

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
REVIEW APPLICATION STAMP NO. 371 OF 2021
IN
TRANSFER APPLICATION NO. 1 OF 2016
(WRIT PETITION NO. 115 OF 2016)**

DISTRICT : BEED

Maharashtra Public Service Commission,)
Through its Secretary,)
MTNL Bldg, 5, 7 & 8th floor, Cooperage,)
Mumbai 400 021.)...**Applicant**

Versus

1. Shri Abhay G. Sanap,)
Occ – Education,)
R/o: Abhay Niwas,)
Bhakti Construction Road,)
Eknathnagar, Beed,)
2. The State of Maharashtra,)
Through its Secretary,)
Department of General Administration)
Department of Sales Tax, Mantralaya,))
Mumbai 400 032.)...**Respondents**

Mr M.B Kolpe, learned Special Counsel with Ms Archana B.K, learned P.O for the Applicant (Ori Respondent no.1).

Shri M.S Mahajan, learned Chief Presenting Officer for the Respondent no. 1.

Shri S.D Munde, learned advocate for the Respondent (Ori Applicant)

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Mr Bijay Kumar, Member (A)

DATE : **26.10.2021**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. The M.P.S.C has moved this application seeking review of the judgment and order dated 12.2.2021 passed by this Tribunal in T.A 1/2016, wherein we have directed the M.P.S.C to recommend the name of Respondent no. 1, (Original Applicant) for the post of Tax Assistant, Group-C.

2. Learned Special Counsel with Learned P.O appearing for the MPSC has submitted that pursuant to the order of this Tribunal, on verification the M.P.S.C found that one candidate, namely, Mr Sugriv V. Wagh at Serial No. 2945 was in the merit list and is above the Respondent no. 1, present applicant. Both the candidates are having equal marks. But the Respondent no.1 , i.e. original applicant is younger in age than the candidate at serial No. 2945 and therefore, as per Rules of Procedure of the Commission, the applicant is not entitled to the recommendations and hence the name of the Respondent no. 1, original Applicant cannot be recommended in view of Rule 10(7)(vi) of The Maharashtra Public Service Commission Rules of Procedure, 2014.

3. Learned P.O for the applicant, original Respondent on the instructions from Ms Swati Mhasepatil, Secretary, M.P.S.C, who was present has submitted that MPSC cannot go beyond the rules as this fact is found and therefore, the order cannot be

implemented and as this new fact has emerged, the application for review is moved.

4. Learned counsel for the Respondent, Original Applicant, Mr Munde has opposed this Review Application mainly on the ground that the applicant, Original Respondent has approached this Tribunal and the other candidate, namely Mr Sugriv Wagh has not come before this Tribunal and no relief can be granted to the candidate who has not approached this Tribunal. Hence, the Review Application is not maintainable.

5. Considered the submissions of both the parties. Under Order XXXXVII of Code of Civil procedure, the application for review can be moved if new and important matter is discovered after due diligence and it was not within the knowledge of the applicant. We agree that the MPSC wanted to implement the order of this Tribunal. However, as they have come across a peculiar situation, that the applicant who is a candidate from NT(D) category applied for the horizontal reservation in Sports category has secured 122 marks and the other candidate, namely, Mr Sugriv Wagh, who also claims reservation in NT (D) Sports category has also secured 122 marks. Thus, both the candidates are equally placed on merit. Therefore, in view of the Rules of Procedure, 2014, MPSC has moved this Review Application.

6. We make it clear that MPSC at the time of hearing of the Transfer Application was having the details of the marks of Mr Sugriv Wagh and the applicant and it was within the knowledge of MPSC at the relevant time that the applicant and Mr. Sugriv Wagh have secured equal marks. However, it was not pointed out and not brought to the notice of the Tribunal.

7. Further, this situation will not come in the way of the MPSC in implementing the order passed by this Tribunal, because the Respondent, original applicant has approached this Tribunal for relief and the other candidate, namely, Mr Sugriv Wagh, is not before this Tribunal. It is not the case that the other candidate Mr. Sugvir Wagh was more meritorious by securing higher marks. He being older in age to the present applicant, hence MPSC wants to recommend him. It is appropriate to consider the case of the original Applicant, who has taken efforts to come before this Tribunal, without any delay and laches.

8. In view of the above, the Review Application is rejected and we direct the MPSC to implement the order dated 12.2.2021 passed by this Tribunal in T.A 1/2016.

**Sd/-
(Bijay Kumar)
Member (A)**

**Sd/-
(Mridula Bhatkar, J.)
Chairperson**

**Place : Mumbai
Date : 26.10.2021
Dictation taken by : A.K. Nair.**