

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NO.662/2016.**

**(D.B.)**

Sneha Sanjay Gadgilwar,  
Aged about 28 years,  
Occ-Nil,  
R/o C/oB Dr. Rupesh Pandurang Baone,  
R/o Quarter No.3, Type-4, Old QR Boys Hostel Road,  
S.V.N.G.M.C., Campus, Yavatmal.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Technical Education,  
Mantralaya, Mumbai-32.
2. The Maharashtra Public Service Commission,  
Bank of India Building, 3<sup>rd</sup> floor,  
Mahatma Gandhi Road, Hutatma Chowk,  
Mumbai-1.
3. The Director of Technical Education (M.S.),  
3, Mahapalika Marg, P.B.No. 1967,  
Opp. Metro Cinema, Mumbai-1.
4. Smt. Sujata Dagdu Jagtap,  
Department of Electronics,  
Govt. Polytechnic College, Usmanabad.
5. Smt. Mohini Bapurao Honna,  
Department of Electronics,  
Govt. Polytechnic College,Arvi,  
District-- Wardha.
6. Smt. Priyanka Bhausahab Nagargoje,  
Department of Electronics,  
Govt. Polytechnic College, Jalna.

7. Smt. Deepa Bansilal Maheshwari,  
Lecturer, Department of Electronics,  
Pune Institute of Computer Technology,  
Sr. No.27, Pune-Satara Road,  
Behind Bharati Vidyapeeth College,  
Dhankawadi, Pune-411 043.

**Respondents**

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Shri R.L. Khapre, the learned counsel for the applicant.  
Shri M.I. Khan, the learned P.O. for the respondent Nos. 1 to 3.  
Shri N.M. Kolhe, he learned counsel for respondent Nos. 4 to 6.  
None appeared for respondent No.7.

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**Coram:- Shri J.D. Kulkarni,**  
**Vice-Chairman (J).**

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**JUDGMENT**

(Delivered on this 5<sup>th</sup> day of December 2017).

This O.A. is being disposed of with the consent of parties on merits.

2. In this O.A., initially the applicant has claimed that the merit list including the candidates secured lesser number of marks from Women category than the applicant be quashed and set aside and the M.P.S.C. be directed to include the name of the applicant in the select list. Thereafter, the application was amended and by way of amendment, the applicant has claimed that directions be issued to respondent Nos. 1 to 3 to revise the order of appointment by impleading the name of the applicant in the appointment order dated 13.1.2017 in the post of reserved category of Open (Female) or in the alternative in Open (General).

3. In response to the advertisement Nos. 5/2013 to 15/2013 dated 6.7.2013, the applicant applied for the post of Lecturer in Maharashtra Technical Education Service in the subject of Atomic Energy. As per said advertisement, 59 + 56 posts were advertised for the said subject and the reservation for Atomic Energy category was as under:-

जाहणत .	वषय	एकूण पद	अराखीव	अ.जा.	अ.ज.	व.जा (अ)	भ.ज.(ब)	व.मा.व.	भ.ज. (क)	भ.ज. (ड)	इ.मा.व.
१५/२०१३	अणुवणत	५९+५६	३२+१५+३	१३	४+२+९	१+४	१+२	२	१+४	२	२०

4. From the aforesaid chart, it seems that 15 posts were reserved for Open (Women), 3 posts were reserved for player category, 5 posts were reserved for physically handicapped category and 5 posts were reserved for visually impaired candidates. The applicant appeared for the written test and was waiting for appointment order. However, vide corrigendum dated 13.4.2016 in respect of advertisement N o. 5/2013 to 15/2013, in respect of Atomic Energy and as per corrigendum, the posts advertised was reduced to 42 + 16, out of which 8 were reserved for Open (Female), 1 each for SC, NT (C) and OBC (Women) and 2 posts were reserved for ST (Women). Select list was published on 20.9.2016 whereby 58 candidates were recommended for appointment. However, in the said select list, applicant's name was not included.

5. According to the applicant, she secured 73 marks in written examination and 27 marks in oral interview, thus totalling 100

marks. However, her name was not included in the select list. As against this, respondent No.4 Smt. Sujata Dagdu Jagtap, respondent No.5 Smt. Mohini Bapurao Honna, respondent No.6 Smt. Priyanka Bhausahab Nagargoje and respondent No.7 Smt. Deepa Bansilal Maheshwari got less marks than the applicant, were included in the category of Open (Female). It is stated that the applicant got total 100 marks and as against this, respondent No.4 Smt. Sujata Dagdu Jagtap got 99 marks, respondent No.5 Smt. Mohini Bapurao Honna got 99 marks, respondent No.6 Smt. Priyanka Bhausahab Nagargoje got 98 marks whereas respondent No.7 Smt. Deepa Bansilal Maheshwari got 93 marks, were included in the select list. It is the case of the applicant that, though she had applied from NT(B) category, she can be considered from Open category and also from Open (Female) category on merit. It is also the case of the applicant that, initially there were three posts reserved for NT(B) category as per advertisement NO. 5/2013 to 15/2013 dated 6.7.2013. But vide corrigendum dated 13.4.2016, reservation criteria was changed and reservation to NT(B) category was withdrawn. Thus, there was no reservation for NT(B) category. According to the applicant, the respondents cannot change the game after it begins and in popular words the said action is known as, "rule of game cannot be changed after game begins." It is, therefore, the case of the applicant that, she shall be

considered on merit from Open (Female) category or in the alternative from Open (General) category and hence this O.A.

6. The Maharashtra Public Service Commission (R.2) has filed affidavit in reply and admitted the fact that initially there was reservation for NT(B) category and three posts were reserved. But subsequently, said reservation was cancelled. According to the respondents, the applicant has applied from NT(B) category and, therefore, she cannot be considered for the post horizontally reserved for the category i.e. Open (Female). It is admitted that the applicant can be considered for Open (General) post. However, last candidate recommended for Open (General) category post has secured 143 marks as against 106 marks secured by the applicant and, therefore, there is no question of considering applicant's name for Open (General) category. It is further stated that the applicant has secured 73 marks in screening test. But cut off marks for screening test for Open (General) category and Open (Female) category is 90 marks. The applicant was, therefore, not held qualified for interview for the post reserved for Open (General) category. It is stated that as per Government Circular dated 13.8.2014, NT(B) category candidates cannot be considered for Open (Female) post, because this is compartmentalized reservation.

7. Heard Shri R.L. Khapre, the learned counsel for the applicant, Shri M.I. Khan, the learned P.O. for respondent Nos. 1 to 3 and

Shri N.M. Kolhe, the learned counsel for respondent Nos. 4 to 6. None appeared for respondent No.7.

8. The learned counsel for the applicant submits that the respondent authorities have changed the criteria for reservation after the candidates appeared for written examination and everything was over except issuing appointment orders and, therefore, there is a change of game after the game has begun and it is not admissible. In support of his contention, the learned counsel for the applicant has relied upon the judgment delivered by the Hon'ble Apex Court in case of **Tej Prakash Pathak and others V/s Rajasthan High Court and others reported in (2013)4 SCC 540.** In the said case, alteration of selection criteria after selection process has commenced and its permissibility has been considered. It was observed that undoubtedly, the State or its instrumentality cannot be permitted to tinkering with rules of game+ insofar as the prescription of eligibility criteria is concerned. In this case, the respondent authorities have not changed the eligibility criteria. But they have only reduced the number of posts to be filled in and also cancelled the reservation for NT(B) category. In the advertisement (Annexure A-1) No. 5/2013 to 15/2013, in condition No.1 itself, it is stated as under:-

“नमूद केले ाया पदसंयेत व आरणामये शासनाया संबंधित ावभागाया सूचनेनुसार बदल होयाची शयता आहे.”

This clearly shows that, in the advertisement itself, it was mentioned that there was likelihood of change of number of posts as well as reservation criteria. There is absolutely no dilution in qualification clause and, therefore, the said change cannot be said to be illegal.

9. The learned counsel for the applicant submits that so far as reservation for women for NT(B) category is concerned, the said reservation was deleted in view of corrigendum and, therefore, any woman applying for the post should be considered for the post reserved for Women from Open category. In the alternative, he submits that, though the applicant belongs to NT(B) category, she can compete the process from Open category. The learned counsel for the applicant relied on the judgment reported in **AIR 2007 SC 3127 in case of Rajesh Daria V/s Rajasthan Public Service Commission and others.** He further submits that the candidates who have appeared for examination from NT (B) category have to be treated as General category candidates.

10. The learned P.O. submits that once the applicant has applied from NT (B) category, in no case, she can be considered for the post reserved for women category.

In this regard, this Tribunal has delivered a judgment in O.A. Nos .195 and 985 of 2015 in case of Harshada Avhad and others V/s State of Maharashtra and others by Mumbai Bench of this Tribunal on 25.1.2017. In the said case, the applicants applied from NT (D) women

category for which three posts were reserved, whereas some applicants applied from OBC category. They qualified in the preliminary examination, but their names were not in the list of candidates to participate in physical examination and interview. The applicants sought selection against Open (Female) category for which the cut off marks were 73. As per Government Circular dated 16.3.1999 the posts which are horizontally reserved for a particular vertical reservation category, cannot be filled in by candidates from other vertical reservation categories and if the suitable candidates from Open (Female) category are not available, the posts will have to be treated as Open and cannot be allowed to be filled in from NT (B) (Female) category. While referring to the G.R. dated 25.5.2001, this Tribunal has observed thus:-

This Tribunal has consistently taken a view based on various judgments of Honble Supreme Court that for horizontal reservation, open category is also a distinct vertical reservation category and an open post horizontally reserved for women can be filled only from women from open category and women from other vertical reservation categories are not eligible for appointment to the post reserved for open female category.+

11. In the said judgment, this Tribunal further observed thus:-
- In the case of **Laxmi Kanwar and another Vs. State (Panchayati Raj Department) and others in S.B. Civil W.P. No. 11119/2012** and others by judgment date d



15.3.2012, Hon'ble Rajasthan High Court has held as follows:-

It was held that everything being equal, preference can be given to the women. In that event, it would not violate Article 16 (2) of the Constitution of India, rather saved by Article 15 (3) of the Constitution of India. It can be thus safely held that so far as earmarking certain posts for women are concerned, it can be saved by Article 15 (3), if considered special provision for women and not by reservation. In the instant case, 30% posts have been reserved for women, but to simplify the issue, it can be construed to be a special provision for women to earmark 30% posts for them. By giving aforesaid interpretation, obvious violations of Article 16(2) would be avoided to save provision for keeping 30% posts for women under Article 15(3) of the Constitution of India without holding it to be reservation. Keeping 30% post for women may result and be loudly construed to be reservation, but argument aforesaid can be nullified by holding that for 30% posts for women by special provision, principle as applicable to the reservation would not be applicable. The posts meant for women would be filled from the category it is meant, without interchangeability as women are vulnerable in each category as held in para 514 in the case of Indra Sawhney (supra). There keeping posts for women category-wise is made permissible. The obvious deviation from the general principle of reservation is regarding interchangeability. In reservation, open/general category means every

category, but if it is construed to be special provision, it would not be required to be dealt with the same principle of inter changeability as applicable in reservation and while doing so, different between reservation and special provision would come out and is required to be made otherwise there would be no difference in reservation and special provision. The special provision would provide post to each class separately as women are vulnerable in each category, whether General, SC, ST and OBC." (emphasis supplied).

This judgment has extensively referred to the judgment of Hon'ble Supreme Court in **INDIRA SAWHNEY** (supra) while arriving at conclusion that the general post, horizontally reserved for women cannot be transferred to other categories

10. In the case of **PUBLIC SERVICE COMMISSION, UTTRANCHAL Vs. MAMTA BISHT & ORS: (2010) 12 SCC 204**, it was pleaded on behalf of the Appellant that:-

"The High Court failed to consider the principle that if a reserved category candidate secures more marks than the last selected candidate in the general category, then he is to be appointed against general category vacancy, does not apply while giving the benefit of horizontal reservation."

It was argued on behalf of the Respondent no. 1. Viz Mamta Bisht, that she has succeeded before the High Court on the sole ground that the last selected candidate receiving the benefit of horizontal

reservation in favour of Uttaranchal Women could be appointed against the general category vacancy and Respondent no. 1 ought to have been selected giving her benefit of horizontal reservation in favour of Uttaranchal women. The Hon'ble Supreme Court, allowed the appeal against the order of High Court, based on the judgment in RAJESH DARIA's case (supra). In para 13, it is observed by Hon'ble Supreme Court, that:-

"In fact, the High Court allowed the writ petition "only on the ground that the horizontal reservation is also to be applied as vertical reservation in favour of reserved category candidates (social)

It is quite clear that the Hon'ble Supreme Court held that horizontal reservation cannot be applied as vertical reservation in favour of reserved category candidate.

**11.** Aurangabad Bench of this Tribunal by judgment dated 26.8.2009 in O.A no 301 of 2009 (Irfan Mustafa Shaikh 86 Ors Vs. State of Maharashtra 86 Ors) has held that open-Home Guard post cannot be filled by a Home Guard from any reserved category. This judgment was upheld by Hon'ble High Court (Aurangabad Bench) in Writ Petition no 272/2010 by judgment dated 15.11.2010. Hon'ble High Court held that:-

"4. The Learned Tribunal while allowing the Original Application has held that in so far as the horizontal reservation is concerned, the candidates from particular category are only entitled to be considered against the

posts reserved for such category. It has further been held that the candidates from one category, for which horizontal reservation is provided, cannot be considered for selection against the post reserved for another horizontal reservation. The view taken by the Learned Tribunal is in consonance with the law laid down by the Apex Court in the case of Rajesh Kumar Dania Vs. Rajasthan Public Service Commission & Others, reported in AIR 2007 SC 3127, wherein it has been held that while filling the posts reserved for horizontal reservation, firstly the candidates from that particular category only be taken into consideration and only if there is a shortfall, then the recourse would be taken to go to another candidate for fulfilling the said quota."

This judgment was upheld by the Hon'ble Supreme Court in C.C. 15802/2011 by judgment dated 27.9.2011. Hon'ble Supreme Court has held that:-

"In our view the explanation given by the petitioners for delay of 173 days in filing the special leave petition is fully unsatisfactory and does not warrant exercise by this Court under Section 5 of the Limitation Act, 1963. Even on merits, we are satisfied that the reasons assigned by the Tribunal for issuing a direction for appointment of the Respondent no. 1 were legally correct and the High Court did not commit any error by declining interference with the Tribunal's order."

12. In O.A. No. 195 and 985 of 2015 as stated (supra), this Tribunal has referred to the judgment delivered by the Supreme Court in **Anil Kumar Gupta and others V/s State of U.P. and others (1995) 5 SCC 173** in which following observations were made by the Supreme Court:-

%We are of the opinion that in the interest of avoiding any complications and intractable problems, it would better that in future any horizontal reservations are compartmentalized in the sense explained above."

In para 15 of the aforesaid judgment, Hon'ble Supreme Court has not favoured 'overall horizontal reservation' as it may, in a hypothetical case of female reservation, result in all the 30% seats going to women from open category, if no female for S.C, S.T etc. is found eligible and 30% reservation for women has to be necessarily filled. A reverse situation may also arise. So, if the open female posts are allowed to be filled by females from other vertical reservation category, it may result in different horizontal reservation criteria being applied to open-female category than the one being applied for other vertical reservation category females. This would be inadmissible in our opinion. Such an action will be discriminatory and arbitrary.

Our attention was drawn to judgment of Hon'ble Bombay High Court dated 10.7.2015 in Writ Petition no 64/2015. However, in this

case the selection of a person from NT-D category, who had applied for Open-PAP post from open-category was challenged. In the present case, the Applicants have not applied from open category and not given up their caste claim.

13. The learned counsel for the applicant has also referred to the judgment delivered by the High court of Judicature at Bombay in case of **Kanchan Vishwanath Jagtap V/s Maharashtra Administrative Tribunal, Nagpur and others reported in 2016 (1) Mh.L.J. 934**, in which it has been held that if the SC candidates get selected in open competition on the basis of their own merit, they will not be counted against the quota reserved for SC. They will be treated as open competition candidates. It was further observed that meritorious candidates in women category belonging to reserved category cannot be denied the benefit of their meritorious position. In this case, the Honble High Court has considered as to whether the Tribunal has rightly considered the law laid down by Honble Apex Court in the case of **Rajesh Daria V/s Rajasthan Public Service Commission and others reported in AIR 2007 (8) 8 SCC 785**. While referring to para Nos. 7, 8 and 9 of the judgment of Rajesh Daria case, the Bombay High Court has observed as under:-

% The perusal of the aforesaid observations of Their Lordships would reveal that the Apex Court has held that the reservations in favour of SC, ST and OBC under

Article 16 (4) were vertical reservation, whereas special reservations in favour of physically handicapped, women etc. under Article 16 (1) or 15 (3) are horizontal reservations. It has been held that 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. It is further held that 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 that the reservation quota for SCs has been filled. It has been further held that the entire reservation quota will be intact and available in addition to those selected under Open Competition category.

**8.** However insofar as horizontal reservation is concerned, Their Lordships held that the said principle would not be applicable to it. It has been held that where a special reservation for women is provided within the social reservation for S.Cs, the proper procedure is first to fill up the quota for SCs 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+~~ It has been further held that 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. It has been further held that only if there is any shortfall, the requisite number of SC women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to SCs. Their Lordships held that thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women.

9. It could thus be seen that the case that fell for consideration before Their Lordships of the Apex Court was regarding the compartmentalized reservation. In the said case, reservation was provided for various categories including SC, ST, OBC and within that reservation, particular number of posts were reserved for women category. In that view of the matter, Their Lordships held that the women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women.+

14. From the aforesaid observation, it is clear that the case reported in **Kanchan Vishwanath Jagtap V/s Maharashtra Administrative Tribunal, Nagpur** (supra) is regarding non-compartmentalized reservation and, therefore, this case will not be applicable in the present set of facts. In the present case, reservations are provided for different categories. The horizontal reservation was also provided for women category, which in itself, is an independent category and, therefore, the candidates from one category for which horizontal



reservation is provided, cannot be considered for selection against the posts reserved for any other horizontal reservation.

15. From the record, it seems that the reservation for women was specifically provided under different categories. As per that reservation, eight posts were reserved for Open (Female), one post for Open (SC Female), one post for Open (ST Female), one post for NT (C) and one post for OBC (Female) and all these posts are filled in. As far as reservation of Open (Female) category is concerned, it seems that one Miss Shikha Ashok Biswas, Shyamal Suresh Panpattiwari, one Sheikh Munaza and one Vinaya Gopalrao Rajeshwarkar were considered from Open (Female) category and these candidates acquired more than 80 marks in the written examination (screening test) and were considered from Open (Female) category. These four posts were considered from Open (Female) category as per merit. Similarly, from the reserved category for women, one candidate from SC (Female). Two candidates from ST (Female), one from NT (A) and one from OBC (Female) categories were recommended. Remaining four posts which were to be filled in from Open (Female) category were also considered and for that purpose, the respondent Nos. 4 to 7 were selected. Since the applicant has applied from NT (B) category, there was absolutely no reason to consider her in horizontal reservation for Open (Female). It is, however, admitted that the applicant was entitled to be considered from Open

(General) category, provided she competes the Open (General) category candidates. The respondents have stated in their reply affidavit that last candidate recommended from Open (General) category post, has secured 143 marks whereas the applicant has secured only 100 marks and, therefore, she cannot compete Open (General) category having got less marks than the last candidate eligible from Open (General) category candidate and, therefore, the applicant has rightly been held ineligible for selection.

16. The learned counsel for the applicant submits that respondent No.6, though selected from Open (Female) category, her appointment order has been cancelled, since she refused to join. He has also invited my attention to the order in this regard which is page No.99. The learned counsel for the applicant further submits that since the order of Smt. Deepa Bansilal Maheshwari (R.7) has been cancelled, one post is lying vacant of Open (Female) category and the applicant may be accommodated in her place. However, for the reasons already stated, applicant's case cannot be considered for Open (Female) category, since she has not applied to the post from Open (Female) category. The applicant has applied for the post from NT(B) category, reservation for which was subsequently cancelled and, therefore, at the most the applicant can be considered eligible for being considered from Open (General) category. The respondents have stated that the applicant was

in fact considered from Open (General) category also, but since she could not compete the last candidate selected from Open (General) category, her claim was rejected and the applicant could not find place in the select list. As already stated, last candidate from Open (General) category has secured 146 marks as against 100 marks secured by the applicant and, therefore, she was not considered. I, therefore, do not find any illegality in the action of the respondents in not considering the applicant to be included in the list of selected candidates. Hence, the following order:-

**ORDER**

The O.A. stands dismissed with no order as to costs.

Dt. 5.12.2017.

(J.D.Kulkarni)  
Vice-Chairman(J)