

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 210 OF 2024

DISTRICT : AURANGABAD

Prem S/o. Bhojraj Totre,)
 Age: 25 years, Occu. :Nil,)
 R/o: Nisargnagar, Kridasankul Road,)
 Buldhana, Dist. Buldhana.) .. **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
 Through its Secretary,)
 Agriculture Department,)
 Mantralaya, Mumbai - 32.)
2. The Commissioner of Agriculture,)
 Agriculture Commissionerate,)
 Maharashtra State, Pune-05.)
3. The President,)
 Divisional Selection Committee &)
 Divisional Joint Director of Agriculture,)
 Chatrapati Sambhaji Nagar Division,))
 Chatrapati Sambhaji Nagar.)
4. Shri Kamaldip Dilip Hunchikatti,)
 Age: Major, Occ: Nil,)
 R/o. the office the President,)
 Divisional Selection Committee &)
 Divisional Joint Director of Agriculture,)
 Chatrapati Sambhaji Nagar.)
5. Mr. Vaibhav Mainaji Mane,)
 Age: Major, Occ.: Service as)
 Senior Clerk,)
 R/o.C/o. O/o the President,)
 Divisional Selection Committee &)
 Divisional Joint Director of Agriculture,)
 Chatrapati Sambhaji Nagar.) ..**RESPONDENTS**

Appearance : Shri K.B. Jadhav, learned counsel for the applicant.
: Shri Mahesh B. Bharaswadkar, learned Chief Presenting Officers for the respondent authorities.
: None appears for respondent no. 04 and 05, though duly served.

CORAM : **Hon'ble Shri Justice V.K. Jadhav,**
Vice Chariman
AND
Hon'ble Shri Vinay Kargaonkar,
Member (A)

RESERVED ON : **19.03.2025**
PRONOUNCED ON : **17.04.2025**

ORDER

(Per : Justice V.K. Jadhav, Vice Chairman)

1. Shri K.B. Jadhav, learned counsel for the applicant and Shri Mahesh B. Bharaswadkar, learned Chief Presenting Officers for the respondent authorities. None appears for respondent no. 04 and respondent no. 05, though duly served.
2. The matter is finally heard with consent of both the sides at the admission stage.
3. By filing this Original Application the applicant is seeking the following reliefs:-

“B) To quash and set aside the impugned letter dtd. 16/02/2024 issued by the respondent no. 3, thereby rejected the application dtd. 09/02/2024 submitted by the applicant for appointment on the post of Senior Clerk on the post reserved for Divyang/Disabled category.

C) To quash and set aside the selection list published by the respondent no. 3 for the post of Senior Clerk to the extent of selection of respondent no. 4 from the Open-General-Disability category.

C-1) To quash and set aside the appointment order dtd.//2024 /21.2.2024 issued by the respondent no. 3 in favour of the respondent no. 4 for the post of Senior Clerk from Divyang category.

C-2) To quash and set aside the appointment order dtd.//2024 (21.2.2024 issued by the respondent no.3 in favour of the respondent no. 5 for the post of Senior Clerk from O.B.C. category and the respondent no. 3 be directed to issue appointment order in favour of the applicant for the post of Senior Clerk from OBC-Divyang category.”

4. Brief facts giving rise to this Original Application are as under:-

(i) In response to the advertisement dated 06.04.2023 published by respondent no. 03 for filling up the posts of Senior Clerk and Assistant Superintendent, Group-C, the applicant has applied from O.B.C. – Disabled reserved category for the post of Senior Clerk. There are 11 posts

reserved for the post of Senior Clerk and 01 post is reserved for Blind/Partially Blind person. The applicant belongs to O.B.C. category and he is partially blind person having low vision disability of 40%.

(ii) The applicant further contends that the respondent no. 04, Shri Kamaldip Dilip Hunchikatti, has also applied from NT-C category for the post of Senior Clerk. The respondent no. 05, Shri Vaibhav Mainaji Mane, has also applied from O.B.C. category.

(iii) The respondent no. 03 has published the merit list for the post of Senior Clerk. The respondent no. 04 has secured 170 marks and stood first in the merit list and the category is shown as NT-C. The applicant has secured 140 marks from OBC reserved category and stood second in the disabled candidates. The respondent no. 05 is also selected from OBC category. The respondent no. 03 has published the provisional selection list for the post of Senior Clerk (Annexure A-7) in which the respondent no. 04 is shown as selected from Open category as per the merits secured by him for the post of Senior Clerk, though he is from NT-C reserved category.

(iv) The applicant has submitted an application/objection to the respondent no. 03 on 09.02.2024 and pointed out that his name is mentioned at sr. no. 148 in the general merit list and he is at sr. no. 02 from the Blind/Low Vision. The applicant has secured 140 marks in the examination. It is submitted that the respondent no. 04 has secured 170 marks and he belongs

to NT-C Blind category, however, the respondent no. 04 has not taken the benefits of Divyang/Disabled and he is selected from Open category as per the merits.

(v) On 16.02.2024, the respondent no. 03 has issued a letter to the applicant and rejected the request of the applicant for appointment to the post of Sr. Clerk on the reserved post of Divyang/disabled. It is informed that the respondent no. 04 has obtained the benefit of Divyang for the post of Sr. Clerk and, therefore, he cannot be selected from the Open category. He is selected from the post reserved for Divyang/Disabled. Thus, the applicant's objection has been turned down vide communication dated 16.02.2024 (Annexure A-9). Hence, this Original Application.

5. The learned counsel for the applicant submits that there is office memorandum/notification dated 15.01.2018 issued by the Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training in which clause no. 4.2 is relevant.

6. The learned counsel for the applicant submits that as per the policy of the Government dated 15.01.2018, the State has issued Government Resolution dated 29.05.2019, thereby framed the certain guidelines for reservation of 4% posts to the disabled/Divyang candidates. Clause (4) of the said G.R. dated 29.05.2019 prescribes about selection of the candidates on the

reserved post of Divyang/disabled, who has not availed the benefits of Divyang. It is stated that if Divyang candidate has not taken the benefit of disability, but selected, then he cannot be appointed to the post reserved for Divyang/disabled candidate.

7. The learned counsel for the applicant submits that in terms of the Memorandum dated 29.09.2022 issued by the Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training in clause (3) it is stated that “the facility of scribe, extra-time and relaxation in medical standards available to PwBD category candidates should not be treated as ‘relaxed standard’.”

8. The learned counsel for the applicant submits that the respondent no. 04 ought to have been selected from the Open category as per the marks secured by him and not on the post reserved for Divyang/disabled candidates. Further, the State has also issued Government Resolution dated 25.01.2024 for implementation of horizontal reservations in the selection process. It is directed that 4% posts should be reserved for disabled persons. It is also directed that except Divyang/disabled reservation, horizontal reservation should be applied to the compartmental horizontal reservations.

9. The learned counsel for the applicant submits that without considering the interim order passed by this Tribunal, the respondent no. 03 has issued backdated appointment orders in favour of respondent no. 04 from Open Divyang category and the respondent no. 05 from OBC category. The applicant has obtained copies of their appointment orders under Right to Information Act. In their appointment orders the date portion is shown as BLANK. The learned counsel submits that the applicant belongs to OBC category and therefore appointment of respondent no. 05 is improper. The learned counsel submits that if the respondent no. 04 is selected from Open General category as per his merits, then the applicant being second candidate in the Divyang category will be entitled for being appointed from OBC Divyang category. The applicant is also challenging the appointment of respondent no. 05 in the present Original Application.

10. The learned counsel for the applicant submits that as per advertisement, total 11 posts are reserved for Sr. Clerk and out of which, 01 post is reserved for Blind/partially Blind person and 01 post is reserved for Open category as well as 01 post is reserved for OBC category. The respondent no. 04 has secured 170 marks and stood first in the merit list and the

applicant has secured 140 marks and stood second in the OBC Divyang category. Therefore, the selection of respondent no. 04 on the post of Sr. Clerk on the reserved seat for Divyang/disabled category is not legal as the respondent no. 04 has not availed the benefits of Divyang. So also, the selection and appointment of respondent no. 05 from OBC category is illegal and liable to be quashed and set aside. The respondent no. 04 ought to have been appointed from Open General category as per the merit and the applicant ought to be selected and appointed in place of respondent no. 05 from OBC Divyang category candidate as the applicant stood second in the Divyang category. The learned counsel submits that this Original Application deserves to be allowed.

11. The learned Presenting Officer on the basis of the affidavit in reply filed on behalf of respondent nos. 01 to 03 submits that after the select list is published by the Divisional Selection Committee, only one grievance application of the applicant was received on 09.02.2024 within the given time in which the applicant has contended that the respondent no. 04 is selected as per merit and he has not taken any benefit persons with disabilities. Therefore, as per paragraph no. 04 of the G.A.D's. Government Resolution dated 29.05.2019, if the

persons with disabilities candidate is selected on unreserved post by not taking any benefit of reservation prescribed for the person with disabilities, then such candidate should be counted as unreserved candidate and the next candidate as per the merit is to be accommodated on reservation of persons with Disabilities. The learned Presenting Officer submits that the grievance of the applicant was properly considered keeping in view the directions issued by the Government of Maharashtra regarding recruitment process. The grievance of the applicant was discussed in the meeting of the Divisional Selection Committee dated 16.02.2024. It was found that the grievance raised by the applicant does not survive in view of various guidelines issued by the Government of Maharashtra. Accordingly, the grievance of the applicant was rejected and it was communicated to him by letter dated 16.02.2024.

12. The learned Presenting Officer submits that it is clear that the candidates belonging to Backward Class may compete for non-reserved post and if they are selected on the non-reserved posts on their merits, then their candidature will not be counted against the quota reserved for respective backward class. So far as horizontal reservation is concerned, a different procedure has been prescribed by the Government.

The learned Presenting Officer submits that paragraph no. 04 of the G.R. dated 29.05.2018 is relevant in this regard. As per the merit list, the applicant was required to be selected and counted from OBC category from the persons with Disabilities reservation.

13. The learned Presenting Officer submits that the respondent no. 04 has enjoyed the facility of scribe along with compensatory time being blind/partially blind candidate and hence the Divisional Selection Committee has concluded that the respondent no. 04 has enjoyed the said facility. Therefore, the respondent no. 04 is accommodated in Open category as per the merits. The respondent no. 04 has exhausted the quota reserved for persons with Disabilities and, therefore, he was counted in the category of persons with disabilities.

14. The learned Presenting Officer submits that as per the office memorandum dated 15.01.2018, which is issued by the Government of India in its Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training, the Government of Maharashtra in its General Administration Department has issued Government Resolution dated 29.05.2019. So far the office memorandum dated 27.09.2022 issued by the Government of India in its Ministry of

Personnel, Public Grievances and Pensions Department of Personnel and Training is concerned, it is applicable to the various departments of the Government of India and the respondents have not received any specific instructions from the General Administration Department of Government of Maharashtra that the provisions of office Memorandum dated 27.09.2022 are to be adopted/followed. Thus, the respondent no. 03 has completed the selection process by following the G.R. dated 29.05.2019 issued by the Government of Maharashtra in this regard.

15. The learned Presenting Officer on the basis of the additional affidavit in reply filed on behalf of respondent nos. 01 to 03 submits that all 11 appointment orders including the appointment orders of respondent nos. 04 and 05 are issued on the said date of similar pattern and dates are handwritten and posted along with the outward number given in the order which is below/lower side of the main memo of the order. All 11 appointment orders came to be issued on 21.02.2024.

16. The learned Presenting Officer submits that the candidate from OBC Women category namely Rupali Subhash Nikam and the candidate from OBC General category namely Vaibhav Mainaji Mane (respondent no. 05 herein) are selected

as per the merit being higher in merit as compared to the applicant. Thus, the respondent no. 04 though OBC candidate and blind/partially blind, but availed the facility for disabilities and is selected as per the merit in Open Category as per the criteria prescribed in clause 04 of G.A.D. G.R. dated 29.05.2019. Thus, the respondent no. 04 has exhausted the reservation of Blind/Partially Blind.

17. The learned Presenting Officer submits that this Tribunal was pleased to pass the interim order dated 27.02.2024. However, inadvertently it was not brought to the notice of this Tribunal at the time of passing the said interim order that the appointment orders have been already issued. The respondents, however, thus expressed their unconditional apology for the same. The learned Presenting Officer submits that there is no substance in this Original Application and the same is liable to be rejected.

18. The learned counsel for the applicant in reply submits that as per the final selection list published by the respondent no. 03, the respondent no. 04 is shown to have been selected from Open category, but his selection is shown from Divyang category, which is not permissible. So also, the selection of respondent no. 05 from OBC category is also illegal.

The applicant is entitled for appointment from OBC Divyang category in place of respondent no. 05. The respondent nos. 01 to 03 have failed to consider the claim of the applicant from Divyang category. Thus, the impugned order dated 16.12.2024 issued by respondent no. 03 is liable to be quashed and set aside. The respondent no. 03 be directed to revise the selection list and to issue the appointment order to the applicant from OBC Divyang category.

19. In the given set of facts it is necessary to state here the object behind enactment of rights of persons with Disabilities Act, 2016. This is a Act to give effect to the United Nations Convention on the Rights of the persons with Disabilities and for the matters connected therewith or incidental thereto. The United Nation Convention laid down various principles for empowerment of persons with disabilities and independence of persons that :-

- (i) Non-discrimination,
- (ii) Full and effective participation and inclusion in society,
- (iii) Equality of opportunity, and
- (iv) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity.

20. The persons with disabilities enjoy various rights such as right to equality, life with dignity and respect for his or her integrity etc., equally with others and also increase in reservation in the posts from existing percentage in the vacancies for persons or class of persons with benchmark disabilities in every establishment.

21. The Act defines the Persons with Disabilities as those having not less than 40% disability and identified 07 categories of disabilities, namely, blindness, low vision, hearing impairment, locomotor disability, mental retardation, mental illness and leprosy cured.

22. In the light of memorandum issued by the Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training dated 15.01.2018, particularly clause (4.1) thereof, a person with benchmark disabilities cannot be denied the right to compete for appointment by direct recruitment against an unreserved vacancy. Thus, a person with benchmark disability can be appointed by direct recruitment against vacancy not specifically reserved for the persons with benchmark disability, provided the post is identified suitable for persons with benchmark disability of the

relevant category. It is also made clear in paragraph (4.2) that the persons with benchmark disabilities selected without relaxed standards along with other candidates, will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible candidates with benchmark disabilities which will thus comprise of candidates with benchmark disabilities. Thus, paragraph no. (4) of the said memorandum dated 15.01.2018 with sub-paragraph 4.1 and 4.2 respectively are reproduced herein below:-

“4. ADJUSTMENT AGAINST UNRESERVED VACANCIES:

4.1) In the category of posts which are identified suitable for persons with benchmark disabilities, a person with benchmark disability cannot be denied the right to compete for appointment by direct recruitment against an unreserved vacancy. Thus a person with benchmark disability can be appointed by direct recruitment against vacancy not specifically reserved for the persons with benchmark disability, provided the post is identified suitable for persons with benchmark disability of the relevant category.

4.2) Persons with benchmark disabilities selected without relaxed standards along with other candidates, will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible candidates with benchmark disabilities which will thus comprise of candidates with benchmark disabilities who are lower in merit than the last candidate in merit list but otherwise found suitable for appointment, if necessary, by relaxed standards.”

23. Undisputedly, the State has adopted the said office memorandum and issued G.A.D. G.R. dated 29.05.2019 with almost with same provisions. Paragraph no. 04 of G.R. dated 29.05.2019, which is in vernacular, is reproduced herein below:-

“४. अनारक्षित पदावर दिव्यांग व्यक्तींची नियुक्ती :- दिव्यांगासाठी सुनिश्चित करण्यात आलेल्या पदावर दिव्यांग व्यक्तीस गुणवत्तेच्या आधारावर निवडीस पात्र ठरत असल्यास व त्यांचेसाठी पद आरक्षित नसले तरी नियुक्तीसाठी अपात्र ठरविता येणार नाही. जर दिव्यांग उमेदवारांची इतर उमेदवारांप्रमाणेच व प्रचलित नियमाप्रमाणे दिव्यांग उमेदवारांना देण्यात आलेल्या सवलतीचा लाभ न घेता एखाद्या पदावर निवड झाली असेल अशा उमेदवारांची गणना दिव्यांगासाठी आरक्षित जागेवर करण्यात येऊ नये व दिव्यांगासाठी आरक्षित पदे / पद इतर दिव्यांग उमेदवारांमधून भरण्यात यावीत.”

24. In the instant case, undisputedly, the respondent no. 04 has applied from NT-C category and also appeared for the examination for the post of Sr. Clerk. The respondent no. 04 belongs to NT-C category. He has filed his application under NT-C Blind category. The respondent no. 04 has secured 170 marks and stood first in the merit list and his category is shown as NT-C.

25. In terms of clause 04 of the G.R. dated 29.05.2019, a person with benchmark disability cannot be denied the right to compete by direct recruitment against unreserved category provided he should not have taken the benefit of divyang/disability category.

26. It is thus specific stand of the respondents that the respondent no. 04 has availed the relaxation standards, which are made available in terms of clause 16 (16.1 to 16.10) particularly 16.8 and 16.9 meant for Blind/partially blind persons.

27. In this context another office memorandum issued by the Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training dated 27.09.2022 is rather important. In paragraph (2) of the said memorandum it is stated that the queries have been received to the said Department from time to time on the following three aspects. The paragraph nos. 02, 03 and 04 of the memorandum dated 27.09.2022 are reproduced herein below:-

“2. Queries have been received in this Department, from time to time, on the following three aspects..

(i) whether PwBD candidates who have qualified on their own merit without any relaxed standard should be appointed against the vacancies not reserved for PwBDs i.e., against the unreserved vacancies which will be in addition to the vacancies earmarked for PwBD category candidates;

(ii) whether the facility of a scribe availed by a PwBD candidate, along with the compensatory time, shall be treated as relaxed standard; and

(iii) whether the disability a PwBD candidate is suffering from, shall be treated as relaxation in medical standard, which will disabled him from being treated as own merit category.

3. *In this connection, it is also pertinent to mention that this Department had constituted a Committee which deliberated upon the above three aspects, particularly in respect of Civil Services Examination (CSE), and recommended, inter-alia, the following -*

(i) the 'own merit' concept for PwBD category candidates should be implemented in CSE, in accordance with Establishment (Reservation) Division's OM No.36035/2/2017-Estt(Res), dated 15.01.2018

(ii) The facility of scribe, extra-time and relaxation in medical standards available to PwBD category candidates should not be treated as 'relaxed standard'.

4. *Accordingly, the following clarifications are issued. -*

(i) In line with the spirit of the O.M. No 36035/2/2017-Estt(Res.), dated 15.1.2018, and O.M. No 36012/1/2020-Estt(Res-II), dated 17.5.2022 on the subject, the concept of own merit for PwBD shall be implemented in all direct recruitment examinations, including the CSE and promotions, wherever applicable. In other words, PwBD category candidates selected without relaxed standard, along with other unreserved candidates, will not be adjusted against the reserved share of vacancies. The reserved vacancies will be filled up separately from amongst the eligible candidates with benchmark disabilities, who are lower in merit than the last unreserved candidate in general merit list, but otherwise found suitable for appointment, if necessary, by relaxed standards.

(ii) In accordance with Para 3 of the OM No 29-6/2019-DD-III, dated 10.8.2022, issued by the Department of Empowerment of Persons with Disabilities, the facility of scribe, along with compensatory time shall not be treated as relaxed standard DoPT, in agreement with this provision, reiterates that the facility of scribe taken by a PwBD candidate, along with compensatory time, shall not be treated as relaxed standard.

(iii) In terms of Corrigendum No. 34-02/2015/DD-III(Pt.), dated 08.02.2019, the phrase 'extra time or

additional time' is required to be replaced by the phrase 'compensatory time'.

(iv) The spirit of the term 'own merit' will get defeated if the disability a person is suffering from, is treated as relaxed medical standard, as no PwBD will get the benefit of the term 'own merit' as stipulated in the OMs, dated 15.1.2018 and 17.5.2022 in such a scenario Accordingly, it is clarified that disability of a person, which he is suffering from, shall not be treated as relaxed standard in medical fitness test for the purpose of 'own merit'."

28. In terms of para 4(ii) of the office memorandum dated 27.09.2022, the facility of scribe, along with compensatory time shall not be treated as relaxed standard. DoPT, in agreement with this provision, reiterates that the facility of scribe taken by a PwBD candidate, along with compensatory time, shall not be treated as relaxed standard.

29. It is the specific stand of the respondents that this particular office memorandum dated 27.09.2022 is not adopted by the State.

30. In view of clause 16 of the advertisement (Annexure A-4), Government Resolution dated 29.05.2019, which has been issued in terms of the office memorandum dated 29.05.2019, which has been issued in terms of the office memorandum dated 15.01.2018 by the Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training

Department and in terms of the statement of objects and reasons for enactment of the Rights of Persons With Disabilities Act, 2016, we find that approach of the State Government is not only contrary to the office memorandum dated 29.05.2019 in its letter and spirit so also the statement of objects and the reasons to give effect to the Union National convention on the rights of persons with disabilities and for matters connected therewith or incidental thereto.

31. In the instant case, the respondent no. 04 has secured 170 marks and he is topper in the merit list. In our considered opinion, non-availing of facility of compensatory time factor, relaxation in medical standard along with facility of scribe if it is treated as relaxed standards, the same would amount to denying the right of equality, equality with others and equality of opportunities to a person with disability.

32. In view of above, we are of the firm opinion that the respondents should have been given appointment order to respondent no. 04 from Open General category on the basis of the marks secured by him and the post reserved for the person with disabilities, the applicant should be appointed as he is next person under divyang/disabled category for having secured 140 marks for the post of Sr. Clerk and the applicant should

have been given appointment order for the post of Sr. Clerk from OBC Divyang/disabled category. However, the respondents have given appointment from OBC category to respondent no. 05. If the applicant is appointed from OBC Divyang/disabled category then the appointment of respondent no. 05 is required to be quashed and set aside. In this context it is necessary to mention here that though the respondent no. 05 is duly served, he has not bothered to contest this O.A. Hence, the following order:-

ORDER

- (i) The Original Application No. 210/2024 is hereby allowed.
- (ii) The impugned order dated 16.02.2024 issued by respondent no. 03 rejecting thereby the application dated 09.02.2024 submitted by the applicant for appointment on the post of Sr. Clerk on the post of reserved Divyang/Disabled category is hereby quashed and set aside.
- (iii) The selection list published by respondent no. 03 for the post of Sr. Clerk to the extent of respondent no. 04 from the Open General Disabled category and the appointment order dated 21.02.2024 issued by respondent no. 03 in favour of the respondent no. 05 for the post of Sr. Clerk from OBC category are hereby quashed and set aside.

(iv) The respondent no. 03 is hereby directed to select the respondent no. 04 in the Open General category on the basis of marks secured by him.

(v) The respondent no. 03 is hereby directed to issue appointment order in favour of the applicant for the post of Sr. Clerk from O.B.C. Divyang category.

(vi) In the circumstances, there shall be no order as to costs.

(vii) The Original Application is accordingly disposed of.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 17.04.2025