

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1101 OF 2017

DISTRICT : SATARA

Miss Sarika Kalerao Gujale,)
Age 26 years, occ. Nil, Ex. Office Peon in the office of)
Public Prosecutor, District Court, Kasba Bawada,)
Kolhapur R/o A/P Velekamthi, Tal. & District Satara)..Applicant

Versus

1. The Director, Directorate of Prosecution,)
Khetan Bhavan, 5th Floor, J. Tata Marg,)
Churchgate, Mumbai 400020)
2. Smt. Jyoti Narsing Jadhav,)
Age Adult, Occ. Nil, [Copy to be served upon)
Respondent No.2 through Respondent No.1])
3. The State of Maharashtra,)
Through Principal Secretary, Home Department,)
Mantralaya, Mumbai 400032)..Respondents

Shri B.A. Bandiwadekar – Advocate for the Applicant

Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)

RESERVED ON : 29th January, 2024

PRONOUNCED ON: 9th February, 2024

PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. The applicant who was working as Office Peon in the office of Public Prosecutor, District Court, Kasba Bawada, Kolhapur challenges order dated 26.5.2015 terminating her services.

Brief facts of the case:

2. Respondent no.1 issued an advertisement dated 17.9.2013 for filling up the post of Office Peon. The written examination was held on 27.10.2013. However, examination in the Amravati centre had to be cancelled due to technical paper leakage. Hence, the examination in Amravati centre came to be postponed but the written examination for rest of the Maharashtra was conducted on 27.10.2013 itself. The written examination for the post of Peon in Amravati centre was postponed to 24.11.2013. The respondent no.2 was from Amravati Division. The Directorate of Prosecution of State of Maharashtra prepared 2 merit lists for the post of Peon; one for Amravati Division and the other for rest of Maharashtra. The applicant came to be selected as she was in the merit list for rest of Maharashtra and was appointed due to publication of two separate lists i.e. one for rest of Maharashtra and other for Amravati Division.

3. The Directorate of Prosecution, Mumbai had issued an advertisement dated 17.9.2013 for 190 post of Peon for all districts located in Maharashtra State. In the said advertisement it was clearly mentioned that one post of Peon was horizontally reserved for physically handicapped person from any category. While taking the decision to prepare two merit lists the Directorate of Prosecution decided to shift one post of Peon of reserved for physically handicapped person and one post of for Scheduled

Tribe candidate in Amravati Division. Accordingly, the reservation of one post of Peon for handicapped candidate was shifted in Amravati Division. Thereafter the merit list of handicapped candidate hailing from Amravati Division was prepared and the name of one Shri Mangesh Bhaskarrao Ghatole who was on the top with 88 marks was selected for post of Peon reserved for handicapped category.

4. One Shri Saleem Ahmed Rasool Shaikh who is physically handicapped person secured 92 marks but was not selected for the post of Peon reserved for handicapped since he did not belong to Amravati Division. He therefore filed OA No.45 of 2014 before the Aurangabad Bench of this Tribunal challenging the selection of Shri Mangesh Bhaskarrao Ghatole who had secured 88 marks for the post of Peon and was appointed on the post reserved for handicapped person or candidate.

5. The Aurangabad Bench of this Tribunal passed the following order on 11.12.2014 :

“Having regard to the aforesaid facts and circumstances of the case, the respondent no.3 is directed to prepare a fresh merit list after merging the merit list of Amravati Range and for the rest of Maharashtra. If the applicant is found eligible to be appointed to the post of Peon from Physically Handicapped category, he may be given appointment. This process must be completed within a period of 3 (three) months from the date of this order. Original Application is disposed with no order as to cost.”

6. In pursuance of the order, the Directorate of Prosecution directed the Maharashtra Knowledge Corporation Limited (MKCL), who was entrusted with the work of conducting written examination for the post Peon, to prepare the merit list afresh for the post of Peon after merging merit lists of Amravati Division and the rest of Maharashtra. The MKCL

after merging the merit list of Amravati Division and rest of Maharashtra prepared a fresh merit list for the post of Peon in which one Shri Rupesh Rupchand Ramteke, a physically handicapped candidate, stood at Sr. No.1 securing 98 marks, since he topped the fresh merit list of handicapped candidates, he was appointed to the post of Peon reserved for physically handicapped. He had earlier been selected against the two posts reserved for candidates belonging to Scheduled Caste. Hence, the Directorate of Prosecution terminated services of all Group-D employees who were not found in the new merit list after merger of both lists. Hence, services of 4 Peons including Shri Ghatole and present applicant were terminated by order dated 26.5.2015. Initially Shri M.G. Ghatole had filed OA No.222/2015 before Nagpur Bench of this Tribunal, in which the applicant was also party. The said OA filed by the applicant was dismissed on the ground of jurisdiction. 4 candidates who were in the merit list after merger of both lists were appointed.

7. Ld. Advocate for the applicant points out that the respondents deliberately misunderstood the decision of Aurangabad Bench of this Tribunal rendered in OA No.45/2014 and thus subjected the applicant to irreparable damage. He stated that the decision of the Tribunal was only to consider whether or not the applicant in that matter Shri Shaikh was entitled for being appointed in the vacancy meant for physically handicapped person after merging merit list of Amravati Range with the rest of Maharashtra. He contended that respondent no.3 was not entitled to disturb the entire merit list of all successful candidates vis-à-vis the said post of Office Peon. By merging entire list the candidates suffered irreparable loss though Shri Shaikh had sought very limited relief to the extent of appointment on one vacancy of Office Peon meant for physically handicapped candidate from any vertical reservation. Ld. Advocate for the applicant further pointed out that the applicant was terminated without

giving her an opportunity of being heard and therefore it was unjustified and illegal.

8. Ld. Advocate for the applicant further pointed out that respondent no.2 belongs to VJ-A reserved category to which applicant belongs and that considering the marks obtained by respondent no.2 in the said selection process viz. 92 marks as against 86 marks by applicant, respondent no.2 was required to be accommodated in one of the vacancies meant for either Open General or Open Female category irrespective of whether respondent no.2 applied for the post in the vacancies meant for VJ-A Female category or otherwise. Ld. Advocate for the applicant relied on the following judgments:

- (i) Sayali Nitin Inamke Vs. State of Maharashtra, 2024(1) Mh.L.J. 303
- (ii) Bharat Sanchar Nigam Limited & Anr. Vs. Sandeep Choudhary & Ors. (2022) 11 SCC 779.
- (iii) Tarakeshwari Devekaran Tayade Vs. MPSC & Ors. OA No.1033/2016 decided by this Tribunal on 5.9.2022.

9. He also pointed out that there are still vacancies for the said post and hence applicant should be accommodated in said vacancies.

10. Per contra Ld. PO relied on the affidavit in reply dated 23.7.2018 filed by Vipin Vilas Joshi, Assistant Public Prosecutor in the office of Director, Directorate of Prosecution, Mumbai on behalf of respondent no.1. Ld. PO pointed out that Directorate had implemented the decision of this Tribunal dated 11.12.2014 rendered in OA No.45/2014 which is reproduced below:

“Having regard to the aforesaid facts and circumstances of the case, the respondent no.3 is directed to prepare a fresh merit list after

merging the merit list of Amravati Range and for the rest of Maharashtra.

11. Ld. PO pointed out that the order of this Tribunal was mainly to merge merit list of Amravati Range and rest of the Maharashtra. After the said merger the revised merit list for Group-D posts was prepared. As a consequence the respondent no.1 terminated the services of all Group-D employees who were not found in the merit in new merit list after merger of both the lists. Hence, services of 4 Peons including Shri Ghatole and the present applicant were terminated. She further submitted that the applicant had secured less marks and could not maintain her position in the revised merit list prepared after decision of this Tribunal Bench at Nagpur dated 11.12.2014 in OA No.45/2014. She therefore states that the OA be dismissed.

12. Ld. Advocate for the applicant relied on the judgment of the Hon'ble High Court in *Sayali Nitin Inamke* (supra). This judgment deals with the migration of reserved category candidate to open category by claiming horizontal reservation. The migration of reserved category women candidate is permissible to open category in case there is shortfall of candidate from the horizontal category. We are able to distinguish this judgment as present OA deals with the issue of change in reservation due to confusion created because of merger of two lists, one for Amravati Division and the other for rest of Maharashtra.

13. In case of *Bharat Sanchar Nigam Limited* (supra), two reserved category candidates belonging to OBC category who were more meritorious than general category candidates were required to be appointed against general category and not reserved. This case is also distinguishable from the present OA which arose from mixing up of

reservation of handicapped person when two separate merit lists were maintained.

14. In case of *Tarakeshwari D. Tayade* (supra) the applicant had approached this Tribunal as she had been excluded from the selection process though she was more meritorious than the respondents and the said OA was allowed on that ground. In the present OA the respondents prepared a fresh merit list after merging the merit list of Amravati Division and rest of Maharashtra pursuant to the directions dated 11.12.2024 of this Tribunal in OA No.45/2014.

15. Considered the submissions of both the sides. This is a matter which relates to advertisement published in September, 2013. It is an undeniable fact that injustice was caused when two separate lists were published one for Amravati Division and the other for rest of Maharashtra. While taking decision to prepare two merit lists the Director of Prosecution decided to shift one post of Peon reserved for physically handicapped person and one post for SC candidate in Amravati Division. Accordingly merit list of physically handicapped candidate hailing from Amravati Division came to be prepared and the name of Shri M.B. Ghatole with 88 marks was selected for the post of Peon reserved for physically handicapped candidate. One Shri Saleem Ahmed Rasool Shaikh secured 92 marks but was not selected for the post of Peon reserved for physically handicapped since he did not belong to Amravati Division. He challenged the selection of Shri M.B. Ghatole who had secured less marks than him and questioned his non selection by preferring OA No.45/2014 before Aurangabad Bench of this Tribunal and the following order was passed on 11.12.2014:

“Having regard to the aforesaid facts and circumstances of the case, the respondent no.3 is directed to prepare a fresh merit list after

merging the merit list of Amravati Range and for the rest of Maharashtra. If the applicant is found eligible to be appointed to the post of Peon from Physically Handicapped category, he may be given appointment. This process must be completed within a period of 3 (three) months from the date of this order. Original Application is disposed with no order as to cost.”

16. Pursuant to the order the Director of Prosecution after merging both the merit lists prepared new merit list of all the candidates belonging to Group-D. In the result the services of 4 Peons including Shri Gatole and the present applicant were terminated and the selected candidates as per new merged list of rest of Maharashtra and Amravati Division were given appointment. Thus, we are of the view that the merger of two lists was necessary in order to ensure that no injustice should be caused to candidates who would otherwise have been selected, if the two merit lists would have been prepared.

17. In the totality of the facts and circumstances of the case, we hold that the above Original Application deserves to be dismissed and the same is dismissed with no order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
9.2.2024

Sd/-

(Mridula Bhatkar, J.)
Chairperson
9.2.2024

Dictation taken by: S.G. Jawalkar.