

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 694 OF 2015 [MUMBAI]
ORIGINAL APPLICATION NO 392 OF 2014 [AURANGABAD]**

DISTRICT : AURANGABAD

Mohammad Akif Abrar S/o Mohd)
Abdul Rauf)
R/o: House No. 814, Near Gurwar)
Bazar, Pensionpura, Chhavani Area)
Aurangabad.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Chief Presenting Officer)
Maharashtra Administrative Tribunal)
Bench at Aurangabad.)
2. The Director,)
Ground Water Survey & Development)
Shivajinagar, Pune.)
3. The Deputy Director of Ground)
Water Survey and Development)
Agency, Aurangabad cum)

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- President Divisional Selection)
 Committee, Aurangabad.
4. Smt Harishi H. Kavatekar,)
 Occ : Service as Sr. Geologist,)
 R/o: Office Ground Water Survey)
 Development Agency, Parbhani,)
 Dist-Parbhani.)
5. Shri Anil Daulatrao Solunke,)
 Occ : Service Sr. Geologist,)
 R/o: Office Ground Water Survey)
 Development Agency, Osmanabad,)
 Dist-Osmanabad.)...**Respondents**

Shri V.B Wagh, learned advocate for the Applicant.

Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents no 1 to 3.

Shri K.R Jagdale, learned advocate for Respondent no. 5.

None for Respondent no. 4.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 15.02.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri V.B Wagh, learned advocate for the Applicant, Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents no 1 to 3 and Shri K.R

Jagdale, learned advocate for Respondent no. 5. None for Respondent no. 4.

2. This Original Application has been filed by the Applicant challenging the selection of the Respondents no 4 and 5 to the post of Geographical Information System Assistant from open category in the posts horizontally reserved, as the Respondents had reserved 100% posts horizontally.

3. Learned Counsel for the Applicant argued that the Respondent no. 3 had issued advertisement dated 14.1.2013 to fill inter-alia, 5 posts of Geographical Information System Assistant. All the posts were horizontally reserved, apart from reservation for OBC and Scheduled Tribe categories. Learned Counsel for the Applicant argued that 100% reservation is against the law laid down by Hon'ble Supreme Court in various judgments. Even vertical reservation cannot exceed 50%. Nature of horizontal reservation is such that it has to be compartmentalized within the vertical (social)_ reservation categories. Though, vertical reservation has to be carried forward, the same is not the case for horizontal reservation, which cannot be carried forward. Learned Counsel for the Applicant argued that by carrying forward horizontal reservation and reserving 100% posts horizontally, the Respondent have committed illegality and the selection process has become illegal and

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it has to be modified. The Applicant is eligible to be selected from open category and he may be declared selected for the post, by ignoring horizontal reservation.

4. Learned Chief Presenting Officer (C.P.O) argued on behalf of the Respondent nos 1 to 3 that the selection for the posts of Geographical Information System Assistants was done in a fair and transparent manner. The number of vacancies were determined on the basis of various vertical and horizontal reservation categories. Learned Chief Presenting Officer argued that for recruitment, there is 52% vertical reservation viz. 13% for Scheduled Caste (S.C), 7% for Scheduled Tribe (S.T) , 11% for D.T-N.T, 2% for Special Backward Category and 19% for O.B.C. However, this limit of 50% does not apply to horizontal reservation, which exceeds 50% (30% for Women, 15% for Ex-Servicemen, 15% for Part-Time Employees, 5% for Sports person etc). Learned C.P.O contended that the vacancy position was worked out by the Respondents based on the Government circular dated 25.10.2005. As the posts reserved horizontally for Ex-Servicemen, Women, Sports person and Part-Time Employee categories were vacant, the advertisement no. 1/2013 was issued, reserving posts accordingly. Learned C.P.O argued that the Applicant had applied from open category and he was allowed to appear for written text, practical examination and interview. However, though the Applicant's name was at Sr. No. 1 in the merit list, he

could not be given appointment, as he did not come in any of the horizontal reservation category in which open posts were reserved. Learned C.P.O argued that the O.A is misconceived and deserves to be dismissed.

5. Learned Advocate Shri Jagdale, argued on behalf of Respondent no. 5 that the Respondent no. 5 has been selected in the post horizontally reserved for Part-Time Employee from open category. The Applicant can be accommodate in the open post which was horizontally reserved for Ex-Servicemen category, which could not be filled.

6. WE find that the Respondent no. 3 had issued advertisement no. 1/2013 (date is either 14.1.2013 or 14.1.2014) to fill up various posts, including the post of Geographical Information System Assistant. The Applicant had applied from open category and he was placed at no. 1 in the merit list in the selection process. The Applicant claims that he should be declared selected as the Respondents no 1 to 3 had applied horizontal reservation in a wrong manner. The Respondents no 1 to 3, however, claim that horizontal reservation is as per various Government orders, especially Government Circular dated 25.10.2005 (P. 66 of the Paper Book). We find that the aforesaid Circular prescribes guidelines to fill Group 'C' & 'D' posts in the Government. Para 3 deals with horizontal reservation and some categories of



horizontal reservation, viz Ex-Servicemen, Project Affected Persons, Physically handicapped, Women and Sports persons are mentioned. Obviously, this list is not complete as the Respondent no. 5 is selected from the Part Time Employee (अंशकालीन) category. However, this Circular makes it very clear that horizontal reservation is compartmentalized and such reservation has to be provided within vertical reservation for different categories. We are unable to find any provision in this Circular regarding carrying forward of unfilled horizontally reserved vacancies. Our attention is drawn to Government Resolution dated 25.5.2001 which deals with horizontal reservation for Women. It is seen that:-

Clause 1(8) reads:- महिलांच्या आरक्षणाच्या अनुशेष पुढे ओढण्यात येऊ नये”.

sub clause (7) reads:-

भरतीच्या वर्षात त्या त्या प्रवर्गातील महिला उमेदवार उपलब्ध झाल्या नाहीत तर सदर आरक्षण इतरत्र अदलाबदल न करता त्या त्या प्रवर्गातील पुरुष उमेदवारांमार्फत भरण्यात यावे”.

From these provisions, it is clear that horizontal reservation has to be worked out based on the vacancies in a particular year, unlike vertical reservation, which is worked out on the number of total vacancies in an establishment. If in a year, some vacancies are reserved horizontally, and if they are not filled for want of suitable candidates, they are added to general vacancies from that vertical reservation category. In the clause 1(7) of the

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G.R, work 'पुरुष उमेदवार' is used. However, it should be read as general category as reservation for Women is subject to production of Non-Creamy Layer (NCL) Certificate and Women not coming in NCL category have to compete as general candidates from their respective vertical reservation category, e.g open or O.B.C etc. As per the above provision, if Open-Women candidates are not available, the unfilled posts, will be added to Open-general category. Similarly, for OBC- Women post, will be added to OBC-general category. It is, thus clear that horizontal reservation posts are to be worked out on the basis of available vacancies (not sanctioned strength) in a particular year and they cannot be carried forward. Whatever is applicable to horizontal reservation for Women will apply to other horizontal reservation categories also. On this basis, number of posts horizontally reserved in a particular vertical reservation category will necessarily be less than 100%. In the present case, 5 posts of Geographical Information System Assistant were to be filled. The following vertical reservation was provided:

Open	-	3
O.B.C	-	1
S.T	-	<u>1</u>
TOTAL	-	<u>5</u>

30% reservation for Women, (which is Compartmentalized) has to be worked out only on the

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posts from various vertical reservation categories. From open, for 3 posts 30% reservation comes to 0.9, which can be rounded off to 1. There could not have been any other horizontal reservation from open category e.g. for Sports as 5% of 3 comes to 0.15, which has to be ignored. Similarly, for 15% reservation for Part Time Employees, it will come to 0.45, which again has to be ignored. Similarly, there could not have been any horizontal reservation for any category from O.B.C and S.T categories as one post each was to be filled.

7. The Applicant had applied from Open Category and he has stood first in the merit list. However, it is not a simple matter between him and the Respondents no 1 to 3. If the Respondent no. 3 had issued correct advertisement, showing that only one of the open post was reserved horizontally for Women candidate, many more candidates could have applied. The advertisement no. 1/2013 issued by the Respondent no. 3 clearly violated the instructions of Hon. Supreme Court which have been mentioned in Government Circular dated 25.10.2005 in para (a), which reads:-

“६. सर्वोच्च न्यायालयाचे न्यायनिर्णय

(अ) मा.सर्वोच्च न्यायालयाने सिव्हील अप्लीकेशन क्रमांक ११६४६/११७२४/१९९६ प्रकरणी शासकीय/निजशासकीय तसचे खाजगी आस्थापनेतील रिक्त पदे भरण्याबाबत असे निर्देश दिले आहेत की, रिक्त पदाबाबत सर्व प्रसारमाध्यमातून जसे वर्तमानपत्रे, दूरदर्शन, रेडीओ, नोटीस बोर्ड, रोजगार पत्र

इत्यादीमध्ये जाहिरात प्रसिध्द करून मागविण्यात यावेत. अशाप्रकारे प्राप्त होणा-या सर्व अर्जांचा निवडीसाठी विचार करण्यात यावा.”

8. In the present case, the advertisement issued by the Respondent no. 3 was restrictive in nature. As all the posts were horizontally reserved, general candidates were not given opportunity to apply for the posts. The whole selection process is incurably vitiated and the request of the Applicant that he may be declared selected cannot be accepted.

9. As a result, the selection of the Respondents no. 4 & 5 is quashed and set aside, as the advertisement pursuant to which they were selected was issued in violation of law. In fact, the whole selection for the post of Geographical Information System Assistant is vitiated and has to be quashed. However, the request of the Applicant for appointment as Geographical Information System Assistant is rejected. This Original Application is disposed of accordingly with no order as to costs.

Sd/-
(R.B. Malik)
Member (J)

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 15.02.2016 (16.2.2016)

Dictation taken by : A.K. Nair.