

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMABI**  
**BENCH AT AURANGABAD.**

**DIST.NANDED.**

**O. A.NO.580/2012 WITH OA NO.581/2012.**

**(1) ORIGINAL APPLICATION NO.580/2012.**

(Subject :- Direction)

1) Bebi D/o. Shankarrao Rathod,

Age: 22 Years, Occu: Nil,

R/o Sneh Nagar, Police Colony,

Nanded. Tq. & Dist. Nanded.

2) Vaishali D/o. Subhash Rathod,

Age: 24 Years, Occu: Nil,

R/o. Renuka Nagar, Renapur,

Tq. Renapur, Dist. Latur.

3) Rekha D/o. Subhash Rathod,

Age: 19 Years, Occu: Nil,

R/o. Renuka Nagar, Renapur,

Tq. Renapur, Dist. Latur. ...

-----**APPLICANTS...**

**VERSUS**

1) The State of Maharashtra,  
Through its Secretary,  
Home Department,  
Mantralaya, Mumbai-32.

2) The State of Maharashtra,  
Through its Secretary,  
General Administration Department,  
Mantralaya, Mumbai-32.

3) Special Inspector General of Police,  
For  
Addl. Director General,  
(Training & Special Cell)  
Maharashtra State, Mumbai.

4) Superintendent of Police,  
Nanded Dist. Nanded.

( Copies of R.1 to 4 served on P.O.  
Chief Presenting Officer,  
MAT, Bench at Aurangabad).

5) Indu Khobraji Gavali,  
Age: Major, Occu: Service,  
As Police Constabl,  
R/o: Police Head Quarter,  
S.P. Office Nanded,  
Tq. & Dist. Nanded.

6) Sangeeta Hanumant Kapse,  
Age: Major, Occu: Service,  
As Police Constable,  
R/o: Police Head Quarter,  
S.P. Office Nanded,  
Tq. & Dist. Nanded.

7) Shabanabegum Pashmiya Shaikh,  
Age: Major, Occu: Service,  
As Police Constable,  
R/o: Police Head Quarter,  
S.P. Office Nanded,  
Tq. & Dist. Nanded.

8) Manjusha Gangadhar Rudrakanthawar  
Age: Major, Occu: Service,  
As Police Constable,

R/o: Police Head Quarter,  
S.P. Office Nanded,  
Tq. & Dist. Nanded.

9) Pooja Dhondiram Kavthale,  
Age: Major, Occu: Service,  
As Police Constable,  
R/o: Police Head Quarter,  
S.P. Office Nanded,  
Tq. & Dist. Nanded.

10) Shubhangi Bhagwanrao Jadhav,  
Age: Major, Occu: Service,  
As Police Constable,  
R/o: Police Head Quarter,  
S.P. Office Nanded,  
Tq. & Dist. Nanded.

11) Yashoda Namdev Kendre,  
Age: Major, Occu: Service,  
As Police Constable,  
R/o: Police Head Quarter,  
S.P. Office Nanded,  
Tq. & Dist. Nanded.

12) Sharda Baburao Bhupal

Age: Major, Occu: Service,

As Police Constable,

R/o: Police Head Quarter,

S.P. Office Nanded,

Tq. & Dist. Nanded.

13) Shaila Venkatrao Sontakke

Age: Major, Occu: Service,

As Police Constable,

R/o: Police Head Quarter,

S.P. Office Nanded,

Tq. & Dist. Nanded.

14) Savita Vyankatrao Kadam

Age: Major, Occu: Service,

As Police Constable,

R/o: Police Head Quarter,

S.P. Office Nanded,

Tq. & Dist. Nanded.

15) Kachan Shankarrao Shinde

Age: Major, Occu: Service,

As Police Constable,  
R/o: Police Head Quarter,  
S.P. Office Nanded,  
Tq. & Dist. Nanded.

16) Sapna Digambarrao Shinde,  
Age: Major, Occu: Service,  
As Police Constable,  
R/o: Police Head Quarter,  
S.P. Office Nanded,  
Tq. & Dist. Nanded.

17) Jayashri Shankar Rachewad,  
Age: Major, Occu: Service,  
As Police Constable,  
R/o: Police Head Quarter,  
S.P. Office Nanded,  
Tq. & Dist. Nanded.

18) Shubahangi Govindrao Koregave  
Age: Major, Occu: Service  
As Police Constable,  
R/o: Police Head Quarter,  
S.P. Office Nanded,

Tq. & Dist. Nanded.

19) Janabai Balaji Devkate

Age: Major, Occu: Service

As Police Constable,

R/o: Police Head Quarter,

S.P. Office Nanded,

Tq. & Dist. Nanded.

20) Shridevi Tulshiram Marwade

Age: Major, Occu: Service

As Police Constable,

R/o: Police Head Quarter,

S.P. Office Nanded

Tq. & Dist. Nanded.

21) Gayatri Vaijinath Jadhav

Age: Major, Occu: Service,

As Police Constable,

R/o: Police Head Quarter,

S.P. Office Nanded,

Tq. & Dist. Nanded.

22) Poonam Rameshrao Udgire

Age: Major, Occu: Service  
As Police Constable,  
R/o: Police Head Quarter,  
S.P. Office Nanded,  
Tq. & Dist. Nanded.

23) Rupali Vinayak Kalne,  
Age: Major, Occu: Service  
As Police Constable,  
R/o: Police Head Quarter,  
S.P. Office Nanded,  
Tq. & Dist. Nanded.

24) Sapna Ashok Suryawanshi  
Age: Major, Occu: Service,  
As Police Constable,  
R/o: Police Head Quarter,  
S.P. Office Nanded,  
Tq. & Dist. Nanded.

25) Sadhana Anandrao Adhav  
Age: Major, Occu: Service,  
As Police Head Quarter,  
S.P. Office Nanded,

Tq & Dist. Nanded.

26) Kashibai Maroti Jamge

Age: Major, Occu: Service

As Police Constable,

R/o: Police Head Quarter,

S.P. Office Nanded,

Tq. & Dist. Nanded.

27) Meena Sheshrao Shinde

Age: Major, Occu: Service

As Police Constable,

R/o: Police Head Quarter,

S.P. Office Nanded, Tq. & Dist. Nanded.

28) Hamida Saheb Shaikh

Age: Major, Occu: Service

As Police Constable,

R/o: Police Head Quarter,

S.P. Office Nanded,

Tq. & Dist. Nanded.

29) Yamuna Panditrao Budruk

Age: Major, Occu: Service

As Police Constable,  
R/o: Police Head Quarter,  
S.P. Office Nanded  
Tq. & Dist. Nanded.

30) Meera Pralhadrao Jogdand

Age: Major, Occu: Service  
As Police Constable,  
R/o: Police Head Quarter,  
S.P. Office Nanded,  
Tq. & Dist. Nanded.

31) Savita Vishwanath Kshirsagar

Age: Major, Occu: Service  
As Police Constable,  
R/o: Police Head Quarter,  
S.P. Office Nanded,  
Tq. & Dist. Nanded.

**---RESOPONDENTS.**

**WITH**

**(2) ORIGINAL APPLICATION NO. 581/2012**

(Subject : Selection)

1) Kavita D/o. Kishan Dhotre,

Age: 23 Years, Occu: Nil,

R/o Balirampur, MIDC,

Nanded, Tq. And Dist. Nanded.

2) Supriya D/o. Chandu Godbole,

Age: 20 Years, Occu: Nil,

R/o Ganesh Nagar Road,

Kranti Nagar, Nanded,

Tq. Dist. Nanded.

3) Varsha D/o. Gopinath Waghmare,

Age: 22 Years, Occu: Nil,

R/o: Police Colony,

Near Gandhi Statute,

Nanded Tq. & Dist. Nanded.

4) Mandakini D/o. Anandrao Jadhav,

Age: 24 Years, Occu: Nil,

R/o. 202-B, Railway Quarters,

Railway Station, Nanded,

Tq. & Dist. Nanded.

----- **APPLICANTS.**

**VERSUS.**

1).The State of Maharashtra,  
through its Secretary,  
Home Department,  
Mantralaya, Mumbai 32.

2)The State of Maharashtra,  
through its Secretary,  
General Administration Department,  
Mantralaya, Mumbai 32.

3) Special Inspector General of Police,  
For  
Addl. Director General,  
(Training & Special Cell),  
Maharashtra State, Mumbai.

4)Superintendent of Police,  
Nanded District Nanded.

5) Indu Khobraji Gavali,  
Age: Major, Occu: Service,  
As Police Constabl,

R/o: Police Head Quarter,  
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Tq. & Dist. Nanded.

6) Sangeeta Hanumant Kapse,  
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8) Manjusha Gangadhar Rudrakanthawar  
Age: Major, Occu: Service,  
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9) Pooja Dhondiram Kavthale,

Age: Major, Occu: Service,

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Age: Major, Occu: Service,

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Age: Major, Occu: Service,

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Age: Major, Occu: Service,  
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16) Sapna Digambarrao Shinde,

Age: Major, Occu: Service,

As Police Constable,

R/o: Police Head Quarter,

S.P. Office Nanded,

Tq. & Dist. Nanded.

17) Jayashri Shankar Rachewad,

Age: Major, Occu: Service,

As Police Constable,

R/o: Police Head Quarter,

S.P. Office Nanded,

Tq. & Dist. Nanded.

18) Shubahangi Govindrao Koregave

Age: Major, Occu: Service

As Police Constable,

R/o: Police Head Quarter,

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19) Janabai Balaji Devkate

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26) Kashibai Maroti Jamge

Age: Major, Occu: Service

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27) Meena Sheshrao Shinde

Age: Major, Occu: Service

As Police Constable,

R/o: Police Head Quarter,

S.P. Office Nanded, Tq. & Dist. Nanded.

28) Hamida Saheb Shaikh

Age: Major, Occu: Service

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29) Yamuna Panditrao Budruk

Age: Major, Occu: Service

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30) Meera Pralhadrao Jogdand

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Tq. & Dist. Nanded.

31) Savita Vishwanath Kshirsagar

Age: Major, Occu: Service

As Police Constable,

R/o: Police Head Quarter,

S.P. Office Nanded,

Tq. & Dist. Nanded.

**---RESOPONDENTS.**

**APPEARANCE** : Shri G. K. Kshirsagar, learned Advocate for the Applicants.

: Shri V.R. Bhumkar, learned Presenting Officer for the Respondents No. 1 to 4.

: None present for the other respondents.

**CORAM** : **Hon'ble Shri Rajiv Agarwal, Vice Chnairman & Hon'ble Shri JD Kulkarni, Member (J).**

**DATE** : 15.12.2016

**COMMON ORDER.**

**(Per : Hon'ble Shri Rajiv Agarwal, Vice Chairman)**

1. Heard Learned Advocate Shri G. K. Kshirsagar for the Applicant and Shri V. R. Bhumkar, learned Presenting Officer for the Respondents 1 to 4. None present for other Respondents in both the matters.

2. Identical reliefs are sought by the Applicants in O.A. No. 580/2012 and O.A. No. 581/2012. Only difference is that the Applicants in O.A.No.580/2012 belong to DT-A category, while the Applicants in O.A.No.581/2012 belong to S.C. category. Both the Original Applications were heard together and are being disposed of by a common order.

3. O.A. No.580/2012 has been filed by the applicants challenging letters dated 9.1.2012 and 10.1.2012 as contrary to Govt. Circular dated 16.3.1999 and also violative of Articles 14, 15 and 335 of the Constitution of India. The Applicants are also challenging the revised selection list dated 10.4.2012 issued by the Respondentno.4.

4. Learned Counsel for the Applicants argued that the Respondent no.4 had issued an advertisement on 1.10.2011 to fill a total of 261 posts of Police Constables. 154 posts were Open and there was 30% reservation for female category. All the Applicants belong to DT-A category and they participated in the selection process. They scored 128, 120 and 119 marks in the selection process and were selected against post reserved for DT-A female category in the selection list published on 27.11.2011 by the Respondent no.4. The Respondent no.4, however, revised the selection list on 10.4.2012, and the names of the applicants were missing. Learned Advocate for the applicants stated that one Irfan Mustafa Shaikh had filed O.A. No.301/2009 before this Tribunal challenging selection of candidates other than Open category for the Open posts horizontally reserved for Home Guards. This Tribunal by judgment dated 26.8.2009 held that horizontally reserved posts from Open category can be filled from the Open category candidates only. Writ Petition No.272/2010 against the judgment of this Tribunal was dismissed by Hon'ble High Court by judgment dated 15.11.2010 and the order was maintained by Hon'ble Supreme Court. Learned Advocate for the Applicants argued that Special Leave Petition against the order of Hon'ble High Court in W.P.No.272/2010 was dismissed by Hon'ble Supreme Court mainly

on the ground of delay. No detailed and reasoned order was passed by Hon'ble Supreme Court. Learned Counsel for the Applicants stated that the Respondents have applied judgment of Hon'ble Supreme Court without application of mind and interpreted it wrongly. Learned Counsel for the Applicants argued that backward class candidates can be considered for appointment in Open vacancy on the basis of merit. The letter dated 9.1.2012 issued by the Respondent no.1 is against the principles of reservation in the Constitution and it is invalid. The applicants have been denied appointment though they had scored more marks than some of the Respondents who are from Open – Female category. Also, denying right to backward class Females to compete for post reserved for Open Female category, amounts to discrimination and is contrary to provisions in Article 14 & 15 of the Constitution of India.

5. Learned Presenting Officer (P.O.) argued on behalf of the Respondent nos. 1 to 4 that the Applicants themselves have quoted the judgment of this Tribunal dated 26.8.2009 in O.A. No.301/2009. This Tribunal has held that horizontal reservation are compartmentalized in each vertical reservation category. A post for Open Home Guard category cannot be filled by a candidate from other vertical reservation category. If that is allowed, there will be

no distinction between vertical and horizontal reservations. Candidates belonging to Home Guard category will compete regardless of the caste and such reservation would amount to 5% reservation for Home Guards. That is clearly impermissible. This judgment of this Tribunal was upheld by Hon'ble High Court in W.P. No.272 of 2010 by judgment dated 15.11.2010. In Special Leave Petition against the judgment of Hon'ble High Court, Hon'ble Supreme court held that on merits also the judgment of this Tribunal was correct. As such the claim of the Applicants that Hon'ble Supreme Court's judgment is misinterpreted by the Respondents is not correct. Learned P.O. further stated that the Respondent no. 1 issued letter dated 9.1.2012, clarifying the procedure to be followed while applying the provision of Govt. Circular dated 16.3.1999 regarding horizontal reservation. This letter is strictly in accordance with Govt. Circular dated 16.3.1999. Learned P.O. further contended that the principle applicable for horizontal reservation for Home Guards would be applicable for horizontal reservation for Female category also. If a post is reserved for Open female category, it can be filled only from Open category. Otherwise it will be treated as Open post without any horizontal reservation. There is no question of any discrimination against female candidates, who can compete for Open post, without

reservation and also for the post horizontally reserved for female from the vertical reservation category to which they belong to. Learned P.O. argued that the Respondent no.4 was required to prepare a revised selection list, which was published on 10.4.2012, which is issued strictly in accordance with law.

6. We find that the issue is regarding nature of horizontal reservation. Govt. Circular dated 16.3.1999, itself makes it clear that it is compartmentalized and has to be provided for each vertical reservation category. Unlike the vertical reservation, horizontal reservation cannot be carried forward. If a suitable candidate is not available to fill up a post horizontally reserved from a particular vertical reservation category, that post is added to that particular vertical reservation category without any horizontal reservation. If the horizontally reserved posts are to be filled without consideration of vertical reservation, there will be no distinction between vertical and horizontal reservation. For females, it will mean that in addition to 52% reservation for various backward classes, 30% posts will be reserved for females, taking reservation to 82%. Such situation will be against the law laid down by Hon'ble Supreme Court that total reservation should not exceed 50%. Therefore, horizontal reservation from one vertical reservation category cannot

traverse to another vertical reservation category. This Tribunal by judgment dated 26.8.2009 in O.A. No. 301/2009 has held accordingly. It was held that an Open post reserved horizontally for Home Guards can be filled by Home Guard from Open category only. This was upheld by Hon'ble High Court in W.P. No.272/2010. Hon'ble Supreme Court has upheld the decision of this Tribunal on merits. What applies to Home Guards also applied for female in so far as horizontal reservation is concerned. On that basis selection list dated 10.4.2012 was issued by the Respondent no.4. We do not find that Govt. letters dated 9.1.2012 or 10.1.2012 violate any provision of Govt. Circular dated 16.3.1999 or any constitutional provision.

7. The issues raised in O.A. No.581/2012 are identical. Only difference is that the Applicants in O.A. No.580/2012 belong to D.T.-A category, while the Applicants in O.A.No.581/2012 belong to S.C. category. Both set of Applicants are seeking selection to the post of Open Female category and the judgment in O.A.No.580/2012 will be squarely applicable to O.A.No.581/2012.

8. We do not find any fault in the final selection list issued by the Respondent no.4 on 10.4.2012 for the post of Police Constables. It

is not a fit case which requires our interference. As a result, these Original Applications are dismissed with no order as to costs.

**MEMBER (J)**  
atpoa580&58112

**VICE CHAIRMAN**