

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

**ORIGINAL APPLICATION NO.165 OF 2013**

**DISTRICT : Beed**

Shri Arvind M. Vidyagar )  
Age: 43 years, Occ: Service )  
R/o. Takshshila Nagar, Nalanda Chowk, )  
Dhanora Road (West Side), Beed, )  
Tq. & Dist. Beed. )...**Applicant**

**VERSUS**

1. The State of Maharashtra, through )  
Chief Presenting Officer, Maharashtra )  
Administrative Tribunal, Aurangabad. )
2. The Secretary, MPSC, M.G. Road, )  
Bank of India Building, IIrd floor, )  
Hutatma Chowk, Fort, Mumbai. )
3. Principal Secretary, School Education )  
And Sports Department, Mantralaya, )  
Mumbai. )
4. Kiran S. Borawadekar, Occu. Service, )  
R/o. A/p Jamsande, Sahakar Nagar, )  
Tal-Devgad, (Amarchandra Nivas), )  
Jamsande Sindhudurg-416612. ) **....Respondents**

Shri J.S. Choudhary, the learned Advocate for the Applicant.

Mrs. Sanjivani Ghate Deshmukh, learned Presenting Officer  
for the Respondent Nos 1 to 3. None 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 J.S. Choudhary, the learned Advocate for the Applicant and Mrs. Sanjivani Ghate Deshmukh, learned Presenting Officer for the Respondent Nos.1 to 3. None for the Respondent No.4.

2. This Original Application has been filed by the Applicant challenging selection of the Respondent No.4 for the post of District Sports Officer (Assistant Director of Sports and Youth Service, Group A (in short D.S.O., hereinafter) from Scheduled Caste (S.C.) category. The Applicant is seeking selection for the said post of D.S.O.

3. Learned Counsel for the Applicant argued that the Respondent No.2 had issued an advertisement for selection to 14 posts of D.S.O. on 28.01.2009. There was one post reserved for S.C. category. The Applicant had applied for the post from S.C. category and was allowed by the Respondent No.2 to participate in the selection process. The result was declared on 19.06.2012. The Applicant's name was not included in the list of successful candidates. The Applicant made a representation to the Respondent No.2 on

20.12.2012. As no satisfactory reply was received, this O.A. has been filed.

4. Learned Counsel for the Applicant argued that the Applicant belongs to S.C. category and was interviewed along with two other S.C. candidates for one post reserved for S.C. category. The Respondent No.2 declared result on 19.06.2012, and the list of unsuccessful candidates was declared in which the name of the Respondent No.4 was also included. However, by order dated 06.02.2013 (Exhibit 'G') the Respondent No.4 was declared successful from S.C. category. As the Respondent No.4 was declared ineligible for selection on 19.06.2012, he must have scored 40 or less marks out of 100 in the interview. Such a person cannot be selected, whatever category he may belongs to. The Applicant's case was not considered by M.P.S.C. The action of the Respondent No.2 is malicious and there is a strong possibility of manipulation of record.

5. Learned Presenting Officer (P.O.) argued on behalf of Respondent Nos. 1 to 3 that the present O.A. is totally misconceived. The Applicant is relying on the list published by the Respondent No.2 of 42 candidates, who were 'not recommended' by the Respondent No.2. 'Not recommended' does not mean that they were found ineligible for selection. In fact, there were a total of 14 vacancies and the Respondent No.2 had declared result of only 12 vacancies on 19.06.2012. Result of one post reserved for S.C. category and another post from open-female category were withheld

due to pendency of O.A. No.289/2011 before Nagpur Bench at this Tribunal (for S.C.post) and O.A.No.446/2011 before Mumbai Bench (for open - female post). O.A. No.289/2011 was decided on 06.02.2013 and the name of Shri Borawadekar was recommended on merit by letter dated 06.02.2013 itself. Learned P.O. argued that the other O.A. was also decided and the W.P.No.5777 of 2012 against the order of Mumbai Bench of this Tribunal was disposed of by judgment dated 16.10.2012 by Hon'ble High Court. A copy of that judgment is placed on record, however, it does not have any relevance in the present O.A. Learned P.O. strongly argued that the Applicant is making baseless allegations against the Respondent No.2.

6. Though the Respondent No.4 was absent during the final hearing, he has filed his affidavit in reply on 03.07.2013. He has stated in the aforesaid affidavit that the result for S.C. category was not declared on 19.06.2012, when result of 12 out of 14 posts was declared, as O.A. No.289/2011 was pending before Nagpur Bench of this Tribunal regarding one post reserved for S.C. category. That O.A. was decided on 06.02.2013 and on the same day the Respondent No.2 declared the result for post reserved for S.C. category. The Respondent No.4 was most meritorious from amongst the candidates for S.C. category and he was selected accordingly.

7. We find that the Applicant is mainly relying on the fact that the Respondent No.2 has issued letter to the

Respondent No.4 on 02.07.2012 that his name was not recommended for the post of D.S.O. (Exhibit 'E'). The Respondent No.2 in the affidavit in reply dated 01.04.2013 has explained that for one post of S.C. category, a total of 33 candidates were prima-facie found eligible. The Respondent No.2 restricted the number of S.C. candidates who were called for interview to 6 by applying appropriate short listing criteria. One candidate was absent for interview and another was recommended for open post on the basis of marks obtained by him. The result was declared by the Respondent No.2 on 19.06.2012 for 12 posts out of 14 advertised. A total of 42 candidates, including the Applicant and the Respondent No.4 were not recommended by the Respondent No.2. That list is at Exhibit R-3 (P.37 of the Paper-Book). All 42 candidates were informed accordingly. The claim of the Applicant that he was not informed about this by the Respondent No.2 does not appear to be correct. The name of the Applicant is at Sr.No.2 and that of the Respondent No.4 is at Sr.No.4 in the list of 42 non-recommended candidates. The Applicant is reading this list along with the letter of the Respondent No.2 dated 23.05.2011 wherein, it was informed that a candidate who scores 40 or less marks in the interview will not be eligible to be recommended. This inference of the Applicant that all non-recommended candidates scored less than 40 marks in interview is a pure conjecture. This has been explained by the Respondent No.2 in para 6 of the affidavit in reply as follows:-

‘As stated in the instructions, candidates scoring more than 40% marks in interview are only considered for

recommendation. However, not all the candidates scoring more than 40% marks are recommended. The number of vacancies available are also required to be taken into consideration. Since Shri Borawadekar was high in merit his name was recommended to the Govt. of Maharashtra in the SC category. This factual position has already been conveyed to Shri Vidyagar vide letter dated 22<sup>nd</sup> February, 2013.”

It is further explained in para 7 of the affidavit that the list of a total of 762 ineligible candidate was available on the web-site of the Respondent No.2.

8. From the affidavit in reply, of the Respondent No.2 dated 01.04.2013, it is clear that the list of 42 not-recommended candidates did not mean that all of them scored 40 or less marks in interview. It had no relevance in so far as the marks obtained by any of these candidates were concerned. This list only meant that they could not be considered as the vacancies were already filled. One vacancy from S.C. category had remained unfilled, the most meritorious S.C. candidate, viz. the Respondent No.4 was selected. There is no basis to assume that the Respondent No.4 was not recommended, so must have scored less than 40 marks.

9. The Applicant has challenged selection of the Respondent No.4 based on his (Respondent No.4's) inclusion in the list of 42 non-recommended candidates. The name of the Applicant is also in the same list. If the Applicant claims that all of them were not recommended as they had scored

40 or less marks in interview, then he admits that he also scored 40 or less marks and was ineligible for selection. In that case, on what basis, he is seeking selection for himself is not understood. He has no basis to seek selection to the post for which he had applied.

10. Having regard to the aforesaid facts and circumstances of the case, this O.A. 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 : VSM**

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