. Patil Jitendra Rajendra)
84. Gharbude Avinash Babasaheb)
85. Patil Vishal Pundlik)
86. Adke Abhijeet Rajendra)
87. Khairnar Sachin Bhagwan)
88. Gawai Mahendrakumar Prakash)
89. Kale Rupesh Satish)
90. Rathod Ulhas Atmaram)
91. Nimbekar Tirthadas Ghansham)
92. Khobragade Pramod Vasantryao)
93. Aghav Anil Punjaji)
94. Shid Mahadeo Popat)
95. Kshirsagar Shobha Mohan)
96. Sandaphule Sachin Abhiman)
97. Borse Umesh Shamrao)
98. Nanaware Sanjay Prabhakar)
99. Ghodake Sharad Vijaykumar)
100. Chaudhari Walmik Vishwanath)
101. Kale Ganesh Bhagwan)
102. Shirsat Yogeshkumar Janardan)
103. Netke Vaibhav Jijabhau)
104. Sanap Yogesh Punja)
105. Patil Ishwar Laxman)
106. Kamble Sanchin Ashok)
107. Goedase Devdatt Arjun)
108. Pital Vittal Jagannath)
109. Ghage Baliram Ashok)

110. Deshmukh Yogesh Prabhakar)
111. Suryawanshi Rohan Tanaji)
112. Kanade Nilesh Arun)
113. Gawande Mahesh Dinkar)
114. Ramekar Yogesh Gajanan)
115. Waghchaure Somnath Fakira)
116. Kedar Ramchandra Harischandra)
117. Meshram Tejram Arjun)
118. Patankar Prashant Rajaramji)
119. Nirdode Ramdas Mahajan)
120. Jarwal Madan Kappusing)
121. Tungenwar Shriniwas Govind)
122. Chature Chandrakant Subhash)
123. Sakore Ajit Tukaram)
124. Gurjar Dinesh Vidyadharrao)
125. Kharat Suresh Kisan)
126. Shelke Ashish Parshram)
127. Padawal Shriram Anandrao)
128. Shejew Rahul Narayanrao)
129. Kamble Manoj Dhondiba)
130. Bhanawase Machindranath)
131. Taledwar Dashrath Govindrao)
132. Ambhore Ravindra Vikram)
133. Takekar Vikrant Ambadas)
134. Hajare Vilas Bhaskarrao)
135. Dandge Ankush Motiram)
136. Bhamare Sanjay Kalu)
137. Lavhe Shekhar Dnyandeo)

138. Sarkate Milind Harischandra)
139. Yamgar Ramchandra Dada)
140. Vhatkar Kuldeep Subhashchandra)
141. Karanjkar Sachin Sudam)
142. Jjadhav Santosh Bhimrao)
143. Shelke Shahaji Sambhaji)
144. Dhokate Sushil Kantrao)
145. Narale Sahaji Bharat)
146. Deore Roshan Jibhau)
147. Bhoyar Praful Krushnarao)
148. Tanagade Swapnil Subhashrao)
149. Patil Laxman Manikarao)
150. Wankhade Manish Vaikuntharao)
151. Kudale Abhijit Yaysing)
152. Pawar Samadhan Gangadhar)
153. Mulla Aliahamad Mahibub)
154. Palave Prajyot Devba)
155. Kamble Dnyaneshwar Shankarrao)
156. Thakar Swapnil Ravindra)
157. Rathod Sachin Vittalrao)
158. Yemmewar Prashant Hanmantrao)
159. Shendage Sarjerao Chandrakant)
160. Kudale Arjun Rambhau)
161. Gaikwad Yogesh Sharad)
162. Patil Ajinath Bhimrao)
163. Shinde Khanaiyalal Kishor)
164. Mansuri Sajid Majeed)
165. Patil Kiran Pandit)

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166. Jamdade Shivraj Gangaram)
167. Bhilawade Kiran Mahadev)
168. Kumbhar Rajendra Prabhakar)
169. Kharat Santosh Bhau)
170. Janlal Rahul Manikrao)
171. Gore Satish Shirpati)
172. Gajjalwar Kishor Kisan)
173. Gonte Sagar Sadashiv)
174. Sahare Ravindra Gulabrao)
175. Lande Ravindra Motiram)
176. Thombre Suhas Suresh)
177. Bhalerao Vind Sahebrao)
178. Lasante Bharat Uttamrao)
179. Shankarwar Gajanan Prakash)
180. Shete Atul Arunrao)
181. Suryawanshi Pravin Bhaskar)
182. Pawar Prashant Balasaheb)
183. Byagalwar Dattraya Narsimlu)
184. Pawar Amol Balasaheb)
185. Narvikar Rohit Kamlakar)
186. Ingole Ganesh Ashok)
187. Abhang Manoj Shridhar)
188. Borate Ashok Jotiram)
189. Mane Bharat Chandrakant)
190. Gawande Pawan Arunrao)
191. Gound Deepak Dattratraya)
192. Korade Kiran Dnyandeo)
193. Dhaygude Shankar Sadashiv)

194. Hiwarkar Vishal Ramesh)
195. Thombre Atul Shamrao)
196. Kangule Anand Shivaji)
197. Patil Samadhan Pandit)
198. Valte Vivek Suresh)
199. Kamble Anant Shamrao)
200. Hattigote Ramesh Shahaji)
201. Doke Mallinath Dashrath)
202. Dorlikar Nitesh Vijay)
203. Deore Tushar Murlidhar)
204. Khadke Kishor Yuwaraj)
205. Lokhande Sachin Ashok)
206. Bhadane Swapnil Laxman)
207. Salunke Sagar Ravindra)
208. Gavhane Tanaji Khanderao)
209. Gore Sandeep Dadasaheb)
210. Koli Vikram Ramchandra)
211. Koli Hemraj Bhagwan)
212. Datre Pravind Ajaysing)
213. Gaikwad Balaji Bhanudas)
214. Thite Anand Ramchandra)
215. Langde Anil Gajendra)
216. Shelar Sonusing Dasrath)
217. Bagul Sandip Ashok)
218. Rathod Shrinivas Kantiram)
219. Pandhar Shankar Gitaram)
220. Jadhav Prasenjeet Chandrakant)
221. Puri Madhav Shivaji)

222. Gawale Hemant Anil)
223. Kokate Vikas Bhagwan)
224. Pawar Ramesh Dattu)
225. Bairagi Ganesh Sudhakar)
226. Wadate Sambha Namdeo)
227. Ghadge Ram Sukhdev)
228. Rathod Ankush Shankarrao)
229. Khadse Manoj Dadarao)
230. Boyane Santosh Vittal)
231. Chapaitkar Bharat Vitthalrao)
232. Kandare Prashant Madhukar)
233. Machale Mahesh Devsing)
234. Khade Mangesh Jagannath)
235. Manwar Santosh Bhimrao)
236. Lamture Vivek Ramchandre)
237. Bhoi Dipak Rohidas)
238. Prashvi Varadaraj Sukhdeo)
239. Gaikwad Suraj Sidram)
240. Dandge Satishkumar Prabhakarrao)
241. Bhore Ravindra Ananda)
242. Kakde Pankaj Dnyaneshwar)
243. Kolte Rahul Prabhar)
244. Waghmode Bhausahab Namdev)
245. Londhe Ganesh Pundlik)
246. Morey Manish Kondiram)
247. Rathod Pavan Govindrao)
248. Pawar Abhinay Dhondiram)
249. Giri Anup Nagnath)

250. Pawale Arjun Darusing)
251. Janrao Sagar Gautam)
252. Arsewar Vadenna Shivlingu)
253. Kore Valmik Nimba)
254. Dhotre Pankaj Bapurao)
255. Waghmare Shivling Godind)
256. Parate Vaibhav Damodar)
257. Padmane Balaji Ukandi)
258. Kamble Amol Prabhakar)
259. Dalve Munjaji Namdeo)
260. Dange Santosh Duryadhan)
261. Telang Mayur Shukrachari)
262. Rathod Avinash Ashok)
263. Inamdar Yuvraj Dattagiri)
264. Analdas Narsingh Ram)
265. Kamble Shrikant Satappa)
266. Gaikwad Shital Nivrutti)
267. Ujgare Ashok Namdev)
268. Fulekar Nishant Bhimrao)
269. Sudewad Prashant Ashokrao)
270. Torne Valmik Kalyan)
271. Kahale Sandip Atmaram)
272. Aranye Devidas Ramdas)
273. Musanwar Vijay Shamrao)
274. Awasarmol Satish Bramhanand)
275. Chavan Sachin Sonappa)
276. Orke Manoj Gajananrao)
277. Bharti Gajanan Venkatrao)

278. Hiwarkar Ganesh Ramesh)
279. Waghmare Amol Jalindar)
280. Gopalchawadikar Nilesh Nivruti)
281. Chavan Deepak Sudam)
282. Baisane Bhusan Vinayak)
283. Dabhade Pankaj Vasant)
284. Ingle Siddarth Keshao)
285. Maske Kapil Vijay)
286. Patole Sopan Vishwanath)
287. Gange Dhananjay Pandharinath)
288. Bhalavi Omprakash Yashwantrao)
289. Tayde Narendra Shamrao)
290. Biradar Ajay Mahadeo)
291. Sonawane Sumedh Chandramani)
292. Chavan Vishal Dilip)
293. Ushire Yogesh Daga)
294. Waghmare Jinpal Shivaji)
295. Malpilu Rajesh Hanmanlu)
296. Meshram Akhilbharat Ramesh)
297. Bachhav Amul Ramdas)
298. Barge Kiran Sureshrao)
299. Shinde Jagannath Bhimrao)
300. Dhoke Dipak Prakash)
301. Lagare Manjuha Maruti)
302. Pujari Pritamkumar Padmakar)
303. Kamble Roshan Eknath)
304. Chavan Yogesh Ramesh)
305. Sakhare Prashant Rushiji)

306. Mutke Sachin Balaji)
307. Bendkule Yogesh Manohar)
308. Gaikwad Nilesh Sharad)
309. Trdalkar Mayur Mohan)
310. Ingle Mahendra Purushottam)
311. Raut Raju Ramrao)
312. Ubale Nityyanand Nath)
313. Gajbhare Sahebrao Ragho)
314. Wahule Ravi Vajjnathrao)
315. More Raju Ashok)
316. Kamble Santosh Pandharinath)
317. Surwade Pravin Janardan)
318. Pachangane Saneep Balaso)
319. Ingle Sachin Madhukar)
320. Bhide Ravindra Baburao)
321. Rokae Rameshwar Khandu)
322. Koli Kiran Shrimant)
323. Ganvir Avinash Ramshwer)
324. Mohod Nagesh Prakash)
325. Wathore Vishal Pandurang)
326. Kite Rahul Satyapal)
327. Rajade Suresh Hemant)
328. Tayade Prakash Shamrao)
329. Narvade Surch Kachru)
330. Dhemkewad Chittaranjan Gyanoba)
331. Anmod Sainath Bhumanna)
332. Gangalwad Amol Vittalrao)
333. Kedar Chhaya Gorakshnath)

334. Gavit Jagdish Parshu)
335. Waghmare Vijendra Ashok)
336. Kodewar Annarao Pandurang)
337. Manjare Swapnil Maruti)
338. Dhaware Amol Suresh)
339. Wathore Anandrao Namdevrao)
340. Nannaware Vaibhav Hari)
341. Bansode Premkumar Sukhdev)
342. Ingle Yogesh Sukhderao)
343. Ahire Ganesh Kashinath)
344. Korwate Vaibhav Bhimrao)
345. Naik Vikas Sampat)
346. Bhorkade Sukhdeo Awadhut)
347. Barel Surpal Bhikala)
348. Pawara Dipak Jaysing)
349. Singanwad Shivaji Gangadhar) **Respondents**

Shri M.B Kolpe, with Shri S.D Patil and Shri A.S. Pawar learned advocate for the Applicants.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents no 1 & 2.

None present for Respondents no 3 to 349, though served.

CORAM : Shri Rajiv Agarwal (Acting-Chairman)

Shri Justice Shrihari P. Davare (Member)(J)

DATE : 02.04.2014

PER : Shri Rajiv Agarwal (Acting-Chairman)

ORDER

1. Heard Shri M.B Kolpe, with Shri S.D Patil and Shri A.S. Pawar learned advocates for the Applicants, Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents no 1 & 2 and none present for Respondents no 3 to 349, though served.

2. In this Original Application, the Applicants are challenging the appointment of the Respondents no 3 to 349 as Police Sub-Inspectors on the basis of selection made by the Maharashtra Public Service Commission (the Respondent no. 2) in pursuance of advertisement No. 71/2011 issued on 5.5.2011. A preliminary examination was held on 26.6.2011 and the result was declared on 9.9.2011. The main examination was held on 18.9.2011 and result declared on 31.10.2011. The candidates were then called for physical test and interview. 30% posts were reserved for women candidates as horizontal reservation. A total of 1869 posts of Police Sub-Inspectors were to be filled out of which 1268 posts were from open (unreserved) category. Out of these 1268 posts, 380 posts were reserved for women candidates and 63 for Sportspersons. Similar horizontal reservations were provided for women and Sportspersons within

various vertical reservations for S.C, S.T, O.B.C etc categories.

3. Learned counsel for the Applicants argued that the horizontal reservation is to be applied as per Government Circular dated 16.3.1999. This Circular makes it clear that horizontal reservation in Maharashtra is a 'Compartmentalized Reservation' and the selection has to be done in three steps mentioned in the aforesaid Circular. Learned counsel for the Applicants argued that the Applicants are women from open category. Only women from open category could be appointed in 380 posts reserved horizontally for open-women category and women from other reservation category were not entitled to be appointed in the post horizontally reserved for open-women category. However, the Respondent no. 1 has in total violation of provisions of Government Circular dated 16.3.1999, recommended the candidates who do not qualify for appointment in open-women category. Applicants have especially challenged selection of the Respondents no 3 to 349 who have been selected in violation of law laid down by Hon'ble Supreme Court ignoring the claims of the Applicants.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents no 1 and 2 that there is no mistake in the selection of candidates which has been done as per Government Circular dated 16.3.1999.

5. Learned Advocate Shri Kolpe for the Respondents no 3 to 349 argued that out of total posts advertised, 229 posts have remained vacant to this date. The selection is subject to the decision of this Tribunal in the present Original Application as per interim order dated 10.5.2012. If the Tribunal finds merit in the claim of the Applicants, they can be granted relief without disturbing other candidates who were selected. He stated that this contention is without prejudice to his other contentions in the Original Application.

6. The only issue to be decided in the present Original Application is whether the Respondent no. 1 has recommended candidates for appointment as P.S.Is correctly per procedure prescribed in Government Circular dated 16.3.1999. The aforesaid Government Circular is issued in pursuance of decision of the Hon'ble Supreme Court in **Anil Kumar Gupta Vs. State of U.P and others J.T 1995(5) S.C 505**. Clause 5 of the said G.R is reproduced below:-

“सर्वोच्च न्यायालयाच्या न्याय निर्णयात/उल्लेखिलेल्या नुसार समांतर आरक्षणांतर्गत त्या त्या प्रवर्गासाठी विहित करण्यात आलेल्या टक्केवारीनुसार वाटा निश्चितपणे मिळावा यासाठी सरळसेवा भरती करतांना खालील टप्पे विचारात घेण्यात यावेत :

अ) प्रथम टप्पा : गुणवत्तेच्या निकषानुसार खुल्या प्रवर्गातील उमेदवारांची निवड यादी करावी. या यादीत, समांतर आरक्षणात बसणा-यांची संख्या पर्याप्त असेल तर कोणताही प्रश्न उद्भवणार नाही आणि त्यानुसार पदे भरावीत. जर समांतर आरक्षणाच्या प्रवर्गातील उमेदवारांची संख्या पर्याप्त नसेल तर समांतर

आरक्षणाकरिता त्या त्या प्रवर्गातील उमेदवारांना उपलब्धतेनुसार पर्याप्त संख्येत यादीतील शेवटचे उमेदवार वगळून समाविष्ट करावेत.

- ब) दुसरा टप्पा : त्यानंतर प्रत्येक सामाजिक आरक्षणाच्या प्रवर्गातील उमेदवारांच्या निवड यादया तयार कराव्यात (जे उमेदवार यापूर्वीच टप्पा “अ” मध्ये सामील झाले असतील त्यांना या यादीतून वगळावे)
- क) तिसरा टप्पा : वरिल “ब” नुसार तयार करण्यात आलेल्या यादयामध्ये सामाजिक आरक्षणातील (Social Reservation) प्रत्येक प्रवर्गाच्या विहित टक्केवारीनुसार “अ” मध्ये विशद केलेल्या कार्यपध्दतीनुसार समांतर आरक्षणाचे पुरेसे उमेदवार समाविष्ट करावेत. मात्र असे करतांना सामाजिक प्रवर्गांतर्गत रहावे”.

In the first step, select list of open candidates has to be prepared. As candidates belonging to vertical (social) reservation category are included in the open category, this list will in effect be a general merit list. In the present case, the following posts were to be filled.

Category	Open	SC	ST	DT(A)	NT(B)	SBC	NT(C)	NT(D)	OBC	Total
General	825	103	77	20	20	19	21	9	120	1214
Female	380	48	35	10	9	8	10	5	56	561
Sports	63	8	6	2	2	1	2	1	9	94
Total	1268	159	118	32	31	28	33	15	185	1869

As there were a total of 1268 open posts, a merit list of 1268 candidates was required to be prepared as a first step. If that list had 63 sports person, there was no need for any change in the lists as regards reservations in sports category. Similarly, if there were 380 female open candidates in the list so prepared, the list would remain unchanged. However, if the list did not have 380 female-

open candidates and/or 63 open-sports category candidates, some names were required to be deleted from the bottom of the list to accommodate 380 female-open and 63 open sports persons in the list containing 1268 names of open candidates. In other words, first 825 candidates could be from any vertical reservation category and would be counted as open-general candidates. Any open-female/open sports person in that list will be counted for horizontal reservation, and the list will have to be expanded to the extent to accommodate remaining female open and open-sports category candidates to the extent of posts reserved for them deleting equal number of names from the bottom of the list. However, any female candidate/sportsperson who is not from open category, unless he/she finds place in the merit list as open male candidates, ignoring vertical reservation but not horizontal reservation, cannot be selected. Steps 2 and 3 are regarding preparation of merit list for each vertical reservation category as above and for horizontal reservation applying the same principle as is to be done in step 1.

7. Learned counsel for the Applicants has cited many judgments of Hon'ble Supreme Court in support of his contention that horizontal reservation cannot be transferred from one vertical reservation category to another and that for horizontal reservation, open

category is also treated as a distinct vertical reservation category.

8. In **Anil Kumar Gupta's** case (referred to in the preamble of the G.R dated 16.3.1999, Hon'ble Supreme Court has held in para 15 that:

“the special reservation would be a watertight compartment in each of the vertical reservation category (OC, OBC, SC and ST)”.

In para 17, it is observed that:

“As pointed out hereinabove, 110 seats out of 112 meant for special reservations have been taken away from the OC category alone and none from the OBC or for that matter from SC or ST”.

In para 18 it is mentioned that:

“The proper and correct course is to first fill up the OC quota (50%) on the basis of merit, then fill up each of the social reservation quota, i.e. SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservation is already satisfied in case it is an overall horizontal reservation no further question arises. But if it is not so satisfied, the

requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom”.

9. From the above, it is clear that the Hon'ble Supreme Court has treated open category (OC) also as a distinct category at par with SC, ST and OBC categories as a social reservation category. However, there is a basic distinction in open category for social reservation and horizontal (special) reservation. For social (vertical) reservation, a candidate from any social reservation category can find place in open category on merit and he will not be counted from his own social reservation category against the posts reserved for that category. For horizontal reservation, the situation is different. A candidate from one social reservation category cannot be given benefit of horizontal reservation in another social reservation category. In other words, a post for open-female has to be filled by open-female and not, for example, by an OBC female. If posts in horizontal reservation category remain unfilled they are not to be carried forward and they have to be transferred to open-general category only. This has been confirmed by Hon'ble Supreme Court in **Rajesh Kumar Daria Vs. Rajasthan Public Service Commission (2007) 8 SCC**

785:- In para 9 of the judgment, Hon'ble Supreme Court has observed as follows:-

“The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are 'vertical reservations'. Special reservations in favour of physically handicapped, women etc., under Articles 16(1) or 15(3) are 'horizontal reservations'. Where a vertical reservation is made in favour of a backward class under Article 16(4), the candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. [Vide - Indira Sawhney (Supra), R. K. Sabharwal vs. State of Punjab (1995 (2) SCC 745), Union of India vs. Virpal Singh Chauhan (1995 (6) SCC 684 and Ritesh R. Sah vs. Dr. Y. L. Yamul (1996 (3) SCC

253)]. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes-Women'. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of scheduled caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women."

The Aurangabad bench of this Tribunal has examined the issue of horizontal reservation in O.A no 301/2009. The issue was regarding 5% special reservation for home guards. Para 7 of the aforesaid judgment reads:-

"7. We are informed that only ten candidates are appointed from Home Guard category as one Scheduled Tribe Home Guard was not available (according to seats advertised horizontal reservation for Home Guard 07 Open, 02 Scheduled Caste, 01 Scheduled Tribe and 01, O.B.C) Sr Nos 3, 7, 8 and 10 who are more meritorious than applicant in Home Guard category, belong to V.J, O.B.C, S.C, and O.B.C respectively. They cannot be counted as Open Home Guard candidates. Thus, referring to Exh. "Y" (it is evident that applicant ought to have come in as last Open Home Guard candidate."

The judgment of this Tribunal in O.A 301/2009 dated 26.8.2009 was confirmed by Hon'ble Bombay High Court (Aurangabad Bench) in Writ Petition no 272/2010 by order dated 15.11.2010. Hon'ble Supreme Court in Special Leave Petition no CC 15802/2011 by order dated 27.9.2011 held that:-

"Even on merits, we are satisfied that the reasons assigned by the Tribunal for issuing a direction for appointment of respondent no. 1 were legally correct and the High Court did not commit any error by declining to interfere with the Tribunal's order".

This Tribunal has taken similar view in R.A no 23 of 2013 in O.A no 664 of 2012 decided on 17.6.2013.

10. The selection of female candidates by the Respondent no. 2 is examined in the light of the above law laid down by the Hon'ble Supreme Court and followed by this Tribunal. The final list of recommended candidates has 1869 names in order of merit. There were 1268 vacancies for open category, including 380 for females and 63 for sports. As per Government circular dated 16.3.1999, first 825 candidates will be selected as open general candidates. It is seen that in the select list, there are 380 female candidates from open category. The last candidate is at Sr. no 1656 and has obtained 409 marks which is the cut-off. In the list of first 825 candidates there are 19 female candidates from open category of whom 15 are from the open category. Candidates at Sr. No 139 (F-OBC), 656 (F-NTD), 757 (F-OBC) and 789 (F-SC) are selected in open general candidates and rest 15 candidates up to (F-19) at Sr No 789 in the list are to be counted as open female category. In the list of 380 open female category candidate, 167 belong to various Social Reservation Category, i.e. OBC, SC DT(A), NT(B), NT(C), NT(D) & SBC categories. (This figure is counted by us from the select list and may be slightly inaccurate). Reservation of female candidates as per advertisement and candidates included in the open-

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female candidates from the reserved categories is as below:-

Category	Post reserved as per advertisement for women	Selection in open female category
Open	380	213
SC	48	24
ST	35	--
DT(A)	10	3
NT(B)	9	5
SBC	8	2
NT(C)	10	14
NT(D)	5	13
OBC	56	92

It is seen that only 213 open-female candidates are selected against 380 post reserved horizontally for open-female. 167 (subject to correction) candidate from other Social Reservation categories (female) have been recruited to posts reserved for open-female category which is not permissible as per law laid down by Hon'ble Supreme Court.

Clause no 4.2.8 of the guidelines issued by MPSC for candidates is apparently based on clause 2(C) of the G.R no 82 / 2001 / म.स.आ-2000 / प्र.क्र.415 / शा-02 dated 25.5.2001. This clause 2(C) in the aforesaid G.R is not in consonance with other clauses of the G.R, viz 1(5) and 1(7). It is also contrary to the provisions of Government circular dated 16.3.1999. This G.R dated 25.5.2001 permits women belonging to Social Reservation Category

to be given option to compete both for open-female category and for female posts in respective social Reservation categories. This is in direct contradiction to the provisions in Government circular dated 16.3.1999 which provides that special reservation cannot be transferred from one Social Reservation category to another Social Reservation category. It may be noted that Government Circular dated 16.3.1999 is based on decision of Hon'ble Supreme Court in Anil Kumar Gupta Vs. State of U.P & Others. If sufficient number of open-female candidates are not available, the posts cannot be filled from Backward Female category candidates, but will have to be transferred to open-general category. This is provided in para 1(7) of G.R dated 25.5.2001. In the select list, it appears that other instructions of S.C have also not been followed. The select list prepared by the Respondent no. 2 has counted many vertically reserved candidate in their respective categories though prima facie they should have been selected in open category. It is, however, seen that para 3.10.6 of the General Instructions issued by the Respondent no. 2 provides that if a backward category candidate has been called for interview on the basis of lower cut-off marks in written Examination applicable to backward category candidates, he will be placed, if selected, in the list of candidates from that category only. This issue is, therefore, not examined further

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11. The contention of the Respondent no. 2 in para 7 of the affidavit in reply contains following submission:-

“I say and submit that the quota of general category is not to be filled in only from open category candidates, any candidate of any category can compete for these posts if they come in merit. In fact, it is exclusively meant for meritorious candidates irrespective of their social category. According to the clause (Two) K(i) of this resolution “those backward class women candidates who gave their option for open female posts or if they are selected even otherwise on open female reserved posts, those female candidates have two options. Thus it is clear from this clause that open female posts are not reserved for open female candidates only. Even backward class female candidates can be selected on these posts on the basis of merit”.

The assertion of the Respondent no. 2 is totally against the law as laid down by Hon'ble Supreme Court in Rajesh Kumar Daria and Anil Kumar Gupta's case. This is also against the view taken by this Tribunal in numerous cases and the order of this Tribunal has been confirmed by the Hon'ble Supreme Court. It is surprising that a constitutional body like the Respondent no. 2 is applying the principles of reservation in a totally wrong manner both for vertical reservation and also for

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horizontal reservation. They are relying on G.R dated 25.5.2001 and have issued guidelines contrary to Government circular dated 16.3.1999 (which is in accordance with the Supreme Court Judgments). It is seen that the another guideline issued by the Respondent no. 2 in respect of sports category have not been updated in respect of Sports recognized by the Indian Olympic Association who by letter dated July 11, 2011 circulated a list of games recognized by them and Association affiliated to them. Many games mentioned in para 4.5.3 of the guidelines issued by the Respondent no. 2 are now not recognized by the Indian Olympic Association. The list needs urgent updating.

The Applicants, who have obtained 405, 388 & 404 marks respectively, are from open-women category. They have claimed that if 380 posts in open-women category were filled exclusively from amongst the open-women category candidates, they would have been selected. The cut off marks for open-female category are 409. This list of 380 female candidates has 167 backward class female candidates (number may vary a little as it is based on counting done by us from the select list). If those names are deleted, the Applicants will qualify to be included. As the full list of all candidates who appeared for written test and interview is not before us, we cannot satisfy ourselves that the Applicants would have been selected if, the horizontal reservation for open-female category was

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correctly applied. There is, however, no doubt that the select list, as it is prepared is full of mistakes. Some of the big mistakes which are apparent on the face of it have been enumerated above. The select list, as such cannot be sustained. We are, however, conscious of the fact that a very large number of persons are going to be effected if the list is quashed. Prima facie, it appears that most of the candidates in the list would be eligible to be selected if the list is prepared in the light of instructions contained in Government Circular dated 16.3.1999. Some candidates who were unsuccessful, especially from open female category, including the Applicants will become eligible for selection and some selected candidates especially from female Social Reservation category may become ineligible. Though their selection was subject to the outcome of this Original Application, we cannot lose sight of the fact that such candidates must suffer for no fault of theirs. Some of them might have become overage by now to compete in future for such selection and some of them might have left other jobs to join the present jobs. They have already completed more than two years in service and considerable public money has been spent on their training.

12. Having regard to the aforesaid facts and circumstances, the Original Application is disposed of with the following directions:

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- (i) Respondent no. 2 may prepare a fresh Select List from amongst the candidate who appeared for written examination or oral interview pursuant to the advertisement no 17/2011 dated 5.5.2011 on the basis of Government Circular dated 16.3.1999 and as per law laid down by the Hon'ble Supreme Court in this regard.
- (ii) In respect of candidates those whose names figure in the old as well as revised Select List, no further action will be required;
- (iii) Candidates whose names did not figure in the old list and whose names figure in the revised list will have to be given appointment. However, they will be eligible to get pay and allowances only prospectively;

This process may be completed within a period of three months from the date of this order.

- (iv) In respect of candidates who were earlier selected and who had joined Government service in pursuance of order issued on the basis of earlier Select List, and who are now found not eligible for selection, the State Government may consider not discontinuing

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their services by adjusting them in the existing vacancies in their respective reservation categories.

Sd/-

(Shrihari P. Davare)
Member (J)

Sd/-

(Rajiv Agarwal)
Acting -Chairman

Place : Mumbai

Date : 02.04.2014

Dictation taken by : A.K. Nair.