

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**AURANGABAD BENCH, AURANGABAD**  
**ORIGINAL APPLICATION No. 897 of 2016 (D.B.)**

1. Sau. Shalini D/o Ramdas Raut,  
Age 29 years, Occ.-Service,  
R/o Plot No. 40, Sangeeta Colony,  
Near Nandanvan Colony, Aurangabad,  
Dist. Aurangabad.

**Applicant.**

**Versus**

1) The State of Maharashtra  
through its Secretary,  
Tribal Development Department,  
Mantralaya, Mumbai.

2) The Secretary,  
Maharashtra Public Service Commission,  
Head Office, 51/2, 7 & 8 Floor, Kuparage,  
Telephone Nigam Building,  
Maharshi Kaeve Road, Kuparage,  
Mumbai-400 021.  
(Copy to be served on C.P.O. M.A.T.  
Bombay, Bench at Aurangabad)

3) The Commissioner of  
Tribal Development Department,  
Adiwashi Vikas Bhavan, First Floor,  
Gadkari Chowk, Old Mumbai-Agra Road,  
Nashik, District Nashik-422 002.

4) Roshana D/o Arun Chavan,  
Age – Major yrs., Occ : Nil,  
R/o Plot No. 73, Narshinha Saraswati Colony,  
Near Raju Gandhi School, Gopal Nagar,  
Amravati-444 607.

5) Hipparge Sairabanu Ladlesaheb,  
Age-Major years, Occ. Nil,  
R/o At Post Murud Budruk, Modi Nagar,  
Murud, Tal. & District. Latur.

**Respondents**

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**Shri S.P.Salgar, Id. Advocate for the applicant.**

**Shri I.S.Thorat, Id. P.O. for the respondent nos. 1 to 3.**

**Shri P.G.Tambale holding for Shri S.S.Jadhavar, Id. Advocate for the  
respondent nos. 4 & 5.**

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

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**JUDGEMENT**

**(Delivered on Day 07<sup>th</sup> of April, 2018)**

Heard Shri S.P.Salgar, Id. counsel for the applicant, Shri I.S.Thorat, the Id. P.O. for respondent nos. 1 to 3 and Shri P.G.Tambale holding for Shri S.S.Jadavar, Id. counsel for the respondent nos. 4 & 5.

2. In response to the advertisement dated 17/03/2015, the applicant applied for the post of Assistant Project Officer/ Research Officer, Grade-B. As per the advertisement of four posts, three posts were kept reserved for Open Female Category. The applicant though belongs to Scheduled Caste Category has applied for the post from Open Category and has also paid the requisite fees for the Open Candidate. A hall ticket

was issued to the applicant and the examination was conducted on 03/10/2015 for which the applicant was allowed to appear. The first answer key was published by the respondent no. 2 on 06/10/2015 and the second answer key was published on 27/11/2015. The applicant secured 58 marks. The result was declared on 17/12/2015. The applicant was surprised to know that even though the cut-off marks for Open Female Category was 36 marks and though the applicant secured 58 marks, still she was not selected and hence this application. During the pendency of the application, the respondent nos. 4 and 5 were selected and, therefore, the applicant amended the O.A. and has claimed for following main relief:-

*B-1. The Selection of respondent nos. 4 & 5 may kindly be cancelled and applicant may kindly be selected and accordingly be given the appointment on the post of Assistant Project Officer/ Research Officer Grade-B as per advertisement no. 4/2015 issued by respondent no. 2, for that purpose issue necessary orders.*

*B-2. Pending hearing and final disposal of the present Original Application no. 897/2016, the respondent nos. 1 & 3 may kindly be directed not issue appointment orders in favour of respondent nos. 4 & 5, for that purpose issue necessary orders.*

3. The respondent no. 2 resisted the claim and submitted that the applicant belongs to Scheduled Caste Category and has applied for Open Category and has also paid prescribed fees for Open Category. The Hall Ticket was issued without detailed enquiry on the basis of application and the applicant was allowed to appear for examination.

According to the respondent no. 2 the cut-off marks set for Open and S.C. categories were as under:-

Sr. No.	Advt. No.	Date of Result	Category wise cut-off			
			Open Gen.	Open F	SC Open	SC F
1	4/2015	17/12/2015	78	36	74	62

4. The respondents submitted that in O.A.437/2012, Smt. Archana Khambe & 2 Ors. Vs. State of Maharashtra & 348 Ors., this Tribunal vide order dated 02/04/2014 has held that reserved category candidates cannot be considered for Open horizontally posts. In the said case, the Commission was directed to revise the result prior to select list accordingly. In O.A.820/2013, Mrs. Lorna D. Pinto & 3 Ors. Vs. State of Maharashtra & 12 Ors., this Tribunal has directed M.P.S.C. to revise the result of selection for the posts of Assistant Commissioner, Drugs vide order dated 01/04/2014 on the similar lines. On the basis of Judgment delivered by the Hon'ble Apex Court in the case of State of Maharashtra Vs. Irfan M. Shaikh had issued circular dated 13/08/2014 the Government clarified the Government Resolution dated 16/03/1999. Another circular dated 13/08/2014 was issued providing guidelines for application of horizontal reservation in recruitment process. According to the respondent no. 2 as per circular dated 13/08/2014, it has been

made clear that for the post of horizontal reservation for Open Category, the candidate of Open Category can only be considered and the reserved category candidates cannot be considered for open horizontal reserved posts. The applicant, therefore, cannot be considered for Open Female posts. The applicant did not secure minimum qualifying marks as per the bench mark, fixed for SC (general), SC (female) and Open General category and, therefore, she was not rightly called for Interview.

5. The applicant has filed rejoinder affidavit and has also relied on the Judgment delivered by this Tribunal in O.A.524/2017 in case of Shri Rahul Darbar Pawar & 7 Ors. Vs. The Chairman, M.P.S.C. & 39 Ors. delivered by this Hon'ble Principal Bench of this Tribunal delivered on 02/11/2017 and submitted that the respondent no. 2 ought to have considered the applicant from Open Female Category. Since the last candidate selected from Open Female Category has only secured 36 marks as against the 58 marks obtained by the applicant. We have heard the Id. counsel for the respective authorities and also perused the documents on records. The advertisement at Annexure-A-1, P.B., Pg. No. 13, clearly shows the reservations for 20 posts for different categories. The said reservation is as under:-

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6. From the aforesaid chart, it will be clear that the reservations are for different categories of the people and from the specific compartments for reservations. It seems that in the S.C. category, one post is reserved for Open General and one post is for Female. The

application form filled up by the applicant is at Annexure-B at P.B., Pg. No. 15 & 16. The applicant, though belongs to S.C., she has not applied from S.C. Category. She has clearly stated that she shall be considered from Open Category, which means the applicant has applied for Open General Category and nothing more. Admittedly, the benchmark for the Open General Category is 78 marks. The applicant however, secured only 58 marks and, therefore, she was rightly rejected for Open General Category and was not even allowed to appear for interview, since the last candidate for Open General Category secured 78 marks. Even the S.C. General Category who has secured 74 marks, has been considered on merits and the S.C. Female who has secured 62 marks has been considered from S.C. Female Category. Since the applicant secured only 58 marks, she was rightly rejected, as she secured only 58 marks.

7. The Id. P.O. has placed reliance on the Judgment delivered by this Tribunal in O.A. 301/2009 in case of Shri Irfan M. Shaikh Vs. State of Maharashtra & 5 Ors. delivered by Aurangabad of this Tribunal on 26/08/2009. In para no. 4 of the said Judgment, this Tribunal has observed as under :-

*The Id. Tribunal, while allowing the Original Application, has held that insofar as horizontal reservation is concerned, the candidates from particular category are only entitled to be considered against the posts reserved for such category. It has further been held that the candidates from one category for which horizontal reservation is provided, cannot be considered for selection against the post reserved for another horizontal reservation. The view taken by the Id.*

*Tribunal is in consonance with the law laid down by the Apex Court in the case of Rajesh Kumar Daria Vs. Rajasthan Public Service Commission & Ors., reported in AIR 2007 SC 3127, wherein it has been held that while filling the posts reserved for horizontal reservation, firstly the candidates from that particular category only be taken into consideration and only if there is a shortfall, then the recourse would be taken to go to another candidate for fulfilling the said quota.*

8. The said Judgment has been confirmed by the Hon'ble Apex Court in case of State of Maharashtra & Ors. Vs. Irfan & Ors. in Special Leave to Appeal (Civil No. 15802/2011) vide order dated 27/09/2011, the copy of the said Judgment of the Apex Court is at P.B. Pg. No. 141 and 142 (both inclusive).

9. Admittedly, the applicant though belongs to S.C. category, can very well compete any post from Open General Category provided, she competes the candidates appearing from Open General Category. However, for the purpose of horizontal reservation, her candidature cannot be accepted and the same has been rightly rejected by the respondent no. 2.

10. The Id. counsel for the applicant has placed reliance on the recent Judgment of this Tribunal delivered by the Hon'ble Chairman in O.A. 524/2017 with O.A. 841/2017 copy of the said Judgment is marked as Exhibit "X" for the purpose of identification. The said Judgment has been delivered on 02/11/2017. The facts of the said case are different



and not analogous with the present set of facts and as already stated, the view taken by the Division Bench of this Tribunal in O.A. 301/2009 as cited supra in the case of Irfan Shaikh Vs. State of Maharashtra & 5 Ors. has already been confirmed by the Hon'ble Apex Court. In view of the aforesaid circumstances, we do not find any illegality in not allowing the applicant to appear for Interview and in not considering her candidature for Open Female. The applicant could neither compete the Open General Category candidate nor the Open Female Candidate or even the S.C. Female candidate, as she has secured less marks, than the benchmark provided for these categories. In such circumstances, we don't find any merits in the applicant's claim and, therefore, we pass the following order:-

### **ORDER**

The O.A. stands dismissed with no order as to costs.

**(P.N.Dixit)**  
**Member (A)**

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

**Dated:-07/04/2018**

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