

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

REVIEW APPLICATION NO 31 OF 2015

IN

ORIGINAL APPLICATION NO 270 OF 2012

DISTRICT : NASIK

Savita Nivruvtti Salve @)
Savita Pravinchandra Dethe,)
Age : 37 years, Occ : Education,)
R/o: Jaidatta, Survey No. 882/3/45))
Vaibhav Colony, Rajeev Nagar,)
Mumbai Agra Road, Nasik.)...**Applicant**

Versus

1. The Desk Officer,)
Through the Chairman/)
Secretary,)
Maharashtra Public Service)
Commission, having office at)
3rd floor, Bank of India Bldg,)
M.G Road, Fort,)
Mumbai 400 001)
2. The State of Maharashtra,)
Through its Secretary,)
Home Department, Mantralaya)
Mumbai 400 032.)

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3. The State of Maharashtra,)
Through its Secretary,)
Department of General)
Administration, Mantralaya,)
Mumbai 400 032.)
[Copy of Respondent nos 2 to 3)
to be served on Government)
Pleader, High Court of Judicature)
at Bombay].)
4. Shri Kumara A. Madhukarrao)
A Type, 33/1, RCF Colony Kurul)
Tal:Alibaug, Dist-Raigad 402 201)
5. Shri Dhole Bhaidas Namdeo)
Superintendent of Jalgaon,)
District Prison, Jalgaon,)
Collector Office back side,)
Jalgaon 425 001.)
6. Dahale Kirti Kishoe)
Kirti Rajesh Chintamani (Dahale)
Gurukrupa Jewellers, Sarafa Line)
Mahagaon, Yavatmal.)
7. Agey Vaibha Sudhkarrao)
Jailor Gr-2, Byculla District Prison)
Clare Road, Byculla,)
Mumbai 400 008.)
8. Mugutrao Aruna Arjunrao)
C/o: Arun T. Handal,)
At and Post Pimpelgaon Baku,)

- Tal-Newasa,)
Dist-Ahmednagar-414 603.)
9. Shikare Geeta Hanumant)
Jail Officers Quarter No. 1,)
Near Female Prison,)
Yerwada, Pune 411 006.)
10. Jogdand Swati Khushalrao)
C/o: Jadhav D.D.G 001, B-12,)
Yogidham, Murbad Road,)
Kalyan [W], Thane.)
11. Ahirrao Harshad Bhikanrao)
Akola District Prison,)
Kaulhed Road, Officers Quarter)
Akola 444 001.)
12. Sawant Nagnath Gangadhar)
At and Post Bolegaon [Khurd],)
Tal-Chakur, Dist-Latur 413 525)...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

Shri K.B Bhise, learned Presenting Officer for the Respondents no 1 to 3.

Shri A.V Bandiwadekar, learned advocate for Respondent no. 5 & 11.

Shri A.A Desai, learned advocate for Respondents no 4, 6, 8 and 12.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : ~~02.05.2016~~ 14.06.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri M.D Lonkar, learned advocate for the Applicant, Shri K.B Bhise, learned Presenting Officer for the Respondents no 1 to 3, Shri A.V Bandiwadekar, learned advocate for Respondent no. 5 & 11 and Shri A.A Desai, learned advocate for Respondents no 4, 6, 8 and 12.

2. This Review Application has been filed by the Applicant seeking recall of our judgment dated 27.7.2015 in O.A no 270/2012 with the prayer that Original Application may be allowed and the Applicant may be directed to be appointed as Superintendent of District Prison/Deputy Superintendent, Central Prison, Group 'B'.

3. Learned Advocate Shri Lonkar argued on behalf of the Applicant that there are error of law in the judgment dated 27.7.2015 of this Tribunal. For the post of Deputy Superintendent, Central Prison, the qualification for appointment by nomination is second class Bachelor's degree in Arts, Science, Commerce, Law or Agriculture and post graduate degree or diploma in

Sociology, Penology, Criminology, Delinquency or Correctional Administration. However, none of the nine candidates who were selected (the Respondent no 4 to 12) have post graduate degree in any of the subjects mentioned above. Learned Counsel for the Applicant stated that this Tribunal did not consider the fact that qualification of MSW is not covered by the rules. Learned Advocate Shri Lonkar argued that the Respondent no. 10 belongs to S.C category and could not have been selected from open-women category as per law laid down by Hon'ble Supreme Court in the case of **RAJESH KUMAR DARIA Vs. RAJASTHAN PUBLIC SERVICE COMMISSION & ORS (2007) 8 SCC 785**. This Tribunal also lost sight of the fact that the short listing criterion should be reasonable as held in BALA GANDHI's case. The Respondent no. 5 is from NT-B category and he does not have necessary Post Graduate qualification. He is M.A (Social Science). He was not eligible to be selected. If the Respondent no. 5 was considered, the Applicant should also have been considered from open category. The Tribunal did not consider the question asked in the interview and answers given to the questions by the Applicant and as to how she was unfairly judged. The Applicant got more marks than other candidates at graduate level. She should have been considered.

4. Learned Presenting Officer argued on behalf of the Respondents no 1 to 3 that the Applicant has not

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been able to show any error in the order of this Tribunal. All the issues raised by her, were considered, and the judgment delivered. The Applicant has raised a host of points and wants to reopen the whole case. This Review Application is in fact in the nature of an appeal, which cannot be countenced.

5. Learned Advocate Shri A.V Bandiwadekar argued on behalf of the Respondent no. 5 and 11 that the Applicant has not been able to show any error in the order of this Tribunal. The Tribunal's judgment is based on the judgment of Hon'ble Supreme Court in **RAJESH K. DARIA's** case (supra) in so far as reservation for women is concerned. Similarly, for short listing criterion, the judgment of Hon'ble Supreme Court in **B. RAMAKICHENIN's** case (also called BALAGANDHI's case) supra has been relied on.

6. Learned Advocate Shri A.A Desai argued on behalf of the Respondent nos 4, 6, 8 and 12 that the selection of the Respondents was as per rules in a fair selection process. The Applicant has no locus to challenge their selection. In any case, settled position cannot be allowed to be unsettled.

7. The order of this Tribunal dated 27.7.2015 has relied heavily on two judgments of Hon'ble Supreme Court, viz. **RAJESH K. DARIA** (supra) and **B.**

RAMAKICHENIN (supra). The first judgment is regarding horizontal reservation. This Tribunal has held that for an open women category post, on S.C-Women person cannot be selected, as horizontal reservation is compartmentalized and posts are to be reserved for each vertical reservation category. No change from one vertical reservation category to another vertical reservation category is allowed as per RAJESH K. DARIA's judgment of Hon'ble Supreme Court. The other judgment is regarding short listing criteria. Hon'ble Supreme Court has held that selection agency like M.P.S.C can fix short listing criterion if the number of candidates is unduly large. In the present case, the number of candidate was very large and M.P.S.C has applied short listing criteria. Hon'ble Supreme Court has held in **RAMAKICHENIN's** case (supra) that once a short listing criterion is fixed it cannot be changed. In the advertisement, M.P.S.C had declared that shortlisting criterion of higher qualification or higher experience may be applied. The actual criteria applied was higher marks at post graduate level. That was held to be invalid as higher marks are not synonymous with higher qualifications. However, as the Applicant was not found eligible for selection, settled position was not unsettled.

8. The Applicant had applied from S.C category. As there was no horizontal reservation for women for the lone post for S.C category, she had to be considered from

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S.C – general (without horizontal reservation) category. Of-course, she was considered from open category without horizontal reservation for women, in view of the judgment of Hon'ble Supreme Court in DARIA's case. The Applicant scored 45 marks in interview out of 100 marks. All the other selected candidates from open or female category got more marks than her. This is clear from the list of selected candidates, who are invariably placed in the order of merit by M.P.S.C viz:-

Sr No	Name of person	Category
1.	Ahirrao Harshad Bhikanrao	Open
2.	Shikare Geeta Hanumant	Open (F)
3.	Agey Vaibhav Shankarrao	OBC
4.	Dhole Bhaidas Namdeo	Open
5.	Dahale Kirti Kishor	OBC
6.	Sawant Nagnath Gangadhar	Open
7.	Jogdand Swati Khushalrao	SC-F (from open-F)
8.	Kumare Anupkumar Madhukarrao	ST
9.	Magatrao Arun Arjunrao	Open

The Respondent no. 10, viz. Jogdand Swati Khushalrao scored 50 marks out of 100 marks in interview. She was at Sr. No 7 in the merit list. Shri Kumare Anupkumar Madhukarrao, the Respondent no. 4 belongs to S.T category and the Applicant cannot challenge his selection. The only person who might have got less marks than the Respondent no. 10 is the Respondent no. 8. She is selected from open category. Even if it is presumed for


the sake of argument that she got less marks than the Applicant in interview, the Applicant cannot be selected in her place as one more candidates from Female category had got more marks than the Applicant. In the affidavit in reply to Review Application by the Respondent no. 1 (M.P.S.C) dated 3.11.2015, in para 16, it is stated that:-

“16. With reference to para 6 of R.A., I say that formal submission about limitation of the present Review Application has been made in this para. There were only 2 posts for open female category, 13 females were called for the interview. 10 females were present for the interview. Respondent no. 10 was on the 2nd position with 50 marks. Another female candidate Smt Jadhao Rekha was on the 3rd position with 48 marks and the applicant was on the 4th position with 45 marks. Even if the applicant is considered for S.C category, she was not sufficiently high in merit in the candidates from S.C category, to have been shortlisted and interviewed. She, therefore, has no case to seek any reliefs. The original application is, therefore, liable to be dismissed with costs.

So, even if the Respondent no. 8 is replaced, there are at least two more candidates, who scored more marks than the Applicant.

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9. This Tribunal has found that short listing criterion of first class post graduate degree should not have been applied as first class degree is not a higher educational qualification than a second class degree. It can at best be said as better performance in the same examination. This was in view of the fact that the advertisement has fixed the short listing criteria as higher educational qualification or experience and that stipulation could not be changed later. The Applicant, was not interviewed on the short listing criterion for S.C category, as she did not have first class degree at Master's level. She was, nevertheless interviewed. She scored marks which are less than other selected candidates up to merit list no. 7 out of 9 selected candidates. The candidate at Sr No. 8 belongs to S.T and he is selected against post reserved for S.T category. The candidate at Sr. No. 9, even assuming that she scored less marks than the Applicant, cannot be replaced by the Applicant, as there were at least one more interviewed candidates, who scored more marks than the Applicant. The Applicant on pure merit does not have any claim to be selected as she did not score more marks than selected candidates and at least one non-selected candidate, who was interviewed, scored more marks than her. This situation exists even if the short listing criteria are ignored. There were no separate interviews for different category. The selection was uniform for all categories. Even if the Applicant were interviewed for S.C



category or open category, the marks obtained by her in interview would have remained the same. The selected candidates from open, open-female and S.C candidate (Respondent no. 10) also scored more marks than the Applicant. The Respondent no. 8, assuming that she scored less marks than the Applicant, though there is nothing on record to show that she actually scored less than the Applicant, one more unsuccessful candidate scored more marks than the Applicant and she has no claim to be selected for the post. The Applicant has made some grievance about her interview claiming that she had done very well and was deliberately awarded less marks. No material is placed on record in support of such a claim. Such allegations can be accepted only if there is satisfactory tangible material. Respondent no. 1 is a Constitutional body given the task of selecting meritorious and suitable candidates for public employment. There is no material on record to say that they have not been fair and impartial..

10. The main grievance of the Applicant appears to be that short listing criteria applied by M.P.S.C was not fair. We have concluded that even if the short listing criteria are ignored, among all those who were interviewed by M.P.S.C, the Applicant could not have been selected. Even from S.C category, there was at least the Respondent no. 10, who was more meritorious than her. We had directed that the Respondent no. 10 should

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be adjusted against S.C vacancy as she was not eligible to be selected from open-female category. As a result, the Respondent no. 8, would be selected from open-Female category, to which the Applicant has no claim. Examine from any angle, the Applicant has no claim to be selected for the post of Deputy Superintendent, Central Prison, Group 'B'.

11. The Applicant has raised a large number of issues, which according to her are errors in the judgment of this Tribunal dated 27.7.2015. However, the Review Application is in fact in the nature of an appeal. The issues raised by the Applicant were examined and findings given in our judgment dated 27.7.2015. If, the Applicant, is not happy with the views taken by this Tribunal, the remedy is not in filing Review Application.

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

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 4.05.2016

Dictation taken by : A.K. Nair.