

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH, NAGPUR
ORIGINAL APPLICATION NO 550 OF 2016

DISTRICT : YAVATMAL

Shri Rahul Ashokrao Bhojane,)
R/o: Chandore Nagar, Dhamangaon Road,)
Yavatmal, Tq & Dist - Yavatmal.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai.)
2. The Collector,)
Yavatmal, At Collector Office,)
Yavatmal.)
3. Suryakant D. Bhosale,)
R/o: At Vitakhrud, PO : Sonkhed,)
Tah-Sonkhed, Dist-Parbhani 431 516.)...**Respondents**

Shri P.R Agarwal, learned advocate for the Applicant.

Shri A.M Ghogre, learned Presenting Officer for the Respondents no 1 & 2.

None for Respondent no. 3

CORAM : Shri Rajiv Agarwal (Vice-Chairman) (A)
Shri J.D Kulkarni (Vice-Chairman) (J)

DATE : 11.8.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri P.R Agarwal, learned advocate for the Applicant and Shri A.M Ghogre, learned Presenting Officer for the Respondents no 1 & 2. None for Respondent no. 3.

2. This Original Application has been filed by the Applicant seeking inclusion of his name in the list of successful candidates from OBC-PAP category, and including the name of candidates selected from OBC-PAP category in the Open PAP category, thus removing the name of the Respondent no. 3 from the list of successful candidates.

3. Learned Counsel for the Applicant argued that the Respondent no. 2 had issued an advertisement on 15.5.2014 to fill a total of 55 posts of Talathis. 2 posts were horizontally reserved for Project Affected Person (P.A.P) category, one each for OBC and Open category respectively. The Applicant had applied from O.B.C-P.A.P category and scored 140 marks in the selection process. Marks obtained by other P.A.P candidates were as follows:-

Sr No.	Name	Category	Marks
1.	Shri Narendra H. Patil	O.B.C	142
2.	Respondent no. 3	Open	130

Learned Counsel for the applicant argued that the State Government had issued Circular dated 13.8.2014 regarding methodology to be used for selecting candidates on the basis of horizontal reservation for different categories. As per this Circular, a P.A.P candidate obtaining highest marks in that category has to be adjusted against Open-PAP category, regardless of the horizontal reservation he may belong to. Shri Narendra Hemraj Patil, who belongs to OBC category, scored highest marks in P.A.P category and was eligible to be selected from Open-P.A.P category. The next candidate from P.A.P category was the Applicant, who scored 140 marks and he is eligible to be selected from O.B.C-P.A.P category. As there were only two posts horizontally reserved for PAP category, the Respondent no. 3 is not eligible for selection.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents no 1 & 2 that this Original Application is misconceived. The applicant is misinterpreting the Circular dated 13.8.2014. This Circular was issued by the Government mainly after this Tribunal (Aurangabad Bench) in the case of Irfan Mustafa Shaikh Vs. State of Maharashtra & Ors in O.A no 301/2009 by judgment dated 26.8.2009 held that a post horizontally reserved for Open-Home Guard cannot be filled by an OBC-Home Guard or any Other Backward Class Home Guard. This judgment was upheld by the Hon'ble High Court

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and Supreme Court. What applies to horizontal reservation for Home Guard, equally applies to PAP reservation. Horizontal reservations are compartmentalized in Maharashtra and migration of a candidate from one vertical reservation category to another is not permissible for post reserved horizontally.

5. The Applicant is claiming that for PAP category, merit list should be operated regardless of vertical reservation category to which a candidate belongs. This issue was considered for horizontal reservation for Home Guards by Aurangabad Bench of this Tribunal in the case of Irfan Mustfa Shaikh (supra). It is clearly held that a post horizontally reserved for Open category cannot be allotted to a candidate belonging to any backward category. This judgment was upheld upto Hon'ble Supreme Court. Circular dated 13.8.2014 is based on the judgment of this Tribunal in Irfan Mustafa Shaikh's case (supra) and some other cases decided on the same lines. The Applicant has completely misinterpreted Government Circular dated 13.8.2014, and can claim no relief on the basis of that Circular.

6. The Applicant has relied upon some judgments of Hon'ble High Court. Hon'ble Supreme Court has laid down that law regarding horizontal reservation in a series of judgments, viz:

- (i) ANIL KUMAR GUPTA Vs. STATE OF U.P & ORS (1995) 5 SCC 123.
- (ii) RAJESH KUMAR DARIA Vs. RAJASTHAN PUBLIC

SERVICE COMMISSION & Ors : (2007) 8 SCC 785.

(iii) PUBLIC SERVICE COMMISSION, UTTARANCHAL
v.MAMTA BISHT AND ORS : (2010) 7 SCR 289

In Mamta Bisht's case, Hon'ble Supreme Court has observed as follows:-

"14. In view of the above, it is evident that the judgment and order of High Court is not in consonance with the law laid down by this Court in Rajesh Kumar Daria (supra)."

In DARIA's case (supra), Hon'ble Supreme Court has referred to the judgment in Anil Kumar Gupta's case (supra) as follows:-

"7. A provision for women made under Article 15(3), in respect of employment, is a special reservation as contrasted from the social reservation under Article 16(4). The method of implementing special reservations was explained by this Court in Anil Kumar Gupta Vs. State of U.P thus...."

7. It is quite clear that in Daria's case, Hon'ble Supreme Court has fully endorsed the earlier judgment in Anil Kumar Gupta's case. Together these judgments contain the law laid down by Hon'ble Supreme Court regarding horizontal reservation and how it is different from vertical reservation. As per Article 141 of the Constitution of India, law laid down by Hon'ble Supreme Court is binding on all

Courts in India. Hon'ble Supreme Court clearly mentioned in Mamta Bisht's case that law of horizontal reservation is laid down in RAJESH KUMAR DARIA's case. We are of the opinion that this Tribunal has to follow the law laid down by Hon'ble Supreme Court as regards horizontal reservation.

8. We find that the Respondent no.2 has strictly implemented Government Circular dated 13.8.2014 and correctly applied the horizontal reservation for PAP candidates. There is no merit in this O.A and it is dismissed with no order as to costs.