

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,  
BENCH AT AURANGABAD.

**ORIGINAL APPLICATION NO. 414 OF 2015**

DIST. : AURANGABAD.

Babasaheb Bhikan Thombre,  
Selected candidate for Junior Clerk,  
In the office of Divisional Commissioner  
Social Welfare, Aurangabad,  
Dr. Babasaheb Ambedkar Samajik  
Nayya Bhavan, Behind Government Dairy,  
Khokadpura, Aurangabad. --- APPLICANT.

VERSUS

1. The State of Maharashtra,  
Through Principal Secretary,  
Social Welfare Department,  
Mantralaya, Mumbai -2.
2. Commissioner for Social Welfare  
3, Church Road, Maharashtra State,  
Pune 411 001.
3. The Divisional Commissioner,  
Social Welfare, Aurangabad Division,  
Dr. Babasaheb Ambedkar Samajik Nayya  
Bhavan, Behind Government Dairy,  
Khokadpura, Aurangabad.
4. Ajay s/o Indal Jarwal,  
Age. 22 years, Occu. Nil,  
R/o Warzadi, Tq. Gangapur,  
Dist. Aurangabad. -- RESPONDENTS

-----  
APPEARANCE : Shri S.V. Chandole, learned Advocate  
for the applicant.

: Shri N.U. Yadav – learned Presenting Officer for the respondent Nos. 1 to 3.

: Shri A.D. Gadekar – learned Advocate for respondent No. 4.

---

**CORAM** : **HON'BLE SHRI RAJIV AGARWAL,**  
**VICE CHAIRMAN (A).**  
**AND**  
: **HON'BLE SHRI B.P. PATIL,**  
**MEMBER (J)**

---

**DATE** : **17<sup>TH</sup> FEBRUARY, 2017.**

---

**J U D G E M E N T**

**[ Per : Hon'ble Shri Rajiv Agarwal, Vice Chairman (A)]**

1. Heard Shri S.V. Chandole – learned Advocate for the applicant, Shri N.U. Yadav – learned Presenting Officer (P.O.) for the respondent nos. 1 to 3 and Shri A.D. Gadekar, learned Advocate for the Respondent no. 4.

2. Learned Advocate for the Applicant argued that the Applicant suffers from 100% handicapped and he is totally blind while the Respondent No. 4 is partially blind and suffers 40% disability. 2 posts of Junior Clerk in Aurangabad Division were reserved for persons suffering vision-related disability in the advertisement issued by the

Respondent No. 2 on 18.8.2014. The Applicant had applied for the said post from Open Category. Learned Advocate for the Applicant stated that the Applicant appeared in the written examination and was successful. His name appeared at Sr. No. 30 in the selection list dated 8.4.2015. However, the Applicant did not get the appointment letter, though he was called for verification of documents. The Applicant made representation on 23.4.2015. The Applicant received final selection list on 22.5.2015, in which his selection was cancelled. The Respondent No. 2 gave appointment letter to the Respondent No. 4 who belongs to S.T. category. The Applicant filed Writ Petition No. 5273/2015 and by order dated 3.7.2015, was granted interim relief. Learned Advocate for the Applicant argued that the Respondent No. 4 was already selected from S.T. Category and there was no reason to adjust him against the post reserved for physically handicapped person. The Respondent No. 2 has not followed Government Circular dated 18.7.2007, which provides that preference is to be given to 100% blind person. The action of the Respondent No. 2 in deleting the name of the Applicant from the list of

successful candidates without giving him any notice is against the principles of natural justice. Learned Advocate for the Applicant argued that the Applicant is entitled to be selected for the post reserved for physically handicapped persons for low-vision category.

3. Learned Presenting Officer (P.O.) argued on behalf of the Respondent Nos. 1 to 3 that only one post of Junior Clerk was horizontally reserved for physically handicapped person from Aurangabad Division and not two as claimed by the Applicant. As per Government Resolution (not Circular), dated 18.6.2007, for selection of physically handicapped persons, merit is the main consideration. If two such candidates have equal marks in the selection process, preference is to be given to person suffering from higher disability. In the case of vision related disability, if two persons get equal marks, the person with higher disability will be preferred. As the Applicant has 100% disability, he could have been preferred, if the Respondent No. 4 had secured marks equal to marks obtained by the Applicant in the selection process. However, the Applicant scored 113 marks while the Respondent No. 4 scored

130.50 marks. As regards the claim of the Applicant that the Respondent No. 4 was already selected from S.T. Category and, therefore, should not have been selected for the post for physically handicapped person, Learned Presenting Officer argued that reservation for physically handicapped persons is horizontal reservation, which is different from vertical (social) reservation. As per the Government Circular dated 19.3.2010, for selection of a physically handicapped person by nomination, separate merit list of such candidates, disregarding the social reservation to which they belong, is to be prepared and the person selected is to be included in the vertical reservation category to which he belongs. As the Respondent No. 4 was most meritorious candidate from amongst vision related handicapped persons, he was selected from that category. As he belongs to S.T. category, he was adjusted against vacancy from that category. Learned Presenting Officer argued that the selection of the Respondent No. 4 is fully in accordance with law.

4. Let us first examine as to how many vacancies were reserved for physically handicapped persons for the post

of Junior Clerk in Aurangabad Division. From the advertisement dated 18.8.2014 issued by the Respondent No. 2, (Exhibit 'A-2' page-36 of the paper book), it is seen that a total of 37 posts of Junior Clerks were to be filled from Aurangabad Division, out of which 17 were open. Out of these, the following posts were horizontally reserved, viz :

- 3-Ex Servicemen;
- 5-Women;
- 1-Project Affected Person;
- 1-Blind/partially blind;
- 2-part time; and
- 1-Sports person.

It is clear that one post was horizontally reserved for blind/partially blind person. The Applicant's claim is that post was reserved for blind/partially blind person from Open Category. This is not correct as horizontal reservation for physically handicapped persons is worked out as per Government Circular dated 19.3.2010, which is at Exhibit 'R-1' (page-74 of the paper book). Relevant extract is reproduced below :

“शासन परिपत्रक:-

सर्व नियुक्ती प्राधिका-यांनी आता अपंगांची सरळ सेवेने नियुक्ती करतांना वरील संदर्भ क्रमांक १ येथील दिनांक १६.३.१९९९ च्या परिपत्रकामधील कार्यपध्दतीचा अवलंब न करता वरील सुचनांनुसारच म्हणजे अपंगाची आरक्षित पदे सरळ सेवेने भरतांना ती सामाजिक प्रवर्गात न दर्शविता ती स्वतंत्रपणे दर्शविण्यांत येऊन अपंगाची पद भरती करण्याची कार्यवाही करावी. मात्र निवड झालेल्या उमेदवारांना ते ज्या सामाजिक प्रवर्गातील असतील त्याच प्रवर्गात समांतर आरक्षण म्हणून सामावून घ्यावे. तसेच, या व्यतिरिक्त वर नमूद केल्याप्रमाणे शासनाच्या ऑफीस मेमोरंडम दिनांक २९/१२/२००५ मधील इतर मार्गदर्शक तत्वानुसार अपंगाची पदे भरण्याची कार्यवाही करणे आवश्यक आहे.”

5. From the merit list prepared for the post of Junior Clerk in Aurangabad Division, it is seen that the Respondent No. 4, who suffers from 40% vision related disability (partially blind) scored 130.50 marks while the Applicant scored 113 marks. While selecting candidates, social reservation category of physically handicapped category is not important. The fact that the Respondent No. 4 belonged to S.T. category is not relevant. Only after selection, he has to be adjusted against S.T. category. Coming to G.R. dated 18.6.2007 (Exhibit A-9, page-56 of the paper book), it is stated that:

“----- जी पदे अंधाच्यावर नमूद केलेल्या सर्व प्रवर्गासाठी सुयोग्य ठरविण्यात आली असतील अशा पदांवर नियुक्ती देतांना अंध अपंगामध्ये गुणवत्ता प्रथम व अपंगत्वाची अधिक टक्केवारी याला प्रथम प्राधान्य देण्यात यावे.”

6. As the Applicant did not obtain equal marks with the Respondent No. 4, the question of giving him preference does not arise. The action of the Respondent No. 2 in selecting the Respondent No. 4 from blind/partially blind category was correct, and the Applicant cannot claim any relief, just because his name appeared in the provisional selection list. The Respondent No. 2 evidently corrected his mistake while preparing the final selection list.

7. Learned Advocate for the Applicant argued that a State-wise selection list should have been prepared for Junior Clerks by the Respondent No. 2. This claim is not as per rules, as the cadre of the Jr. Clerks in Social Welfare Commissionerate is a divisional cadre and appointing authority is Regional Joint Commissioner of Social Welfare in each division. The Respondent No. 2 is only the selection authority. We do not find that the principles of natural justice is violated as the Applicant was neither selected or given appointment order. The mistake in preparing provisional selection list was corrected while preparing the final selection list. No notice was required to be given to the Applicant.



8. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

**MEMBER (J)**

**VICE CHAIRMAN (A)**

O.A.NO.414-2015(hdd)-2017(DB)