

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.135 OF 2010

DISTRICT : LATUR

Shrikant Hanmantrao Kumthekar,)
Age 32 years, occ. Nil,)
R/o Ganesh Nagar, Old Ausa Road, Latur)..Applicant

Versus

1. The State of Maharashtra,)
Through Presenting Officer, M.A.T. Aurangabad)
2. The Collector & Ex-officio Chairman of the)
Selection Committee, Beed)
3. The Secretary,)
General Administration Department,)
Mantralaya, Mumbai 400032)
4. The Divisional Commissioner,)
Aurangabad Revenue Division, Aurangabad)
5. Shri Digambar Bhagwanrao Tandale,)
Age 34 years, occ. Nil, R/o At Talegaon-Khurd,)
Post Talkhed, Tq. Majalgaon, District Beed)
6. Shri Anil Bhimrao Shinde,)
Age 35 years, occ. Nil, R/o Near Police Colony,)
Nutan Vasahat, Ambad, District Jalna)..Respondents

Shri S.B. Mene, Learned Advocate holding for

Shri Ajay Deshpahde – Advocate for the Applicant

Shri M.P. Gude – Presenting Officer for Respondents No.1 to 4

Shri A.S. Deshmukh – Advocate for Respondents No.5 & 6

CORAM : Shri Rajiv Agarwal, Vice-Chairman
Shri B.P. Patil, Member (J)

DATE : 16 August, 2017

PER : Shri Rajiv Agarwal, Vice-Chairman

J U D G M E N T

1. Heard Shri S.B. Mene, learned Advocate holding for Shri Ajay Deshpahde, learned Advocate for the Applicant, Shri M.P. Gude, learned Presenting Officer for Respondents No.1 to 4 and Shri A.S. Deshmukh, learned Advocate for Respondents No.5 & 6.

2. This OA has been filed by the Applicant challenging the selection process undertaken by the Respondent No.2 pursuant to his advertisement dated 21.11.2009, on the ground that it was done in violation of law laid down by Hon'ble Supreme Court in Indra Sawhney's case reported in 1992 Supp (3) SCC page 217.

3. Learned counsel for the Applicant argued that the Respondent No.2 had issued an advertisement in 21.11.2009 to fill up various posts of Clerk-cum-Typists, Talathis and Peons. The Applicant has applied for the post of Clerk-cum-Typist from Part-Time employees category. 10% posts are reserved horizontally for Part Time employees category as per GR dated 27.10.2009. Out of a total of 64 posts, 22 posts were open and 40 were reserved for various vertical reservation categories. Out of 22 open posts, 14 posts were horizontally reserved. Only 8 post were thus left for open category. The Respondent No.2, later issued a Press Note and

clarified that out of 22 posts, 14 posts only were available and 8 posts were to be filled from amongst the Muster Assistants working on EGS works. No post was accordingly available for open category without any horizontal reservation. Learned counsel for the Applicant argued that this is against the law laid down by the Hon'ble Supreme Court in Indra Sawhney's case, where not more than 50% of the posts can be reserved.

4. Learned counsel for the Applicant argued that the Applicant participated in the written examination and scored 152 marks. He was eligible to be awarded 10 extra marks as a Part Time employee. He was not selected. The Applicant has challenged the whole selection process in the present OA.

5. Learned Presenting Officer (PO) argued on behalf of the Respondents No.1 to 4 that the Applicant has participated in the selection process from Open Part Time Employee category. He was not successful. Now, he cannot challenge the selection process. Learned PO contended that as per advertisement dated 21.11.2009, 22 posts of Clerk-cum-Typist were from open category. 30% posts were reserved for Female which came to 7. 7 women from open category were selected. 3 persons from Ex-Servicemen and 3 persons from Part-Time Employees category were selected. 1 person each was selected from Open PAP and open Sports Category. Remaining 8 posts were filled from amongst Muster Assistants working on EGS Works, who were required to be absorbed in Govt. Service. Learned PO argued that the Applicant scored 152 marks in the selection process while the cut off from Part-Time Employees category was 156. The Applicant was ineligible for selection.

6. We find that the Respondent No.2 has given details of the posts of Clerk-cum-Typists on his establishment in para 4 of the affidavit in reply dated 27.4.2010. It is stated that there are a total of 184 sanctioned posts

of Clerk-cum-Typist. As on 31.12.2008, there were a total of 62 vacancies and as per reservation for various vertical reservation categories, 40 posts were to be filled from backward classes, leaving 22 posts to be filled from open category. It is thus clear that 40 posts which were vertically reserved, included backlog also. Out of 22 open posts, it was decided to fill 8 from amongst the Muster Assistants working on EGS works, who were to be absorbed in Govt. posts. If the Muster Assistants belonged to open category, it cannot be said that the proportion of open category was reduced. Only mode of filling the posts was changed. Out of 22 open posts, 10% were horizontally reserved for Part Time Employees category. 10% of 22 is 2.2, which should have been rounded off as 2. However, the Respondent No.2 had filled 3 posts from Open Part Time Employees category. This appears to be flawed. However, no prejudice was caused by this action to the Applicant, who had applied from Open Part Time Employees category.

7. The Respondent No.2 has not violated the vertical reservation provided for different categories, which comes to 52%. We do not find that the law laid down by the Hon'ble Supreme Court in Indra Sawhney's case was violated. From the material, which is placed on record, it is seen that no prejudice was caused to the Applicant, who applied for Open Part-Time Employees category and was not successful.

8. Having regard to the aforesaid facts and circumstances of the case, this OA is dismissed with no order as to costs.

Sd/-

(B.P. Patil)
Member (J)
16.8.2017

Sd/-

(Rajiv Agarwal)
Vice-Chairman
16.8.2017

Dictation taken by: S.G. Jawalkar.