

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.120 OF 2017
WITH
ORIGINAL APPLICATION NO.121 OF 2017

ORIGINAL APPLICATION NO.120 OF 2017

DISTRICT : MUMBAI

Shri Umesh Sukhdeo Chavan,)
Age 40 years, occ. Government service,)
Working as “Shreistedar” in Consumer Disputes)
Redressal Commission, Mumbai)
R/at 704, Mangalmurti, Plot No.19, Sector 6,)
Khanda Colony, New Panvel (West), 410 206)..Applicant

Versus

1. The State of Maharashtra,)
Through Secretary, Food, Civil Supplies and)
Consumer Protection Department,)
Mantralaya, Mumbai 400032)
2. The Controller of Legal Metrology,)
Maharashtra State, Nariman Point, Mumbai)
3. Registrar (Administration),)
Consumer Disputes Redressal Commission,)

- MS, Old Administrative Staff College Building,))
R. No.1, 2, 5 & 6, Opp. CST Railway Station,))
Mumbai 400001))
4. Shri N.B. Ugokar,))
C/o Registrar, State Consumer Disputes))
Redressal Commission, Maharashtra,))
Circuit Bench, Administrative Building))
No.1, 5th floor, Civil Lines, Nagpur 440001))
5. Shri R.A. Bhagat,))
C/o Registrar, Consumer Disputes Redressal))
Forum, Jalna District, Aurangabad-Ambad))
Bypass Road, Survey No.488, Behind District))
Krida Sankul, Jalna 431203))
6. Shri A.K. Wasnik,))
C/o Registrar, State Consumer Disputes))
Redressal Commission, Maharashtra,))
Circuit Bench, Administrative Building))
No.1, 5th floor, Civil Lines, Nagpur 440001))
7. Shri J.S. Thakur,))
C/o Registrar,))
Consumer Disputes Redressal Forum,))
Jalgaon District, Near Broadcasting Center,))
Collector Office Compound, Jalgaon))
8. Shri D.U. Rathod,))

- C/o Registrar,)
Consumer Disputes Redressal Forum,)
Nashik District, Collector Campus,)
Near SDO Office, Nashik)
9. Shri A.S. Jevalikar,)
C/o Registrar,)
Consumer Disputes Redressal Forum,)
Osmanabad District, Collector Office)
Compound, Osmanabad 431 501)
10. Shri A.R. More,)
C/o Registrar,)
Consumer Disputes Redressal Forum,)
Dhule District, Behind New Administrative)
Building, Collector Office Campus,)
Dhule 424001)
11. Shri S.P. Kulkarni,)
C/o Registrar,)
Consumer Disputes Redressal Forum,)
Latur District, Central Administrative Building,))
2nd Floor, Collector Office Compound, Latur)..Respondents

WITH

ORIGINAL APPLICATION NO.121 OF 2017

DISTRICT : MUMBAI

Shri Vinay Mahadev Khopatkar,)
Age 42 years, occ. Government service,)
Working as "Superintendent", Consumer Disputes)
Redressal Commission, Mumbai)
R/at 401, Vaikunt Villa-B, Shivaji Nagar,Koldongri,))
Vile Parle (East), Mumbai 400057)..Applicant

Versus

1. The State of Maharashtra,)
Through Secretary, Food, Civil Supplies and)
Consumer Protection Department,)
Mantralaya, Mumbai 400032)
2. The Controller of Legal Metrology,)
Maharashtra State, Nariman Point, Mumbai)
3. Registrar (Administration),)
Consumer Disputes Redressal Commission,)
MS, Old Administrative Staff College Building,))
R. No.1, 2, 5 & 6, Opp. CST Railway Station,)
Mumbai 400001)
4. Shri D.U. Rathod,)
C/o Registrar,)
Consumer Disputes Redressal Forum,)
Nashik District, Collector Campus,)

- Near SDO Office, Nashik)
5. Shri A.S. Jevalikar,)
 C/o Registrar,)
 Consumer Disputes Redressal Forum,)
 Osmanabad District, Collector Office)
 Compound, Osmanabad 431 501)
6. Shri A.R. More,)
 C/o Registrar,)
 Consumer Disputes Redressal Forum,)
 Dhule District, Behind New Administrative)
 Building, Collector Office Campus,)
 Dhule 424001)
7. Shri S.P. Kulkarni,)
 C/o Registrar,)
 Consumer Disputes Redressal Forum,)
 Latur District, Central Administrative Building,)
 2nd Floor, Collector Office Compound, Latur)..Respondents

Shri C.T. Chandratre – Advocate for the Applicants

Shri K.B. Bhise – Presenting Officer for Respondents No.1 to 3

CORAM : Shri Justice A.H. Joshi, Chairman

Shri P.N. Dixit, Member (A)

CLOSED ON : 21st March, 2018

PRONOUNCED ON : 18th April, 2018

J U D G M E N T

PER: Shri Justice A.H. Joshi, Chairman.

1. Heard Shri C.T. Chandratre, learned Advocate for the Applicants and Shri K.B. Bhise, learned Presenting Officer for Respondents No.1 to 3 in both the OAs. None appears for private respondents in both the OAs.

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 Shirastedar.

(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.

3. In the background aforesaid position, which is almost undisputed, the applicants have challenged the impugned communication on certain grounds as averred in the OA, which reads as follows:

“6.13 Applicant states that the contention stated in the order is also incorrect. Applicant states that by GR dated 29.11.2010 the procedure was fixed for regulating the on going process of recruitment. It was directed that where the select list has been published but the appointment orders are not issued the extension should be granted to the select list and appointment order shall be issued on lifting the ban on recruitment.

6.14 Applicant states that the respondents are relying on the GR dated 13.4.2011 and 2.8.2011 in support of their contention that the appointment orders were issued to the officials at Sr. No.18 to 23. Applicant states that with reference to this GR, the list was kept in abeyance for the respective class. The lists of various classes were prepared on the same date but were kept in abeyance. Therefore, it is quite clear that the entire selection process was one and one only. Therefore, the applicant is entitled to have his seniority as per Rule No.4(2) and 5. The impugned communication dated 10.8.2016 and placement of the applicant in the respective seniority list is against this Rule and therefore requires to be quashed and set aside.

6.15 Applicant states that, without prejudice to the above submission it is stated that:

(i) Even the advertisement do not discloses that the vacancies notified were from backlog or otherwise. Applicant states that by misreading the GR dated 13.4.2011 and 2.8.2011 the interviews of the reserved candidate has been carried out on the earlier point of time and therefore the private respondents are not entitled for the seniority against the order of merit.

(ii) Applicant states that the backlog means and as understood in common parlance is that the posts were advertised on earlier occasion and remain to be filled for want of eligible candidates from reserved category and thereafter carried forward to the next advertisement/selection process. Applicant states that it is not at all on the record of respondents that, the posts offered to the private

respondents was of such nature. It was not posts from backlog. On the other hand merely taking the advantage of the word that, drive to fill up the posts from backlog be operated from 14.4.2011, the respondent had issued the appointment order in favour of private respondents. If one considers this fact it would be clear that by misreading the GR dated 13.4.2011 the orders were issued and thereby artificial batches were created. This is totally illegal and for this reason the impugned order is required to be quashed and set aside.

(iii) Even otherwise it was specifically stipulated in the GR dated 13.4.2011 and 2.8.2011 that, the backlog was to be filled up by observing the procedure stated in the GR dated 29.11.2010. As per the GR dated 29.11.2010 the clause A (3) was applicable. It is stated that where the examination/interviews are over then without declaring the select list appointment orders should be issued after lifting the ban. Thus ban was lifted in two stages but in respect of common selection process. Therefore, it was necessary to maintain the seniority list as per the merit acquired by the candidates. For this reason the impugned placement of the applicant in the seniority list is illegal.

Grounds:

(b) Applicant states that being from same recruitment process i.e. from same batch they are entitled to the seniority as per the order of merit assigned by recruiting agency i.e. respondent no.2. Applicant states that he had joined to his duty within prescribed period. Applicant therefore is entitled for the relief prayed for.”

(Quoted from page 6 to 8 of OA No.121/17)

4. In response to the above averments and grounds the respondents have replied in paras 20 to 22 as under:

“20. With reference to para no.6.13, I say as follows: GR dated 29.11.2010 was issued for specifying the procedure to be adopted in the circumstances wherein recruitment process was already started prior to issue of GR dated 5.6.2010 which restrained the recruitment on different posts.

21. With reference to para no.6.14, I say as follows: Contentions are denied. As stated herein above interviews of candidates from Reserved Category and of Open Category were taken in different

batches on different dates. Merit list was also prepared separately for these dates for Reserved Category candidates and for Open Category candidates. This means two different merit lists were made. As such it is not true to say that list of various classes were prepared on the same date but were kept in abeyance.

22. With reference to para no.6.15 (i to iii), I say as follows: Contentions are misleading. I say that as stated above the written examination was held on 7.3.2010 and results were being prepared. In the meantime, the ban on recruitment for one year was imposed on 5.6.2010 and thereafter continued for further one more year by GR dated 30.6.2011. Thereafter as a result of special drive for filling up of backlog of reservation vide GR dated 13.4.2011, interviews of Reserved Category candidates were arranged on 20th to 23rd September, 2011, as this backlog was required to be filled up by March, 2012. Merit list was prepared and it was send to respondent no.2 with letter dated 30.9.2011. Similarly, merit list of the candidates of Open Category was prepared separately as interviews of these candidates were taken in different batch and on different dates after the ban on recruitment was ceased in view of the GR dated 30.6.2011.”

(Quoted from page 78-79 of OA No.121/17)

5. Based on the rival submissions, applicants have argued that the plea of the Government which is emerging from the affidavit in reply of the State, reveals as follows:-

(a) The Government has treated that the selection of private respondents on one hand and applicants and similarly placed candidates on the other hand to constitute two different batches.

(b) The first batch consisting of private respondents – candidates belonging to reserved categories comprise of one batch.

(c) Candidates belonging to open merit competition category comprises of second batch.

(d) Recruitment of candidates who had applied against reserved post was proceeded, leaving behind the selection of candidates from open competition category because of the policy of Government of filling in the backlog.

6. The applicants claim that: -

- (a) It is a matter of record that the posts of which applicants and private respondents were being recruited are newly created posts.
- (b) The applicants and private respondents taken together were part and parcel of one selection process conducted pursuant to one advertisement and same selection process.
- (c) Applicants as well as private respondents had appeared for a test for which examination of total 200 marks was held.
- (d) Out of 200, 175 marks were reserved for written test which was common test in which the applicants and private respondents had appeared, were assessed and were declared successful in one batch.
- (e) Private respondents were preferred out of turn for viva voce due to misunderstanding that the vacancies against which they had applied were from backlog.
- (f) Viva voce consisted of only 25 marks out of 200.
- (g) Only step of viva voce of the applicants was deferred on the ground that candidates belonging to reserved category were given a preferential walk ahead of the applicants, on the belief that backlog was to be filled in.
- (h) These cadres did not exist on the establishment of the Government earlier and were newly created due to creation of various fora under the Consumer Protection Act.
- (i) It is nobody's case that "backlog" could exist in the aforesaid category.
- (j) By virtue of Rule 4 and 5 of MCS (Regulation of Seniority) Rules, 1982, the seniority of the candidates forming part of one batch or one selection process has to be determined on the basis of order of merit furtherance to selection process arranged by the selecting authority.
- (k) The private respondents have been put into seniority list above the applicants on account of the fact that they had joined prior in the time, which version of the Government is evident from the

impugned communication dated 10.8.2016, text whereof reads as follows:

“त्यानुसार शिरस्तेदार या पदाकरीता लेखी परिक्षा दि.०७.०३.२०१० रोजी घेण्यात आल्या होत्या. तथापि वित्त विभाग, शासन निर्णय दि.०५.०६.२०१० व ३०.०६.२०११ अन्वये गट-क व गट-ड संवर्गातील पदभरतीस निर्बंध घालण्यात आले. मात्र वित्त विभाग, शासन निर्णय दि.०२.०८.२०११ अन्वये मागासवर्गीयांचा अनुशेष भरला जाण्याच्या दृष्टीने विशेष मोहिम सुरु करण्याबाबत शासनाने पारीत केलेल्या आदेशानुसार ज्येष्ठता यादीतील अ.क्र. १८ ते २३ मध्ये दर्शविण्यात आलेल्या कर्मचा-यांची शिरस्तेदार पदावर नियुक्ती सन २०११ मध्ये करण्यात आलेली आहे व सदर उमेदवार पदस्थपितीच्या ठिकाणी हजर झालेले आहेत. त्यानंतर शासनाने पदभरतीचे निर्बंध उठविल्यानंतर खुल्या प्रवर्गातील उमेदवारांची नियुक्ती सन २०१२ मध्ये करण्यात येऊन सदर उमेदवार पदस्थपितीच्या ठिकाणी हजर झालेले आहेत.

याबाबत असेही स्पष्ट करण्यात येते की, शासन धोरणानुसार अ.क्र.१८ ते २३ मध्ये दर्शविण्यात आलेल्या उमेदवारांची मुलाखत दि.२०.०९.२०११ ते २३.०९.२०११ या कालावधीत घेण्यात आलेली होती. तथापि खुल्या प्रवर्गातील अ.क्र.२७ ते ३४ या क्रमांकावर दर्शविण्यात आलेल्या उमेदवारांची मुलाखत दि.०४.०६.२०१२ ते ०५.०६.२०१२ या कालावधीत घेण्यात आलेली आहे, म्हणजेच शिरस्तेदार पदाच्या उमेदवारांच्या निवडीची प्रक्रिया ही २ तुकडीत विभागण्यात आल्याने अ.क्र.१८ ते २३ आणि अ.क्र.२७ ते ३४ मध्ये दर्शविण्यात आलेल्या कर्मचा-यांना वेगवेगळ्या गुणवत्ता यादीनुसार त्यांची ज्येष्ठता ठरविणे क्रमप्राप्त आहे.

सामान्य प्रशासन विभाग, शासन निर्णय दि.२१.०६.१९८२ मध्ये नमूद केलेल्या ज्येष्ठतेच्या सर्वसाधारण तत्वानुसार शिरस्तेदार या पदाकरीता २ तुकडीत निवड झाल्याने त्यांची सेवा ज्येष्ठता तुकडीनिहाय करणे अभिप्रेत आहे. त्यामुळे आपले आक्षेप नाकारण्यात येत आहेत.

Sd/-

10/08/2016

(न.ज.पाटील)

प्रबंधक (प्रशासन),

राज्य आयोग, महाराष्ट्र, मुंबई.”

(Quoted from page 49-50 of OA No.121/17)

(1) Those amongst applicants who are holding higher merit in the batch comprising of applicants and private respondents, considering marks in written test (175 out of 200 and 25 out of 200), have eight of due placement in the rank strictly in accordance to merit out of 200 marks awarded to them.

7. After scrutiny of rival submissions and record, what reveals is as discussed in paragraphs appearing hereinafter.
8. Applicants as well as private respondents in present OAs had applied furtherance to single advertisement of which the process of initial scrutiny and written examination proceeded and was completed as one unit and one group and/or as one batch.
9. At no point of time the State has come with a plea:
 - (a) That there existed two advertisements.
 - (b) There existed backlog.
 - (c) There existed a conscious decision at the level of the Government to divide the process of recruitment into two lots.
10. "Backlog" is always a question of fact which has to be shown and proved to exist. The existence of backlog has to be shown from unfilled roster point and actual count & reckoning thereof. Any document supporting the fact of figures of backlog has not been brought forward by the respondents.
11. However, at the time of inviting candidates for viva voce, the Government picked up the lot consisting of candidates who had applied against reserved vacancies, amongst whom present private respondents are. It is, thus, for the alleged object of filling in the backlog of reserved categories, the candidates who had applied against reserved vacancies were given a preferential treatment.

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.

13. In fact due to the said erroneous act, the 'first batch' comprising of reserved category candidates as described by the Government has received a walk ahead of the candidates who did not belong to categories for whom reservation was prescribed, and the candidates who are appointed because of the division of the batches first in sequence of time. This accelerated process of selection is done erroneously and illegally and is a wind fall and a fortuitous gain to the private respondents.

14. The opportunity of appointment came to the private respondents as a windfall which has occurred due to a mistake in implementing the policy of Government which has proved for them to be a blessing in disguise.

15. The fortuitous appointment has resulted into fetching for private respondents the wages, salary and position, but such fortuitous gain ought not and cannot lead them override legitimate claim of the candidates whose merit is higher in rank than such fortuitous beneficiaries.

16. It is not shown that considering the total of 175 marks for written test and 25 marks for viva voce taken together, private respondents are higher in merit ranking than applicants.

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.

20. The defence of the State that two batches were created and because of which two separate merit lists are prepared and the private respondents are put in the seniority list based on the date of entry, above the names of the applicants based on their date of joining, is borne on record. However, it is not shown that a conscious decision to break one batch into two batches was taken at any point of time.

21. Advancing a group of candidates who were given a walk ahead of all other open competition category candidates who had applied furtherance to one and same advertisement; passed through one and same written test on the basis of a misconception of filling in the 'backlog' which in fact never existed, is based on a grave error or a blatant fallacy.

22. It thus emerges conclusively, that the division of one batch into two batches is done on bureaucratic level and not with a Government decision and authority of law or any factual foundation. Thus, the division of one batch into two batches as done in present case, is an unnatural separation and it violates right of equal treatment to the members of one and the same class as candidates of one and the same batch/class.

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.

25. Present Original Applications succeed in terms of foregoing paragraphs.
26. Parties are directed to bear own costs.

Sd/-
(P.N. Dixit)
Member (A)
18.4.2018

Sd/-
(A.H. Joshi, J.)
Chairman
18.4.2018

Dictation taken by: S.G. Jawalkar.