

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 906/2019(D.B.)

- 1) Mr. Pravin Vijay Hedau,
Aged about 36 years, Occ. Govt.
Service, working as 'Stenographer
Lower Grade' in Consumer Disputes
Redressal Forum Nagpur, R/o.
Plot No.140, LIG Vinkar Colony,
Manewada, Nagpur-440027.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary, Food,
Civil Supplies and Consumer
Protection Department,
Mantralaya, Mumbai-400 032.
- 2) The Controller of Legal Metrology,
Maharashtra State, Nariman Point,
Mumbai – 400 021.
- 3) Registrar (Administration), Consumer
Disputes Redressal Commission,
Maharashtra State, Old Administrative
Staff College Building, R.No.1, 2, 5 & 6
Opposite CST Railway Station,
Mumbai – 400 001.
- 4) Shri Parikshit Bhaurao Dhumale,

C/o. Registrar, Additional Consumer
Disputes Redressal Forum, Pune
District, New Administrative Building,
4th Floor, B Block In front of Vidhan
Bhawan, Pune – 411 001.

5) Shri Sachin Ramesh Rao Kumbhare,
C/o. Registrar, Consumer Disputes
Redressal Forum, Wardha District,
Sevagram Road, Near Yashwant,
College, Wardha – 442001.

6) Shri Vitthal Dhondiba Phad,
C/o. Registrar, Consumer Disputes
Redressal Forum, Latur District,
Central Administrative Building,
2nd Floor, Collector Office Compound,
Latur – 431 512.

Respondents

Shri Bharat Kulkarni, Ld. Counsel for the applicant.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

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

Dated: - 08th December 2022.

With

ORIGINAL APPLICATION NO. 907/2019

1) Smt. Chandrakala Gajanan Muley,
Aged about 42 years, Occ. Govt.
Service, working as 'Stenographer

Lower Grade' in Consumer Disputes
Redressal Forum Amravati, R/at F-3,
Chintamani Apartment, Ramanand,
Residency, Tapowan Gate, Near
Gajanan Maharaj Mandir,
Amravati 444 602.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary, Food,
Civil Supplies and Consumer
Protection Department,
Mantralaya, Mumbai-400 032.
- 2) The Controller of Legal Metrology,
Maharashtra State, Nariman Point,
Mumbai – 400 021.
- 3) Registrar (Administration), Consumer
Disputes Redressal Commission,
Maharashtra State, Old Administrative
Staff College Building, R.No.1, 2, 5 & 6
Opposite CST Railway Station,
Mumbai – 400 001.
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Sevagram Road, Near Yashwant,
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C/o. Registrar, Consumer Disputes
Redressal Forum, Latur District,
Central Administrative Building,
2nd Floor, Collector Office Compound,
Latur - 431 512.

Respondents

Shri Bharat Kulkarni, Ld. Counsel for the applicant.
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

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

Dated: - 08th December 2022.

JUDGMENT

Per :Member (J).

Judgment is reserved on 22th November, 2022.

Judgment is pronounced on 8th December, 2022.

These two connected O.As. were heard together and the same
are being decided by this common judgment.

2. Case of the applicants is as follows.

The applicants, respondents 4 to 6 and some others responded to the advertisement dated 11.08.2009 and after undergoing the process they were selected to the post of Stenographer (Lower Grade). The applicants were selected from Open category whereas respondents 4 to 6 were selected from the reserved category. Vide G.Rs.dated 05.06.2010 and 30.06.2011 general ban was imposed on recruitment to Group-C and Group-D posts. It was lifted in respect of posts falling under the backlog of vacancies for backward classes vide G.R. dated 02.08.2011 subject to compliance of contentions stipulated in G.R. dated 29.11.2010. Hence, respondents 4 to 6 who belong to reserved category were interviewed, appointed and posted earlier whereas the applicants who stood above them in the merit list were interviewed, appointed and posted later on. By disregarding *inter-se* merit, in the provisional and final seniority lists respondents 4 to 6 were wrongly placed above the applicants. This ought not to have been done since the posts were newly created vacancies. The selection process could not have been divided into parts in violation of Rule 4(2)(1)(a) of the M.C.S. (Regulation of Seniority) Rules, 1982. The applicants objected to impugned seniority list but to no avail. Hence, these O.As. to appropriately place the applicants in the seniority list.

3. In his reply at pp.76 to 82 respondent no.3 has averred that there were two processes separately undertaken one after the other, respondents 4 to 6 were appointed earlier because they belonged to reserved category, the applicants were appointed later on because they belonged to the Open category and under these circumstances question of fixing *inter-se* seniority among them i.e. these two groups, will not arise.

4. The applicants have relied on the common judgment dated 18.04.2018 delivered by the Principal Bench of this Tribunal in O.A.Nos.120/2017 and 121/2017. These O.As. arose out of the same recruitment process which commenced with the publication of advertisement dated 11.08.2019. The only difference was that those applicants had applied for and they were appointed to the post of Sheristedar. Here, the applicants were appointed as Stenographer (Lower Grade). The Principal Bench set out the facts as follows-

2. The case proceeds on admitted facts, which are as follows:

(a) The applicants before this Tribunal are Sheristedars working in Consumer Disputes Redressal Commission, Maharashtra State, Mumbai.

(b) The advertisement for recruitment of 23 posts of Sheristedar and equivalent posts was issued on 11.8.2009. Applicants and respondents along with

many other candidates had applied for the post of Sheristedar.

(c) On 7.3.2010 common written examination for selection of 23 posts was conducted. Applicants, private respondents and various other candidates appeared for said common examination.

(d) On 5.6.2010 the Government of Maharashtra imposed general ban on recruitment.

(e) On 29.11.2010 the Government issued instructions prescribing procedure to be followed in respect of the selection process which was already in motion.

(f) On 13.4.2011 & 2.8.2011 the ban imposed through G.R. dated 29.11.2010 was lifted in respect of the posts falling under "backlog of vacancies for backward classes".

(g) The Department of Consumer and Civil Supplies has understood that the decision of Government about lifting of the ban as regards backlog of reserved posts, was applicable to the posts advertised through advertisement dated 11.8.2009 to the extent of 23 vacancies which were reserved for backward classes.

(h) All 23 vacancies reserved for backward classes, sought to be filled in through advertisement dated 11.8.2009 were in fact newly created vacancies and were advertised for first time.

(i) Common written examination / test of all applicants for 175 marks was held.

(j) On 20.9.2011 and 23.9.2011 the candidates who had applied for selection against the vacancies reserved for various reservation categories who had qualified for viva voce were interviewed, while the candidates who had applied for open competition category were kept waiting.

(k) The names of those candidates who had applied against reserved posts and were interviewed and were selected, were sent to the Government. The Government issued appointment orders to those reserved category candidates against vacancies reserved for various categories.

(l) In due course ban in relation to recruitment to various posts was relaxed.

(m) On 4.6.2012 and 5.6.2012 the candidates from open competition category like applicants whose interviews were kept in abeyance, were interviewed, selected, recommended and appointment orders were issued to candidates who were selected from open merit category.

(n) On 3.2.2016 the provisional seniority list of Sheristedars was published, in which reserved category candidates, who were recruited by issuing appointment orders forming part of the same batch of which applicants are members, were placed higher in rank than the applicants.

(o) In view that the posts of Sheristedars in Consumer Disputes Redressal Fora were newly created, on facts

any backlog of unfilled reserved category roster point understood in common parlance as 'backlog' did not exist.

(p) Impugned communication is served on the applicants assigning reason towards assignment of lower position in seniority ranking based on their dates of appointment as they belong to two different batches.

It was observed-

12. Admittedly, these are newly created posts, advertised for the first time and the aspect of backlog did not apply to these posts. Therefore, division of the candidates into reserved and unreserved posts for the purpose of recruitment is an artificial act of separation done by or on the part of the department and such classification is arbitrary, done without any factual or legal foundation.

It was further observed-

17. The process of selection from advertisement, scrutiny of applications, fixing of date of eligibility, written test, all were common until decision to give preference to candidates who had applied from reserved categories was taken.

18. Since all processes till viva voce were common, it is mysterious puzzle and is not solved by the State as to how sheerly owing to a bureaucratic or Government's decision to give preferential treatment to candidates

who had applied for/or against reserved class vacancies based on totally erroneous notion of existence of backlog, could constitute the group of those candidate a different batch.

19. The act of the administration in creating two batches by dividing single batch amounts to giving preferential treatment to a particular class of candidates without any reason, cause or intelligible differentia, and denying seniority to applicants due under Rule 4 and 5 of MCS (Regulation of Seniority) Rules, 1982.

It was also observed-

23. In the result, it is necessary in the interest of justice to quash and set aside the impugned decision and communication and to direct the Government to treat the applicants and the private respondents in both the OAs. to be members of one and the same batch and rearrange their seniority as per Rule 4 and 5 of MCS (Regulation of Seniority) Rules, 1982.

24. The State will have to act upon an integrated merit list of applicants and respondents and similarly situated candidates, if there be, and prepare common seniority list and publish it in accordance with law.

A statement was made at the Bar by Adv. Shri B. Kulkarni that the above referred judgment has, for want of challenge attained finality.

According to respondent no.3 aforementioned ruling of the Principal Bench is not applicable to the facts of these cases. There is no substance in this submission. The ruling, having regard to facts of the cases, squarely covers the issue. Hence, the order.

ORDER

The O.As. are allowed in the following terms-

The respondent department shall fix inter-se seniority by treating both the groups viz. those of open and reserved categories - as one integrated group - within three months from the date of this order and publish it in accordance with law. No order as to costs.

(M.A.Lovekar)
Member (J)

(Shree Bhagwan)
Vice Chairman

Dated - 08/12/2022

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 : 08/12/2022.
and pronounced on
Uploaded on : 08/12/2022.