

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
AURANGABAD BENCH, AURANGABAD**

**TRANSFER APPLICATION NO 5 OF 2016
(WRIT PETITION NO 5439 OF 2016**

DISTRICT : AHMEDNAGAR

Shri Shaikh Yunus Mohammad Rafique)
Occ : Retired, R/o: 5112, Bhagwan Galli,)
Maliwada, Ahmednagar.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
General Administration Department)
Madam Cama Road, Mantralaya,)
Mumbai 400 032.)
[copy to be served on Presenting)
Officer, M.A.T Bench at Aurangabad)
2. Additional Director General of)
Police and Director Police Wireless)
Dr. Homi Bhabha Road,)
Chavan Nagar, Pashan Road,)
Pune.)

3. President of Recruitment Committee)
 Additional Director General of)
 Police and Director Police Wireless)
 Dr Homi Bhabha Road, Chavan)
 Pune.)
4. Government of India,)
 Through Ministry of Home Affairs,)
 New Delhi. [copy served on)
 Learned Standing Council,)
 Union of India.)...**Respondents**

Shri P.P Kothari, holding for Shri Satyajit Bora, learned advocate for the Applicant.

Shri N.U Yadav, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)
Shri B.P Patil (Member) (J)

DATE : 16.08.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri P.P Kothari, holding for Shri Satyajit Bora, learned advocate for the Applicant and

Shri N.U Yadav, learned Presenting Officer for the Respondents

2. The Applicant retired voluntarily from the Central Reserve Police Force (CRPF) as Head Constable, Radio Operator after 21 years of service. He applied for the post of Head Constable-Wireless Operator in Maharashtra Police from Ex-Servicemen category, but his candidature was rejected. The Applicant has challenged Circular dated 11.9.2014 and the order passed on 27.4.2016 by the Respondent no. 3 holding the Applicant not eligible to apply for the post of reserved horizontally for Ex-Servicemen.

3. Learned Counsel for the Applicant argued that the Applicant was working in the Central Reserve Police Force (CRPF) as Head Constable, Radio Operator, when he retired voluntarily. Central Government has decided that personnel who have retired from Central Armed Police Forces (CAPF) may be given all facilities which are available to Ex-Servicemen of Defence Forces. However, the Respondent no. 1 has issued Government Circular dated 11.9.2014, holding that Ex. CAPF are not included in the category of Ex-Servicemen of Defence Forces, viz. Army, Navy and Air Force. As such, Ex-CAPF persons are not eligible to be considered for appointment to the posts horizontally reserved for Ex-Servicemen. This is in contravention of decision taken by Ministry of Home

Affairs, Govt. of India, which is reflected in D.O letters dated 19.2.2012 and 29.6.2013. Learned Counsel for the Applicant argued that Maharashtra Government Circular dated 11.9.2014 is arbitrary and discriminatory and not in keeping with decision of the Central Government. It is, therefore, liable to be struck down. As the Respondent no. 3 has rejected the candidature of the Applicant based on this Circular dated 11.9.2014 by communication dated 27.4.2016, the aforesaid communication dated 27.4.2016 is also not maintainable.

4. Learned Presenting Officer (P.O) argued on behalf of the Applicant that the Applicant is relying on recommendations of Ministry of Home Affairs, Government of India. By letter dated 19.2.2013 (Exhibit 'H') Government of India has recommended that suitable benefits may be extended to Ex-CAPF personnel. It is not a mandatory directive from the Central Government to the State Government. Government of Maharashtra has decided not to make Ex-CAPF personnel eligible for posts horizontally reserved for Ex-Servicemen. Learned P.O argued that such a decision is neither discriminatory nor arbitrary. Service conditions of CAPF personnel and Ex-Servicemen are totally different. CAPF personnel retire on reaching the age of 60 years like other Central Government employees, while Ex-Servicemen from Army, Navy and Air Force retire much earlier. Reservation in

State Government services is meant for such Ex-Servicemen. The Applicant, himself could have continued to serve in CRPF till he reached 60 years of age. He, however, chose to retire voluntarily. The benefit of reservation is not meant for such persons.

5. Learned Presenting Officer argued that the Central Government has framed Rules, viz. the Ex-Servicemen (Re-employment in Central Civil Services & Post) Amendment Rules, 2012. The reservation is only for those who have served in Regular Army, Navy and Air Force of the Indian Union. Central Armed Police Forces like CRPF, BSF etc. declared as Armed Forces of the Union but they are not Regular Army, Navy or Air Force of the Indian Union. When Central Government has not provided any reservation for Ex-CAPF personnel, there is no question of extending such a benefit in the States.

6. We find that the letter of Home Secretary, Government of India dated 19.2.2013 (Exhibit 'H') has the following recommendation:-

“6. Based on such designation of Ex-CAPF personnel, you are requested to extend the suitable benefits to them on the lines of the benefits extended to the Ex-Servicemen of Defence Forces.”

Government of India has also distinguished Ex-CAPF personnel from Ex-Servicemen of Defence Forces. The recommendation is to extend suitable benefits. As the Personnel of CAPF retire on attaining the age of retirement applicable to other Central Government employees, the question of giving reservation to them in State Government employment does not arise. It is also clear from the Rules framed by Government of India for Re-employment of Ex-Servicemen, that the reservation is provided to those who had served in Regular Army, Navy and Air Force of the Indian Union. No reservation is provided to Armed Forces of the Union, which include CAPF, and rightly so, as there is no need to provide for such reservation. The claim of the Applicant that the State Government has failed to implement mandatory directions of Central Government has no basis. Firstly, there are only recommendations from the Central Government and secondly there is no express recommendations for providing reservation in State Services or Posts to Ex-CAPF Personnel. In fact, no such recommendation is required as CAPF Personnel retire at an age higher than the age of superannuation in Maharashtra Government. In the present case, the Applicant could have continued to serve in CRPF, but he chose to retire voluntarily. There appears to be no justification to consider such persons at the cost of Ex-Servicemen, who retire at much earlier age. We find that the Government Circular dated 11.9.2014 is perfectly

legal and proper. Accordingly, communication dated 27.4.2016 rejecting candidature of the Applicant for post reserved for Ex-Servicemen is also legal and proper.

7. The Applicant has relied on a judgment of Central Administrative Tribunal, Ernakulum Bench, Shri Anil G. Nair Vs. Union of India & Ors, reported in 2016 SC Online CAT 568. Central Administrative Tribunal has held that Ex-BSF personnel can be considered as Ex-Servicemen. With great respect, we are unable to accept the judgment of C.A.T for the reasons mentioned in the preceding paragraphs.

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

Sd/-
(B.P. PATIL)
MEMBER(J)

Sd/-
(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 16.08.2017
Dictation taken by : A.K. Nair.