

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.460 OF 2021**

DISTRICT : NASHIK

Shri Mulchand Devrao Jadhav,)
Age 30 years, Occ. Agriculture, R/at Hanvatkheda,)
Post Rohada, District Yavatmal 445215)..Applicant

Versus

1. The State of Maharashtra,)
Through its Secretary,)
Tribal Development Department,)
Mantralaya, Mumbai-32)

2. Commissioner,)
Tribal Development Department,)
1st Floor, Ram Ganesh Gadkari Chowk,)
Old Agra Road, Nashik)..Respondents

Shri C.K. Bhangoji – Advocate for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

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

DATE : 11th January, 2023

PER : Smt. Justice Mridula Bhatkar, Chairperson

J U D G M E N T

1. Heard Shri C.K. Bhangoji, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. A query was made whether the post of Stenographer (Lower Grade) under the NT-A and NT-B category are vacant as per advertisement of 2015. Pursuant to the query affidavit in sur-rejoinder dated 5.12.2022 is filed by Shri Chandrakant Dagadu Pawar, Assistant Project Officer, Tribal Development Department, Nashik on behalf of respondent no.2. From para 3 of the affidavit we understand that out of total 12 posts of Stenographer (LG) only 8 persons were found qualified and therefore respondents could not fill up 4 posts. Shri C.D. Pawar has not come out with correct information meeting the query whether the post of NT-A and NT-B are vacant. We are on the point of inter-transfer of reservation against NT-A and B which is permissible under the law. Under such circumstances, respondents were directed to furnish information about vacant post. Whether Government has filled up posts from NT-B category and any post under NT-B is vacant.

3. The issue involved of inter-transferability of the applicant who has claimed under the NT-A in view of the Maharashtra State Public Services Act, (Maharashtra Act No.VIII of 2004).

4. In the reply dated 5.1.2022 it is specifically mentioned in para 6.4 that name of the applicant is shown at Sr. No.3 for "Marathi Lower Grade Stenographer" from open category (as the applicant applied for the said post from open category) and his name is shown at Sr. No.6 for "English Lower Grade Stenographer" from VJ(A) as the applicant applied for this post from VJ(A) category. In para 7.1 of the reply he has relied on Section

6(1) of the Maharashtra Act VIII of 2004 about carrying forward the unfilled vacancy reserved for any category of persons under sub-section (2) of section 4 and has mentioned in para 7.3 that the reservation for VJ(B) is carried forward by respondent no.2 for the further recruitment process.

5. On hearing the Ld. Advocate for the applicant our attention is drawn to Section 4(3) and Section 6 of the Act and the Table mentioned in Section 4(2). Section 4(3) reads as under:

“The reservation specified for the categories mentioned at serial numbers (3) to (6) (both inclusive) in the table under sub-section (2) shall be inter transferable. If suitable candidates for the posts reserved for any of the said categories are not available in the same recruitment year, the posts shall be filled by appointing suitable candidates from any of the other said categories”.

Table in Section 4(2) reads as under:

	Description of Caste/Tribe /Category/Class	Percentage of vacancies or seats to be reserved
1	Scheduled Castes	13 percent
2	Scheduled Tribes	7 percent
3	De-notified Tribes (A)	3 percent
4	Nomadic Tribes (B)	2.5 percent
5	Nomadic Tribes (C)	3.5 percent
6	Nomadic Tribes (D)	2 percent
7	Special Backward Category	2 percent
8	Other Backward Classes	19 percent
	Total	52 percent

(Emphasis supplied)

6. We called upon respondent no.2 to explain under what provisions unfilled vacant post of VJ-A English Stenographer (LG) was carried forward under the provision of inter-transferability amongst the reservation between DT and NT when the applicant was available.

7. Ld. CPO on instructions submits that provisions of Section 4(3) and 4 (2) were not considered. Thus, in view of the submissions and the fact that one post of NT-B is vacant and available so by way of invoking the powers of Section 4(3) and 4(2) the Government is empowered to inter-transfer the candidate who is eligible from any category between Sr. No.3 to 6 of sub-section 2 of Section 4. If at all no candidate for inter transfer is eligible then only Section 6(1) is to be taken by the Govt. However, the Govt. is required to consider possibility of inter transfer of the eligible candidates to fill up the post.

8. Applicant admittedly has applied for English Stenographer (LG) from VJ-A and he is eligible candidate in that group and waitlisted at Sr. No.6 and he is the only candidate available on merit from VJ-A and therefore he is to be transferred under Section 4(2) to NT-B.

9. We would like to reproduce relevant portion of the statement of objects and reasons of the impugned Act of 2001:

“The Government of Maharashtra feels that for more effective and smooth implementation of the reservation policy of the State it is necessary to have a special law in this behalf laying down specifically the percentage of reservation in the State for the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes of citizens in the public services and posts and

also to provide for application of the principle of creamy layer with reference to such reservations as per the directions of the Hon. Supreme Court.”

10. Thus, we allow this OA. The applicant is found eligible for inter transfer from NT-A to NT-B. Hence, respondents to consider the name of the applicant and do the needful accordingly on or before 31.1.2023.

Sd/-

(Medha Gadgil)
Member (A)
11.1.2023

Sd/-

(Mridula Bhatkar, J.)
Chairperson
11.1.2023

Dictation taken by: S.G. Jawalkar.