

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

ORIGINAL APPLICATION NO. 516 OF 2023

DIST. : AURANGABAD

Yogesh S/o. Sukhdeo Kharde,
Age: 23 years, Occu. Education,
R/o. At Post. Aland, Tq. Deulgaon Raja,
Dist. Buldhana.

-- **Applicant.**

V E R S U S

- 1] The State of Maharashtra,
Through its- Secretary,
Home Department, Mantralaya,
Mumbai-32.
- 2] The Director General of Police,
Training and Special Unit,
Police Headquartes, Old Council Hall,
Shaeed Bhagat Singh Marg,
City-Mumbai, Pincode-400001.
- 3) The Superintendent of Police Railway,
Aurangabad, Bharatmata Chowk,
Police Colony Road, DCTC Building,
Aurangabad,
Dist. Aurangabad-431 003.
- 4] Jitendra Kande,
Age: Major, Occu: Service,
R/o. C/o. The Superintendent of Police,
Aurangabad, Bharatmata Chowk,
Police Colony Road,
DCTC Building, Aurangabad,
Dist. Aurangabad-431 003.

.. Respondents

APPEARANCE :- Shri Vijay V. Deshmukh, learned
Advocate for the applicant.

: Shri V.G. Pingle, learned Presenting
Officer for the respondent authorities.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman
and
Hon'ble Shri Vinay Kargaonkar,
Member (A)
DATE : **14.06.2024**

ORDER

[Per :- Justice P.R. Bora, V.C.]

1. Heard Shri Vijay V. Deshmukh, learned counsel for the applicant and Shri V.G. Pingle, learned Presenting Officer for respondent authorities.

2. The applicant had applied for the post of Police Constable in pursuance of the advertisement dated 09.11.2022 issued by respondent No. 2. Applicant belongs to NT-D category and he has applied for the subject post claiming reservation for NT-D candidates. In the subject recruitment 05 posts were reserved for NT-D candidates. Amongst the seats reserved for NT-D candidates, 02 were for NT-D (General), 02 for NT-D (Female) and 01 for NT-D (Ex-serviceman).

3. It is the case of the applicant that in the written examination he received 82 marks, whereas in the physical test he scored 43 marks. He thus, received total 125 marks. It is the case of the applicant that in view of the marks scored by

him he was entitled to be selected against the seats reserved for NT-D (General). As averred in the Original Application only 01 candidate namely Shri Vaibhav Nagare was above the applicant in the merit from the NT-D category candidates. Said candidate received 128 number of marks. According to the applicant, he was the next meritorious candidate in NT-D category. Name of the applicant was however, shown at serial No. 01 in the waiting list for the open category candidates. It is the grievance of the applicant that without giving him any notice the respondents changed his category and when he was liable to be selected from NT-D (General) category, respondent No. 4 came to be selected on the said post though the said respondent has scored less number of marks than the applicant. Respondent No. 4 has secured 120 marks. It is the further contention of the applicant that the respondents have caused grave injustice to the applicant by erroneously including his name in the open category at Sr. No. 01 of the waiting list of open candidates. In the circumstances, the applicant has approached this Tribunal by filing the present O.A. seeking quashment of the final select list published on 19.07.2023 insofar as inclusion of name of respondent No. 4 as NT-D (General) candidate and name of the applicant at Sr. No. 01 in the waiting list of Open category

candidates is concerned. Applicant has also prayed for his appointment in place of respondent No. 4.

4. Affidavit in reply is filed only on behalf of respondent No. 3 i.e. the Superintendent of Police Railway, Aurangabad. In his affidavit in reply respondent No. 3 has taken a stand that since the applicant was not having valid Non-Creamy-Layer certificate and has expressed his inability to produce the said certificate before the cut-off date i.e. 15.12.2023, his claim for recruitment against the seats reserved for NT-D candidates was denied and by treating the applicant as Open category candidate his name has been shown at Sr. No. 01 in the waiting list of Open category in order of his merit. Respondent No. 3 has further contended that after publication of the provisional select list the applicant did not raise any objection to the said list in writing. It is further contended that for want of producing on record the valid Non-Creamy-Layer certificate, the claim of the applicant for his selection against NT-D category has not been done and on the basis of marks scored by him he has been shown at Sr. No. 01 in the waiting list prepared of the Open category. Respondent No. 3 on the aforesaid ground has prayed for dismissal of the O.A. Respondent No. 4 though has

been duly served did not cause his appearance in the matter. The O.A. has been, therefore, proceeded *ex parte* against him.

5. Shri V.V. Deshmukh, learned counsel appearing for the applicant vehemently argued that as per the advertisement issued by respondent No. 2 on 09.11.2022 the candidates claiming reservation against the seats reserved for the backward class candidates were under an obligation to produce Non-Creamy-Layer certificate of the financial year 01.04.2021 to 31.03.2022. Learned counsel submitted that the applicant has submitted the Non-Creamy-Layer certificate of the said period. Learned counsel invited our attention to the certificate produced on record by the applicant at page-46 of the paper book. Learned counsel submitted that when the applicant had fulfilled the requirements making him eligible to be appointed as NT-D candidate, the respondents on erroneous grounds deprived him from his selection. Learned counsel submitted that even as per the subsequent advertisement dated 06.12.2022 the applicant was liable to be selected. Learned counsel in the circumstances prayed for the directions against the respondents to appoint the applicant against the seat reserved for NT-D (General) category candidate.

6. Shri V.G. Pingle, learned Presenting Officer reiterating the contentions raised in the affidavit in reply filed by respondent No. 3 submitted that the applicant has been rightly refused the appointment since the Non-Creamy-Layer certificate produced by him is of the different period than prescribed. Learned P.O. submitted that in the advertisement issued on 06.12.2022 it has been clearly mentioned that the candidates claiming reservation against the reserved seats must produce on record the Non-Creamy-Layer certificate of the period mentioned in the said advertisement. Learned P.O. submitted that when the applicant was expected to place on record the Non-Creamy-Layer certificate of the period ending on 31.03.2023 or 31.03.2024 or 31.03.2025, the applicant has produced the Non-Creamy-Layer certificate, valid up to 31.03.2022 and, as such, the respondents have rightly not considered the applicant for his appointment on the basis of his tribe. Learned P.O. submitted that considering the number of marks scored by the applicant, his name has been included at Sr. No. 01 in the waiting list of the open candidates treating the applicant as a Open category candidate. Learned P.O., therefore, prayed for dismissal of the application.

7. After having considered the arguments advance by learned counsel appearing for the applicant and the learned Presenting Officer appearing for the State authorities and after having gone through the documents produced on record by the parties, we are inclined to allow the present application for the following reasons.

8. It is not in dispute that the applicant belongs to NT-D category. It is also not in dispute that the applicant scored total 125 marks. Further there appears no dispute that amongst the NT-D category candidates the applicant is the second highest candidate in order of merit. As is revealing from the stand taken by respondent No. 3 in his affidavit in reply the applicant has not been selected from NT-D category on the ground that he was not having valid Non-Creamy-Layer certificate and he expressed his inability to produce on record the same before the cut-off date i.e. 15.12.2023.

9. The aforesaid is the only ground on the basis of which the selection of the applicant against NT-D candidate has been refused. The stand taken by respondent No. 3 is wholly unsustainable. The respondents have utterly failed in appreciating the import of clause 15 of the advertisement issued on 06.12.2022. We deem it appropriate to reproduce the

condition as imposed in the advertisement issued on 09.11.2022, which reads thus: -

“१२) पोलीस शिपाई / पोलीस शिपाई चालक व राज्य राखीव पोलीस बलातील सशस्त्र पोलीस शिपाई पदाकरीता सामाजिक व समांतर आरक्षणाबाबतच्या सूचना:-

१) सामाजिक आरक्षण:-

१. विमुक्त जाती-अ, भटक्या जमाती-ब, भटक्या जमाती-क, भटक्या जमाती-ड, इतर मागास प्रवर्ग, विशेष मागास प्रवर्ग, आणि आर्थिकदृष्ट्या दुर्बल घटक या मागास प्रवर्गातील उमेदवारांनी ते उन्नत व प्रगत गटात मोडत नसल्याबाबतचे सक्षम प्राधिकाऱ्याने दिलेले लगतच्या आर्थिक वर्षाचे मूळ नॉन क्रिमीलेअर प्रमाणपत्र (Latest Non Creamy Layer Certificate) सादर करावे, म्हणजेच दिनांक ०१.०४.२०२१ ते ३१.०३.२०२२ या वित्तीय वर्षातील नॉन क्रिमीलेअर मूळ प्रमाणपत्र छाननीच्या वेळी सादर करणे आवश्यक आहे. अन्यथा त्यांची निवड रद्द करण्यात येईल.

२. महाराष्ट्र शासन, सामान्य प्रशासन विभाग निर्णय क्रमांक: बीसीसी २०११/प्र.क्र.२६४/२०११/१६-ब, दिनांक १२/१२/२०११ अन्वये ज्या उमेदवारांची निवड मागासप्रवर्गासाठी आरक्षित असलेल्या जागेवर झालेली आहे. अशा उमेदवारांस त्यांच्या जात प्रमाणपत्र वैधता तपासणीच्या अधीन राहून तात्पुरती नियुक्ती देण्यात येईल. नियुक्ती आदेश प्राप्त झाल्यानंतर अशा उमेदवाराने नियुक्ती आदेशाच्या दिनांकापासून सहा महिन्यांच्या आतमध्ये आपल्या जात प्रमाणपत्राची वैधता संबंधित जात पडताळणी समितीकडून करून घेणे आवश्यक राहिल.

३. आर्थिकदृष्ट्या दुर्बल घटकांतील (ईडब्लूएस) उमेदवारांकरिता शासन निर्णय, सामान्य प्रशासन विभाग क्रमांक राधाओ-४०१९/प्र.क्र.३१/१६-अ, दिनांक १२ फेब्रुवारी २०१९ अन्वये विहीत करण्यात आलेले मूळ प्रमाणपत्र, कागदपत्र पडताळणीच्या वेळी सादर करणे आवश्यक राहिल.”

10. We deem it necessary to reproduce the concerned clause 15 in the advertisement issued on 06.12.2022, which reads thus: -

“१५. नॉन क्लिमिलेअर प्रमाणपत्राबाबत :- महाराष्ट्र शासन, सामाजिक न्याय व विशेष सहाय विभाग, शासन परिपत्रक क्रमांक सीबीसी २०१२/प्र.क्र.१८२ विजाभज-१, दिनांक २५.०३.२०१३ मधील मुददा क्रमांक २(iii) मध्ये असे नमूद केले आहे की, “एखाद्या पदाकरीता अर्ज दाखल करावयाची/स्विकारण्याची अंतिम तारीख किंवा त्या पदाकरीता निश्चित करण्यात आलेली विशिष्ट निर्णायक (Crucial) तारीख हीच संबंधित उमेदवार उन्नत आणि प्रगत व्यक्ती/गटात मोडत नसल्याबाबतची पडताळणी करण्यासाठी गृहीत धरण्यात यावी” त्यानुसार अनुसूचित जाती व अनुसूचित जमाती प्रवर्ग वगळून उर्वरीत विमुक्त जाती, भटक्या जमाती, मागास प्रवर्ग आणि विशेष मागास प्रवर्गातील उमेदवारांसाठी अर्ज दाखल करण्याच्या अंतिम दिनांकापर्यंतचे नॉन क्रिमीलेअर सर्टीफिकेट विचारात घेण्यात यावे. नॉन क्रिमीलेअर प्रमाणपत्र हे सन २०२१-२२, २०२२-२३ सह दिनांक ३१.३.२०२३, ३१.३.२०२४ व ३१.३.२०२५ पर्यंत वैध असलेले विचारात घेण्यात यावी.”

11. It is undisputed that the applicant was holding the Non-Creamy-Layer certificate valid up to the date 31.03.2022 and was produced by the applicant. The said certificate is at page-46 of the paper book. The applicant has applied online on 29.11.2022. The documents on record revealed that by issuing a circulate dated 06.12.2022 the period for submitting online applications was extended till 15.12.2022. In the said circular having considered the fact that the timelimit was extended for submitting online applications a provision was made in clause 15 of the advertisement, which we have reproduced hereinabove, whereby the candidates were permitted to submit the Non-Creamy-Layer certificates valid not only up to 31.03.2022 but also up to 31.03.2023, 31.03.2024 and 31.03.2025. It however, appears that aforesaid clause has been misinterpreted by the authorities to mean that the condition incorporated in the initial advertisement issued on 09.11.2022 to the effect that the reserved class candidates shall furnish the Non-Creamy-Layer certificates valid up to 31.03.2022 was withdrawn and substituted by the Non-Creamy-Layer certificate valid till 31.03.2023, 31.03.2024 & 31.03.2025. In fact, the condition included in the earlier advertisement requiring the candidates belonging to reserved class to furnish the Non-Creamy-Layer certificate valid up to 31.03.2022 was kept intact.

Applicant has undisputedly submitted the Non-Creamy-Layer certificate valid up to 31.03.2022. In the above circumstances, the applicant was entitled to be selected against the seat reserved for NT-D (General) candidates.

12. As has come on record in the NT-D category one Shri Vaibhav Nagare has scored 128 marks and he has, therefore, been rightly selected against NT-D (General) seat. The record further reveals that against second seat for NT-D (General) the respondents have selected respondent No. 4, who has secured 120 marks i.e. less than the number of marks earned by the applicant. It is thus, evident that being second highest meritorious candidate it was the applicant who was liable to be selected as second NT-D (General) candidate in place of respondent No. 4. Respondents have committed a gross error in not considering the applicant for his selection against NT-D (General) candidate and considering him as Open (General) candidate. The erroneous decision taken by the respondent Nos. 2 & 3 has resulted in depriving the applicant from his selection. The error so committed deserves to be rectified.

13. From the facts and circumstances discussed above it is evident that the applicant was entitled to be selected and appointed against the seats reserved for NT-D(General)

candidates and not the respondent No. 4. The final select list published by respondent no. 03 on 19.06.2023, therefore, needs to be set aside to the extent it contains the name of respondent no. 04 as the candidate selected against the seat reserved for NT-D (General). The respondents are also required to be directed to include the name of the present applicant in the said list in place of respondent no. 04 and to issue the order of appointment in his favour within a stipulated time. Further, it is clarified that the respondents are not precluded from accommodating respondent no. 04 against any unfilled or vacant seat. In the result, the following order is passed: -

ORDER

- (i) The final select list published by respondent no. 03 on 19.06.2023 is set aside to the extent it contains the name of respondent no. 04 as the candidate selected against the seat reserved for NT-D (General). Consequently the respondents are directed to include the name of the present applicant Shri Yogesh Sukhdeo Kharde in the said list in place of respondent no. 04 and issue him the order of appointment within 08 weeks from the date of this order.
- (ii) Respondents are not precluded from accommodating respondent no. 04 against any unfilled or vacant seat.

(iii) The Original Application is allowed in the aforesaid terms without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 14.06.2024

ARJ O.A. NO. 516 OF 2023 (SELECTION PROCESS)