

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI, BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 454 OF 2016**

**DISTRICT : AURANGABAD**

Dhiraj s/o Ramdas Mote, )  
Occ : Nil, R/o: Prithivi Park, )  
Padhegaon, Tal & Dist-Aurangabad **...APPLICANT**

**VERSUS**

1. The State of Maharashtra, )  
Through the Secretary, )  
Revenue & Forest Department, )  
Mantralaya, Mumbai. )
2. The Addl. Principal Chief Conservator )  
of Forest, (Admin Subordinate )  
cadres, M.S, Nagpur. )
3. The Chief Conservator of Forest (T) )  
Aurangabad Forest Division, )  
Aurangabad. )
4. The Dy. Conservator of Forest, (T), )  
Aurangabad Forest Division, )  
Aurangabad. ) **..RESPONDENTS**

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

Shri V.R Bhumkar, learned Presenting Officer for the Respondents no 1 to 3.

Shri Vivek Bhavthankar, learned advocate for Respondent no. 4.

**CORAM** : **Shri Rajiv Agarwal, (Vice-Chairman)**  
**Shri B.P Patil (Member) (J)**

**DATE** : **08.03. 2017**

**PER** : **Shri Rajiv Agarwal, (Vice-Chairman)**

### **ORDER**

1. Heard Shri V.B Wagh, learned Advocate for the Applicant, Shri V.R Bhumkar, learned Presenting Officer (P.O) for the Respondents no 1 to 3 and Shri Vivek Bhavthankar, learned advocate for Respondent no. 4.

2. This Original Application has been filed by the Applicant challenging the selection process for the post of Driver. The Applicant had prayed that impugned order dated 9.3.2015 may be modified to allot marks as prescribed in G.R dated 19.10.2007.

3. Learned Counsel for the Applicant argued that the Respondent no. 4 issued an advertisement on 1.3.2012 to fill up, inter alia, 4 posts of Drivers. By a later corrigendum the number of posts was increased to 8. As per para 5(3) of G.R

dated 19.10.2007, for the post of Driver, the following procedure is required to be followed:-

“ (३) शालांत परीक्षा उत्तीर्णपेक्षा कमी अर्हता आवश्यक असलेल्या उदा. सुतार, गवंडी, वाहनचालक इत्यादी संवर्गातील पदांसाठी व्यावसायिक चाचणी, आवश्यक तेथे शारिरीक क्षमतेची चाचणी व मुलाखत घेणे आवश्यक असल्यामुळे अशा उमेदवारांची निवड करतांना ५० गुणांची व्यावसायिक चाचणी, आवश्यक तेथे ४० गुणांची शारिरीक क्षमतेची चाचणी व मुलाखतीसाठी १० गुण ठेवून उमेदवारांची निवड करण्यात यावी. ज्या पदांसाठी शारिरीक क्षमतेची चाचणी घेण्याची आवश्यकता नाही अशा पदांसाठी ९० गुणांची व्यावसायिक चाचणी व मुलाखतीसाठी १० गुण ठेवून उमेदवारांची निवड करण्यात यावी.”

In short, as physical fitness test was not required the marks should have been allotted out of 90, i.e. 90 marks for Professional Proficiency and 10 marks in interview. The Respondent no 4, however, divided Professional Test in two parts, 40 marks for technical written examination and 50 marks were divided as follows:-

- (i) LMV Driving test : 20 marks
- (ii) HMT Driving test : 20 marks
- (iii) Care taking of vehicle : 10 marks

However, in actual practice, 40 marks for LMV, 40 marks for HMT and 10 marks for care taking of vehicles were allotted, ignoring the marks in written examination. By this process, the Applicant was eliminated along with others. The Respondent no. 4 has given information under the Right to Information Act to the Caste Tribe Union by letter dated

10.9.2012 that 50 marks were for practical professional test, 40 marks for written professional test and 10 marks for oral test were awarded. However, that is not correct. Learned Counsel for the Applicant stated that due to these illegalities, the Respondent no. 2 had cancelled the selection process by letter dated 9.3.2015 and 6.4.2015. The Applicant is seeking modification in order dated 9.3.2015 in this Original Application.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents no 1 to 3 that the selection process for the post of Drivers was cancelled by the Respondent no. 2 by order dated 9.3.2015. However, by judgment dated 13.12.2016 in O.A no 202/2015, this Tribunal has quashed the aforesaid order of the Respondent no. 2 dated 9.3.2015. The Applicant is seeking modification in this order, which amounts to a review of earlier judgment of this Tribunal, which is not permissible.

5. Learned Advocate Shri Bhavthankar, argued on behalf of Respondent no. 4 that in O.A no 202/2015, though there were some technical deficiency noted by this Tribunal, but the process of selection of Drivers has been upheld by this Tribunal. There is no merit in the present Original Application.

6. We find that the selection process for selection to the post of Drivers, pursuant to the advertisement dated

1.3.2012 has been challenged earlier in O.A no 756/2012 which was dismissed by judgment dated 9.1.2013. There was another Original Application no 202/2015 filed before this Tribunal, in which the selected candidates have challenged the communication dated 9.3.2015 issued by the Respondent no. 2 cancelling the selection process. This Tribunal has passed the following order:-

- “(i) The O.A no 202/2015 stands allowed.
- (ii) The impugned communications dated 9.3.2015 and 6.4.2015 issued by the res. No. 2 the Additional Principal Chief Conservator of Forests (Admn. Subordinate Cadres), M.S, Nagpur (Annex A.6 & A.7 respectively) are quashed and set aside.
- (iii) The State Government is directed to initiate enquiry as regards illegalities committed by the res. authorities in respect of recruitment of various posts consequent to the advertisement issued by the Res. no. 4 on 29.2.2012 and the corrigendum to it on 7.3.2012 and to take action against the erring officers as may be deemed fit in the circumstances and shall intimate about the action thereon to this Tribunal within a period of 6 months from the date of this order.”

Date of advertisement in the aforesaid judgment is mentioned as 29.2.2012, while the Applicant in para 4.2 of this Original Application has given the date as 1.3.2012.

7. The main controversy, in the present O.A is about system of allotment of marks. As per para 5(3) of G.R dated 19.10.2007, as no physical fitness test was required, the marks should have been allotted as 90 marks for professional proficiency test and 10 marks for oral interview. In the impugned order dated 9.3.2015 has stated that the Respondent no. 4 has allotted 40 marks for written test, 90 marks for professional proficiency test and 60 marks for oral interview. As a result, too much weightage was given to oral interview. In fact, oral marks should have been 10% (10 out of 100) but they were given around 32% weightage (60 out of 190 marks). This Tribunal has analyzed this issue in para 8 of the judgment dated 13.12.2016 in O.A no 202/2015. It appears that marks were allotted in written examination out of 40 (column 3), for practical test in professional proficiency, marks were given out of 40 by R.T.O (for LMV, column 4) and by S.T (for HMT, column 5) also out of 40. However, average of these marks is taken in column 6. Column 7 has marks awarded by D.C.F out of 10 for care taking of vehicle and column 8 has marks out of 10 for oral interview. There were certain mistakes in taking average, but in the final result, the marks for professional proficiency were allotted to the extent of 90 and oral interview that of 10. At the time of interview, marks awarded by different members of interview board were shown, but average of marks given by six members was taken. We find that the claim of the Applicant that G.R dated 19.10.2007 was not followed, is not correct. Though in the oral interview marks given by each of the six members of

interview board were added, but actually average of marks were taken to make it out of 10 marks. Actual weightage given to oral interview was only 10%. Similarly for LMV & HMTV, marks given by two bodies, viz. RTO & ST out of 40 each were shown, but average has been taken. For care taking of vehicles, marks awarded by DCF/ACF out of 10 have been considered and 40 marks were for written professional test. The total marks for professional test come to 90 marks. This is clear from the marks allotted to candidates from open category as attached to letter of the Respondent no. 4 dated 21.9.2013 (Exhibit R-2) addressed to Maharashtra State S.C/S.T Commission. It is also mentioned in the aforesaid letter that the present Applicant has applied from open category, though he claims that he belongs to S.C category.

8. We are unable to find any manipulation in the marks allotted to candidates in the aforesaid selection process. There were some minor mistakes of averaging of marks given by R.T.O & S.T, but that will have no effect on the prospects of the present Applicant. In para 4.4 of this Original Application, the Applicant has admitted that he had applied from open category. The Applicant was placed at Sr. No. 7 and there were five posts from open category. He was, therefore, ineligible for selection to the post of Driver from open category, from which he had applied. We do not find any merit in this Original Application.

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

**B.P. PATIL  
(MEMBER. J)**

**RAJIV AGARWAL  
(VICE-CHAIRMAN)**

**Date : 08.03.2017  
Place : Aurangabad  
Dictation taken by : A.K Nair**

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