

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.697 OF 2014

DISTRICT : THANE

Mr. Nitin Rajendra Jadhav,)
R/at. SRP Camp, Group 7, 565 Quarters,)
Room No.41/1, Daund, District Pune.)

.... APPLICANT

VERSUS

1. The Commandant,)
State Reserve Police Force,)
Group 7, Daund, Dist. Pune,)
2. Mr. Shivkumar Baban Patole,)
Pavnewadi, Tal. Baramati,)
Dist. Pune.)

....RESPONDENTS

Shri K.R. Jagdale, learned Counsel for the Applicant.

Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN
SHRI R.B. MALIK, MEMBER (J)

DATE : 03.05.2016.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

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J U D G M E N T

1. Heard Shri K.R. Jagdale, learned Counsel for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the communication dated 25.07.2014 from the Respondent No.1 informing him that he was not eligible to be selected as Police Constable from VJ.A. category, as one of the two posts reserved for VJ.A. category, was filled on compassionate basis. The Applicant is also seeking appointment as Police Constable for VJ.A category.

3. Learned Counsel for the Applicant argued that the Applicant has applied for the post of Police Constable pursuant to the advertisement issued by the Respondent No.1 on 30.04.2014 for recruitment of Police Constables viz. Maharashtra State Police Constables Recruitment, 2014. Initially, 140 posts were required to be filled. However, by a corrigendum dated 17.05.2014, the number of posts to be filled was increased to 162. Out of 162 posts, 2 posts were reserved for VJ.A. category. The Applicant had applied for the post from VJ.A. category and scored 176 marks in the selection process. One other candidate from VJ.A. category scored 179 marks. The Applicant was, thus, fully eligible to be selected from VJ.A. category as he was placed at No.2 in VJ.A. category. However, the Respondent No.1 filled one post

from VJ.A, category by appointing the Respondent No.2, on compassionate basis. Learned Counsel for the Applicant argued that this action of the Respondent No.1 is contrary to Government Resolution for compassionate appointment and is totally arbitrary. It was mentioned in the corrigendum dated 17.05.2014, that 10% of the posts will be filled on compassionate ground. However, 10% posts for each vertical reservation category were required to be proportional to the vacancies available. For VJ.A. category, where only two posts were available and 10% would come to 0.2, which has to be ignored. Learned Counsel for the Applicant argued that 10% reservation for compassionate appointment should have been worked out as below :

Category	Total post	Compassionate posts under 10% reservation
Open	77	8
SC	32	3
ST	17	2
<u>VJ(A)</u>	<u>2</u>	<u>0</u>
NT(B)	7	1
NT(C)	9	1
NT(D)	5	0
SBC	3	0
OBC	10	1

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This would have ensured that 16 posts (10% of 162) were distributed in proportion to the vacancies across vertical reservation categories. Learned Counsel for the Applicant argued that the Respondent No.1 is justifying his action on paragraph (A) and (B) of Government circular dated 13.10.2010. However, there is nothing in this circular which will justify action of the Respondent No.1. Learned Counsel for the Applicant argued that the Respondent No.2 has since resigned and the Applicant can be appointed in the vacant post.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent No.1 that the Respondent No.2 was given compassionate appointment as per Rule 9 of the Armed Police Constables (Male) in the Maharashtra State Reserve Police Force (Recruitment) Rules, 2012. Learned P.O. argued that the appointment of the Applicant was in conformity with terms of G.A.D. circular dated 13.10.2010. It is true that the Respondent No.2 has since resigned and his resignation has been accepted by order dated 22.06.2015. However, the Applicant is not eligible to be appointed in that vacancy as per G.R. dated 19.10.2007 as the waiting list has expired.

5. We find that the Applicant is claiming that he was placed at Serial no.2 in the merit of candidates for VJ.A. category. This list was published on 22.06.2014. This fact is mentioned in paragraph 6.5 of the O.A. In the affidavit-in-reply, dated 10.09.2014, no comments are offered by the Respondent No.1,

which means that he had admitted this fact. In paragraph 2 of the affidavit-in-rejoinder, the Applicant has stated that the Respondent No.2 resigned on 28.05.2012. In the affidavit-in-sur-rejoinder, dated 10.02.2016, the Respondent No.1 has not denied this fact. It is, therefore, clear that the vacancy from VJ.A. category was available during the validity of the select list, which was published admittedly on 22.06.2014, as the Respondent No.2 had resigned on 28.05.2015. The Respondent No.1 is relying on paragraph 9 of G.R. dated 19.10.2007. We are rather surprised that learned P.O. is relying on this provision, though the same is replaced by paragraph 7 of G.R. dated 27.06.2008, which reads :-

“७. निवडसूचीची कालमर्यादा :-

दि. १९/१०/२००९ च्या आदेशातील परिच्छेद क्र.९ येथील तरतूदीमध्ये बदल करण्यात येत असून यापुढे निवडसमितिने तयार केलेली निवडसूची एक वर्षासाठी किंवा निवडसूची तयार करताना ज्या दिनांकापर्यंतची रिक्त पदे विचारात येण्यात आली आहेत त्या दिनांकापर्यंत, जे नंतर घडेल त्या दिनांकापर्यंत विधिग्राह्य ठरेल. त्यानंतर ही निवडसूची व्यापगत होईल.”

6. This Tribunal has, in a number of cases, including by judgment dated 13.04.2016 in O.A.No.690 of 2015 has held as follows :-

“This Tribunal, based on the judgment of Hon’ble Supreme Court and Hon’ble Madras High Court has held in a few cases that even if a person, who is selected and joins, but later resigns, the resultant vacancy can be filled by operationalising the waiting list, if it (waiting list) was valid on the date when such vacancy occurred.”

In the present case, vacancy occurred on 28.05.2015 when the Respondent No.2 resigned, the list was published on

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22.06.2014, and was valid till 21.06.2015. The Applicant is clearly eligible to be appointed in the post of Police Constable reserved for VJ.A. category which was available due to resignation of the Respondent No.2 as he is no.1 in the waiting list. It is not necessary to examine other issues raised by the Applicant.

7. Having regard to the aforesaid facts and circumstances of the case, the Respondent No.1 is directed to appoint the Applicant as Police Constable in the post reserved for VJ.A. category, if he is otherwise found fit, within a period of three months from the date of this order. This O.A. is allowed accordingly with no order as to costs.

Sd/-

(R.B. MALIK)
MEMBER(J)

Sd/-


(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 03.05.2016
Typed by : PRK