

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.172/2015

DISTRICT – DHULE

Mahendra s/o Nilkanth Pardeshi,
Age : 35 years, Occ : Service,
R/o. 32, Renuka Nagar, Wadi Bhokar Road,
Deopur, Dhule, Dist. Dhule. ...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai.
2. The Superintendent of Police,
Through its Chairman/Secretary,
Having Office at third floor,
Bank of India Building,
Fort, Mumbai – 400 001.
3. Mr. Dhananjay s/o Shivgonda Khot,
Age : Major, Occ : Service,
R/o. Asst. Director of Town Planning,
Kolhapur, Municipal Corporation,
Shivaji Chowk,
Dist. Kolhapur, 416002. ...RESPONDENTS

APPEARANCE :Shri C.R.Thorat, learned Advocate for the
applicant.

Shri D.R.Patil, learned Presenting Officer
for the respondents.

CORAM: Hon'ble Shri Rajiv Agarwal, Vice-Chairman (A)
A N D
Hon'ble Shri J.D.Kulkarni, Member (J)

DATE: 30th January, 2017.

ORDER**[PER: MEMBER (J)]**

Applicant belongs to VJ(A) category and has applied for the post of Assistant Director of Town Planning in response to the advertisement issued by the Maharashtra Public Service Commission (MPSC) on 31st January, 2013. The applicant was called for written examination and his seat no. was 38 MB0038. Written examination was for 200 marks and it was scheduled on 07-07-2013, wherein the applicant was at Sr.No.38. MPSC called 24 candidates for oral interview on 25th and 26th September, 2013 but the applicant was not called for oral interview.

2. According to the applicant, as per provision of Section 4(3) of the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 (which shall hereinafter be referred to as "Act of 2001" for short), reservations specified for the categories mentioned at Sr.No.3 to 6 in the table under sub sec. 2 shall be inter-transferable. Applicant belongs to VJ(A) category and comes under De-notified Tribes [DT (A)] category, and as

such, he deserves inter-transferable reservation. According to the applicant, he has secured more marks than the benchmark for NT(C) category, and therefore, he should have been called for oral interview. Action of the respondent nos.1 and 2 not calling applicant for interview is arbitrary, unreasonable and shows favoritism in favor of the selected candidates.

3. Applicant has also given history of the earlier litigation filed before the Tribunal i.e. O.A.No.177/2012, wherein the applicant has challenged the appointment of one Shri Madhukar Yashwant Devade on the similar ground before the principal Seat of the Tribunal at Mumbai. In the said O.A., the applicant claimed that on 04-05-2011, the respondent issued a corrigendum to the advertisement making it clear that even if the said post is reserved for VJ(A), that in the event a suitable and eligible candidate belonging to VJ(A) does not become available, then in order to enable fill up the said vacancy, as per the Government policy of the interchangeability, that the eligible candidates belonging to NT(B), NT(C) and NT(D) reserved category can make application for the said post. It is further submitted

therein that in the event a suitable and eligible candidate belonging to VJ(A) does not become available, then the candidate belonging to NT(B), NT(C) and NT(D) reserved category can be considered for recommendation on the basis of merit vis-à-vis the said post. The applicant has, therefore, prayed that suitable direction be issued to the respondent no.2 i.e. MPSC and the order passed by MPSC recommending respondent no.3, a candidate belonging to NT(C) category for the post of Assistant Director Town Planning, Grade (A) (Gazetted), be quashed and set aside.

4. Respondent no.2 MPSC has filed affidavit in reply. It is stated that the applicant belongs to DT (A) category. The post was reserved for NT(C) category, and therefore, he could have been at the most considered from Open category. It is stated that in the written examination, for Open category, cut off marks for calling the candidates for interview was 116. The applicant has, however, secured 98 marks only in the written examination, and therefore, he was not called for interview.

5. It is stated that total 10 candidates from NT(C) category had applied for one post reserved for NT(C)

category. Required number of candidates from NT(C) category were available to be called for interview on the basis of cut off marks fixed for NT(C) category, and therefore, there was no need to consider any other candidate from DT(A), NT(B) or NT(D) category. When sufficient candidates in proportion of 1:3 were not available from the category for which post is reserved as shown in the concerned advertisement, then only candidates from remaining categories are taken into consideration. It is further stated that the fact that other candidates from DT(A), NT (B), NT(C) and NT(D) have secured more marks than NT(D), is irrelevant.

6. As regards earlier litigation, it is stated that Shri Madhukar Yashwant Devade was found eligible for appointment as Deputy Director of Town Planning, Town Planning & Valuation Service Gr-A. as per policy of internally transferable posts between DT(A), NT(B), NT(C), NT(D) category. At that time, applicant secured less than 40 marks which was the benchmark. Applicant has filed rejoinder and submitted that MPSC has taken contradictory

stand in earlier litigation i.e. O.A.No.177/2012 and the present O.A.

7. Heard Shri C.R.Thorat learned Advocate for the applicant and Shri D.R.Patil learned Presenting Officer for the respondents.

8. We have perused memo of O.A., affidavits in reply, rejoinder affidavit as well as various documents placed on record by the parties.

9. Material point to be considered is whether recommendation of respondent no.3 for appointment on the post of Assistant Director Town Planning Grade (A) (Gazetted) by respondent no.2 vide order dated 25-10-2013 is legal and proper ?

10. Learned Advocate for the applicant submits that in the earlier O.A.No.177/2012, respondent no.2 has taken a defense that the reservation amongst NT(A), NT(B), NT(C) and NT(D) etc. is interchangeable/inter-transferrable but the said stand has been deviated in the present O.A.

11. We have perused order passed in O.A.No.177/2012 as well as the contents of the reply affidavit filed in this O.A. We do not find any deviation in the stand taken by the MPSC in both the O.As. In reply affidavit filed by the respondent no.2 it has been specifically stated that as per Section 4(3) of Act of 2001 if suitable candidate for the post reserved for any of the said categories are not available, then the posts are to be filled by candidates from any of the said other categories. It is further stated that this Rule is to be applied in the event of 2 probabilities; (1) post is reserved for NT(C) category but not a single NT(C) category candidates applies, and (2) NT(C) category candidate fails to qualify for the interview.

12. In the present case, advertisement vide which the applications were called for the post of Assistant Director Town Planning, clearly shows that the posts were reserved for NT(C) and OBC categories. Clause 2.2 of the advertisement shows that the posts of VJ (A), NT(B), NT(C) and NT(D) are inter-transferable and those can be filled in as per rules.

13. Perusal of the reply affidavit of respondent no.2 shows that sufficient numbers of candidates were available from NT(C) category and sufficient candidates have secured more marks than benchmark in written examination for qualifying for interview. Therefore, there was no question of considering inter-transferability of the posts.

14. Learned P.O. has invited our attention to provisions of Act of 2001, and particularly, Section 4(3), which reads as under:

“4. ...

(3) The reservation specified for the categories mentioned at serial numbers (3) to (6) (both inclusive) in the table under sub-section (2) shall be inter transferrable. If suitable candidates for the posts reserved for any of the said categories are not available in the same recruitment year, the posts shall be filled by appointing suitable candidates from any of the other said categories.”

15. Aforesaid provision clearly shows that if suitable candidates for the post reserved for any of the categories are not available in the said recruitment year, the posts shall be filled in by suitable candidates from any of the abovesaid categories. In the present case, thought the

applicant has secured 98 marks as he belongs to DT(A)/VJ(A) category, and the posts are specifically reserved for NT(C) category, his claim cannot be accepted. Since, sufficient number of candidate were available from NT(C) category being called for oral interview, there was no reason for respondent no.2 to call the applicant for oral interview.

16. Learned Advocate for the applicant has placed reliance on the judgment delivered in O.A.No.177/2012 when the applicant had challenged the selection of one Shri Madhukar Devade for the post of Deputy Director, Town Planning, wherein Shri Devade who belongs to NT(C) category was considered for the post belonging to DT(A) category. However, said judgment may not favor the applicant for the reason that, in that case, applicant could not secure minimum 40 marks, which was the benchmark for oral interview and since sufficient number of candidates were not available, rule of inter-transferability of the reservation was made applicable. So is not the case here. It seems that respondent no.2 has received sufficient candidates from NT(C) category, for which posts were

advertised, and therefore, the applicant was not rightly called for oral interview. The applicant has not been considered from Open category since he did not secure benchmark of 116 marks for open category.

17. In the result, we do not find any merit in the O.A. Hence, following order:

ORDER

O.A. stands dismissed with no order as to costs.

(J. D. Kulkarni)
MEMBER (J)

(Rajiv Agarwal)
Vice-Chairman