IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.113 OF 2016

DISTRICT : RAIGAD

Sandipan Dhondiram Murkute)
Age 23 years, occ. Unemployed, R/o Pisewadi,)
Tq. Gangakhed, District Parbhani)..Applicant

Versus

1. The State of Maharashtra,)
Through the Presenting Officer, MAT, Mumbai)
Through the Secretary, Home Department,)
Mantralaya, Mumbai 400032)

2. The Superintendent of Police,)
Raigad (Alibag), Tq. & District Raigad)..Respondents

Shri K.R. Jagdale – Advocate for the Applicant
Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM	:	Shri P.N. Dixit, Vice-Chairman (A)
		Shri A.P. Kurhekar, Member (J)
RESERVED ON	:	27th August, 2019
PRONOUNCED ON	:	3rd September, 2019
PER	:	Shri P.N. Dixit, Vice-Chairman (A)

J U D G M E N T

1. Heard Shri K.R. Jagdale, learned Advocate Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

Brief facts:

2. The respondent no.2 (Superintendent of Police, Raigad) published an advertisement for recruitment of Police Constable. The relevant portion reads as under:

"१. पोलीस शिपाई :-

अजा	अज	विजा अ	भज-ब	भज-क	भज-ड	भज ब/क	विमाप्र	इमाव	खुला	एकुण
२५	३९	३	६	६	५	१	३	१७	२७३	३७८

खेळाडू, माजी सैनिक, प्रकल्पग्रस्त, भुकंपग्रस्त, गृहरक्षक दल, महिला यांचेकरिता असलेले आरक्षण हे समांतर आरक्षण असून ते सामाजिक आरक्षणांतर्गत समाविष्ठ आहे."

(Quoted from page 28 of OA)

3. The applicant participated in the same and secured 147 marks. The applicant has made following prayer:

"(B) That, the respondent no.2, Superintendent of Police, Raigad, District Raigad, may kindly be directed to select the applicant for the post of Police Constable from the category of sportsman and issue appointment order to that effect.

(C) That respondents may kindly be directed to give the benefit of Government Resolution dated 22nd August 2014 to the applicant, by

selecting him from the category of sportsman and place him in waiting list of future coming vacant post of Jail Guard.

(D) Pending hearing and final disposal of this OA the respondents no.1 and 2 may kindly be directed to select the applicant from the category of sportsman or he may be kept in the waiting list of future coming vacant post of Jail Guard in view of GR dated 22.8.2014."

(Quoted from page 24-25 of OA)

4. According to the applicant,

"7. ..... the method for selecting the candidate from Horizontal Reservation for the category of sportsman was wrongly followed by the respondent no.2, no separate list of total 18 candidate from the category of sportsman was not published, the name of applicant was not added in the list of selected candidates though he secured more marks than the last candidate from the sportsman category, has not been selected by the respondent no.2."

8. That, the applicant submits that, even if the Horizontal Reservation is considered for fill-up the post from the category of sportsman, the applicant belongs to Vanjari Caste, comes under the reserved category of NT-D, he is a sportsman, applied from the category of sportsman, the respondent no.2 selected 5 candidates from the category of NT-D which are as under:

Sr. No.	***Name of candidate***	***Category***	***Marks secured by candidate***	
			Male	*Female*
1.	*Ramsevak Dnyanoba Kande*	*NT-D*	*172*	
2.	*Kedar Sahadeo Maroti*	*NT-D*	*172*	
3.	*Misal Shivaji Trimbak*	*NT-D*	*172*	
4.	*Savitra Dnyanoba Kangne*	*NT-D*		*146*
5.	*Swati Baban Ombase*	*NT-D*		*138*

From the selection list of NT-D candidates it appears that, no candidate from NT-D sportsman has been selected, three candidates from male and two candidates from female were selected from NT-D category, the last candidate from male secured 172 marks and from female secured 138 marks, no candidate from NT-D sportsman have been adjusted in the said list by applying the formula of Horizontal Reservation, therefore, the respondent no.2 by adopting wrong procedure for giving Horizontal Reservation in the selection of sportsman candidate and thereby wrongly denied the selection to the applicant."

(Quoted from page 5-6 of OA)

5. The applicant relies on the GR issued on 22.8.2014. The relevant portion reads as under:

"शासन निर्णय :

(१) पोलीस भरती २०११ मध्ये खुल्या प्रवर्गाच्या समांतर आरक्षणात निवड होऊन प्रत्यक्षात नियुक्त्या दिलेल्या १५८ अन्य प्रवर्गातील उमेदवारांना गृह विभागाच्या दिनांक ९ जानेवारी, २०१२ च्या स्पष्टीकरणानंतर सेवेतून कमी करण्यात आले आहे. या १५८ उमेदवारांच स्वतंत्र प्रवर्गनिहाय प्रतिक्षायादी बनविण्यात यावी व त्यांना त्यांच्या प्रवर्गात समांतर आरक्षणाच्या अनुषंगाने भविष्यात रिक्त होणा-या पदावर पोलीस दलात सामावून घेण्यात यावे.

(२) तसेच पोलीस भरती २०११ मध्ये खुल्या प्रवर्गात समांतर आरक्षणात निवड झालेल्या अन्य प्रवर्गातील ३७१ उमेदवारांना गृह विभागाच्या दिनांक ९ जानेवरी, २०१२ च्या स्पष्टीकरणानंतर अद्यापि नियुक्त्या देण्यात आलेल्या नाहित. हे उमेदवार तुरुंग विभागात तुरुंग रक्षक पदावर कार्य करण्यास तयार असल्यास, त्यांची इच्छुकता मागविण्यात येऊन त्यांची स्वतंत्र प्रवर्गनिहाय प्रतिक्षायादी बनविण्यात यावी व त्यांना प्रवर्गातंर्गत भविष्यात रिक्त होणा-या तुरुंगरक्षक पदावर तुरुंग विभागात नियुक्ती देण्यात यावी."

(Quoted from page 83 of OA)

6. The respondent no.2 has filed affidavit contesting the contentions raised by the applicant. The relevant portion reads as under:

"5. The applicant had applied under NT-D category of social reservation for the post of police constable from sportsman category under horizontal reservation in Raigad District police recruitment 2011. That time 5 posts were vacant for NT-D category. Out of them 3 candidates were selected on

the basis of merit and the marks obtained by last candidate were 172. Under the horizontal reservation 2 candidates were selected from female. 5 % horizontal reservation was kept for the post of sportsman. Applicant obtained 147 marks. Therefore, he is not selected on the basis of merit considering very low marks in comparison to 172 marks obtained by the last candidate from this category. As per the advertisement issued on 3.10.2011 by the office of Superintendent of Police, Raigad-Alibag only 5 posts were vacant for NT-D category out of 378 posts. Therefore, under horizontal reservation no post was available for sportsman in NT-D category.

9. From NT-D category only 5 posts were available out of these posts 3 candidates were selected on merit and 2 female candidates were selected under horizontal reservation so all 5 vacant post available from NT-D category were filled and thereafter vacant post in NT-D category was not available.

11. ……. Under horizontal reservation no post was available for sportsman in NT-D category. As per Maharashtra Gov. GAD Circular No.SRV-1097/M. No.31/98/16-A, Mantralaya, Mumbai dated 16.3.1999, the office of S.P. Raigad had rightly filled up the vacancies. Perusing the letter of Home Department, Maharashtra Government, dated 9.1.2012 it has been clearly mentioned in the Stage one of Open category Horizontal Reservation that if required candidates for allocated seats are not available in Horizontal Reservation then required candidates are to filled from remaining meritorious candidates belonging to open category only. As Raigad Police Constable Recruitment Process 2011 was conducted in consonance with GR dated 9.1.2012, no changes were made and the selection list was not revised.

21. In all 5% parallel reservation is allocated for candidates applying from sports category. While deciding quota of NT-D category during 2011 police recruitment, only 5 posts were available for NT-D category out of total 378 vacant posts. Because less number of posts were allocated to NT-D

category there was no scope for parallel sports category in NT-D category reservation. Last selected candidate from NT-D category had obtained 172 marks and petitioner had obtained 147 marks therefore he was not selected on merit.

24. With reference to grounds 15.VIII(c) to VIII(e), I say that as regards GAD circular dated 16.3.1999, reservation from sports category is parallel reservation and hence candidates applied from NT-D category were not selected as a sportsman.

24.1 In circular dated 16.3.1999 GAD had elaborated procedure to allocate parallel reservation in sports category. Respondent no.2 had followed procedure to allocated parallel reservation in sports category as laid down judgment of Hon'ble Supreme Court dated 27.9.2011 in SLP CC No.15802/11 and judgment of Hon'ble Bombay High Court, Bench at Aurangabad dated 15.11.2010 in Writ Petition No.272/2010. Petitioner belongs to NT-D category and obtained 147 marks therefore not selected on merit and there were no parallel reservation for sportsman from NT-D category."

(Quoted from page 113-123 of OA)

7. The respondents have therefore prayed that the OA is devoid of any merits and should be dismissed.

8. We have examined the facts and the list published of the selected candidates for NT(D) category, which reads as under:

भ.ज.(ड) प्रवर्ग :- अंतिम निवड यादी

दिनांक :- २२/१२/२०११

Chest No.	Name	Gender	Education	Special Skill	Birth Date	Category Apply	Total
२९३१	कांदे रामसेवक ज्ञानोबा	Male	HSC	PAP	०४/०१/१९८६	NT(D)	१७२

६४५	केदार सहदेव मारोती	Male	HSC	PAP	०८/०४/१९८७	NT(D)	१७२
२७६४	मिसाळ शिवाजी त्रिंबक	Male	HSC		०५/०७/१९८७	NT(D)	१७२
६७	कांगणे सावित्रा ज्ञानोबा	Female	HSC		१८/०९/१९९१	NT(D)	१४६
१८	ओंबासे स्वाती बबन	Female	HSC		१६/०५/१९९३	NT(D)	१३८

(Quoted from page 73 of OA)

9. As stated by the respondents, respondent no.2 has followed the procedure as laid down in the judgment of Hon'ble Supreme Court in SLP (CC) No.15802 of 2011 dated 27.9.2011 and judgment of Hon'ble Bombay High Court, Bench at Aurangabad dated 15.11.2010 in Writ Petition no.272 of 2010. We find that the applicant, who belongs to NT(D) category, has obtained 147 marks while the three candidates who have been selected in his category have secured 172 marks. Thus, the three candidates who have been selected are on the basis of merit. Remaining two candidates who have secured 146 and 138 marks respectively have been selected in the female category which is different from the applicant. All available seats from NT(D) category reservation were filled in and thus there was no scope for further parallel sports category in NT(D) category. Hence, adequate grounds have been furnished by the respondents for applicant's rejection. The applicant has failed to demonstrate any valid ground for interfering with the list of candidates who have been selected.

10. The Original Application, therefore, is without any merit and the same is dismissed. No order as to costs.

(A.P. Kurhekar)
Member (J)
3.9.2019

(P.N. Dixit)
Vice-Chairman (A)
3.9.2019

Dictation taken by: S.G. Jawalkar.
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