

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 25 of 2018 (D.B.)**

Rupali D/o Ashok Sondawale,
Aged about 29 years,
R/o Chandramani Nagar, L-9, Plot Nos.41,42,
Behind Medical College, Post Parvati Nagar,
Nagpur-440 027.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Excise, Mantralaya, Mumbai.
- 2) Maharashtra Public Service Commission,
Cooprej Telephone Exchange Building,
Maharshi Karve Marge, Cooprej, Mumbai-21
through its Secretary.
- 3) Renuka D/o Babasaheb Kamble,
- 4) Sunayna D/o Chandrakant Waghmare,
- 5) Snehal S/o Uday Kedare,
- 6) Pundlik S/o Vishwanath Jadhav,
Res. 3 to 6, C/o Office of MPSC,
Maharshi Karve Marge, Cooprej,
Mumbai-21.

Respondents.

**S/Shri N.R. and Mrs. K.N. Saboo, Advocates for the applicant.
Shri A.P. Potnis, learned P.O. for respondent nos. 1&2.
S/Shri D.U. Thakare, H.D. Mohod, Ms. R. Waghmare, Advs. for
respondent nos.4&5.
None for respondent no.3&6**

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J) and
Hon'ble Shri Shree Bhagwan, Member(A).**

JUDGMENT**PER : V.C. (J).****(Delivered on this 28th day of August,2018)**

Heard Shri N.R. Saboo, learned counsel for the applicant, Shri A.P. Potnis, learned P.O. for respondent nos.1&2 and Shri D.U. Thakre, learned counsel for respondent nos. 4 and 5. None for respondent nos.3&6.

2. The applicant was duly qualified for the post of Sub-Inspector in State Excise Department and therefore in response to the advertisement dated 13/01/2017 issued by the MPSC she participated in the process of recruitment. The applicant belongs to SC category and her sub-caste is "Mahar". On 08/01/2018 respondent MPSC notified the merit list as well as select list and the applicant had secured 122 marks. She was shown to be selected and eligible for SC (general), SC (female) and SC (sport) category. However, the respondent nos. 3 to 6 who scored less marks than the applicant were shown to be selected against SC (general) and SC (female). It is stated that the selection of respondent nos. 3 to 6 is therefore against the directions issued by the Hon'ble Apex Court reported in the case of **Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Ors.,AIR 2007 SC 3127 (1)** and in the case of **Anil Kumar Gupta Vs. State of U.P.** The applicant should have been considered from SC (general) or SC (female) since she

has secured more marks than respondent nos. 3 to 6 were appointed under said category. It is therefore prayed that the selection of respondent nos. 4 to 6 for the post of Sub-Inspector in State Excise Department main as per selection of examination-2017 notified as per select list at Annex-A-5 be quashed and set aside and the MPSC be directed to select and recommend the applicant's name for the said post against SC (general) or SC (female) category.

3. The MPSC (R/2) tried to justify the process and non selection of applicant and selection of respondent nos. 3 to 6. According to the MPSC, the applicant belongs to SC (sports) category and her prayer cannot be accepted since as per online application she has applied for SC (sports) category. The process as per G.Rs. dated 16/03/1999 and 13/08/2014 has been followed and the applicant's name has been rightly recommended for sports reserved category. It is however admitted that the applicant had applied for SC (female) as well as SC (sports) category and has paid the requisite fees, i.e., Rs.373/- for the said examination. It is admitted that the respondent no.3, Smt. Renuka D/o Babasaheb Kamble got 121 marks and respondent no.4, Smt. Sunayana Chandrakant Waghmare got 110 marks and both of them were selected for SC (female) category. It is further stated that the respondent no.5, Smt. Snehal S/o Uday Kedare and respondent

no.6, Shri Pundlik Vishwanath Jadhav got 118 and 119 marks respectively and were recommended for SC (general).

4. The respondent nos. 4 and 5 also filed reply-affidavit and justified their selection.

5. We have heard the learned counsel for the applicant and learned P.O. Though it is stated by the respondents that the applicant applied for SC (sport) category and her claim was considered for SC (sport) category, it will be clear from the record that even though the applicant has applied under SC (sports) category, she has not specified the sports event in which she participated. Her application form is at P.B. page no.70 which clearly shows that she has applied for all 3 categories, i.e., SC (general), SC (female) and SC (sports).

6. The application form about the sport category states that the person who has to apply from sports category has to mention the name of the Game in which he / she participated. The list of such recognised sports competition and the status of meritorious sports person is to be mentioned. From the application form of the applicant, it seems that she has not specified under which sports she has participated and whether she was meritorious or not. In such circumstances, the applicant's claim so far as SC (sports) category is concerned, should have been rejected. The list of candidates eligible

for recommendation is placed on record and the name of the applicant in the said list is at sr.no.163 at P.B. page no.28. From the said list, it seems that the claim of the applicant was considered for SC (general) and SC (female) as well as SC (sports), but she was recommended for SC (sports) only. As already stated since the applicant has not specified the sports event in which she participated, her claim for SC (sports) should not have been considered and her claim should have been considered only for SC (general) or SC (female). It is admitted fact that the applicant has obtained 122 marks, whereas, the respondent nos. 3 to 6 have obtained less marks than her. The last candidate selected for SC (general) has secured 121 marks as against, 122 marks obtained by the applicant, whereas, the last candidate selected for SC (female) has obtained 110 marks. Since the applicant has secured 122 marks which is more than the persons selected for SC (general) as well as SC (female), there is no reason as to why the applicant was not considered for SC (general) or SC (female). There was absolutely no hitch in selecting the applicant for SC (general) category. We are therefore satisfied that the recommendation of the applicant for SC (sports) category is not legal. In fact, she should have been recommended for SC (general) or in any case for SC (female). We, therefore, pass the following order :-

ORDER

The O.A. is partly allowed. We hereby direct the respondent no.2, i.e., the MPSC to recommend the applicant for the post of Sub-Inspector in State Excise Department against SC (general) or SC (female) as the case may be. Necessary recommendation shall be made within one month from the date of this order. Instead of quashing the selection of respondent nos. 4 to 6 for the post of Sub-Inspector in State Excise Department main as per the selection of 2017, we observe that the consequence of selection of the applicant as directed by this Tribunal will follow the consequence in respect of respondent nos. 4 to 6 as per its own merits. No order as to costs.

(Shree Bhagwan)
Member(A).

(J.D. Kulkarni)
Vice-Chairman (J).

Dated :- 28/08/2018.

dnk.