

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 73/2023 WITH****CIVIL APPLICATION NO.109/2024 (D.B.)**

1. Ajay S/o Abhiman Chirmade,  
About Occp. Nil,  
Aged about 24 years, R/o Hanvatkheda,  
Post.RohadaTq. Pusad, Dist. Yavatmal.
  
2. Krushna S/o Rameshwar Taram,  
Occp. Nil, Aged about 24 years,  
R/o Bharnoli, Post Rajoli,  
Tq. Arjuni Morgaon Dist. Gondia.
  
3. Anil S/o Balkrushna Kinake,  
Occp. Nil, Aged about 32 years,  
R/o Seva Nagar, Ward No. 19,  
Behind N.P. School No. 8, Wani  
Tq. Wani, Dist. Yavatmal.
  
4. Yogesh S/o Vitthal Maighane,  
Occp. Nil, Aged about 32 years,  
R/o At Post YerendaTq. Malegaon,  
Dist. Washim.

**Applicants.**

**Versus**

1. State of Maharashtra,

through its Secretary,  
Home Department, Mumbai-32.

2. Additional Director General of Police,  
State Reserve Police Force,  
Maharashtra State, Mumbai.
3. Deputy Inspector General of Police,  
State Reserve Police Force,  
Nagpur Range, Nagpur.
4. The Commandant,  
State Reserve Police Force,  
(Bal Gat) Group No. 13,  
Vadsa (Desaiganj), Gadchiroli.

**Respondents**

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Shri P.B.Patil, Ld. Counsel for the applicants.  
Shri S.A.Sainis, Ld. P.O. for the respondents.

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**With**

**ORIGINAL APPLICATION NO. 437/2023 WITH**  
**CIVIL APPLICATION NO.108/2024 (D.B.)**

1. Jagdish Chavhan, S/o Gajanan,  
Occp. Nil Aged about 30 years,  
R/o At.Chikhli, Post Bhawani,  
Tq. Umarched, Dist. Yavatmal.
2. Bhedraj S/o Chindhuji Chanap,  
Occp. Nil, Aged about 29 years,

R/o At.Post.Kavtha Kadu,  
Tq. Chandur Railway Road, Dist. Amravati.

**Applicants.**

**Versus**

1. State of Maharashtra,  
through its Secretary,  
Home Department,  
Mantralaya, Mumbai-32.
2. Additional Director General of Police,  
Training & Special Unit,  
Maharashtra State, Mumbai.
3. Superintendent of Police,  
Amravati (Rural), Amravati.

**Respondents**

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Shri P.B.Patil, Ld. Counsel for the applicants.  
Shri S.A.Sainis, Ld. P.O. for the respondents.

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**Coram:-Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.**

**Dated: - 14<sup>th</sup> March, 2024.**

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**COMMON JUDGMENT**

Heard Shri P.B.Patil, learned counsel for the applicants  
and Shri S.A.Sainis, learned P.O. for the respondents.

2. The regular Division Bench is not available. The Hon'ble  
Chairperson, M.A.T., Principal Bench, Mumbai issued Circular

No.MAT/MUM/JUD/469/2023, dated 24/04/2023. As per the direction of Hon'ble Chairperson, if both the parties have consented for final disposal, then regular matter pending before the Division Bench can be disposed off finally.

3. As per the M.A.T., Principal Bench, Mumbai office order / letter No.MAT/MUM/JUD/1350/2023, dated 21/11/2023, the Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai has given direction to this Tribunal to decide the Division Bench matters if the matter is covered by the Judgments of Hon'ble Supreme Court, Hon'ble High Court and the Benches of the M.A.T. etc. Hence, the matter is heard and decided finally with the consent of learned counsel for both the parties.

4. Case of the applicants in short is as under-

The applicants in O.A.No.73/2023 applied for the posts of Armed Police Constable (S.R.P.F.) under S.T. category as per advertisement dated 18.05.2022. The applicants appeared in the written examination. Thereafter, they appeared in the physical test also. The applicants were in the waiting list. As per advertisement, 11 posts reserved for Ex-serviceman (S.T.) category, but those candidates were not available. Only 3 candidates were found eligible in the category of Ex-serviceman (S.T.) Category. Therefore, the

respondents have not appointed the applicants as per the G.R. of 1981. Those posts were carried forward.

3. The applicants in O.A.No.437/2023 applied for the posts of Armed Police Constable under (S.T.) category as per advertisement dated 05.11.2022. Total 24 posts were reserved for Ex-serviceman category and two posts were reserved for Ex-serviceman (S.T.) category. Only one Ex-serviceman (S.T.) category candidate was available, but one post of Ex-serviceman (S.T.) category candidate is not available and therefore one post of that category was carried forward to the Ex-serviceman VJ(A) category. In that category also the candidate was not available and therefore that one post was carried forward to VJ(A) category.

4. In both O.As. the applicants are relying on the G.R. of 1999 and submitted that when the reserved category candidates in Vertical Reservation are not found eligible or not available, then reservation in Vertical category shall be shifted in Horizontal category. The applicants belong to Horizontal category and therefore, they are eligible/entitled for appointment of the said posts. They are shown in the merit list and also in the waiting list. The respondents have not appointed them on the ground of G.R. of 16.04.1981. The posts were carried forward because of non-availability of the candidates in Ex-serviceman (S.T.), (VJ)(A)

category. Therefore, applicants approached to this Tribunal for direction to the respondents to appoint them by showing Vertical Reservation in the category of Horizontal Reservation as per their eligibility and merit.

5. The O.As. are strongly opposed by the respondents. It is submitted that as per the Government G.R. dated 16.04.1981, the respondents have carried forward the said posts. Hence, applicants are not entitled for the relief claimed.

6. During the course of submission, learned counsel for the applicants has pointed out decision of the **Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.6064/2014 decided on 05.09.2018.** The learned counsel for the applicants has submitted that after the G.R. dated 16.04.1981, the Government of Maharashtra has issued G.R. dated 16.03.1999. As per the G.R. of 16.03.1999, if the candidates are not available in the Vertical category, then that reservation is to be shifted in the Horizontal category and the available candidates shall be appointed as per merit list. He has pointed out Government Resolution dated 16.04.1999.

7. There is no dispute about the G.R. of 1981 and G.R. of 1999 as stated above. The learned counsel for the applicant has pointed out the Judgment of the Hon'ble Bombay High Court, Bench at Aurangabad in the case of **Nikhil Santosh Choudhari Vs. the State**

**of Maharashtra and others.** The whole Judgment of Hon'ble High Court is reproduced below–

*Pursuant to the advertisement dated 31.12.2011 the petitioner and respondent No.3 applied for the post of Measurer from OBC category. There were total four posts OBC category. From the said four posts, one post was for OBC woman, one for OBC Ex-Serviceman, one for part time employee and one other.*

2. *From the OBC category one Badgujar Gajanan Eknath was selected and one Kapadne Mahindra Popat who had secured 112 marks was included in the list from the OBC category as no female candidate from said OBC category was available. Still there were two posts, one for OBC (Ex-service) and second for OBC part time. The said posts meant for horizontal reservation were not filled in. The petitioner approached the Maharashtra Administrative Tribunal by filing Original Application No.939/2012. The tribunal in its judgment dated 07.01.2014 observed that as far as the post of Ex-serviceman OBC is concerned, as no eligible candidate is available, the post cannot be filled in from OBC General category. The same based was on Government Resolution dated 16.04.1981. The tribunal further observed that as far as the other post OBC (part time) is concerned the same would go to the vertical reservation as from said horizontal reservation post for part time candidate was not available. The tribunal has considered that respondent No.3 has got more marks than the petitioner as such respondent No.3 should be considered for the appointment and if respondent No.3 does not respond then petitioner's claim be considered for the appointment. The petitioner assails the said order by filing the instant writ petition.*

3. *Learned AGP submits that the tribunal has considered the Government Resolution dated 16.04.1981 which states that the post of Ex-Serviceman cannot be filled up unless there is compliance of Clause-II of the said Government Resolution which*

*states that the post for Ex-serviceman cannot be filled in, if the candidate is not available.*

4. *Mr. Bajaj, learned counsel for the petitioner and Mr. Katneshwarkar, learned counsel for respondent No.3 relied the on Government Resolution dated 16.03.1999 to submit that if the persons from the horizontal reservation are not available, the said post has to be filled in from the member of the vertical reservation.*

5. *According to the learned AGP the Government Resolution dated 16.04.1981 is not superseded and as such the same was relied.*

6. *Government Resolution dated 16.03.1999 is subsequently issued based on the judgment of this Court and the Apex Court. The reference to the said judgments is given in the said Government Resolution itself. Naturally the said the Government Resolution has to be implemented.*

7. *Considering the above, two remaining posts from the OBC category meant for Ex-serviceman and part time shall be filled in from the persons of OBC category as per the final list published. The respondent No.3 has secured 109 marks and the petitioner has secured 108 marks. The petitioner and respondent No.3 are required to be considered for the appointment.*

8. *In the light of above, we pass the following order.*

**ORDER**

- I. *The order passed by the tribunal is set aside.*
- II. *Respondent Nos.1 and 2 shall consider the petitioner and respondent No.3 for appointment to the post of Measurer from the OBC category as the persons from the OBC EX-serviceman and OBC part time are not available, pursuant to the said advertisement. Same shall be considered within a period of four weeks.*
- III. *The writ petition is, accordingly, allowed. No costs.*



8. In view of the above cited Judgment in the case of **Nikhil Santosh Choudhari Vs. the State of Maharashtra and others**, it is clear that Government of Maharashtra has issued G.R. of 1999. As per the judgment of Hon'ble Supreme Court in the case of **Anilkumar Gupta Vs. State of Uttar Pradesh and Others SCC (5) 173 decided on 28.07.1995** and as per G.R. of 16.04.1999, if the candidate in Vertical category is not available, then that reservation is to be shifted in Horizontal category and the available candidates as per merit/select list shall be appointed.

8. In view of the Judgment of Hon'ble Bombay High Court in the case of **Nikhil Santosh Choudhari Vs. the State of Maharashtra and others**, applicants are entitled for appointment because they are in the merit list. They scored more marks as compared to others. The candidates in the category of Ex-serviceman (S.T.) were not available and therefore 8 posts of the said category are carried forward by the respondents as per G.R. of 16.04.1981. As per G.R. of 16.03.1999, both posts cannot be carried forward apart from that both posts are to be filled from available candidates as per merit list by shifting the Vertical reservation into Horizontal reservation.

9. Four applicants in O.A.No.73/2023 who scored more marks are shown in the waiting list at Sr. Nos. 4, 5, 7 and 8, they have secured 171, 171, 170 and 170 marks respectively. They are S.T.

category candidates. Hence, they are entitled for appointment as per the G.R. dated 16.03.1999 and as per above cited Judgment.

10. In 437/2023, the applicant nos. 1 and 2 belongs to VJ(A) and S.T. category respectively. The 24 posts for the Armed Police Constable as per advertisement dated 05.11.2022 reserved for Ex-serviceman category. Out of that only S.T. Ex-serviceman candidate was not available and therefore, that post was carried forward of the Ex-serviceman VJ(A) category. Ex-serviceman VJ(A) category candidate was also not available and therefore that post was carried forward to next recruitment as per G.R. of 1981.

11. As per G.R. of 16.03.1999, the said posts cannot be carried forward and therefore the respondents should have appointed the available candidates as per final merit list by shifting the Vertical reservation. In O.A.No.437/2023, applicant no.1 Jagdish Gajanan Chavhan who is in VJ(A) category has scored 126 marks and another applicant no.2 Bhedraj Chanap who is in (S.T.) category has scored 107 marks. The respondents could not get candidates of VJ(A) and also (S.T.) category of Ex-serviceman and therefore that posts were carried forward. One post of (S.T.) category was carried forward and one post for VJ(A) category was carried forward as per the G.R. of 1981. The respondents should have appointed available candidates in the merit list as per G.R. of 1981. Applicant no.1

Jagdish Chavan belongs to VJ(A) category and one post is available in the category of VJ(A) and applicant no.2 belongs to S.T. category and one post is available for S.T. category Ex-serviceman because those candidates were not available. Hence, in view of the Judgment of Hon'ble Bombay High Court in the case of *Nikhil Santosh Choudhari Vs. the State of Maharashtra and others*, the following order is passed.

**ORDER**

1. The O.As. are allowed.
2. The respondents are directed to appoint / select the applicants as per G.R. dated 16.03.1999, if they are found eligible and the posts advertised are available by shifting Vertical Reservation into Horizontal Reservation.
3. The C.As. are also disposed of.
4. No order as to costs.

**(Justice M.G.Giratkar)**  
**Vice Chairman**

**Dated - 14/03/2024.**  
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde  
Court Name : Court of Hon'ble Vice Chairman.  
Judgment signed on : 14/03/2024.  
Uploaded on : 28/03/2024.

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