

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.818 OF 2017**

**DISTRICT : MUMBAI**

**Sub.:- Denial of Appointment**

Shri Abhishek Manish Surve. )  
Age : 20 Yrs, Occu. : Nil, )  
R/o. C/44, Naigaon New Police Line, )  
G.D. Ambekar Marg, Parel, Mumbai – 12. )...**Applicant**

**Versus**

1. The Commissioner of Police, Mumbai) )  
Having Office at Mumbai Police )  
Commissionerate, L.T. Marg, )  
Oppo. Crawford Market, Fort, )  
Mumbai – 400 001. )
2. The Additional Director General of ) )  
Police [Training and Special Unit], )  
M.S, Mumbai, Having Office in the )  
Office of Director General and )  
Inspector General of Police, M.S, )  
Mumbai, Old Council Hall, )  
Shahid Bhagatsingh Marg, )  
Mumbai – 400 039. )
3. The State of Maharashtra. ) )  
Through Additional Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )
4. The Ganesh Shivaji Bhosale. ) )  
Aged : Adult, Occu.: Nil, )  
R/at 26, Ravivar Peth, Joshi Galli, )  
North Solapur – 413 005. )...**Respondents**

**Shri Gaurav A. Bandiwadekar, Advocate for Applicant.**

**Smt. K.S. Gaikwad, Presenting Officer for Respondent Nos.1 to 3.**

**None present for Respondent No.4.**

**CORAM : A.P. KURHEKAR, MEMBER-J  
DEBASHISH CHAKRABARTY, MEMBER-A**

**DATE : 22.06.2023**

**PER : A.P. KURHEKAR, MEMBER-J**

### **JUDGMENT**

1. The Applicant has challenged the communication dated 20.07.2017 issued by Respondent No.1 – Commissioner of Police, Mumbai thereby rejecting his candidature for the post of Police Constable Bandsman in the recruitment of 2017, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Respondent No.1 – Commissioner of Police, Mumbai issued Advertisement on 23.02.2017 to fill in 1717 posts of Police Constables and 39 posts of Police Constable Bandsman. Out of these 39 posts, one post was reserved for NT(B) category. The Applicant belongs to NT(B) category and participated in process. As per Recruitment Rules, the minimum educational qualification for Police Constable was 12<sup>th</sup> standard and for the post of Police Constable Bandsman, it was S.S.C. Insofar as physical fitness is concerned of the post of Police Constable, the candidate (male) should not have less than 165 cms. height and chest should not be less than 79 cms. Whereas for the post of Police Constable Bandsman, there is relaxation of 2.5 cms. in height and some relaxation for chest. The candidate will have to appear in physical fitness test of 100 marks and 50% is the minimum marks for appearing in written test of 100 marks for the post of Police Constable. Insofar as Police Constable Bandsman is concerned, the candidature is required to have experience to play musical instruments. The Applicant accordingly,

participated in recruitment process. He got 78 marks in physical fitness, 75 marks in musical test and 45 marks in written test. Whereas Respondent No.4 Ganesh Bhosle secured 90 marks in physical fitness, 28 marks in musical test and 79 marks in written test. Thus, Applicant's aggregate marks in all these three tests comes to 198 and aggregate marks of Respondent No.4 comes to 197. He, therefore, claims precedence over Respondent No.4.

3. During the process of recruitment, Respondent No.1, however, issued Circular dated 22.03.2017 adopting some different method for selection of Police Constable Bandsman as to how to calculate aggregate marks for selection of Police Constable Bandsman. The contents of Circular dated 22.03.2017 for averaging marks in musical test and written test is as under :-

“बँड्समन पदासाठी असलेले उमेदवारांची १०० मार्कांची संगितीक परीक्षेत मिळालेले गुण व त्यांना लेखी परीक्षेत १०० पैकी मिळालेल्या गुणांची बेरीज करून त्यांना दोनने भागून येणारे गुण त्यांच्या लेखी परीक्षेचे गुण धरावेत व त्यानुसार निवड यादी करावी. (उदा. संगित परीक्षा : ६० गुण + लेखी परीक्षा ७० गुण = १३० गुण --  $१३० \div २ = ६५$  हे गुण लेखी परीक्षेचे धरावेत.”

4. By this method, Respondent No.1 decided to overage the marks obtained by the candidate in musical test and written test and then to add his physical test marks therein for merit list.

5. As per this method, the marks allotted to the Applicant as well as Respondent No.4 comes as under :-

Candidates Name	DOB	Education	Category	Horz Resv	NCL	Ground Marks	Musical Marks	Written Marks	Total Marks	Remarks
						A	B	C	A+(B+C)/2	
Abhishek Manish Surve	26/06/1997	SSC	NT-B	None	Y	78	75	45	138	Waiting List General
Ganesh Shivaji Bhosale	09/05/1993	B.A.	NT-B	None	Y	90	28	79	143.5	Selected NT-B General

6. Thus, in result, Respondent No.4 secured 143.5 marks and Applicant has secured 138 marks. Since there was only one post of NT(B) category, the Respondent No.4 was selected and appointed.

7. It is on the above background, the Applicant has challenged the appointment of Respondent No.4 *inter-alia* contending that the method adopted by Respondent No.1 by Circular dated 22.03.2017 is totally in contravention of Rules and in absence of any such provision in Recruitment Rules, the formula adopted by Respondent No.1 is totally unsustainable.

8. Shri G.A. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned communication dated 20.07.2017 mainly on the ground that the criteria adopted by Respondent No.1 of overaging of marks by Circular dated 22.03.2017 is totally arbitrary and it is not permissible after the recruitment process was initiated. He emphasized that the Applicant being secured higher marks in musical test than Respondent No.4, the weightage ought to have been given to the musical marks obtained by the candidates, but it is because of novel method adopted by Respondent No.4, the Applicant is deprived of selection in very arbitrary and illegal manner. On this line of submission, he prayed to quash and set aside the impugned communication and to appoint the Applicant in place of Respondent No.4 by cancelling his selection.

9. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer in reference to stand taken in Affidavit-in-reply submits that the post of Police Constable Bandsman is also required to be filled in from the candidates who are eligible and selected for the post of Police Constable. She has further pointed out that even if the candidate is appointed on the post of Police Constable Bandsman, he too is required to discharge the duties of Police Constable. According to her, even if candidate is required to go through musical test, the precedence is to the marks for the selection for the post of Police Constable. Learned P.O. fairly

concedes that in Recruitment Rules, there is no such specific provision for minimum benchmark in musical test and all that one requires some experience to play musical instrument.

10. The learned P.O. placed reliance on Para 12.1 of the decision of Hon'ble Supreme Court in **Civil Appeal No.2164-2172 of 2023 [Tejvir Singh Sodhi & Ors. Vs. The State of Jammu & Kashmir & Ors.] decided on 28.03.2023**, which is as under :-

*“12.1 Thus, the inexorable conclusion that can be drawn is that it is not within the domain of the Courts, exercising the power of judicial review, to enter into the merits of a selection process, a task which is the prerogative of and is within the expert domain of a Selection Committee, subject of course to a caveat that if there are proven allegations of malfeasance or violations of statutory rules, only in such cases of inherent arbitrariness, can the Courts intervene.*

*Thus, Courts while exercising the power of judicial review cannot step into the shoes of the Selection Committee or assume an appellate role to examine whether the marks awarded by the Selection Committee in the viva-voce are excessive and not corresponding to their performance in such test. The assessment and evaluation of the performance of candidates appearing before the Selection Committee/Interview Board should be best left to the members of the committee.”*

11. In view of submissions, the issue posed for our consideration is whether impugned communication dated 20.07.2017 thereby rejecting the candidature of the Applicant for the post of Police Constable Bandsman suffers from any such legal infirmity and is entitled for selection by cancelling selection and appointment of Respondent No.4.

12. True, ideally for the post of Police Constable Bandsman, the weightage needs to be given to the marks obtained in musical test by the candidate. However, for selection on the post of Police Constable Bandsman, he must stand in merit fulfilling the requirement and eligibility for the post of Police Constable, since post of Police Constable Bandsman are required to be filled in amongst the post for Police Constables. In other words, to be Police Constable Bandsman, he must be first Police Constable. It seems precisely for this reason, in

Recruitment Rules, no such specific provision is made prescribing benchmark in musical test. All that, for the post of Police Constable Bandsman, it requires some experience of playing musical instruments. Therefore, in absence of any such specific benchmark or criteria in musical test, only because Applicant had secured more marks in musical test than Respondent No.4, the selection of Respondent No.4 cannot be termed *ipso-facto* illegal or bad in law.

13. The method envisaged in Circular dated 22.03.2017 about averaging the marks obtained in musical test and written test and then to add marks obtained in physical test *per se* cannot be termed arbitrary or bad in law, particularly when there is no such provision in Recruitment Rules for the benchmark in musical test. By doing so, the Respondent No.1 gave weightage to the marks obtained in physical test and written test which is the criteria for selection to the post of Police Constable. As rightly pointed out by learned P.O. that once Applicant knowing well about the formula adopted by Respondent No.1 participated in the process, then he cannot challenge the selection process unless it is shown that the formula adopted by the Department is totally in contravention of the Recruitment Rules.

14. That apart, the same formula has been applied to fill-in all 39 posts of Police Constable Bandsman from various other reserved categories including open posts. Those remaining 38 candidates selected and already appointed on the post of Police Constable Bandsman are not party to this O.A. If the formula adopted by Respondent No.1 for averaging the marks obtained in musical test and written test is held incorrect, in that event, those 38 candidates will also be affected, but they are not party to this O.A. we are, therefore, afraid any such adverse finding could be recorded without hearing them.

15. That apart, even if we ignore the said formula of averaging the marks obtained in musical test and written test, in that event also, the

selection of Respondent No.4 can hardly be questioned, since it is strictly in consonance with the criteria laid down for selection in Recruitment Rules. Material to note, as per Recruitment Rules, merit list was to be published on the basis of aggregate marks obtained in physical test and written test. It has no reference of addition of marks obtained in musical test. Suffice to say, there is specific provision in Recruitment Rules for preparation of merit list by consolidating the marks obtained by the candidate in physical test and written test. In the present case, the Applicant secured 78 marks in physical test and 45 marks in written test and his aggregate marks comes to 123 marks. Whereas Respondent No.4 obtained 90 marks in physical test, 79 marks in written test and his consolidated marks comes to 169 marks. Thus, on merit also, Respondent No.4 having obtained higher marks, his selection is indefeasible. This aspect indeed tilts the scale in favour of Respondent No.4. As such, examining the matter from the criteria mentioned in Recruitment Rules itself, the claim of the Applicant for selection in place of Respondent No.4 is without any merit.

16. Thus, apparently, it is because of the method of averaging the marks obtained in musical test and written test adopted by Respondent No.1, the Applicant tried to challenge the selection of Respondent No.4 because he (Applicant) got more marks than Respondent No.4 in musical test. Had Respondent No.1 not applied this method and prepared select list strictly on the basis of Recruitment Rules which provides for declaration of result by consolidating the marks obtained in physical test and written test, the Applicant would not have got any such occasion to challenge the selection of Respondent No.4. Be that as it may, by applying the criteria provided for selection in Recruitment Rules for preparation of merit list by consolidating marks obtained in physical test and written test, the selection of Respondent No.4 cannot be faulted with.

17. Shri G.A. Bandiwadekar, learned Advocate for the Applicant to bolster up his contention placed reliance on **(2018) 11 SCC 352 (2018) 11 SCC 352 [Gaurav Pradhan & Ors. Vs. State of Rajasthan & Ors.]** which pertained to migrating reserved category candidates into general category candidates. In that case, on the basis of Circular issued by Rajasthan Government, the candidates belonging to reserved categories who have taken concession of age in reserved category were migrated to the unreserved vacancies which have resulted into denial of appointment to the candidates from unreserved vacancies. Hon'ble Supreme Court held that such migration is impermissible, but having found that those reserved category candidates appointed on migration against unreserved vacancies were not at fault should not be displaced. Therefore, they are allowed to continue by adjusting equities. The State was directed to work out and issue appropriate orders for appointment of such candidates who were as per their merit belonging to general category candidates entitled for appointment. Thus, the issue pertained to migration. Therefore, this Judgment is hardly of any assistance to the Applicant. No such equities can be done in the present case, since Respondent No.4 got more marks and entitled to selection in terms of Recruitment Rules even without applying formula of overaging of marks.

18. The learned Advocate for the Applicant further placed reliance on Para No.17 of the decision in **(2019) 20 SCC 17 [Dr. (Major) Meeta Sahai Vs. State of Bihar & Ors.]**, which is as under :-

*“17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.”*



19. In the present case, there is no such case of misconstruction of statutory rules or discriminating consequences arising therefrom. In that case, Advertisement was issued for the post of General Medical Officers restricting the work experience only as experience gained in Government Hospital. The Appellant did not challenge the selection process but questioned Respondents' interpretation of 'work experience'. The Appellant had work experience in Army Hospital and was not considered for weightage on the ground that the Rules mandated only service rendered in Government Hospital has to be counted. It is in that context, Hon'ble Supreme Court held that since interpretation of statute or Rule is exclusively domain of Courts, the challenge made by the Applicant is maintainable even after participating in process. Whereas in the present case, there is no such issue of interpretation of Rules. As such, in our considered opinion, the Applicant cannot derive any benefits from these decisions in the present matter.

20. The totality of aforesaid discussion leads us to conclude that the challenge to the impugned communication dated 20.07.2017 holds no water and O.A. is liable to be dismissed. Hence, the order.

### **ORDER**

The Original Application is dismissed with no order as to costs.

Sd/-  
**(DEBASHISH CHAKRABARTI)**  
**Member-A**

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai  
Date : 22.06.2023  
Dictation taken by :  
S.K. Wamanse.

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