

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 1017/2021(D.B.)**

Sajjad S/o Subhan Choudhary,  
Aged about 28 years, Occu: Nil,  
R/o Jam Mohall, Mohta Mill Road,  
Gawlipura Akola Dist.&Tah Akola

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Secretary,  
Home Department,  
Mantralaya, Mumbai-32.
- 2) Additional Director,  
General Of Police Training &  
Special Unit Maharashtra  
State Mumbai.
- 3) Superintendent of Police  
Akola District Akola
- 4) Vikrant S/o. BharatraoSonone  
Aged about 28 year Occ. Nil R/o.  
Ratanganj, Third NagobaMandir,  
Near RamuKirana, Amravati.

**Respondents**

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Shri P.B.Patil, Ld. Counsel for the applicant.  
ShriS.A.Deo, Ld. P.O. for the respondents.

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**Coram:- Shri Shree Bhagwan, Vice-Chairman and**  
**Hon'ble Shri M.A.Lovekar, Member (J).**  
**Dated: - 17<sup>th</sup> June 2022.**

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**JUDGMENT****Per :Member (I).****Judgment is reserved on 15<sup>th</sup> June, 2022.****Judgment is pronounced on 17<sup>th</sup> June, 2022.**

Heard Shri P.B.Patil, learned counsel for the applicant and ShriS.A.Deo, learned P.O. for the Respondents.

2. In this O.A. the applicant is aggrieved by the communication dated 29.10.2021 (Annexure A-8) whereby he, along with othersimilarly placed persons, was treated to have incurred disqualification on account of having made more than one application for the post of Police Constable Driver in different units.

3. Record of the case shows that the applicant applied for the post of Police Constable Driver on the establishment of armed Police Constable in S.R.P.F. (Annexure A-3) as well as establishment of Railway Police (Annexure A-4).

4. A batch of 11 Original Applications was decided by common judgment dated 20.04.2022 by this tribunal in which the point for determination was the same i.e. whether an applicant, by submitting more than one application each for the post advertised can be said to have committed breach of a condition stipulated in clause 11.10 of the advertisement dated 30.11.2019 (Annexure A-1) and would

thereby incur disqualification. While deciding this issue this Tribunal held.

3. *Clause 11.10 of the advertisement dated 30.11.2019 which has given rise to these O.As. is as under:-*

“११.१० उमेदवारास (१)जिल्हा पोलीस दलातील पोलीस आयुक्त / पोलीस अधीक्षक यांच्या आस्थापनेवरील पोलीस शिपाई चालक, (२) लोहमार्ग पोलीस दलातील पोलीस शिपाई चालक व (३) राज्य राखीव पोलीस बलातील सशस्त्र पोलीस शिपाई पदासाठी एक अशा एकूण पदांसाठी तीन आवेदन अर्ज सादर करता येतील। **महिला उमेदवारांना राज्य राखीव पोलीस बलातील सशस्त्र पोलीस शिपाई पदासाठी आवेदन अर्ज सादर करता येणार नाही।**

एकाच पोलीस घटकातील एकाच पदासाठी एकापेक्षा जास्त अर्ज सादर करता येणार नाहीत(उदाहरणार्थ-पोलीस आयुक्त, बृहन्मुंबई यांच्या आस्थापनेवरील पोलीस शिपाई चालक पदासाठी एकापेक्षा जास्त अर्ज भरता येणार नाहीत किंवा राज्य राखीव पोलीस बलातील एकाच गटात सशस्त्र पोलीस शिपाई पदासाठी एकापेक्षा जास्त अर्ज भरता येणार नाहीत). जर एका उमेदवाराने एकाच पोलीस घटकातील एकाच पदासाठी एकापेक्षा अधिक अर्ज केलेले आहेत. असे आढळून आले तर अशी उमेदवारांची उमेदवारी रद्द केली जाईल.

एकाच पदासाठी विविध पोलीस घटकांत आवेदन अर्ज सादर करता येणार नाहीत.”

4. *For the sake of clarity we would divide Clause 11.10 in the advertisement dated 30.11.2019 in following four parts:-*

*Part one refers to three posts – two of Police Constable Driver and one of Armed Police Constable in S.R.P.F. Out of two posts of Police Constable Driver one is jointly for the establishments of Police Commissioner and Police Superintendent. Presence of “/” between the description of these two separate establishments in the advertisement would strengthen this conclusion. Further conclusion which would follow, having regard to two prohibitions contained in this clause to which we will advert later on, is that the candidate had to choose between these two*

*establishments before making an application for the post of Police Constable Driver and he could not make an application for the post of Police Constable Driver on both these establishments. The other post of Police Constable Driver was on the establishment of Railway Police. The remaining and the third post was of Armed Police Constable in S.R.P.F.. Thus, in all, there were three distinct, separate posts for four distinct units. Mention of four separate units and three separate posts would also show that the candidates had to choose between the establishments of Police Commissioner and Police Superintendent before making an application for the post of Police Constable Driver. Had liberty to simultaneously apply for this post on the establishments of Police Commissioner as well as Police Superintendent both been given, there would have been four distinct, separate posts and not three. Thus, this part is enabling, rather than prohibitory, in nature.*

*Part 2 refers to the first prohibition. It lays down that for one post in a unit a candidate could not file more than one application. As per Rule 2(g) of the Maharashtra Assistant Police Sub Inspector Driver, Police Head Constable Driver, Police Naik Driver and Police Constable Driver (Recruitment) Rules 2019 "Police Unit" means office of the Commissioner of Police / Superintendent of Police.*

*Part 3 refers to the manner in which the first prohibition mentioned above shall operate, and the consequence of cancellation of candidature which breach thereof may entail.*

*Part 4 refers to the second prohibition. It lays down that it would not be permissible to make an application for the same post in more than one unit.*

*Thus, part 1 of Clause 11.10 is enabling in nature, parts 2 and 4 are prohibitory in nature and part 3 is clarificatory in nature.*

5. *Record shows that with regard to what the Clause 11.10 expressly prohibited there was no certainty in the mind of Unit Heads. Therefore, they sought guidance from their superiors. To set their doubts at rest a Circular dated - \_\_-10-2021 was issued. In this Circular Clause 11.10 of advertisement dated 30.11.2019 was reproduced. In addition, it was stated-*

“उपरोक्त प्रमाणे तरतूद असतांना चालक पोलीस शिपाई पदासाठी आवेदन अर्ज केलेल्या २८९७ उमेदवारांनी एकापेक्षा अधिक घटकांत आवेदन अर्ज सादर केला आहे. त्याची यादी यासोबत जोडली आहे.

तरी उपरोक्त तरतूदीच्या आधारे जर ते उमेदवार अंतिम निवड यादीमध्ये पात्र होत असल्यास त्याच्या नियुक्त्या तात्काळ रद्द करण्यात यावे व केलेल्या कार्यवाहीबाबतचा अनुपालन अहवाल या कार्यालयास सादर करावा.”

6. *On 27.12.2021 a Circular was issued stating therein -*

“२. काही घटक प्रमुखांनी एकापेक्षा अधिक घटक कार्यालयासाठी अर्ज करणा-या उमेदवारांच्या बाबत शंका उपस्थित केल्या आहेत. त्याबाबत असे कळविण्यात येते की हे फक्त दुस-या टप्प्यातील भरती प्रक्रियेच्या जाहिरातीसाठी लागू आहे त्यात पोलीस शिपाई चालक आणि राज्य राखीव पोलीस बल या भरती प्रक्रियेचा समावेश आहे. एकापेक्षा अधिक घटक प्रमुखांच्या आस्थापनेवर अर्ज करणा-या उमेदवारांना अपात्र करण्याबाबतचा निर्णय हा पहिल्या टप्प्यातील भरती प्रक्रियेसाठी लागू राहणार नाही. सदरहू प्रकरणी संबंधित vendor यांच्याकडून उमेदवारांची माहिती परत तपासण्यात यावी.

३. दुस-या टप्प्यातील भरती प्रक्रियेत जे उमेदवार पात्र झाले असतील त्या सर्व उमेदवारांकडून बॉण्ड करून घेण्यात यावा जर त्यांनी एकापेक्षा अधिक घटकांसाठी अर्ज केला असेल तर त्यांची निवड रद्द करण्यात येईल.”

7. *It is a matter of record that there were two phases of recruitment process of Police Constables, 2019. The first phase began with the advertisement dated 03.09.2019 and the second phase began with the advertisement dated 30.11.2019. In both these advertisements Clause 11.10 finds place. Clause 11.10 in the advertisement dated 30.11.2019 replicates Clause 11.10 in the advertisement dated 03.09.2019 except the last sentence (part 4 mentioned above) which creates an additional prohibition on making an application for the same post in more than one unit. The only prohibition contained in the advertisement dated 03.09.2019 was in respect of making more than one application for the same post in a unit.*

8. *Ld. counsel for the applicants invited our attention to para no. 2 of Circular dated 27.12.2021. In this para respondent no. 2 clarified that only the candidates belonging to the first phase who had applied for a post in more than one unit were not to incur disqualification on that count but the candidates belonging to the second phase who had done so were to incur such disqualification. According to the ld. counsel this is patently discriminatory and arbitrary and hence the applicants who participated in the second phase (by responding to the advertisement dated 30.11.2019) could not be deprived of relaxation which was extended to the candidates who had*

*participated in the first phase. To counter this submission ld. C.P.O. argued as under:-*

*“It is submitted that, after the publication of the first advertisement dated 03.09.2019 it was realized by the respondents that, many candidates had applied for the same post in more than one unit. Hence to avoid the duplicity and to fill all the vacancies it was decided to amend the next advertisement. Some of the candidates qualify for more than one place and later resign after completion of process and the said action on the part of the candidates creates delay and confusion in recruitment process. To avoid all the confusion and the delay in the recruitment process and to give chance to maximum number of candidates a conscious decision was taken to insert the last line in para 11.10 of the advertisement. In spite of that various complaints were received by the D.G. office that the various candidates have applied for same post in more than one unit. Therefore, the D.G. office vide communication dated 01.10.2021 have asked all the units to cancel the candidature of all the candidates who have applied for same post in more than one unit. A copy of which is filed herewith and marked as **Annexure-R-1.**”*

*According to ld. C.P.O. this second prohibition incorporated in the advertisement dated 30.11.2019 (part 4 mentioned above) would non-suit the applicants, said prohibition was not there in the advertisement dated 03.09.2019, this was the main reason why disqualification based on the said contingency was not made applicable to the candidates who had participated in the first phase, the candidates who had participated in the second phase*

were, on the other hand, made aware that making applications for the same post in more than one unit could entail disqualification and for these reasons present applicants who had participated in the second phase cannot claim relaxation which was extended to the candidates who had participated in the first phase.

9. To properly appreciate rival contentions set out hereinabove it would be necessary to pinpoint in what respect nature of Clause 11.10 was altered by incorporating the second prohibition.

10. For the sake of clarity we sub-divided Clause 11.10 in the advertisement dated 30.11.2019 in four parts. Part 1 refers to four distinct units and three distinct posts. This para enables a candidate to make as many as three applications – one each for a post. Part 2 creates the first prohibition which places an embargo on a candidate making more than one application for a post in a unit. Part 3 is an illustration which explains the first prohibition (which is in part 2). Part 4 creates an additional, second prohibition stating that for the same post a candidate could not make an application in more than one unit. It may be reiterated that this additional, second prohibition was not there in the first phase of recruitment which commenced with the publication of advertisement dated 03.09.2019.

11. Question which goes the root of the matters is whether Clause 11.10 of the advertisement dated 30.11.2019 is sufficiently clear to put the candidates applying in response to the same on guard as to what was permitted and what was prohibited. As mentioned earlier, part 1 of Clause 11.10 enables a candidate to



*submit three applications for three distinct, separate posts in 4 units which include two posts of Police Constable Driver – 1 each on the establishment of Police Commissioner/ Police Superintendent, and Railway Police. The third post is of Armed Police Constable under S.R.P.F.. When parts 1 & 4 of Clause 11.10 are juxtaposed, it becomes apparent that these two parts are irreconcilable. Clause 11.10 read as a whole, creates confusion. By extending benefit of relaxation to the candidates who had participated in the first phase, the respondent department tacitly conceded that Clause 11.10 of the advertisement dated 03.11.2019 certainly left something to be desired in terms of clarity and there was a loophole which needed to be plugged. This was sought to be remedied by incorporating the second prohibition in Clause 11.10. As it transpires, mere addition of the second prohibition in Clause 11.10 was not sufficient to dispel confusion. To make the change workable and fruitful part 1 of the Clause was also required to be amended so that these two parts could be reconciled with each other and could stand together. It may be stated at the cost of repetition that part 1 of Clause 11.10 enables a candidate to apply for more than one post under different units and part 4 prohibits a candidate from applying for the same post in more than one unit.*

*It may be reiterated that the applicants, like the candidates who had participated in the first phase, are found entitled to relaxation from incurring disqualification because the advertisement to which they responded contains parts (1 & 4) which are irreconcilable. Under such circumstances not extending the relaxation to them which was extended to the*

*candidates who had participated in the first phase, would be arbitrary. On account of lack of clarity in the advertisement the applicants would be entitled to relief of declaration that they have not incurred disqualification.*

13. *The applicants have placed on record copy of letter dated 20.04.2016. Said letter states :-*

“उपरोक्त संदर्भाधिन पत्रान्वये पोलीस आयुक्त, नागपूर यांच्या आस्थापनेवरील सन २०१४ साठी घेण्यात आलेल्या पोलीस भरतीमध्ये उमेदवारांनी एकापेक्षा जास्त घटकात आवेदन अर्ज भरल्यामुळे पोलीस आयुक्त नागपूर यांनी त्यांना अपात्र ठरवून त्यांची नियुक्ती रद्द करण्यात आली होती. अशा उमेदवारांनी त्यांना पुन्हा सेवेत सामावून घेण्याबाबत निवेदन सादर केले होते. सदरहू उमेदवारांना शासनाने संदर्भाधिन दि. १७.१२.२०१५ रोजीच्या पत्रान्वये सेवेत घेण्याबाबतचा निर्णय घेण्यात आला होता.

२. उपरोक्त निर्णयानुसार पोलीस भरती सन २०१४ मधील इतर उमेदवारांकडून ही पोलीस आयुक्त, नागपूर शहर येथील उमेदवारांप्रमाणे सेवेत घेण्याबाबत विनंती अर्ज शासनास प्राप्त झाले आहेत. त्यानुसार पोलीस आयुक्त, नागपूर शहर यांच्या आस्थापनेवरील उमेदवारांना शासनसेवेत सामावून घेण्याबाबत घेतलेल्या निर्णयाच्या धर्तीवर पोलीस भरती- २०१४ मधील इतर घटकातील ज्या उमेदवारांनी एकापेक्षा जास्त घटकात आवेदन अर्ज भरलेले आहेत. अशा उमेदवारांना शासन सेवेत सामावून घेण्याबाबतचा प्रस्ताव शासनास सादर करण्यात आलाहोता. सदरहू प्रस्तावास शासनाने मान्यता दिली आहे.

३. पोलीस भरती सन २०१४ मधील ज्या उमेदवारांनी एकापेक्षा जास्त घटकात आवेदन अर्ज भरल्यामुळे त्यांना अपात्र ठरवून त्यांची नियुक्ती रद्द करण्यात आली आहे, अशा पोलीस भरती सन २०१४ मधील उमेदवारांनी पोलीस शिपाई पदावर नियुक्ती देण्यात यावी. तत्संबंधीचा अहवाल उमेदवारांच्या माहितीसह शासनास सादर करावा.”

5. The aforequoted determination made in the judgment dated 20.04.2022 will govern this case as well.

For these reasons we hold that the applicant cannot be held to have incurred disqualification on account of making more than one application for the same post in more than one

unit. Respondent no. 1 to 3 shall consider his candidature on its own merits and in accordance with law. Application is allowed in these terms. No order as to costs.

(M.A.Lovekar)  
Member (J)

(Shree Bhagwan)  
Vice Chairman

Dated – 17/06/2022

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde  
Court Name : Court of Hon'ble Vice Chairman &  
Court of Hon'ble Member (J) .  
Judgment signed on : 17/06/2022.  
and pronounced on  
Uploaded on : 17/06/2022.