

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 538 OF 2015

DISTRICT : MUMBAI

1. Shri Pratap Sampatrao Madkar,)
B-1/2, Sawali Building, Worli,)
Mumbai 400 018.)
2. Shri Prashant Sarjerao Hadambar)
Room no. 401, Sagar-Deep Bldg,)
Plot No. 11, Sector-6,)
At Post Kamothe, Navi Mumbai.)
3. Shri Arjun Sampatrao Waghmode)
A/P : Pandhare, Tal-Baramati,)
Dist-Pune.)
4. Smt Jyotsna Sunil Arjun,)
D-303, Nav Chetan Society,)
Tukarnagar, Dombivali [E],)
Dist-Thane.)
5. Shri Rajkumar Shankar Alkunte,)
Flat No. D/402, Tulsi Angan Soc.)
Katrap, Badlapur 421 503.)
6. Shri Padam Motilal Pardeshi,)
C/o: Room no. 401, Sagar Deep)
Bldg, Plot no. 11, Sector-6,)
At Post Kamothe, Navi Mumbai.)...**Applicant**



Versus

1. The Chief Secretary,)
State of Maharashtra, Mantralaya,)
Mumbai 400 032.)
2. Additional Chief Secretary [Services],)
General Administration Department,)
Mantralaya, Mumbai 400 032.)
3. The Principal Secretary,)
[Special Development Co-ordination])
General Administration Department,)
Mantralaya, Mumbai 400 032.)...**Respondents**

Mrs Punam Mahajan, learned advocate for the Applicants.

Ms Neelima Gohad, learned Presenting Officer for the Respondents.

W I T H

MISC APPLICATION NO. 05 OF 2016

I N

ORIGINAL APPLICATION NO 538 OF 2015

Additional Chief Secretary [Services],)
General Administration Department,)
Mantralaya, Mumbai 400 032.)...**Applicant**
(Ori Respondent)

Versus

1. Shri Pratap Sampatrao Madkar,)
B-1/2, Sawali Building, Worli,)
Mumbai 400 018.)
2. Shri Prashant Sarjerao Hadambar)
Room no. 401, Sagar-Deep Bldg,)
Plot No. 11, Sector-6,)
At Post Kamothe, Navi Mumbai.)
3. Shri Arjun Sampatrao Waghmode)
A/P : Pandhare, Tal-Baramati,)
Dist-Pune.)
4. Smt Jyotsna Sunil Arjun,)
D-303, Nav Chetan Society,)
Tukaramnagar, Dombivali [E],)
Dist-Thane.)
5. Shri Rajkumar Shankar Alkunte,)
Flat No. D/402, Tulsi Angan Soc.)
Katrap, Badlapur 421 503.)
6. Shri Padam Motilal Pardeshi,)
C/o: Room no. 401, Sagar Deep)
Bldg, Plot no. 11, Sector-6,)
At Post Kamothe, Navi Mumbai.)...**Respondents**
(Ori Applicants 1 to 6)

Ms Neelima Gohad, learned Presenting Officer for the Applicant (Ori Respondents).

Mrs Punam Mahajan, learned advocate for Respondents (Ori Applicants).

ah

CORAM : Shri Rajiv Agarwal (Vice-Chairman)
Shri R.B. Malik (Member) (J)

DATE : 02.02.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Mrs Punam Mahajan, learned advocate for the Applicants and Ms Neelima Gohad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicants, who belong to VJ(A) and NT(C) categories and who have challenged the decision of the Respondent nos 2 & 3 to absorb the persons from NT(B) and NT(D) categories in the posts which should have been filled by VJ(A) and NT(C) category persons as per 100 point roster in G.R dated 18.10.1997.

3. Learned Counsel for the Applicants argued that the Applicants belong to VJ(A) and NT(C) categories. They are working as Assistants in various departments of Mantralaya and their cadre Controlling Authority is the General Administration Department. The Applicants had passed the Departmental Examination to become eligible for promotion to the post of Section Officer and they were



in the zone of consideration for promotion in the vacancies reserved for VJ(A) and NT(C) categories, on the basis of final seniority list of Assistants as on 1.1.2014 which was published on 2.2.2015. Learned Counsel for the Applicants stated that as per the Maharashtra Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-Notified Tribes [Vimukta Jatis], Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 (Reservation Act) the following reservation in promotion is provided to De-Notified Tribes and Nomadic Tribes (DT-NT) viz:-

VJ(A)	3%
NT(B)	2.5%
NT(C)	3.5%
NT(D)	<u>2%</u>
	<u>11%</u>

In all 11% reservation is provided for DN-NT group as a whole. As per section 4(3) of the Reservation Act, reservation for categories mentioned at Sr. Nos (3) to (6) both inclusive, in the table under section 4(2) is inter-transferable. Learned Counsel for the Applicants contended that Section 4(3) provides for inter-transferability in the 'same recruitment year'. Learned Counsel for the Applicants argued that the Respondents have misinterpreted this section and have denied promotion to the Applicants on the ground that the vacancies reserved for VJ-A and NT(C) categories have

already been utilized by promoting candidates from NT(B) and NT(D) categories in the past. Learned Counsel for the Applicants stated that the Respondent no. 2 has issued ad hoc promotion order promoting Assistants as Section Officers on 20.2.2015. Though, the Applicants were due and eligible for promotion to the post of Section Officer, they have not been promoted in violation of the provisions of the Reservation Act.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that as per section 4(3) of the Reservation Act, reservation for DT(A), NT(B), NT(C) and NT(D) categories are inter transferable, if suitable candidates for the posts reserved for any of those categories are not available in a recruitment year. Learned Presenting Officer argued that provisions of section 4 are applicable only in the case of direct recruitment. In so far as promotions is concerned, G.R dated 18.10.1997 is applicable. Para 9 of the aforesaid G.R also provides for inter changeability in reservation for VJ(A), NT(B), NT(C) and NT(D) categories. This G.R is saved in view of section 5(2) of the Reservation Act. Promotion are given as per 100 point roster prescribed by G.R dated 18.10.1997. A vacant post reserved for the Backward Classes, as per roster, is filled by promoting a person from that category. However, if a Backward Class candidate is fit for promotion as per his seniority and roster point from that category is not available, that



candidate is promoted and adjusted against the vacancy of that category as per roster as and when it becomes available. This is done as per the judgment of Hon'ble Supreme Court in **R.K. SABHARWAL's case, AIR 1997 SC 1371**. Posts in DT-NT categories are inter-transferable. If persons have already been promoted from DT-NT category in excess of their quota in the past, they are first adjusted against vacancy from DT-NT category becoming available as per roster and remaining vacancies are filled by fresh promotion. Learned Presenting Officer argued that the vacancies of VJ(A) and NT(C) categories were filled in the past by promoting officers from NT(B) and NT(D) categories as officers from VJ(A) and NT(C) categories were not available. Learned Presenting Officer argued that 11% limit of DT-NT reservation is maintained. If the request of the Applicants is accepted, the promotions from DT-NT category will far exceed their quota. Learned Presenting Officer stated that by letter dated 8.7.2015 the Applicants were informed accordingly.

5. We find that the Applicants are relying on section 4(3) of the Reservation Act, which reads:-

“(3) The reservation specified for the categories mentioned at serial numbers (3) to (6) (both inclusive) in the table under sub section (2) shall be inter-transferable. If suitable candidates for the posts reserved for any of the said categories are not

available in the same recruitment year, the posts shall be filled by appointing suitable candidates from any of the other said categories.”

Serial nos (3) to (6) are:-

Sr No	Castes	Percentage of reservation
(3)	Denotified Tribes (A)	3
(4)	Nomadic Tribes (B)	2.5
(5)	Nomadic Tribes (C)	3.5
(6)	Nomadic Tribes (D)	2
	TOTAL	11

The Respondents in para 6 of the affidavit in reply dated 7.10.2015 have claimed that section 4 of the Reservation Act applied only to direct recruitment, while for promotion, G.R dated 18.10.1997 is applicable. This G.R is protected by section 5(2) of the Act. It is, however, clear that there is no difference as far as the principle of inter-transferability among DT-NT categories is concerned between section 4(3) of the Reservation Act and G.R dated 18.10.1997. As per 100 point roster for promotion, for VJ(A), points at 3, 4, 83 are reserved. For other categories, the following points are reserved:

NT(B) - 7, 47
 NT(C) - 4, 31, 57
 NT(D) - 11, 77
 NT(B-C) - 99. By rotation.

6. From the file notings of the General Administration Department, (p. 110 of the Paper Book), it is seen that 80% of the posts of Section Officers are filled by promotion and 20% by direct recruitment. 596 posts are thus, in promotion quota. In addition 74 supernumerary posts are added to promotion quota, making a total of 670 posts. For 2014-15, the following posts were from DT-NT categories were to be filled.

Castes	No of posts available	Already working	Vacancies
VJ(A)	20	14	06
NT(B)	17	24	(7 excess)
NT(C)	24	20	04
NT(D)	13	29	(16 excess)
	74	87	

A few more posts were becoming available due to retirement. After adjustment of persons in NT(B) and NT(D) categories in the vacancies becoming available in those categories, it was found that in NT(B) and NT(D) categories 3 and 10 officers were in excess of their respective quotas. These 13 posts were adjusted from VJ(A) and NT(C) categories.

7. The grievance of the Applicants is that the vacancies in VJ(A) and NT(C) categories should have been filled from the candidates from these categories, who are eligible for promotion. The Respondents' case is that the persons who were in the previous years promoted from NT(B) and NT(D) categories, have to be adjusted against

bb

vacancies from any of the DT-NT categories, first, as these vacancies are inter-transferable.

8. We find that reservation quota for promotion for each category is fixed as per the Reservation Act and G.R dated 18.10.1997, which are identical, except that there is no quota for promotion for OBC category. For promotion, the quota for a particular category can exceed, as some persons may be promoted on the basis of seniority, when the post from that category as per 100 point roster of promotion was not available. In the present case, 3 persons from NT(B) and 10 persons from NT(D) category were found in excess. As the persons from all categories of DT-NT promoted as Section Officers were in excess of 11% reservation for these categories, they must have been promoted on the basis of seniority, as the roster point vacancies were not available. To adjust such persons from NT(B) and NT(D) category against roster points for DT(A) which is same as VJ(A) and NT(C) category does not appear to be logical, just because these categories are inter-transferable. If these persons were from say ST category, they would have been adjusted against future vacancies in S.T category only. There is no reason as to why a person promoted from NT(B) or NT(D) category selected on the basis of seniority should be adjusted in a future vacancy from VJ(A) or NT(C) category. If such a person was not promoted on the basis of seniority, but only because no posts were available

from his category of NT(B) or NT(D), but vacancies were available from VJ(A) or NT(C) categories, things would be different. Here against the quota of 74 persons from DT-NT categories, already 87 persons were working, which clearly means that officers in excess of quota must have been promoted on the basis of seniority and there is no reason to adjust them against a vacancy which is not from the category to which they belong. Any other view will mean that persons from any of the DT-NT category are treated differently from persons in other reservation categories like SC/ST etc. in the matter of promotion.

9. We are of the opinion that persons from DT-NT categories, who were promoted in the past, in excess of the quota of their category, will have to be adjusted in the future vacancies from that quota only. The principle of inter-transferability will not apply there. This Tribunal by judgment dated 27.10.2004 in O.A no 1125/2003 has held that:-

“Internally transferable means if a candidate of the specific sub-category from which the roster point is meant, is not available, then only it can be transferred and given to other sub-category. In that event, the senior most eligible candidate from other sub-category can be given the post. If this is not construed in this manner then the very object of categorization would become meaningless. It would

defeat the very purpose or policy of providing roster. If it was straightway interchangeable then there was no necessity of providing different percentages of reservation for different categories. It was then sufficient to provide broadly as it was before providing roster points. If seniority is to be applied as test for promotion then a candidate belonging to a particular sub category may not get promotion for a long time to come thus defeating the very purpose of providing different percentages for each sub-category.”

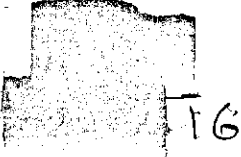
This judgment has already recognized that if a person from one category (sub-category) of DT-NT is eligible, then he alone will be promoted in the roster point for that category, regardless of the fact that some person from other category of DT-NT is available and he may be senior to him. This clearly shows that inter-transferability cannot be applied in all situations. Only when vacancies of any category of DT-NT cannot be filled due to non-availability of eligible candidates from that category, a suitable and eligible candidate from other DT-NT categories can be appointed. In the present case, persons appointed on the basis of seniority cannot be adjusted against vacancies in any category other than their own.

10. Having regard to the aforesaid facts and circumstances of the case, the Applicants are entitled to



be considered for promotion from VJ(A) and NT(C) categories, as per vacancies from those categories, as per roster prescribed by G.R dated 18.10.1997 without adjusting persons from NT(B) and NT(D) categories against such vacancies. The Respondents should complete this process within a period of 3 months from the date of this order. This Original Application is allowed accordingly with no order as to costs.

As this O.A is disposed of, nothing survives in the Misc Application, which also stands disposed of.


(R.B. Malik)
Member (J)


(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 02.02.2016
Dictation taken by : A.K. Nair.