

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.70 OF 2023

DISTRICT: Solapur
Subject: Selection

1. Shri Harshraj D. More)
Age 29 years, R/at Anawali, Tal. Pandharpur,)
Dist. Solapur.)
2. Shri Pravin C. Suryawanshi, Age 27 years,)
R/at & Post Wadmurambi, Taluka Deoni,)
Dist. Latur 413519.)
3. Shri Ajay H. Patil, Age 29 Years, R/o Aai Baba)
Niwas, Chamaraga, Taluka Shirur Anantpal,)
Dist. Latur 413524.)...Applicant

Versus

1. The State of Maharashtra through the)
Principal Secretary, Urban Development Dept.)
Mantralaya, Mumbai 400 032.)
2. The Commissioner and Director, Municipal)
Administration, DMA Office, Belapur Bhavan,)
7th floor, CBD Belapur 400614.)....Respondents

Shri U. V. Bhosale, Counsel for the Applicant
Ms S. P. Manchekar, Chief Presenting Officer for the Respondent.

CORAM : Justice Mridula Bhatkar, Chairperson
Shri Debashish Chakrabarty, Member (A)

DATE : 15.01.2024

JUDGEMENT

1. Heard Shri U. V. Bhosale, learned Counsel for the Applicants and Ms
S. P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. The Applicants had appeared for 'Written Examination' for posts of 'Civil Engineer, Group 'C' pursuant to Advertisement dated 05.04.2018 issued by 'Respondent No.2 - Commissioner and Director of Municipal Administration, Navi Mumbai'. The Applicants were not selected and their names not included in 'Draft Select List' published on 19.11.2018.

3. Learned Counsel for Applicants stated that under 'Civil Engineer Group C' there are 'Three Grades' viz Grade 'A', Grade 'B' and Grade 'C'. The Applicants had appeared for all 367 posts included in 'Civil Engineer- Group C'.

4. Learned Counsel for Applicants stated that Respondents had published the 'Draft Selection List' on 19.11.2018 for 'Civil Engineer Group C in respect of Grade 'A', Grade 'B' and Grade 'C'. The total posts of 'Civil Engineer -Group C' which were 367 had been sub-classified in these 'Three Grades' as follows :-

- (i) Civil Engineer, Group C : Grade 'A'-19 Posts
- (ii) Civil Engineer Group C : Grade 'B'-172 Posts
- (iii) Civil Engineer Group C : Grade 'C'-176 Posts.

5. Learned Counsel for Applicants further stated that Respondents had published 'Waiting List' of candidates only for posts of 'Civil Engineer-Group C' : Grade 'C' on 16.09.2019. No separate 'Waiting List' were published for posts of 'Civil Engineer-Group C': Grade 'A' and 'Civil Engineer-Group C' : Grade 'B' although there were 'Vacant Posts'.

6. Learned Counsel for Applicants then stated that the 'Additional Draft Selection List' was published by Respondents on 19.05.2021 which was only in respect of posts of 'Civil Engineer Group C' : 'Grade C'. He emphasized that it is pertinent to note that names of Applicants were included in this 'Additional Draft Selection List'.

7. Learned Counsel for Applicants relied on the 'Additional Affidavit in Reply' filed by Shri Harshraj More on behalf of Applicants on 16.10.2023 in respect of this 'Additional Draft Selection List'. In 'Para No. 2' of the said 'Additional Affidavit in Reply', the Applicants have stated that in the 'Draft Selection List' of 'Civil Engineers-Group C' : 'Grade B', there were 7 candidates who had secured more marks than Applicants and although they were selected, their Appointment Orders were not issued. Hence, these 7 posts at higher level which remained vacant are of 'Civil Engineer-Group C' : Grade 'B'.

8. Learned Counsel for Applicants further submitted that last candidate who was selected for posts of 'Civil Engineer-Group C': Grade 'C' had secured 73.05 marks, while marks obtained by (i) Applicant No.1-Shri Harshraj Dattatray More is 72.5, (ii) Applicant No.2-Shri Pravin Chandrakant Suryawanshi is 73.00 and (iii) Applicant No.3-Shri Ajay Hansraj Patil is 73.00. Therefore, it was submitted by learned Counsel for Applicant that 'Selection Board' should have considered names of Applicants for selection in 'Civil Engineer -Group C' : Grade 'C' after few selected candidates of 'Grade C' were to be moved to 7 posts which at higher level remained vacant in 'Grade B'.

9. Learned Counsel for Applicants submits that Respondents No.2 has filed 'Additional Affidavit in Reply' filed on 03.10.2023 by Smt. Sadhana Patil, Assistant Commissioner, in office of 'Commissioner & Director of Municipal Administration, Navi Mumbai' on the point of 'Waiting List'. In 'Para 3' of said 'Additional Affidavit in Reply' though the Respondent No.2 has mentioned that "no waiting list would be published and no candidate can claim right towards it". However, on the contrary 1st 'Waiting List' was published for post of 'Civil Engineer- Group C' : Grade 'C' on 16.09.2019 and 2nd 'Waiting List' again for posts of 'Civil Engineer-Group 'C'- Grade 'C' was published on 19.05.2021.

10. Learned C.P.O. placed reliance on the 'Affidavit in Reply' filed on 27.02.2023 by Shri Sambhaji Waghmare, Deputy Commissioner, in office of Commissioner & Director, Municipal Administration, Navi Mumbai and further placed reliance on 'Affidavit in Sur-Rejoinder' filed by Smt. Sadhana Patil, Assistant Commissioner, in the office of Commissioner & Director, Directorate of Municipal Administration, Navi Mumbai on 03.10.2023. The relevant Paragraph Nos. 4.1 & 4.2 of this reads as below:-

"4.1 The present Applicants belong to Open Category and applied for the same as open candidates for the post of 'Civil Engineers' in the advertisement dated 07.04.2018, therefore the scope of the present Sur-Rejoinder will be constrained only to the Open Category. The status of the available and vacant posts of the 'Civil Engineers' for General Category as per the advertisement dated 7.04.2018 is as under :

No. of posts for General Category	Grade-A	Grade-B	Grade-C
Advertised	2	27	24
Filled in posts along with marks of the last candidate in the respective categories	2 Marks of the last candidate- 119.25	27 Marks of the last candidate 90.5	24 Marks of the last candidate 73.5

The marks obtained by the Applicant No.1, Shri Harshraj Dattatray More are 72.5, Applicant No.2, Shri Pravin Chandrakant Suryawanshi 73 and Applicant No.3, Shri Ajay Hansraj Patil is 73 and these marks are less than marks obtained by the last selected candidates from open category.

4.2. There is no waiting list published for the Grade-A and Grade-B as the posts are filled in. Moreover, the present Applicants have not secured more marks for seeking appointment against the Grade A and B. I say that waiting lists were prepared in the Grade C two times, one on 16.09.2019 and another on 19.05.2021.”

11. Learned C.P.O. further placed reliance on ‘Para 4.3.3’, ‘Para 4.3.4’ and ‘Para 4.3.5’ of this ‘Affidavit-in-Sur-Rejoinder’ filed on 03.10.2023 on behalf of Respondent No.2 which reads as follows : -

“4.3.3 Again on 19.05.2021, for three posts, additional selection list/second waiting list consisting of six candidates was published on 19.05.2021, whereby three candidates got selected and joined as per their appointment orders dated 30.12.2021. The additional selection list/second waiting list dated 19.05.2021 was for only three posts which remained vacant due to the candidates who chose to remain absent for document verification in the additional select list dated 19.05.2019. The name of the Applicants are below the three candidates who are issued appointment orders dated 30.12.2021. As all the three candidates above the Applicants joined against the three posts as per the additional select list dated 19.05.2019, no occasion arose for issuance of the appointment orders in the name of the Applicants in the Grade-C.

4.3.4 Therefore, the Applicants cannot claim appointment on the ground of their names appearing in the Additional Selection List/ Second Waiting List dated 19.05.2021 which was published by the Respondent No.2 for only three posts which remained vacant due to non-joining of three candidates in the additional list/first waiting list dated 16.09.2019 and those three candidates have joined the service.

4.3.5 The present Applicants also cannot claim appointment to the post of “Civil Engineers” as per advertisement dated 07.04.2018 from any other category of which posts are vacant nor to new advertisement dated 11.07.2023 which is published during the pendency of the present application.”

12. The main contention of learned Counsel for Applicants is that in respect of appointment in ‘Civil Engineer -Group C’ : Grade ‘B’ from the ‘General Open’ category out of total 27 posts which were advertised, only 20 posts have been filled up and so 7 higher posts available in Grade ‘B’ could be filled up by shifting selected candidates from ‘Grade-C’ to ‘Grade-B’.

13. The submissions of learned Counsel of Applicant and learned CPO were considered. The contention of learned Counsel for Applicants is that after shifting of selected candidates from Grade 'C' to 7 higher posts of 'Grade 'B' under 'Civil Engineer-Group C', the Applicant could be considered for appointment to those posts which would then become available in Grade 'C'. However, it is necessary to point out that for Grade 'B' posts the 'Cut-off Marks is 90.5 while present Applicants have secured 73.05, 73.00 and 73.00 marks respectively. Therefore, unless it is permissible to shift selected candidates from Grade 'C' to 7 higher posts in Grade 'B', there would be no scope for appointment of Applicants in Grade 'C'. Learned Counsel for Applicant has not argued about the merits of Applicants. The Applicants cannot be directly accommodated in the 7 higher posts available in Group 'B' in view of marks obtained by them which are much less than Cut-off Marks to Grade 'B' which is 90.5. Further, it is also necessary to mention that when there is 'Multi Cadre Examination' and for 'Civil Engineer -Group C', such shifting from Grade 'C' to Grade 'B' and Grade 'B' to Grade 'A' even if some higher posts remain vacant is not permissible. Hence, 'Waiting Lists' are not maintained by Respondent No.2.

14. Now, we take note of latest Advertisement issued on 11.07.2023 by Respondent No.2 especially 'Clause No.6.6.12' wherein it has been specifically clarified that no 'Waiting List' will be maintained and no candidate in the 'Common Merit List' shall have any claim against any vacant posts seeking to be shifting up from Grade 'C' to Grade 'B' and Grade 'B' to Grade 'A'. No such representations will be entertained by Respondent No.2 -Commissioner and

Director of Municipal Administration, Navi Mumbai. The 'Clause 6.6.12' reads as under:-

“6.6.12. भविष्यात कुठल्याही कारणास्तव कोणत्याही संवर्गातील वरिष्ठ श्रेणीतील पद रिक्त झाल्यास कनिष्ठ पदावरील उमेदवारास जसे श्रेणी-क वरून श्रेणी-ब वर व श्रेणी - ब वरून श्रेणी -अ वर रिक्त होणा-या पदावर हक्क सांगता येणार नाही किंवा श्रेणीवाढ करण्याची विनंती कोणत्याही परिस्थितीत मान्य करता येणार नाही. याबाबतची निवेदने प्राप्त झाल्यास कोणतीही कार्यवाही न करता परस्पर दफतर दाखल करण्यात येतील”

15. In view of above, we find no merit in case of Applicants. Hence, the following order :-

ORDER

- (A) Original Application is dismissed.
(B) No Order as to Costs.

Sd/-

(Debashish Chakrabarty)
Member (A)

Sd/-

(Mridula Bhatkar, J.)
Chairperson