

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 854 OF 2023

DISTRICT:- AURANGABAD

Shaikh Danish S/o. Abdul Rafat,
Age-31 years, Occu. Service,
(J.E., Junior Engineer/construction)
Nanded Division, South Central Railway,
R/o. House No. 4-17-12, Mill Corner,
Kotwalpura, Aurangabad.

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APPLICANT

V E R S U S

- 1. The State of Maharashtra,**
Through Principal Secretary,
Town Planning and Valuation
Department, Mantralaya,
Mumbai.

- 2. Director, Town Planning And
Valuation Department,**
Ground Floor, Central Office,
Near Railway Station, Opposite
B.J. Medical College,
Pune 411001.

.. **RESPONDENTS**

APPEARANCE : Shri Masood C. Syed, learned counsel
for the applicant.

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

**CORAM : JUSTICE SHRI P.R. BORA, VICE CHAIRMAN
AND
: SHRI VINAY KARGAONKAR, MEMBER (A)**

DATE : 26.08.2024

ORAL ORDER

(Per : Justice Shri P.R. Bora, Vice Chairman)

Shri Masood C. Syed, learned counsel has filed **VAKALATNAMA** on behalf of the applicant today by taking NOC from the earlier advocate. It is taken on record.

2. Heard Shri Masood C. Syed, learned counsel for the applicant and Shri Mahesh B. Bharaswadkar, learned Chief Presenting Officer for the respondent authorities.

3. The applicant had applied for the post of Planning Assistant in the Town Planning Department of the Maharashtra State in pursuance of the advertisement issued by respondent No. 2 on 28.03.2023. Total 177 posts were advertised. The Social reservations as well as horizontal reservations were provided and the break-up was provided in the advertisement itself in the concerned advertisement. Out of 177 posts, 14 were reserved for the candidates coming from the OBC (General) and 36 posts were for Open (General).

4. The applicant belongs to the OBC category and had applied for the advertised post as OBC candidate claiming reservation meant for the said category. However, in the selection process the applicant scored 150.202 marks in the

written test and become liable to be selected from the open category in order of merit. Accordingly, his name was included in the list of eligible candidates to be recommended for their appointment against Open (General) seats. Subsequently, however, he was declared ineligible on the ground that he did not submit the requisite Non-Creamy-Layer Certificate as required in the advertisement. The applicant, therefore, has approached this Tribunal by filing the present Original Application.

5. During pendency of the present Original Application since the applicant received the communication, whereby appointment was denied to him the applicant carried out amendment so as to bring on record the said information and to make the contextual prayer and the same was allowed.

6. The respondents have opposed the contentions raised in the O.A. as well as the prayers made therein on the only ground that the applicant failed to submit Non-Creamy-Layer Certificate as was required as per the terms in the advertisement.

7. It is not in dispute that in order of merit the applicant stands at a quite higher position and initially he was

shown to have been selected from the Open category against the seat reserved for the open class. As mentioned hereinabove, 36 posts were to be filled in by Open General Candidates. In the said list the applicant stands at Sr. No. 24. It is thus, evident that even though the applicant had applied from the OBC category and also had claimed reservation available for the OBC candidates, on the basis of marks scored by him in the written test he got the place in the list of candidates to be recommended for their appointments against the Open (General) seats.

8. It is well settled that the Open General is not a “quota”, but rather available to all women and men alike. It is equally well settled that the reserved category candidate, irrespective of whether he claims such reservation as and by way of vertical or horizontal, is always entitled to claim seat from Open category on the basis of his merit. This is particularly because, the Open category or quota as such is meant for being allotted only and only on merit and, therefore, in such allotment, the caste, creed or sex or any other criteria, relating to any candidate does not at all matter. The present applicant has secured the seat meant for Open category solely on the basis of his merit.

9. Having regard to the settled legal position as above, the respondents could not have rejected the claim of the applicant to be appointed against the Open (General) seat on the ground that he did not submit the Non-Creamy-Layer Certificate though he had applied from OBC reserved category. Once the applicant on his own merit becomes entitled to be selected against the Open General seat the fact that he belongs to OBC category becomes irrelevant and consequently the requirement of possessing the Non-Creamy-Layer Certificate also becomes irrelevant and redundant. Had it been the case that the applicant was to be selected against the OBC general seat it could have been said that the respondents were justified in asking from the applicant the requisite Non-Creamy-Layer Certificate as prescribed in the advertisement. However, when the applicant on his own merit becomes liable to be selected as open candidate, this requirement had lost significance and the respondents could not have insisted for any such certificate from the applicant. It is not the case that the applicant had taken any benefit, more particularly the benefit of age relaxation while participating in the said selection process.

10. For the reasons stated above, the letters dated 01.09.2023 and 08.09.2023 issued by respondent No. 2

deserves to be quashed and set aside and the applicant deserves to be held entitled for his appointment against the Open General seat. In the result, the following order is passed:-

ORDER

- (i) The applicant is held entitled for to be appointed against the Open General seat on the basis of his merit on the post of Planning Assistant, Group-B (Non-gazetted) in Town Planning Department. Accordingly, the respondents shall issue the order of appointment in favour of the applicant within 08 weeks from the date of this order.
- (ii) The seniority of the applicant be reckoned in his cadre from the date of appointment of the candidate lower in rank than the applicant.
- (iii) The Original Application stands allowed in the aforesaid terms.
- (iv) There shall be no order as to costs.

MEMBER (A)

VICE CHAIRMAN

PLACE : AURANGABAD

DATE : 26.08.2024