

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**TRANSFER APPLICATION NO. 02 OF 2012  
[WRIT PETITION NO. 9902 OF 2011]**

**DISTRICT :- OSMANABAD.**

Radha d/o Nagnath Choure  
Age : 21 years, Occu. Nil,  
R/o: Siddhi Vinayak,  
Near Chapane Building,  
Anand Nagar, Osmanabad  
Tq. & Dist. Osmanabad

**APPLICANT**

**V E R S U S**

1. State of Maharashtra,  
Through Secretary,  
Department of Home Affairs,  
Mantralaya, Mumbai-32.
2. The Superintendent of Police,  
Osmanabad, Dist. Osmanabad.
3. The Sub Divisional Magistrate,  
Sub Division, Osmanabad,  
Dist. Osmanabad.

**RESPONDENTS**

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**APPEARANCE :** Shri R.V. Naiknaware, learned counsel for the  
applicant.

: Shri Mahesh Bharaswadkar, learned Chief  
Presenting Officer for the respondent authorities.

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**CORAM : HON'BLE JUSTICE V.K. JADHAV, VICE CHAIRMAN  
AND  
: HON'BLE VINAY KARGAONKAR, MEMBER (A)**

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**Reserved on : 17.03.2025**

**Pronounced on : 21.03.2025**  
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**O R D E R**

*[Per : Shri Vinay Kargaonkar, Member (A)]*

Heard R.V. Naiknaware, learned counsel for the  
applicant and Shri Mahesh B. Bharaswadkar, learned Chief  
Presenting Officer for respondent authorities

**2. Brief Facts:**

This Transfer Application No. 02 of 2012 has come before this Tribunal through an order of transfer issued by the Hon'ble High Court of Judicature at Bombay. Originally filed as Writ Petition No. 9902 of 2011 before the High Court, the matter pertains to a dispute regarding police recruitment in Maharashtra. The applicant initially approached the High Court under Article 226 of the Constitution of India as, at that time, the Division Bench of the Maharashtra Administrative Tribunal was not available, and the Single Judge was not entertaining matters seeking interim relief. Subsequently, the Hon'ble High Court, recognizing that the subject matter fell within the jurisdiction of this Tribunal, transferred the matter to the Maharashtra Administrative Tribunal for adjudication on merits. It is noteworthy that during the pendency of the matter before the High Court, interim relief was granted to the applicant allowing her to participate in the written examination scheduled on 23.12.2011 on a provisional basis. The applicant appeared for the examination and secured 59 marks in the written test in addition to the 61 marks already secured in the physical test. The applicant was declared ineligible on the ground of want of required Non-Creamy Layer certificate.

**3. Pleadings and Arguments by the Applicant:**

- (i) The Government of Maharashtra decided to conduct the recruitment process for police constables known as the "Maharashtra Police Recruitment Exam 2011." The recruitment

process was conducted through various units as prescribed, with the Superintendent of Police, Osmanabad being one such unit. According to the advertisement, candidates were required to first undergo a physical test, and after passing this test, they would be allowed to participate in the written examination. The applicant, being desirous to apply for the post of police constable (lady), submitted her online application on 20.10.2011. As per Government policy, 30% of seats are reserved for women candidates, with various other reservations laid down by the Constitution of India and Government policy also provided for in the recruitment process. The applicant belongs to the Dhangar caste, recognized as NT(C) in the State of Maharashtra.

(ii) Candidates from OBC, VJ, and NT categories are required to submit a Non-Creamy Layer certificate to benefit from reservation. The advertisement specified that the Non-Creamy Layer certificate must have been issued recently. The applicant possessed a Non-Creamy Layer certificate issued on 28.3.2011, which is valid for a period of one year from the date of issuance. In her online application, the applicant categorically stated that she belongs to the Non-Creamy Layer category. After verification of applications, candidates were called for the physical test, which was conducted on 24.11.2011 for the Osmanabad unit. The applicant, with a height of 159 cm, was allowed to participate in the physical test.

(iii) In the physical test, the applicant scored 61 marks. As per the rules, the passing benchmark for candidates belonging to the NT(C) category, both male and female, was 51 marks, while the passing benchmark for open category (General) candidates was 73 marks. Having scored 61 marks in the physical test, the applicant was eligible for the written test.

Despite this, on 15.12.2011, all candidates were called to the office of the Superintendent of Police, Osmanabad, where the applicant was informed that she was ineligible for the subsequent written examination. The respondent no. 2 conveyed that as the applicant had scored 61 marks, which was below the passing benchmark of 73 marks for the open category, she was declared ineligible. The list of eligible and ineligible candidates was displayed in the office of respondent no. 2, and the applicant found her name among the ineligible candidates.

(iv) When the applicant sought clarification about her ineligibility despite scoring 61 marks, respondent no. 2 informed her that her Non-Creamy Layer certificate issued on 28.3.2011 was not considered "recent" as per his understanding. Therefore, the applicant was declared ineligible as she could not meet the benchmark for the open category (73 marks). The applicant was not even considered from the open category (female). The applicant tried to convince respondent no. 2 that her Non-Creamy Layer certificate was valid for one year from the date of issuance and that she should be allowed to participate in the written examination. Subsequently, the applicant approached respondent no. 2 and submitted another Non-Creamy Layer certificate issued on 19.11.2011, which was not a new certificate but a clarification of the certificate issued on 28.3.2011. This certificate clearly mentioned the validity as until 31.3.2011.

(v) The applicant contends that a Non-Creamy Layer certificate is issued for a period of one year. The certificate issued on 28.3.2011 in her favor is valid for one year, i.e., until 26.3.2012. Therefore, her candidature should not have been declared invalid due to the lack of a proper Non-Creamy Layer certificate. The approach of respondent no. 2 in interpreting the

certificate was overly technical. Non-Creamy Layer certificates cannot be issued for less than one year. Therefore, the certificate issued on 28.3.2011, especially in light of the subsequent certificate dated 19.11.2011, should be treated as valid until 31.3.2012.

(vi) After the Hon'ble High Court granted interim relief on 22.12.2011, the applicant was allowed to participate in the written examination and scored 59 marks. Combined with her physical test score of 61 marks, she achieved a total of 120 marks, making her eligible for appointment either from the reserved category for women or from the open women category. However, respondent no. 2 selected less meritorious candidates and did not appoint the applicant despite her higher merit. The applicant relies on the judgment of the Hon'ble Supreme Court in Anil Kumar Gupta and Others vs. State of U.P. and Others (1995) 5 SCC 173, which held that even a reserved category candidate who secures higher marks should be accommodated along with open category candidates.

(vii) The applicant further refers to the judgment in Original Application No. 122 of 2012 (Jalandhar Rathod vs. The State of Maharashtra and Others), where the Hon'ble Tribunal observed that, following the Supreme Court judgment in Saurav Yadav and Ors. vs. State of Uttar Pradesh and Ors., the law has been settled regarding the migration of candidates from backward caste social reservation categories under horizontal reservation to open social reservation categories. Vacant posts under horizontal reservation in the open category must be filled on a merit basis by allowing migration from other social reservation categories. This judgment should be given retrospective effect. Based on the above legal position and facts, the applicant argues that her application should be allowed, and she should

be considered eligible for recruitment as a police constable with retrospective effect.

**4. Pleadings and Arguments by the Respondents**

(i) The respondents have filed a short affidavit in response to the Hon'ble Tribunal's instructions during the hearing of Transfer Application No. 02/2012 in Writ Petition No. 9902/2011 dated 10/01/2024. The respondents clarify that the order passed by the Hon'ble Tribunal in Original Application No. 122/2012 and 123/2012 was not challenged before the Hon'ble High Court. Both Original Applications No. 122 and 123/2012 arose from the same recruitment process held in 2011 and raised similar issues. The grievance in both cases was that although the applicants were eligible for selection from the quota of Home Guards and Sportsman respectively in the open category based on their marks, the respondents selected less meritorious candidates. After hearing both sides, the Hon'ble Tribunal ordered the inclusion of the applicants' names in the list of selected candidates from their respective quotas and directed the issuance of appointment orders in their favor.

(ii) As per the Tribunal's orders, the applicants were directed to report to the office of respondent no. 2. The applicant in O.A. No. 122/2012 communicated in writing that since he was already selected as a Police Constable in Pune Commissionerate, he was not interested in accepting the appointment in Dharashiv District Police. The sports certificate produced by the applicant in O.A. No. 123/2012 was found invalid during verification by the Deputy Director, Sports and Youth Services, Maharashtra State, Pune, and therefore his claim for appointment was disallowed. The respondents argue that the present applicant's case in Transfer Application No.

02/2012 is different from the cases of the applicants in O.A. No. 122/2012 and 123/2012.

(iii) The respondents contend that the applicant herself admitted that she did not have the required Non-Creamy Layer certificate as specified in the advertisement. Therefore, she requested that her candidature be considered under the open category. The applicant's candidature was considered from the open category as per her request. However, her candidature could not be considered under the 30% reservation provided for women as she belongs to the NT-C category, for which a Non-Creamy Layer certificate was required. Due to the absence of a valid Non-Creamy Layer certificate, her candidature from this category could not be considered.

(iv) The applicant obtained a total of 120 marks in the physical and written examinations. The cut-off for the open category was 173 marks, and as such, her candidature was not considered for appointment. Her name does not appear in the merit list due to her insufficient marks for the open category. The respondents argue that in view of these facts and circumstances, there is no merit or substance in the present Original Application, and it deserves to be dismissed with costs.

## **5. Reasoning and conclusions:**

(i) After careful consideration of the pleadings and arguments advanced by both parties, this Tribunal has reached the following conclusions on the merits of this case:

(ii) The central issue in this Transfer Application is whether the applicant was wrongfully denied participation in the police recruitment process due to the alleged invalidity of her Non-Creamy Layer certificate, and whether she should be

considered for appointment either under the NT-C category or under the open female category based on her merit.

(iii) Upon examination of the records placed before us, it is evident that the applicant herself had admitted to not possessing the required Non-Creamy Layer certificate as specified in the advertisement. This is a crucial admission that fundamentally undermines her case. The respondents have produced documentary evidence in the form of an application along with an undertaking given by the applicant wherein she requested that her candidature be considered under the open category due to the lack of a valid Non-Creamy Layer certificate. This admission by the applicant is fatal to her claim of wrongful denial of consideration under the NT-C category.

(iv) The recruitment process must be conducted in strict adherence to the terms and conditions stipulated in the advertisement, which serves as the primary contract between the recruiting authority and the candidates. The requirement of a valid Non-Creamy Layer certificate for candidates from OBC, VJ, and NT categories is not a mere technicality but a substantive condition precedent for availing the benefits of reservation. When a candidate fails to meet this basic eligibility criterion, the recruiting authority is well within its rights to consider such a candidate under the general/open category.

(v) In accordance with the applicant's own request, the respondents considered her candidature under the open category. However, her total score of 120 marks (61 in the physical test and 59 in the written examination) fell significantly short of the cut-off mark of 173 for the open category. Therefore, she could not be selected on merit against the open category vacancies.

(vi) The applicant's reliance on the judgment in Anil Kumar Gupta and Others vs. State of U.P. and Others (1995) 5 SCC 173 and Saurav Yadav and Ors. vs. State of Uttar Pradesh and Ors. is misplaced. These judgments deal with the principle of migration of reserved category candidates to open category based on merit. However, this principle presupposes that the candidate in question is eligible under the reserved category in the first place. Since the applicant did not possess a valid Non-Creamy Layer certificate, she was not eligible for consideration under the NT-C category.

(vii) Similarly, the applicant could not be considered against the 30% seats reserved for women as she belongs to the NT-C category, for which a valid Non-Creamy Layer certificate was a prerequisite for being considered for women reservation. The reservation for women operates within the framework of social categories, and a candidate must first satisfy the eligibility criteria of her social category before availing the benefit of gender reservation.

(viii) The applicant's attempt to draw a parallel with the cases decided in O.A. No. 122/2012 and 123/2012 is also untenable. As rightly pointed out by the respondents, those cases involved different factual scenarios and legal issues. The decisions in those cases cannot automatically be extended to the present case, which hinges on the admitted lack of a valid Non-Creamy Layer certificate.

(ix) The Tribunal is cognizant of the fact that recruitment processes must not only be fair but also appear to be fair. However, fairness does not mean relaxation of essential eligibility criteria for individual candidates. To do so would be unfair to numerous other candidates who meticulously

complied with all the requirements stipulated in the advertisement.

6. In view of the aforementioned reasons, this Tribunal finds no merit in the Transfer Application. The action of the respondent authorities in not considering the applicant for appointment was in accordance with the terms of the advertisement and established principles of recruitment. No illegality or arbitrariness has been established.

7. Accordingly, the Transfer Application is dismissed. There shall be no order as to costs.

**MEMBER (A)**

**VICE CHAIRMAN**

**Place : Aurangabad**

**Date : 21.03.2025**

T.A.02-2022-HDD-2025-advertisement