

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.610 OF 2017**

DISTRICT : MUMBAI

Navnath Jotiram Bharmale)
Age 21 years, occ. student,)
R/at Village Chikhli, Taluka & District Osmanabad)..Applicant

Versus

1. The State of Maharashtra,)
through its Secretary, Home Department,)
Mantralaya, Mumbai 400032)
- 1A. The State of Maharashtra,)
Through its Secretary,)
School Education & Sports Department,)
Mantralaya, Mumbai 400032)
2. The Commissioner of Police for Greater Mumbai,)
D.N. Road, Fort, Mumbai 400001)
3. The Deputy Commissioner of Police,)
Headquarter-2, having his office at)
Office of Commissioner of Police, Greater Mumbai)
D.N. Road, Fort, Mumbai 400001)
4. The Commissioner, Sports & Youth Services,)

Old Central Building, 1st floor, Pune Station Road,
Opp. Collector Office, Pune 411001)

5. The Deputy Director, Sports & Youth Services,)
Latur Division, Latur, Taluka & District Latur,)..Respondents

Shri Govind Solanke, Advocate holding for

Shri L.S. Deshmukh – Advocate for the Applicant

Miss S.P. Manchekar – Chief Presenting Officer for Respondents No.1 to 3

Shri D.B. Khaire – Special Counsel for Respondents No.1A, 4 and 5

CORAM : Shri Justice A.H. Joshi, Chairman
Shri P.N. Dixit, Member (A)
RESERVED ON : 24th October, 2018
PRONOUNCED ON : 19th November, 2018
PER : Shri Justice A.H. Joshi, Chairman

J U D G M E N T

1. Heard Shri Govind Solanke, learned Advocate with Shri L.S. Deshmukh, learned Advocate for the Applicant, Miss S.P. Manchekar, learned Chief Presenting Officer for Respondents No.1 to 3 and Shri D.B. Khaire, learned Special Counsel for Respondents No.1A, 4 and 5.

2. Notice for final disposal was issued in this Original Application by order dated 10.07.2017. The respondents have filed reply to the OA as well as amended OA. Respondent no. 1A has filed affidavit in furtherance to the direction of this tribunal.

3. Facts of the case in nutshell are as follows:-

- (a) Government of Maharashtra has provided 5% horizontal reservations in various groups and cadres for sportsmen who have achieved success at State or National or International levels.
- (b) Applicant had participated in Fourth National Level Rural Tournament at Siliguri (West Bengal) conducted by Sports Authority of India.
- (c) 30.07.2016: Applicant furnished for scrutiny his Sports Certificate pertaining to participation in 2011 and 2012 National Tournament held on 30.7.2016.
- (d) 23.02.2017: Respondent No.2 advertised recruitment for Police Constables on 23.2.2017.
- (e) 20.3.2017: Last date for filing application for appointment furtherance to the advertisement issued by the Respondent No.2 was 17.03.2017.
- (f) 6.6.2017: Applicant received Certification of Sports Verification from the Respondent No.5, on 06.06.2017.
- (g) 13.06.2017: Applicant's candidature is rejected by the Respondent No.2, on the ground that certificate of validity of applicant's Sport Certificate was not furnished along with application.

4. Initially present OA was heard and notice for final disposal was issued.

5. Applicant had challenged the order of rejection by the Respondent No.2 by filing present Original Application.

6. The grounds on which the applicant's candidature has been rejected is contained in point no.5 of the communication dated 13.6.2017 Exhibit 'A'.

A. The text thereof reads as follows:

“५. ऑन लाईन अर्जामध्ये खेळाडू समांतर आरक्षणासाठी दावा केलेला आहे. परंतु कागदपत्र पडताळणीच्यावेळी सादर केलेले खेळाडू पडताळणी प्रमाणपत्र हे ऑन लाईन अर्ज भरण्याची अंतिम

मुदत दिनांक २०/०३/२०१७ रोजीचे किंवा त्यापूर्वीचे सादर केले नाही. सादरहू प्रमाणपत्र दिनांक २०/०५/२०१७ रोजी निर्गमित केले असल्यामुळे.”

(Quoted from page 14 of OA)

The last portion of the impugned communication reads as follows:

“तसेच नमूद करण्यात येते की, आपणांस तात्पुरत्या गुणवत्ता यादीमध्ये खुला प्रवर्गांतर्गत.. खेळाडू समांतर आरक्षणांतर्गत आपणांस १६६ गुण प्राप्त झालेले आहेत. परंतु वरील नमूद केलेल्या अनु.क्र.५ च्या कारणामूळे / पुर्वते अभावी सादर प्रवर्गातील पोलीस शिपाई या पदाच्या निवडीस अपात्र ठरलेले अहात. खुला प्रवर्गाची तात्पुरती गुणवत्ता यादी १८१ गुणांवर बंद झाली असल्याने व आपणांस त्यापेक्षा कमी गुण म्हणजेच १६६ गुण प्राप्त झाले असल्यामुळे पोलीस शिपाई पदाच्या सर्वसाधारण खुला प्रवर्गातून निवडीसाठी अपात्र ठरले अहात. त्यामुळे सबब आपली तात्पुरत्या गुणवत्ता यादीमध्ये खुला प्रवर्गांतर्गत खेळाडू समांतर आरक्षणांतर्गत पोलीस शिपाई पदी समाविष्ट करण्यात आलेले नांव बाद करून आपली पोलीस शिपाई पदावरील तात्पुरती निवड व उमेदवारी रद्द करण्यात येत आहे. भविष्यात याबाबत आपले कोणतेही अभिवेदन विचारात घेतला जाणार नाही, याची नोंद घ्यावी.

Sd/-

(अश्विनी सानप - देवधर)

पोलीस उप आयुक्त, मुख्यालय - २,
अध्यक्ष, तथा सह पोलीस आयुक्त, प्रशासन,
मुंबई यांच्याकरिता.८

(Quoted from page 14 of OA)

7. During first hearing, it had transpired that, though Applicant's prayer pertains to quashing the decision/communication of rejection of applicant's candidature, he is in fact claiming exception to the policy decision of the Government wherein by virtue of this Government Resolution No. jkdzh/kks&2002@iz-Ø-68@Øh;qls&2 dated 01.07.2016, it is laid down in paragraph 4 (v) as follows :-

“4 (v)

(अ) खेळाडू उमेदवारांनी अर्ज करण्यापूर्वीच सुधारीत तरतूदीनुसार विभागीय उपसंचालक यांचेकडून खेळाच्या प्रमाणपत्राची पडताळणी करून घेणे आवश्यक आहे. त्यामुळे खेळाडू उमेदवाराने अर्जासोबतच विभागीय उपसंचालक यांनी क्रीडा प्रमाणपत्र योग्य असल्याबाबत व खेळाडू कोणत्या संवर्गासाठी पात्र ठरतो याबाबत प्रमाणित केलेले प्रमाणपत्र जोडणे आवश्यक राहिल-”

(Quoted from page 22, paragraph 4(v) of G.R. dated 01.07.2016)

8. Applicant has averred the ground of challenge in the OA in a very simple manner. Relevant pleading is contained in para 6.9, which reads as follows:

“6.9 From the facts and circumstances mentioned hereinabove it is clear that applicant has been denied appointment to the post of Police Constable from sports quota on very hyper technical ground and that too for no fault on his part.”

(Quoted from page 7 of OA)

9. In the affidavit in reply filed by respondents no.2 and 3 they have replied para 6.9 in para 15 as follows:

“15. With reference to para 6.9, I say as follows: The contention raised therein is denied by the respondent. It is respectfully submitted that at the time of filing the online application for the post of Police Constable viz. dated 16.3.2017 he did not possess verification report of sports certificate from the competent authority and therefore applicant was not eligible to apply under the Sports Person Category. It is seen from verification report of sports certificate dated 20.5.2017 that, applicant had submitted verification report of sports certificate bearing No.000477 instead of sports certificate bearing No.12991 dated 18.12.2011 which was mentioned at the time of submitting online application.”

(Quoted from page 116-117 of OA)

10. In the affidavit in reply, filed by respondent no.4 in reply to para 6.9 reads as follows:-

“6. With reference to para nos.6.8 to 6.10, I say and submit that the contents of these paras are related with the present respondent No. 2.”

(Quoted from page 221 of OA)

11. In so far as the affidavit of respondent no.5 is concerned, he has answered para 6.9 in equally brief manner which reads as follows:

“6. With reference to para nos.6.8 & 6.9, I that the contents thereof are related to respondent no.2.”

(Quoted from page 87 of OA)

12. It is thus evident from the affidavits of the Respondents no.4 and 5 that they have pleaded that they have no concern with the rejection of applicant's candidature.

13. Respondents no.2 and 3 who are the recruiting authorities, contend that they have taken action, because as per the mandate of the Govt. contained in the decision dated 1.7.2016, it was imperative to possess and produce the certificate of validation of participation in sports activity, on the date of application.

14. Thus what had emerged during initial hearing is that real cause of rejection of applicant's candidature is para 4(v) of GR dated 1.7.2016. This factual aspect is clear from the recruitment notification. Relevant text of the said notification dated 23.2.2017 is seen at page 47, which reads as follows:

“खेळाडू उमेदवारांनी अर्ज करण्यापूर्वी उपरोक्त नमूद शासन निर्णय दिनांक ०१.०७.२०१६ मधील परिच्छेद ४(अ)मधील तरतुदीनुसार खेळाडू उमेदवारांनी अर्ज करण्यापूर्वीच विभागीय उपसंचालक यांच्याकडून खेळाच्या प्रमाणपत्राची पडताळणी करून घेणे आवश्यक आहे. त्यामुळे खेळाडू उमेदवाराने, अर्जासोबतच विभागीय उपसंचालक यांनी क्रीडा प्रमाणपत्र योग्य असल्याबाबत व खेळाडू कोणत्या संवर्गासाठी पात्र ठरतो याबाबत प्रमाणित केलेले प्रमाणपत्र ऑनलाईन अर्ज सादर करण्याच्या शेवटच्या दिनांकापर्यंत किंवा त्यापूर्वीचे प्राप्त केलेले असणे आवश्यक आहे.

खेळाडू आरक्षणाचा लाभ घेण्यासाठी उमेदवाराने सक्षम प्राधिकरणाकडून प्राप्त केलेले क्रीडाविषयक प्रमाणपत्र आणि विभागीय उपसंचालक यांनी सदरहू क्रीडा प्रमाणपत्र योग्य असल्याबाबत व खेळाडू कोणत्या संवर्गासाठी पात्र ठरतो याबाबत प्रमाणित केलेले प्रमाणपत्र ऑनलाईन आवेदन अर्ज भरण्याच्या शेवटच्या दिनांकापर्यंत किंवा त्यापूर्वीचे दिलेले कागदपत्र पडताळणीच्या दिवशी सादर करणे अनिवार्य राहिल.

खेळाडू प्रवर्गातून गट क कर्मचारी निवडीसाठी पात्र असल्याबाबत / खेळाडू योग्यता प्रमाणपत्र बरोबर असल्याबाबत उमेदवाराने स्वतःखात्री करूनच ऑनलाईन आवेदन अर्ज सादर करावा. कोणत्याही टप्प्यावर खेळाडू विषयक विहित पात्रता पूर्ण करित नसल्यास उमेदवारी रद्द करण्यात येईल व त्याची जबाबदारी उमेदवाराची राहिल.

टिप : खेळाडू आरक्षणाचा लाभ मिळण्यासाठी उमेदवाराने सादर केलेली क्रीडाविषयक प्रमाणपत्रे आवश्यकता वाटल्यास संबंधित विभागीय उपसंचालक, क्रीडा व युवक सेवा संचालनालय, महाराष्ट्र राज्य, पुणे यांच्याकडे तपासणीसाठी पाठविण्यात येतील. त्यांच्याकडून तपासणी अंती सदर प्रमाणपत्र वैध ठरल्यासच उमेदवारास नियुक्ती देण्यात येईल.”

(Quoted from page 47 of OA)

15. This Tribunal had heard present OA on various dates and inter alia on 8.9.2017 before admission thereof, recorded certain observations and directed respondents no.1 and 1A to file affidavit. Relevant part of order passed on 8.9.2017 namely para 4 to 7 therein reads as follows:

“4. It has transpired that Applicant is denied the appointment for an omission or failure which is not attributable to him, relying on Rule 4(v) of Government Resolution dated 01.07.2016 issued by Respondent and which is impugned. Thus reads as follows:-

“अद्ध खेळाडू उमेदवारांनी अर्ज करण्यापुर्वीच सुधारीत तरतुदीनुसार विभागीय उपसंचालक यांचेकडून खेळाच्या प्रमाणपत्राची पडताळणी करून घेणे आवश्यक आहे. त्यामूळे खेळाडू उमेदवाराने अर्जासोबत विभागीय उपसंचालक यांनी क्रीडा प्रमाणपत्र योग्य असल्याबाबत व खेळाडू कोणत्या संवर्गासाठी पात्र ठरतो याबाबत प्रमाणित केलेले प्रमाणपत्र जोडणे आवश्यक राहिल.”

5. Applicant's submission is, prima facie, rather ex-facie eloquent and exhibits either non-application of mind or arbitrariness while framing said Rule 4(v). Therefore, the Respondent No.1 and Respondent No.1-A are called to file their own affidavit-in-reply i.e. not of any subordinate officer, to state as to whether condition contained in Rule 4(v) of Government Resolution dated 01.07.2016 issued by Respondent No.1-A stands to the reason, on the ground that it tends to deprive a candidate who is duly selected for an appointment on account of act of omission or lapse which is accountable to the

Officers of Government and in particular the Respondent Nos.4 and 5, and is not attributable to the candidate.

6. *Affidavits need not be filed, if paragraph 4(v) supra is rescinded or is suitable modified for neutralizing the hazardous and arbitrary dictate contained therein.*
7. *Affidavits be filed on or before 15.09.2017.”*

(Quoted from order dt.8.9.2017passed in O.A 610/2017)

16. Affidavits are filed by respondent no.1 and 1-A furtherance to the direction given by this Tribunal on 8.9.2017. These affidavits are on record at page 229 and 247 of the paper book of OA. Shri Nand Kumar, IAS, Principal Secretary of Higher and Technical Education Department swearing for the Respondent No.1A has averred to the effect that the reason due to which the condition contained in rule 4(v) has been introduced. Substance of the plea raised in the affidavit for Respondent No.1A, is as follows:

- (a) Object of new policy and in particular said para 4(v) is of undoing an eventuality of Government's allowing entry of candidates in employment, with ostensible eligibility but being required to remove those after finding that they are lacking the eligibility
- (b) In the background of reason due to which new policy has been devised, rescinding of newly devised policy through decision dated 1.7.2016, would mean going back to the earlier position, and hence condition laid down through para 4(v) cannot be rescinded.

(c) Hence, it was found difficult to devise any other modality.

17. Reliance is placed by respondent no.1A on the judgment of Hon'ble Supreme Court in Bedanga Talukdar Vs. Saifudaullah Khan & Ors. 2012 AIR (SC) 1803 : 2012 AIR SCW 2403.

18. This judgment is relied upon by the respondent No.1A, to urge that the mandatory requirement of production of certificate at a particular stage or date cannot be altered later on.

19. Respondent No.1 purports to adopt the affidavit filed by Secretary, Sports Department.

20. When the case was taken up for final hearing the Ld. Special Counsel for the Respondent No1A, 4 and 5 as well learned CPO for respondent No. 1, 2 and 3 have placed reliance on following judgments:

- (i) Rakesh Kumar Sharma Vs. Government of NCT of Delhi & Ors. Civil Appeal No.6116 of 2013 decided by the Hon'ble High Court on 29.7.2013.
- (ii) Bedanga Talukdar Vs. Saifudaullah Khan & Ors. 2012 AIR (SC) 1803 : 2012 AIR SCW 2403.
- (iii) Gaurav Sharma Vs. State of U.P. and Ors. Special Appeal No.156 of 2017 & Ors. decided by Allahabad High Court on 4.5.2017.
- (iv) Avdhoot Gangaram Puri Vs. The State of Maharashtra & Ors., Writ Petition No.11901 of 2015 decided by Bombay High Court Bench at Aurangabad on 6.6.2017

- (v) Mrs. Swati Anil Deshmukh Vs. Member Secretary, Regional Selection Committee, OA No.136 of 2009 decided by this Tribunal on 16.7.2009
- (vi) Shaikh Sohail Hamed S/o Shaikh Ismail Vs. The State of Maharashtra & Ors., OA No.821, 822 & 824 of 2011 decided by Aurangabad Bench of this Tribunal on 29.11.2011.
- (vii) Shri Hasan Shabbir Mujawar Vs. The State of Maharashtra & Anr. OA No.609 of 2012 decided by this Tribunal on 17.3.2015.
- (viii) Maharashtra Rajya Shikshak Sena, Basmat & Anr. Vs. State of Maharashtra & Ors. 2018(1) Mh.L.J. 388.

21. The judgment in Rakesh Kumar Sharma Vs. Government of NCT, Delhi & Ors and Bedanga Talukdar Vs. Saifudaullah Khan & (supra) are relied upon to urge that:-

- (a) The eligibility of the candidate has to be judged with reference to the date fixed by the advertisement; and
- (b) A candidates who acquires qualification subsequent to the date fixed in advertisement cannot be considered at all.

The relevant text of the judgment in Rakesh Kumar's case adopting the view taken in Ashok Kumar Sharma's case [(1997) 4 SCC 18] which is quoted with approval therein is seen in para 12 thereof, and the Hon'ble Supreme Court decided to proceed on the same line. Para 12 of Rakesh Kumar Sharma's case referred above is quoted for ready reference:

"12. A three-Judge Bench of this Court in Ashok Kumar Sharma v. Chander Shekhar (1997) 4 SCC 18 reconsidered and explained the

judgment of Ashok Kumar Sharma (1993) (supra) observing : ‘The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued / published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation.

(Quoted from copy of judgment tendered at bar)

22. The applicant before the Hon’ble Supreme Court in Bedanga Talukdar (supra) did not submit necessary certificates in the office of respondent no.3. i.e. Assam Public Service Commission before date fixed in the advertisement. Their Lordships held that there cannot be relaxation in terms of advertisement. The factual aspect and findings are seen at page 19 and 28 of the judgment, which need advertence and are quoted below:

“19. *Mr. Jayant Bhushan, learned senior counsel, appearing for the appellant herein submits that in the advertisement dated 5th June, 2007, one post was reserved for person suffering from Locomotor Disability only. The advertisement also further provided that those who applied earlier in response to advertisement No.6/2006 dated 10th August, 2006 need not apply again, but the candidates with Locomotor Disability must produce supporting documents in the office of Assam Public Service Commission or in the examination hall before commencement of the examination. The advertisement further provided that candidates who are declared by the Commission to have qualified for admission to the main examination will have to apply again in prescribed - 14 - application form, which will be*

supplied to them. All candidates applying in the category of persons with Locomotor Disability upto 50% were required to send a certificate of Locomotor Disability from the appropriate authority. According to Mr. Bhushan, respondent No. 1 did not submit the necessary certificate in the office of the respondent No. 3 or in the examination hall before commencement of the examination. In fact, he did not submit even the ID card till after the interview. By the time, he submitted the ID card, even the Select List of the successful candidates had been published. Since respondent No. 1 had not submitted the requisite disability certificate within the stipulated period as provide in the advertisement, respondent No. 3 rejected his candidature for valid reasons in its resolution dated 8th January, 2010.

28. *We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There can not be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due*

publication would be contrary to the mandate of quality contained in Articles 14 and 16 of the Constitution of India.”

(Quoted from page 242 & 245 of OA)

23. In so far as various judgments relied upon by Ld. Special Counsel Shri D.B. Khaire and Ld. CPO are concerned, the principle relied upon is as follows”-

“Whenever rules or advertisement prescribes that the candidate must hold eligibility on the date fixed by rules/advertisement the said date must be meticulously and mandatorily adhered to”.

24. The last judgment relied by the Ld. Special Counsel on Maharashtra Rajya Shikshak Sena, Basmat & Anr. Vs. State of Maharashtra & Ors. 2018(1) Mh.L.J. 388, is on the point of judicial review. In that case which was before Hon’ble High Court the question of judicial review had come up with regard to the executive competence to lay down modalities of transfer.

25. This Tribunal has to and respectfully abides by the said ratio decidendi. Any debate or dispute as regards prepositions covered by precedents is not raised by the applicant

The applicant has not even raised any dispute as to power of the Government to lay down rules as done in the Government decision dated 1.7.2016.

26. The question involved in this OA has arisen in the background of mandate that the candidate “must possess eligibility on the date

prescribed by the advertisement”, and the questions which arises for adjudication are as to:-

- (1) What is the condition of eligibility prescribed in the recruitment notification?
- (2) Whether the applicant was possessing the eligibility with reference to the date of notification?
- (3) Whether the applicant is responsible for the delay in issue of validation certificate by the Respondent No. 5?
- (4) Whether a condition can be prescribed for acquiring a certificate for which the candidate has applied well in time but the competent public authority has failed to issue it, for which no fault is attributable to the candidate?
- (5) Whether act of Respondent No. 2 of fixing a date for submitting last date for furnishing application without leaving reasonable and fair margin of time for securing Validity Certificate procurement whereof is beyond human abilities of the candidate.

27. In order to examine the merit of the case and questions which have arisen, it is once again necessary to advert to the facts which are enumerated below, namely:

- (i) *The applicant had participated in the event of sports for which he was awarded certificate as of 2011-2012.*
- (ii) *The applicant's merit certificate relating to sports pertains to the participation held from 9.1.2012 to 12.1.2012.*
- (iii) *The date when applicant submitted application for verification is 30.7.2016.*
- (iv) *The date of notification of recruitment is 23.2.2017.*

- (v) The last date fixed for submitting the application is 17.3.2017.
- (vi) The date of issue of certificate of verification is 20.5.2017.
- (vii) The date of declaration of provisional list is 6.6.2017.
- (viii) The applicant has secured marks above the benchmark and is entitled for selection in sports persons' reserved category.

28. The eligibility for claim in the reservation for sports is prescribed in clause (v) of the advertisement which is part of para no.17 of the advertisement. Relevant text is at page 46 of Paper Book of O.A, which reads as follows:-

“v. खेळाडू आरक्षणाचा लाभ घेऊ इच्छिणा-या उमेदवारांनी शासन निर्णय, शालेय शिक्षण व क्रिडा विभाग, क्रमांक राक्रीधो-२००२/प्र.क्र.६८/क्रीयुसे-२, दिनांक १.७.२०१६ आणि तदनंतर यासंदर्भात वेळोवेळी निर्गमित केलेले आदेश लागू राहतील. सदरहू शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in संकेतस्थळावर उपलब्ध आहे.

उपरोक्त नमूद शासन निर्णयातील परिच्छेद २ नुसार गट क कर्मचारी निवडीसाठी क्रीडाविषयक अर्हता खालीलप्रमाणे आहे. त्यानुसार खेळाडू वर्गातून आरक्षणाचा लाभ घेण्यासाठी उमेदवाराने क्रीडा विषयक अर्हता प्रमाणपत्र कागदपत्र पडताळणीच्या दिवशी सादर करणे आवश्यक आहे.

उमेदवाराने त्यांची खेळविषयक सर्व प्रमाणपत्रे एकाचवेळी सादर करणे आवश्यक आहे. खेळाडू प्रवर्गातून गट 'क' पदावरील भरतीसाठी दिनांक १.७.२०१६ च्या शासन निर्णयासोबतच्या परिशिष्ट-अ मध्ये नमूद केलेल्या पात्र स्पर्धा व खेळ पात्र असल्याबाबत /खेळाडू योग्यता प्रमाणपत्र बरोबर असल्याबाबत उमेदवाराने स्वतः खात्री करूनच र्ज सादर करावा. कोणत्याही टप्प्यावर खेळाडूविषयक विहित पात्रता पूर्ण करत नसल्यास उमेदवारी रद्द करण्यात येईल व त्याची जबाबदारी उमेदवाराची राहिल.

गट	खेळविषयक अर्हता (परिशिष्ट अ प्रमाणे)	खेळविषयक पात्रता	
		वैयक्तिक स्पर्धा	सांघिक स्पर्धा
क	गट अ व गट ब या पदाकरिता विहित केलेली खेळविषयक अर्हता धारण करणारा खेळाडू अथवा ण राष्ट्रीय क्रीडा स्पर्धा (कनिष्ठ गट)-राष्ट्रीय ज्युनिअर गट अंजिक्य स्पर्धा ष राज्य स्तरावरील वरिष्ठ क्रीडा स्पर्धा-राज्यस्तर वरिष्ठ गटातील अंजिक्यपद स्पर्धा. ष्ण राज्यस्तर शालेय क्रीडा स्पर्धा टण राज्यस्तर ग्रामीण व महिला क्रीडा स्पर्धा	राष्ट्रीय स्तरावरील स्पर्धेमध्ये महाराष्ट्राचे /राज्य स्तरावर संबंधीत विभाग /जिल्हयाचे प्रतिनिधित्व करून प्रथम, द्वितीय अथवा तृतीय स्थान /सुवर्ण,	राष्ट्रीय स्तरावरील स्पर्धेमध्ये महाराष्ट्राचे /राज्य स्तरावर संबंधीत विभाग /जिल्हयाचे प्रतिनिधित्व करून प्रथम, द्वितीय अथवा तृतीय स्थान /सुवर्ण

	टण राज्यस्तर आंतरविद्यापीठ क्रीडा स्पर्धा (अश्वमेध) टण राज्यस्तर आदिवासी क्रीडा स्पर्धा टण्ण राज्यस्तर पॅराऑलिंपीक क्रीडा स्पर्धा टण्ण्ण राज्यस्तर अपंग क्रीडा स्पर्धा	रौप्य किंवा कास्य पदक मिळविणे आवश्यक.	रौप्य किंवा कास्य पदक मिळविणे आवश्यक.
टिप	अ.क्र.१ ते ५ मधील सर्व क्रीडा स्पर्धा मधील खेळ हे ऑलिम्पिक क्रीडा स्पर्धा, एशियन गेम्स आणि कॉमनवेल्थ गेम्समध्ये समावेश असलेले खेळ व बुध्दीबळ तसेच, कब्बडी व खो-खो हे देशी खेळच ५: खेळाडू आरक्षणासाठी असतील.		

(Quoted from page 46-47 of OA)

29. Para 5 (iii) of the GR dated 1.7.2016 lays down as follows:

“(iii) सदर खेळविषयक प्रमाणपत्र खेळाडूंकडून पडताळणीसाठी प्राप्त झाल्यानंतर संबंधित विभागीय उपसंचालक, क्रीडा व युवक सेवा यांनी त्यांची संघटनेकडून प्राप्त झालेल्या निकालाच्या आधारे सर्व आवश्यक कागदपत्रांची पूर्तता झाल्यानंतर पडताळणी करून प्रमाणपत्र योग्य असल्याची खात्री करून सदर क्रीडा प्रमाणपत्र अ, ब, क व ड या संवर्गांपैकी कोणत्या संवर्गासाठी पात्र ठरतो याबाबतचा स्पष्ट उल्लेख करून परिशिष्ट “क” नुसार प्रमाणित प्रमाणपत्र खेळाडूस पाठवावे. तसेच सदर अहवाल क्रीडा विभागाच्या अपलोड करावा. उपसंचालकाद्वारे वरील पूर्ण कार्यवाही खेळाडूंकडून आवश्यक कागदपत्रे प्राप्त झाल्यानंतर व संघटनेकडून निकालासंदर्भात आवश्यक कागदपत्रे प्राप्त झाल्यानंतर २० कार्यालयीन दिवसांच्या आत करण्यात येईल.”

(Quoted from page 23 of OA)

30. In the present case the applicant had applied for verification of his sports certificate on 30.7.2016 i.e. after issuance of the GR. The advertisement subject matter is dated 23.2.2017. Respondent No. 5 had written letter dated 4/11.11.2016, to the Respondent No. 4 calling for information most punctually. However, the issuance of Certificate of Verification has remained pending at the end of the Respondents No. 4 & 5 for reasons best known to them and beyond control of the applicant.

31. Had the authority undertaken the exercise and completed the process of verification of the certificate within reasonable time i.e. even 3 times more than the prescribed limit of 20 days even then the applicant could come to know the facts of validity of Certificate, could have secured the certificate at least 6 months before due date.

32. It is in the aforesaid background this Tribunal had recorded in its order dated 8.9.2017 in para 5 which at the cost of repetition is quoted below:

“5. Applicant’s submission is, prima facie, rather ex-facie eloquent and exhibits either non-application of mind or arbitrariness while framing said Rule 4(v). Therefore, the Respondent No.1 and Respondent No.1-A are called to file their own affidavit-in-reply i.e. not of any subordinate officer, to state as to whether condition contained in Rule 4(v) of Government Resolution dated 01.07.2016 issued by Respondent No.1-A stands to the reason, on the ground that it tends to deprive a candidate who is duly selected for an appointment on account of act of omission or lapse which is accountable to the Officers of Government and in particular the Respondent Nos.4 and 5, and not is attributable to the candidate.”

(Quoted from order dated 8.9.2017 of this OA)

33. The observation recorded in para 5 of order dated 8.9.2017 was in fact reiteration of similar observation recorded in earlier order dated 9.4.2017 observing that the said condition was ex facie resulting into denial of opportunity.

34. The affidavit of Principal Secretary, Higher and Technical Education Shri Nand Kumar, I.A.S, seen at page 229-237 narrates in detail the history as to why a condition precedent of prior scrutiny was required to be imposed.

35. The object of Govt. Decision dated 1.7.2016 is undoubtedly laudable. However, the Government was expected to anticipate the loathsomeness and snail’s speed of working of authorities working in Sports Department or time genuinely required with contemplation of best

of efficiency at the end of officers under the control of the Respondent no. 1A and the Respondent no. 4.

36. No efforts are made by the Government, or no steps are taken by the Government to ensure that:-

At the time of issue of any recruitment notification / advertisement is taken, the last date for submitting application should be fixed by leaving adequate and reasonable margin so that the scrutinizing authority of different departments are left with adequate time to complete the Sports Verification claims, and the candidates are provided with adequate interval / space of time to knock approach the scrutinizing / authority including if compelled, to seek judicial intervention.

37. Had adequate and reasonable span of time been left between the last date of advertisement and date of application fixed for submitting, applications for verification of sports certificate of the candidates who have applied furtherance to any particular advertisement could have been taken up by Respondent Nos.4 and 5, for verification on priority basis on candidates' bringing to the notice of verifying authority to take up the claim of certificate for scrutiny, in order to avoid deprivation of the candidates of an opportunity for consideration for employment.

38. It has to be noted from the facts of the case that applicant is claiming the 'relaxation or extension of the date' rather his demand is for its proper fixation. Admittedly, the applicant holds the certificate of participation and he had applied for scrutiny way back on 30.6.2016 i.e. 8 months before the date of submission of the application. On facts the lapse has occurred on the part of the Respondent No. 4 and 5. Moreover

any third party or any private organization or agency, who may have conducted Tournaments was not involved. Activities of channelization of Sports activities of Sports Authority of India are routed through the Respondents No. 4 & 5.

39. The policy decision of the Government dated 1.7.2016 requires the competent authority to undertake the scrutiny of certificate and complete it within 20 days from the receipt of reply from an Association if it is involved. By necessary implication outer limit of 20 days would not absolve the candidate from his application being complete in all respects. On facts at no point of time applicant was communicated any deficiency in his application. The applicant's certificate was validated without any grudge or demur beyond the date prescribed by the advertisement.

40. Record reveals that the Respondents no.4 and 5 have not come forward with a plea that:-

- (a) Any deficiency or shortcoming in applicant's claim for validation was found.
- (b) Any deficiency in applicant's claim was communicated to the applicants.
- (c) Delay is caused due to any fault on the part of the applicant.

41. In connected cases applicant therein has shown that there are instances where the validation certificates were issued by respondent No.5 and other officers subordinate to the Respondent no. 4, within span of one day and in many cases within fortnight.

42. The condition prescribed in the advertisement that he must possess and must furnish the validity certificate before last date is beyond human

limits / beyond applicant's physical control. The applicant has been asked to perform an impossible act or an act which is beyond his personal power and control, issuing of validation being matter of domain and authority of respondents no.4 and 5, applicant's candidature is denied for the failure performance whereof beyond applicant/candidate's power and control.

43. The result is that applicant was in totality fulfilling the condition prescribed by the rules and Government notification to the extent it was within his power. Limited deficiency in applicant's eligibility is not accountable / attributable to the applicant.

44. It is the exclusive business, prerogative and duty too, of the Government to frame guidelines which would be reasonable and practicable and which do not result in denying reasonable, equal and fair opportunity in the matter of employment.

45. Executive and legislative wisdom is always a matter of exclusive domain and prerogative of the State, and is beyond judicial probe in the process of judicial review. However, an unreasonable condition which results in denial to a candidate, fair and reasonable opportunity of 'consideration' in the matter of public employment can never be justified by State by posing a shield of 'immunity from judicial review' being a matter of legislative or executive wisdom.

46. The State has to inculcate an urge to overcome the situation of denying to a candidate opportunity due to lack of eligibility for deficiency which is attributable to the authorities / administrative machinery and not to the candidate. The State has duty to devise appropriate method and

procedure to confer and make available due and fair opportunity of consideration in the matter of public employment.

47. The sports authority i.e. respondents no.4 and 5 who are immediate subordinate to respondent no.1 could have been compelled to hold special sessions of scrutiny for applicants who were subject matter of particular recruitment schedule by exchanging list of the candidates by the respondents no.2 by coordination with Respondents No. 4 & 5 and with due intervention of respondent no. 1 and 1A.

48. Though this Tribunal has recorded finding it is considered necessary that this Tribunal should not part with this order without a noting expectation about what action the Recruiting Authority should have taken to minimize/eliminate the complication.

49. In the present case, the Respondent no. 2 had left about 22 days' time between the date of advertisement and last date of making application. Had at least one month's time being left, applicant could have had adequate time at his disposal to approach higher authorities and seek mandatory orders for issuance of certificate. More over some ventilator should have been left where the authority who is supposed to issue certificate fails to act in time.

50. Respondent no. 2 for that matter and all other departments/Recruiting Authorities should leave adequate span of time from the date of advertisement till the last date of submitting application. This would enable the candidates to collect the documents and if required contact higher authorities including Courts for a mandamus against the erring authorities for issuance of proper certificate. It is hoped that

suitable measures of mitigation for future casualties of present nature be taken by the Government.

51. Moreover, it is very well borne on record that the Government decision dated 1.7.2016 imposing condition that candidate must possess the certificate of validity of Sports participation before the last date fixed in the advertisement was not given publicity much less wide publicity thereof. Therefore, candidates are not given due and fair notice of introduction of new rule. Had this rule been given prospective application by giving fair notice, its sharp and hurting edge would not have resulted in denial of opportunity as has in fact occurred.

52. Hence, newly introduced rule 4(v) ought not be made applicable to any recruitment session unless due publicity of Rule 4(v) aforesaid is given and the advertisement / recruitment notice provides for reasonable time of at least 45 days for securing validity certificate of participation in Sports activity. Had due publicity been given and about 45 days' time had been spared to candidates, the candidates could have approached the verifying authority or seek judicial intervention and exert to avail of opportunity of being a candidate.

53. The respondent no.1 and 1-A ought not plead as if astute in the matters of expediting the procedure which is exclusively within their domain. Candidates who are at the receiving end cannot be made to suffer on the ground of purported defence of executive action of prudent exercise being beyond reach of judicial review.

54. However, prudent and wise exercise in the form of decision dated 1.7.2017, may be claimed, by the Government, because it denies the candidate the opportunity of being considered for employment it openly

violates guarantee of equality of opportunity, enshrined and guaranteed under Article 14 and 16 of the Constitution of India. Therefore, it has to be held that applicant possesses due eligibility, sans the fault of the Respondents no. 1-A, 4 & 5.

55. Applicant is in no way responsible for delay in scrutiny of his Sports participation Certificate. The Government is under obligation to carve out an exception to mitigate the lapse on the part of authority and/or the circumstances beyond control of the candidate. There is no corresponding duty and obligation fastened to the Respondent No. 1A, 4 and 5. The State wants a candidate to do some acts which its own officers are unable to perform.

56. Therefore, this Tribunal holds that impugned rejection is based on rule 4(v) of Government decision dated 1.7.2016, which mandates that a candidate must possess / secure a Certificate before last date fixed by advertisement, which act is beyond control of the candidate. Since the deficiency / shortcoming in applicant's eligibility is not being beyond applicant's control and no fault is attributable to the applicant, rejection of the applicant's candidature is ex facie arbitrary and unconscionable and hence violative of Article 14 and 16 of the Constitution of India. Therefore, the rule 4(v) contained in Government decision dated 1.7.2016 which provides for rejection of candidature due to failure to 'possess' and produce the validity of sports certificate on the particular date, which is beyond physical capacity of applicant, turns out to be a condition which results in denial of consideration for opportunity of public employment, and arbitrary, unfair, unconscionable and hence violative of Constitutional guarantee under Articles 14 & 16 of Constitution of India.

57. In either of the judgments of the Hon'ble Supreme Court, High Court or of this Tribunal their Lordships were not dealing with the eventuality where the Government authorities were at fault. In all cases which are cited arose where the candidates were at fault and authorities had no duty perform or blame to suffer. Therefore, all these judgments do not operate as a precedent to govern the situation as is obtaining in the case at hand.

58. In the result, the questions framed by this Tribunal are answered as follows:

(a) Question No. (1): What is the condition of eligibility prescribed in the recruitment notification?

AND

(b) Question No. (2): Whether the applicant was possessing the eligibility with reference to the date of notification?

Finding: Applicant holds the eligibility Certificate to the extent of participating in National Sports Tournament. Applicant had applied for validation well in time, i.e. 8 months before Recruitment Notification. Applicant's application for validation was pending in which no fault is attributable to the applicant. It was indolence or negligence on the part of Respondent no. 5 due to which the process of validation was delayed. Therefore, due to lapse on part of Respondent no. 5 there was deficiency in applicant's eligibility had occurred.

(c) Question No. (2): Whether the applicant is responsible for the delay in issue of validation certificate?

Finding :As per discussion contained in the judgment and answer to Question (a) & (b) applicant is not responsible for the delay in his securing possession of Validation Certificate. At no point of time applicant was ever communicated any shortcoming on his part. Respondent no. 5 has punctually called for information from Respondent no. 4. If at all there be any lapse or delay, it is inter se Respondent no. 4 & 5. Candidate who is not a privy to the dealings between Respondent no. 4 & 5, he cannot be made a scape goat and responsible for his inability to possess the certificate of validation and consequent failure to produce it on fixed date. Therefore, it will have to be deemed that the applicant is eligible with reference to the requirement of the advertisement by granting necessary allowance of relaxation by reading down clause 4(v) of Government decision dated 1.7.2016 as relaxable because the deficiency is attributed to the authority, i.e. the Respondents No. 4 & 5.

(d) Question No. (4):- Whether it would be reasonable and fair to impose a condition for acquiring a certificate for which the candidate has applied well in time but the competent public authority has failed to issue it, for which no fault is attributable to the candidate?

Finding : (a) While it is within the legislative and executive competence of the executive to lay down by subordinate legislation, rules of procedure and executive always be protected by a protective suit of prerogative and exclusive domain of wisdom cannot be framed in any

manner which results in denial of opportunity of consideration for public employment which is a Constitutional guarantee.

(b) Therefore, while prescribing conditions for eligibility, any condition cannot be framed in such a fashion that it results in denial of a candidate an opportunity of consideration in the matter of employment.

(c) All that is constitutionally guaranteed, is opportunity, and denial of opportunity has to be viewed as a worst ever violation of Articles 14 & 16 of the Constitution of India. Hence, it has to be held that whenever a condition is prescribed for an opportunity in public employment, compliance of which is beyond the control of a candidate, such condition is potentially and inherently arbitrary and violating the Constitutional guarantee under Articles 14 & 16 of the Constitution of India, cannot be upheld or protected. Such rule which denies an opportunity cannot be protected under the shield of a matter of executive domain due to legislative wisdom for framing subordinate legislation.

(d) New rule introduced through rule 4(v) of Government decision dated 1.7.2016 was not given due and fair publicity and notice to candidates and hence said rule cannot and ought not be applied to present recruitment notice / advertisement.

(e) Even in future all advertisements must contain adequate space of around 45 days for affording to candidates, opportunity of securing the validity certificate of participation in Sports activity which would afford them a chance to approach verifying authority or to seek judicial intervention.

59. In view that this Tribunal had answered all questions which are framed hereinabove in the affirmative and in favour of applicant, the OA succeeds. The respondent no.2 is directed to accept applicant's candidature and treat him as selected and follow the entire course if on merits applicant is found eligible as per recruitment rules.

60. In the result, we proceed to pass the following order:-

- (A) Original Application is allowed in terms of prayer clause (b) and (c) of the OA.
- (B) The applicant shall be given all benefits as if his candidature was not rejected and shall be entitled be conferred with the benefits of seniority etc. as he would be entitled as per rules.
- (C) In the event the posts are filled in, applicant be absorbed by taking all measures including by creating a supernumerary post, if necessary.
- (D) Chief Secretary of State should issue suitable directions by considering observations contained in paras no. 51, 56, 57 and 59 of this judgment. For this purpose, Registrar of this

Tribunal as well as learned CPO are directed to forward copy of this judgment and order to the Chief Secretary of Government of Maharashtra with a request to furnish due compliance thereof within one month from the receipt of the order.

(E) Parties are directed to bear their own costs.

Sd/-
(P.N. Dixit)
Member (A)
19.11.2018

Sd/-
(A.H. Joshi, J.)
Chairman
19.11.2018

Dictation taken by: S.G. Jawalkar.