

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**MUMBAI**  
**ORIGINAL APPLICATION NO.829 OF 2019**  
**WITH**  
**ORIGINAL APPLICATION NO.346 OF 2017 (Aurangabad)**  
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**ORIGINAL APPLICATION NO.829 OF 2019**

**DISTRICT : MUMBAI**

1. Shri Arun Pandharinath Ghadge )  
Age 48 years, occ. Police Constable, )  
Arya Prem 205, Plot No.145A/148, )  
Opp. Kalamboli Police Station, Sector 1E, )  
Kalamboli, Raigad 410218 )
2. Shri Vipin Ramchandra Patil, )  
Age 45 years, Occ. Police Constable, )  
Room No.202, A Wing, Parul Plaza, Plot No.4, )  
Near Dyanmandir School, Sector-13, )  
Kalambaoli 410210 )
3. Shri Anand Motiram Giri, )  
Police Constable, )  
Ambejogai Road, Near Akshay Building, )  
Fulari Gate No.2, Keshav Nagar Sul Colony, )  
Latur, Maharashtra 413 512 )
4. Shri Bharat Yashvant Kate, )  
Police Constable, )  
C-2/54, Marol Police Camp, Marol Maroshi )  
Road, Near MIDC, Andheri, Mumbai 400059 )
5. Shri Rajendra Sopan Sonawane, )  
Police Constable, )  
Room No.1, Building No.E/7, Vijay Nagar, )  
Marol Police Camp, Marol, Near Vijay Nagar, )  
Andheri, Mumbai 400059 )..Applicants

Versus

1. The State of Maharashtra, )  
Through Secretary, Home Department, )  
Mantralaya, Mumbai 400032 )
2. The Director General of Police, )  
Police Headquarters, MS, Mumbai )
3. The Additional Director General of Police, )  
Training & Special Squad, MS, Mumbai 400005 )
4. The Addl. Director General of Police, )  
Establishment, Police Headquarters, )  
Mumbai. Maharashtra State 400 001. )
5. Mr Shijaji N. Wagh, )  
Presently R/at Room no. 5, )  
Bhima Building, Police Training Centre, )  
Bhabulgaon, Latur, Dist-Latur 413 531 )
6. Mr. Aba Gopal Borade, )  
Police Head Constable, )  
R/o: Saravaibhav Reaighar, Jatwada Rd )  
Tal & Dist-Aurangabad. )
7. Mr. Nanasaheb L. Gaikwad, )  
Police Naik/Constable [PTC], )  
R/o: Sainath Ngar, Mantha Chafulli, )  
Jalna, Tal & Dist-Jalna. )
8. Mr. Laxman Narayan Sormare, )  
A.S.I, R/o: Sukhshanti Nagar, )  
Mantha Road, Jalna, Tal & Dist-Jalna. )
9. Mr. Gajanan Shivappa Parit. )  
Police Constable, Kolhapur )  
Plot No.7, Asstekar Nagar, Line Bazar, Kasaba )  
Bavada, Kolhapur 416003 )
10. Mr. Ramesh Digambar Shinde. )  
Police Constable, Solapur Rural )  
Flat No.22, Vaishnavi Nagar, Part 2, )  
Vijapur Road Saiful, Solapur 413 004 )
11. Mr. Dhansing Ramsing Rathod )  
Police Constable, Akola. )

- Anand Nagar, Behind Matoshri General Store, )  
 Sindhi Camp, Tal & District. Akola, )  
 Now posting at Borgaon, Manju Police Station, )  
 Akola 444102 )
12. Mr. Kishaorsing S. Rathod. )  
 Police Constable, Nagpur. )  
 C/o Rakhiv Police Inspector Headquarters, )  
 (RPI), Nagpur Rural, Nagpur 440026 )
13. Mr. Prabhakar K. Sawde )  
 Police Constable, Nagpur Loha Marg, )  
 At & Post Dahekarwadi Junajalna, )  
 Near Bajaj Showroom, Tal. Jalna Dist. Jalna )
14. Mr. Ganesh N. Kamble, )  
 Police Constable, Gadchiroli. )  
 1321 C/o Gadchiroli Police Station, )  
 District Gadchiroli 442605 )
15. Mr. Eknath N. Gaikwad )  
 Aurangabad Gramin. )..Respondents

Shri Mangal Bhandari, Ld. Counsel with  
 Shri M.M. Deshmukh – Advocates for the Applicants  
 Ms. S.P. Manchekar – Chief Presenting Officer for Respondents No.1 to 4  
 Shri P.A. Kulkarni – Advocate for Respondents No.5 to 14 and holding for  
 Shri A.S. Tilve – Advocate for Respondent No.15

**WITH**

**ORIGINAL APPLICATION NO.346 OF 2017 (Aurangabad)**

**DISTRICT : LATUR**

1. Shri Balaji Baburao Latpate )  
 Age : 51 years, Occ. Police Head Constable )  
 With C.I.D. crime branch Latur, )  
 R/o.Somvanshinagar, in front of )  
 Medical college Ambejogayi Road, Latur. )
2. Shri Manmath Baswant Swami. )  
 Age : 53 years, Occ. Police Head Constable )  
 RPTS Babalgaon Latur, )  
 R/o. Gawlinagar, Nanded Road, )  
 Near Bharat Society, Latur. )

3. Shri Yeshwant Shivaji Munde, )  
 Age : 51 years, Occu. A S I, )  
 Motor Transport, Latur, )  
 R/o. Somvanshinagar, In front of )  
 Medical College, Ambejogayi Road, )  
 Latur. )..Applicants

Versus

1. The State of Maharashtra, )  
 Through its Secretary, Mantralaya, Mumbai. )  
 Copy to be served on Presiding Officer, )  
 M.A.T. Bench at Aurangabad. )
2. The Director General of Police, )  
 Maharashtra State, Mumbai 400 001. )
3. The Spl. Inspector General of Police, )  
 Nanded Range, Nanded. )..Respondents

Shri P.A. Kulkarni – Advocate for Applicants

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

CORAM : Smt. Justice Mridula R. Bhatkar (Chairperson)  
 Shri P.N. Dixit, Vice-Chairman (A)

RESERVED ON : 2<sup>nd</sup> March, 2021

PRONOUNCED ON: 10<sup>th</sup> March, 2021

PER : Shri P.N. Dixit, Vice-Chairman (A)

### **J U D G M E N T**

1. Heard Shri Mangal Bhandari, learned Counsel with Shri M.M. Deshmukh, learned Advocates for the Applicants, Ms. S.P. Manchekar, learned Chief Presenting Officer for Respondents No.1 to 4, Shri P.A. Kulkarni, learned Advocate for Respondents No.5 to 14 and holding for Shri A.S. Tilve, learned Advocate for Respondent No.15 in OA No.829/2019.

2. Also heard Shri P.A. Kulkarni, learned Advocate for Applicants and Ms. S.P. Manchekar, learned Chief Presenting Officer for Respondents No.1 to 3 in OA No.346/2017.

3. The controversy in these Original Applications originates following promotion of respondents no.5 & 6 in pursuance of the judgment and order dated 24.3.2017 passed by the Aurangabad Bench of this Tribunal in OAs. No.378/2016, 38, 39 & 40 of 2016.

Brief Facts:

4. The applicants appeared in Limited Departmental Competitive Examination (LDCE), 2014 conducted by the Director General of Police (DGP), State of Maharashtra as per Maharashtra Police Manual, 1959 Vol-I Rule 180(3) and Rectification Chit No.122 in pursuance to the advertisement dated 21.2.2014 for filling up 32 posts of Reserved Police Sub Inspector (RSI). 292 candidates qualified in the said examination. Following the directions given by this Tribunal on 24.3.2017 in OAs. No.38, 39, 40 & 378 of 2016, 11 additional candidates were declared as qualified. Out of the total 303 qualified candidates, 167 have been promoted as RSI. Private respondents no.5 & 6 in the present OA have been promoted as RSI. The background of the same is as under.

5. On 30.1.2014 the DGP issued circular mentioning that the examination shall be conducted in 2 parts i.e. Part-I Written Examination of 100 marks and Part-II Practical Examination of 200 marks. The candidates appearing in the said examination have to score 50% marks in each part and 50% aggregate for passing the said examination. On 21.2.2014 the DGP issued another circular clarifying that the said examination shall be conducted in 2 parts i.e. Part-I Written Examination

of 100 marks and Part-II Practical Examination of 200 marks. The candidates appearing in the said examination have to score 50% marks in each part and 50% aggregate for passing the said examination.

6. Private Respondents no.5 to 15 filed OAs. No.38, 39, 40 & 378 of 2016. The operative part of the order dated 24.3.2017 stated that the decision of the respondent no.2 viz. DGP, MS declaring the applicants (private respondents in the present OA) as failed as they failed to score 50% marks in second examination of Part II i.e. Practical Examination. The Tribunal observed that applicants (private respondents in the present OA) scored 50% marks in Part-I i.e. written examination and 50% marks in Part-II i.e. practical examination. They scored more than 50% marks in aggregate also. The Tribunal therefore held that they have fulfilled the conditions as laid down in para 4(c) of the circular dated 21.2.2014. The Tribunal further stated that the respondents ought to have declared the applicants as 'passed' as they fulfilled the required criteria but the respondents have declared them as 'failed' in violation of the conditions contained in the circular dated 30.1.2014 and 21.2.2014. The Tribunal therefore stated that the impugned order passed by respondent no.2 declaring the applicants as 'failed' is not legal and proper. The Tribunal therefore quashed and set aside the impugned order and directed the DGP to act upon accordingly to consider the applicants (private respondents in the present OA) for promotion on the post of RSI.

7. In pursuance of the order of the Tribunal, on 24.3.2017 the DGP modified the results and the private respondents in the present OA were moved to higher seniority numbers as passed. On 16.7.2019 six private respondents no.9 to 14 viz. (1) Shri Gajanan Shivappa Parit, (2) Shri Ramesh Digambar Shinde, (3) Shri Dhansing Ramsing Rathod, (4) Shri Kishaorsing Gambhirsing Rathod, (5) Shri Prabhakar Kashinath Sawde and (6) Shri Ganesh Niranjana Kamble were declared as passed in the said

examination. As the publication of the changed result adversely effected the applicants in the present OA, they have approached this Tribunal at Principal Bench in the present OA with the following prayers:

*(a) This Hon'ble Court may be pleased to call for record and proceedings in the case of present applicants and this Hon'ble Tribunal may further be pleased to issue appropriate directions to the respondent no.1 to consider names of the present applicants along with total 147 candidates on preferential basis for appointing them on the post of Reserved Police Sub-Inspector-2014 before appointing respondents no.5 to 8 and respondents no.9 to 15.*

*(b) This Hon'ble Tribunal be pleased to stay all further actions in relation to, or by way of, appointment (by way of handing over appointment/posting letters) of respondents no.5 to 15 on the post of Reserved Police Sub-Inspector-2014 before appointing applicants and total 147 candidates.*

*(c) This Hon'ble Tribunal may further be pleased to direct the respondent no.2 to appoint the applicants along with 147 candidates on the post of Reserved Police Sub-Inspector and give them benefits of seniority before appointing respondents no.5 to 15.*

(Quoted from pg.13-14 of OA.829/19)

8. As the issue to be decided was whether the view taken by earlier Division Bench in OAs. No.38, 39, 40 & 378 of 2016 decided on 24.3.2017 by Aurangabad Bench of this Tribunal is in consonance with Rule 180(3)(e) of the Maharashtra Police Manual, 1959. Accordingly, Larger Bench [Chairperson, Vice-Chairman (A) and Member (J)] was constituted and the same gave its judgment on 25.2.2021. The judgment of the Larger Bench examined the issue and came to following conclusion:

*“4. The Rule 180(3)(e) of Maharashtra Police Manual, 1959 states the pattern and allocation of marks in written as well as physical test for promotion to the post Reserve Sub Inspector. Hence, it is useful to reproduce the said rule.*

*“180. Head Constables :- (1) Departmental Examination qualifying for promotion to Sub Inspector:-.....*

*(e) Candidates obtaining not less than 50 per cent marks in each of the three subjects will be considered to have passed the test.”*

5. *Heard learned counsel for the Respondents 5 to 14 and also learned counsel for Respondent no. 15. We requested the learned counsel to point out whether Rule 180(3)(e) of Maharashtra Police manual 1959 is referred to or discussed in the judgment in O.A 378/2016, 38/2016, 39 & 40/2016 and O.A 228/2019, decided on 24.3.2017 and 7.3.2019 by M.A.T, Aurangabad Bench. Learned counsel for the Respondents have fairly conceded that neither the present Respondents nor the State have pointed out Rule 180(3)(e) of Maharashtra Police Manual, 1959.*

6. *Mr Bhandari, learned counsel for the applicants and Ms Swati Manchekar, learned C.P.O both have submitted to the orders of this Bench in view of the arguments advanced by Mr Pramod Kulkarni, learned counsel for the Respondents.*

7. *Thus, on perusal of the judgment and order dated 24.3.2017 in O.A Nos 378/2016, 38/2016, 39 & 40/2016 and 7.3.2019 in O.A 228/2019, passed by Division Bench of M.A.T, Aurangabad we found that the said bench had no opportunity to deal with Rule 180(3)(e) of Maharashtra Police Manual, 1959 as it was not pointed out or placed before by either of the parties.*

8. *Admittedly the examination was in two parts, one written of 100 marks and practical of 200 marks. On perusal of the judgment we found that Rule 180(3)(e) of Maharashtra Police Manual, 1959 is not considered therein. The rule states that in written test minimum 50 marks out of 100 is required to be secured and similarly in practical test, which is divided in two subjects, i.e. physical training, musketry and drill a candidate has to secure 50 marks out of 100 and in the second subject, i.e. ability to impart instructions, the candidate should acquire 50 marks out of 100. Though the minimum percentage is 50% i.e. 150 marks out of 300, the candidate in all*



*of the three subjects should secure minimum 50% in each subject. Thus, aggregate minimum 50% of the three subject is counted as in each subject minimum 50%. On perusal of the judgment and order we find that the D.B of M.A.T, Aurangabad has taken a contrary view. As per the said judgment, the aggregate of all the marks 150 to be considered and it is not necessary for candidates to secure 50 marks in each subject of the three subjects.*

9. *The said Rule is the basis of the both the Circulars dated 30.1.2014 and 21.2.2014. The Circulars open up with the statement where this Rule is mentioned. Therefore, we hold that the view taken by the earlier D.B in O.A 378/2016, 38/2016, 39 & 40/2016 and O.A 228/2019, decided on 24.3.2017 and 7.3.2019 has not addressed the said Rule 180(3)(e) of Maharashtra Police Manual, 1959 and therefore, view taken by the D.B is not in consonance with the said rule.*

10. *In view of the above, we hold that the issue referred to the larger bench:*

*Whether the view taken by the earlier Division Bench in O.A 378, 38, 39 and 40/2016 decided on 24.3.2017 of Aurangabad Bench of this Tribunal is in consonance with Rule 180 (3)(e) of the Maharashtra Police Manual, 1959? ..... Negative.”*

9. Once the legal issue was decided as mentioned above, the Ld. Counsel for the applicants submitted that the applicants have filed present OA on 19.8.2019 within time limit as the Additional Director General of Police (Training) declared six persons (Respondents No.9 to 14) as passed based on Court orders on 16.7.2019. He therefore contended that there is no delay in filing OA and it is not hit by limitation. He further pointed out that applicants in the present OA were not party to the OAs filed by the private respondents and they were not aware of the

judgment till the private respondents got the benefit of the same and superseded other candidates as per the communication on 16.7.2019 (Exhibit K-61). Learned counsel Mr. Bhandari for the applicants has pointed out chronologically the steps taken by the applicants and the reply given by the office of the Director General of Police in respect of the results. The present applicants have submitted letter to the office of the Director General of Police complaining about the method followed in allocation of marks in practical examination in Part-I & Part-II. They have received communication on 6.10.2017 that office of the Director General of Police has inquired about the same. The present applicants have also applied under the R.T.I to get the correct information from the office of the Director General of Police. They received reply on 20.10.2018 from the office of the Director General of Police. A list of 72 candidates was published on 7.1.2019. Then again on the letter of the applicants dated 7.3.2019, they received reply from the office of the Director General of Police. On 16.7.2019, list of 6 more candidates was published based on the decision given by the Aurangabad Bench of this Tribunal in O.A. Nos.378/2016, 38/2016, 39 & 40/2016. Again on 5.8.2019 another letter was sent by the applicants and finally they have filed present O.A on 19.8.2019, without any delay.

10. Learned counsel for the private Respondents, Mr. Pramod Kulkarni has opposed the present Original Application only on the ground of limitation, however, has accepted that the present applicants were not made party in the Original Application filed at M.A.T, Aurangabad Bench. In fact, the learned advocate for the private Respondents fairly conceded that the provisions in the rules as pointed out are to be followed and there cannot be any deviation from the same.

11. Learned counsel Mr. Bhandari for the applicants has taken us to the correspondence between the applicants and the office of the Director

General of Police, which discloses that the applicants were diligent in taking steps in putting up their grievance time to time. Admittedly, they were not party to the earlier proceedings before M.A.T, Aurangabad Bench, which was decided against them. Thus, they were directly affected persons, and they had no opportunity to voice their grievance before M.A.T, Aurangabad Bench. Therefore, they filed the present Original Application at M.A.T, Mumbai. It is necessary to mention that at M.A.T, Aurangabad Bench, no Division Bench is available due to retirement of the Members and Division Bench is not functional since 1 ½ years. The issue was required to be decided afresh, and it was beyond the scope of review. Thus, we hold that the present Original Application is within limitation and there is no delay.

12. Ld. Advocate for the private respondents fairly concedes that the provisions in the rule are highest in hierarchy and therefore there cannot be any deviation from the same.

13. The Ld. Counsel for the applicants relies on the judgment of the Hon'ble Supreme Court in Civil Appeal No.4837 of 2019 (SLP (C) No.15699 of 2018) Lance Nayak PNO No.980510777 Raj Bahadur & Ors. Vs. State of Uttar Pradesh & Ors. decided on 9.5.2019, wherein it is observed as under:

*“4. The candidates were thus required to appear in the written examination which was to carry 300 marks. The written examination comprised of four subjects as enumerated in Rule 16(a)(i) and the candidate who failed to obtain minimum 50 marks in each subject would not be eligible for promotion.*

*10. When the matters were taken up on 15.04.2019 Mr. Pallav Shishodia, learned Senior Advocate appearing for the appellants relied upon*

*Order dated 30.01.2017 passed by this Court in Writ Petition (C) No.45 of 2016 whereunder the concerned petitioners having secured more than cut off marks were directed to be sent for training. It was submitted that similar benefits be given to the appellants. Submissions advanced by Mr. Pallav Shishodia, learned Senior Advocate were noted in the order dated 15.04.2019 as under:*

*'According to the Rule, the eligible candidates are to appear in the written examination which is to carry 300 marks and the details of the subjects are given in Rule 16(A). The subjects so specified are 1 to 4 (subjects 3 & 4 carry 50 marks each).*

*According to the petition, the requirement to secure 50% marks is not to be reckoned subject-wise but ought to reckon paper-wise. And since there is common paper for subjects 3&4, the minimum marks which ought to be insisted upon must be in terms of the entire paper and not per subject i.e., subjects 3&4. Mr. Shishodia submits that his clients have secured 54% in the paper though the clients may not have secured 50% minimum in subjects 3&4.*

*According to Mr. Shishodia, if this submission is accepted, the petitioners would be entitled to the benefit of Order dated 30.01.2017 passed by this Court as the aggregate marks secured by them are more than 50%.'*

13. *We have given anxious consideration to the submissions as advanced. We are concerned in these matters with limited Departmental examination where the idea is, regardless of seniority levels, a meritorious candidate be given chance to reach higher levels. Merit is therefore the key element and there can be no compromise and dilution of the criteria. What is required in terms of the Rules is minimum of 50 per cent marks "in each subject". The subjects are delineated in the Rules and there are four subjects. Irrespective whether subjects 3 and 4 form part of the same paper,*

*the express language of the Rules does not permit any such interpretation and the construction suggested by Mr. Shishodia cannot be accepted.”*

14. The Ld. Counsel therefore submitted that the prayers made by the applicants need to be conceded accordingly.

15. As per the detailed judgment given by the Larger Bench of this Tribunal dated 25.2.2021 and the observations by the Hon'ble Supreme Court, we have no hesitation in observing that the prayers made by the applicants are in consonance with Rule 180(3)(e) of the Maharashtra Police Manual, 1959 and therefore the prayers made by the applicants at prayer clause 10(a), (b) and (c) in OA No.829 of 2019 are allowed. The judgment will come into effect immediately from the date of signing.

16. Original Application No.829 of 2019 is therefore allowed in terms of prayer clause 10(a), (b) and (c). Original Application No.346 of 2017 is dismissed, as there is no merit in the same.

17. No order as to costs.

Sd-

**(P.N. Dixit)**  
**Vice-Chairman (A)**  
**10.3.2021**

Sd/-

**(Mridula R. Bhatkar, J.)**  
**Chairperson**  
**10.3.2021**

Dictation taken by: S.G. Jawalkar.