

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI
BENCH AT AURANGABAD.

DIST. PARBHANI.

ORIGINAL APPLICATION NO.838/2011.

- 1) Uttam s/o Milind Shahane,
Age 19 years, Occu. Nil,
R/o House No.412, Bldg.No.36,
Police Head Quarters, Parbhani.
- 2) Sangpal Chandoba Nirmale,
Age 23 yrs. Occu. Nil,
R/o Digras Post Pharkhanda,
Tq. Palam, Dist. Parbhani.

-- APPLICANTS.

VERSUS

1. State of Maharashtra
Through its Secretary,
Home Department,
Mantralaya, Mumbai 32.
2. The Director Genral of Police,
M.S. Mumbai.
3. Superintendent of Police,
Parbhani.

(Copy to be served on CPO,
MAT, Bench at Aurangabad.)
4. Vijay Nagnathrao Uphade,
Age Major, Ocu. Nil,
R/o C/o Superintendent of Police,
Parbhani.

5. Suresh Nivrutti Aagale,
Age Major, Occu. Nil,
R/o as above.

-- RESPONDENTS.

APPEARANCE : Miss Bhavna Panpatil, learned Advocate holding for Shri SB Talekar, learned Advocate for the Applicants.

: Smt PR Bhraraswadkar, Learned Presenting Officer for Respondents No.1 to 3.

: Shri SJ Salunke, learned Advocate for the Respondent No.4 (Absent).

: Shri AS Deshmukh, learned Advocate for the Respondent No.5.

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

DATE : 13.12.2016.

JUDGMENT

(Delivered on 13/12/ 2016.)

(Per: Hon'ble Shri J.D. Kulkarni, Member (J))

1. Applicants are claiming that the merit list dated 22.11.2011 in respect of Bandsmen (Trumpet) in respect of candidates at Sr.Nos.36 & 37 be quashed and that the Respondents no.1 to 3 be directed to consider the claim of the applicants strictly as per the marks in a category of

Bandsmen (Trumpet) and to appoint the applicants as Police Constable (Bandsmen) (Trumpet).

2. The applicants belongs to Scheduled Castes category. They applied for the post of Police Constable (Bandsmen) category, in response to the advertisement dated 2.10.2011, two posts each were reserved for Bandsman (Clarinet), two for Bandsman (Euphonium) and two were for Bandsman (Trumpet).

3. The Applicants accordingly appeared for the physical test, followed by written test held on 15.11.2011 and 21.11.2011 respectively. The applicant no.1 secured 66 marks in the physical examination, whereas applicant no.2 obtained 82 marks in physical examination. These marks were displayed on the notice board of the office of the Head Quarter, Parbhani.

4. In the written examination the applicant no.1 answered 64 questions correctly, whereas the applicant no.2 answered 48 questions correctly. The applicants were

called to play the musical instruments such as Euphonium and Trumpets.

5. The Respondent no.3 published a merit list / selection list and the applicants were surprised to know that the candidates who have secured less marks than them were placed in merit list. Both the applicants have completed Euphonium and Trumpet and were eligible for Bandsmen category since they have taken special training of Euphonium and Trumpet.

6. Since the applicants' names were not figured in the merit list they filed representation on 22.11.2011 and 23.11.2011. As per guide-lines a separate merit list is to be published in respect of bandsmen category, but it was not published. Though both the applicants have secured 130 marks their claim was not considered from Trumpet category and they have only been considered against the posts reserved for Bandsmen Euphonium category and therefore, this O.A.

7. The respondent no.3 the Superintendent of Police has filed affidavit in reply and justified the recruitment process. According to respondent no.3 in all 17 candidates were found eligible for Bandsmen category. It is stated that, the Committee of 3 Bandsmen measure of 3 districts was constituted and Reserved Police Inspector (R.P.I.) was Member and Dy.S.P. Head Quarter was designated as supervising Officer. As per the said Committee the applicants no.1 & 2 were found eligible for playing instrument Euphonium only. It is further stated that, the list is prepared on the marks obtained in physical and written tests, and the applicants should not found place on merits. As against this, the respondents no.4 & 5 were found eligible and therefore, they have rightly appointed.

8. We have heard Miss Bhavna Panpatil, learned Advocate holding for Shri S.B. Talekar, learned Advocate for the applicants, Smt PR Bharaswadkar, learned Presenting Officer for the Respondents No.1 to 3, and Shri AS Deshmukh, learned Advocate for the Respondent no.5. We have also perused the application, affidavit, affidavit in

reply filed by the Respondents and various documents placed on record by the respective parties.

9. The material points to be considered in this O.A. are as under:-

i) Whether the merit list dated 22.11.2011 in respect of Bandsman (Trumpet) at Sr.Nos.36 & 37 is legal and proper?

ii) Whether the applicants are entitled to be appointed as Police Constable Bandsman (Trumpet) ?

10. The learned Advocate for the applicants invited our attention to the guide-lines issued in the advertisement and the Govt. circulars. The learned Advocate for the applicants Miss. Bhavna Panpatil further submits that, if the statute provides for something to be done in a particular manner it should be done in that manner only. In support of her claim learned Advocate for the applicants placed reliance on the judgment reported in “(2015) 7 SUPREME COURT CASES 690, in the case of ZUARI CEMENT LIMITED Vs. REGIONAL DIRECTOR, EMPLOYEES STATE INSURANCE CORPORATION,

HYDERABAD AND OTHERS”. In the said case Hon'ble Apex Court has observed in para nos.14 & 15 as under :-

“14. As per the scheme of the Act, the appropriate Government alone could grant or refuse exemption. When the statute prescribed the procedure for grant or refusal of exemption from the operation of the Act, it is to be done in that manner and not in any other manner. In *State of Jharkhand v. Ambay Cements*, it was held that : (SCC p.378, para 26)

“26..... It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way.”

15. In *Babu Verghese v. Bar council of Kerala*, it was held as under : (SCC pp. 432-33, paras 31-32).

“31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in *Taylor v. Taylor*, which was followed by Lord Roche in *Nazir Ahmad v. King Emperor*, who stated as under : (*Nazir Ahmad case*, IA pp. 381-82)

'..... where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.'

32. This rule has since been approved by this Court in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh*, and again in *Deep Chand v. State of Rajasthan*. These cases were considered by a three-Judge Bench of this Court in *State of U.P. v. Singhara Singh* and the rule laid down in *Nazir Ahmad case* was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.”

11. Learned Advocate for the applicants has invited our attention to clause nos.9 and 10 of the guidelines as regards the procedure to be followed for appointment of Police Constable. The said guidelines are dated 26.8.2011. Clause no.9 states about the Committed to be appointed for appointment of Police Constable and clause 10 deals with the preparation of merit list. The said clauses are as under :-

“९. **निवड मंडळ** :- महासंचालकांनी प्रत्येक पोलीस घटकासाठी गटित केलेले निवड मंडळ सेवाप्रवेश नियम २०११ च्या पोटनियम (१) व (२) मध्ये नमुद केलेल्या दोन निकषांवरून प्राप्त एकत्रित गुणांच्या आधारे उमेदवारांची गुणवत्ता यादी तयार करील. शारीरिक चाचणी व लेखी चाचणी यामध्ये प्राप्त होणारे गुण एकत्र केल्यानंतर, उमेदवारांची अंतिम गुणवत्ता यादी सामान्य प्रशासन विभागाच्या क्रमांक एसआरव्ही १०९७/प्र.क्र.

३१/९८/१६ -अ, दि. १६.०३.१९९९ च्या शासन परिपत्रकामध्ये दिलेल्या टप्प्यानुसार तसेच शासनाने वेळोवेळी निर्गमित केलेल्या आदेशानुसार तयारी करील. त्याकरिता निवड मंडळ खालील प्रमाणे राहिल.

- a पोलीस उप आयुक्त/ अपर पोलीस आयुक्त/ पोलीस अधिक्षक/ अपर पोलीस अधिक्षक/ समादेशक - अध्यक्ष
- b अल्पसंख्यांक समाजाचा अधिकारी - सदस्य
- c जिल्हा महिला व बालविकास अधिकारी - सदस्य
- d समाजकल्याण अधिकारी - सदस्य

१०. **गुणवत्ता यादी** :- उमेदवारांची “शारीरिक चाचणी” व “लेखी चाचणी” गुण एकत्रित करून गुणवत्ता यादी तयार करावी. बॅन्ड्समनची स्वतंत्र गुणवत्ता यादी तयार करावी. शेवटच्या उमेदवारांची लेखी चाचणी परीक्षा संपल्यानंतर शक्यतो २४ तासात अथवा उमेदवारांची संख्या मोठी असलस लवकरात लवकर भरतीचा अंतिम निकाल सूचना फलकावर लवून जाहिर करण्यात यावा. २४ तासाच्या आत अंतिम निकाल जाहिर करणे शक्य नसल्यास सूचना फलकावर तशा सूचना लिहून निश्चित तारीख व वेळ उमेदवारांना कळविण्यात यावी. तसेच निकाल वेबसाईटवर उपलब्ध करून द्यावा.”

12. According to the learned Advocate for the applicants the Respondents should have formed the Committee as per clause no.9 and should have declared merit list as per clause no.10 and therefore, it was necessary to publish a separate merit list in respect of Bandsmen category. The merit list published in this case is however, general in nature and separate list as claimed by the learned Advocate for the applicants.

13. The learned Presenting Officer Smt. PR Bharaswadkar however, submits that the Respondent authorities have formed a special Committee to test the merit of the candidates to be considered from Bandsman category.

14. The perusal of the documents shows that, general merit list was prepared which includes the candidates from reserved category, open category, Sports category, as well as Bandsmen category. It is material to note that, there was no separate advertisement for the post of Police Constable (Bandsmen category). As per advertisement dated 1.10.2011 in all 103 posts of Police Constables were to be filled in, out of which 6 posts were reserved for Bandsmen and these 6 posts were to be distributed as 2 posts each for Clarinet, Euphonium and Trumpet. There is nothing on record to show that, these 103 posts were not filled in by the competent Committee as stated in clause no.9 of the guidelines dated 26.8.2011. We therefore, do not find any substance in the say that, the selection was not done by the competent authority as stated in clause no.9 of the Govt. Circular dated 26.8.2011.

15. The learned Presenting Officer submits that, amongst the Police Constables, who were selected on merits 17 candidates were found eligible from Bandsmen category and therefore, a preliminary test was conducted for selecting the category of candidate and this Committee tested the candidates and their performance as to which instruments they can play efficiently and fluently. In the said test the applicants were found eligible for playing Euphonium only.

16. It seems from the reply affidavit filed by Respondent no.3 that, the expert Committee was formed. This expert Committee consists of 3 Bandsmen measure of 3 districts and Reserved Police Inspector (R.P.I.) was member of said Committee and a Dy.S.P. Head Quarter was designated as Supervising Officer. This Committee was directed to submit report of selected / rejected candidates.

17. The respondents have placed on record the report submitted by this Committee. This report is at paper book

page nos. 90 to 102 (both inclusive). This report shows the candidates who were found eligible and who were not found eligible for particular instrument category. The Exh.R-5 at paper book page no.102 is the list of candidates, from which it seems that, candidate at Sr.Nos.1 & 2 of the said list were found eligible for Euphonium, candidate at Sr.Nos.3 & 6 were found eligible for Clarinet category, whereas the candidate at Sr.Nos.7 & 9 were found eligible for Trumpet category. It is true that, the candidate at Sr.Nos.7 & 9 i.e. Respondents no.4 & 5 respectively, who were found eligible from Trumpet category got less marks than the applicants in the physical and written tests. However, the Committee found them more suitable in Trumpet category than that of applicants. Admittedly, the candidates who were selected from Euphonium and Clarinet category got more / equal marks than the applicants.

18. The learned Advocate for the applicants submits that, there was no procedure to appoint any such Expert Committee to test the merits of the applicants as per rules.

Even for the sake of argument it is accepted that, there is no specific provision to appoint said Committee, we do not find any illegality in appointing said Committee of the Expert persons. The Committee for appointment of Police Constables was as per guidelines dated 26.8.2011. In clause no.9 of the said Govt. Circular Committee was formed, and therefore, the appointment of 103 Police Constables was done by the Committee, as provided in clause no.9. Now, out of these 103 Police Constables 17 seems to have applied and found suitable for the post of Bandsmen and in order to know as to which candidate is expert to play particular instruments, the respondents seems to have appointed the Expert Committee and have relied on their report. This Expert Committee consists of Experts from 3 districts. We therefore, do not find any illegality. Admittedly, the respondents have taken care to see that particular category of Police Constable (Bandsmen) in different instrument have been tested by the competent persons in the particular field and therefore, we do not find anything wrong done by the respondents. There are no allegations of mala fides against the Expert Committee or

the Respondents and whatever allegations are made are vague. Merely because the applicants have secured more marks in written and physical tests than the respondents no.4 & 5, they can not be said to be expert in playing particular instrument and their merit can be judged only by the Expert in that particular field.

19. The learned Advocate for the applicants submits that, as per guideline no.10 of the circular dated 26.8.2011 the list of Bandsmen shall be prepared separately. The learned Advocate for the applicants submits that, this rule has not been followed by the respondents. In our opinion, these instructions regarding preparation of separate merit list of Bandsmen is in the form of internal instructions and it is not necessary to publish separate list of Bandsmen. The respondents seems to have followed the procedure and has prepared a separate list of 17 candidates, who were eligible to be considered for the category of Bandsmen as per Exh.R-5 and thereafter, 6 persons were selected and these 6 persons were included in the general merit list and they were placed at their respective placed in the merit list. The

Respondents therefore, have done nothing wrong and we are satisfied that a proper procedure has been followed by the respondents.

20. On a conspectus of discussions in foregoing paragraphs we are therefore, satisfied that the due procedure has been followed properly and even for the sake of argument it is accepted, though it is not show that, the separate merit list of Bandsmen category was not published, no prejudice has been caused to the applicants. The judgment on which the applicants have placed reliance has therefore, no relevance with the facts of this case.

21. In view of the discussions as above, we find no merits in the O.A. Hence the order.

ORDER.

- i) The Original Application is dismissed.
- ii) No order as to costs.

MEMBER (J)
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VICE CHAIRMAN (A)

