

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

NO.MAT/MUM/JUD/1448 /2016
 Maharashtra Administrative Tribunal
 Pay & Accounts Barrack Nos.3 & 4,
 Free Press Journal Marg,
 Nariman Point, Mumbai 400 021.

Date :

27 APR 2016

M.A. No. 253/2015 IN O.A. No. 921/2015.
(Sub :- Selection)

1. Shri Abasaheb Vishnu Disale & 4 ors.
 C/o. Shri S.D. Patil, Advocate for the Applicants.
 Add. 18 D, 2nd Mezanine Floor, 45, Rajabhadhur Mansion, Homi Modi 2nd
 Cross Lane, Fort, Mumbai-01.

....APPLICANT/S.

VERSUS

- | | |
|--|---|
| 1 The State Of Maharashtra, Through
The Principal Secretary, Home
Department, Mantralaya, Mumbai-32. | 2 Inspector General of Police, Police
Head Quarters, Maharashtra State,
Mumbai. |
| 3 The Maharashtra Public Service World
Trade Center-1 Building, 30 th floor,
Cuff Parade, Mumbai-400 005. | 4 Krishna Dagadu Patil, R/o. 2104,
Ruby Bldg., Regency Tower, G.B.
Road, Near Muchhala College,
Anandnagar, Thane (w), Dist. Thane,
Maharashtra-400607. |
| 5 Jaya Annasaheb Tarade | 6 Santosh Sitaram Rathod,
Add. Room No. 501, Narayan Park,
Surya Nagar, Near Samshan Bhoomi,
Vitawa, Thane-400605. |
| 8 Shailaja Bhaskar Bhagat | 7 Monali Lotesch Sonawane |
| 9 Chhaya Madhavrao Wagh | 12 Navita Dilip Ghuge,
R/at. Shri Gurudevdukt Apt., Flat No.
403, Near Khetwadi Lawns,
Untewadi, CIDCO, Nashik, Dist.
Nashik, Maharashtra-422009. |
| 10 Bharti Dashrath Ingole | 13 Rupali Narayan Shinde, R/at. A/p.
Mandaki Purandhar, Tal. Purandhar,
Dist. Pune. Maharashtra-412305. |
| 11 Somitra Ramrao Mundhe | 14 Manjusha Ganpati Gurme,
R/at. Vishal Nagar, Latur, Tal. Latur,
Dist. Latur, Maharashtra-413512. |
| 15 Kavita Sitaram Metkari | 17 Swati Baban Sathe, R/at. A.P. Hanga,
Tal. Parner, Dist. Ahmednagar,
Maharashtra-414301. |
| 16 Sulbha Bhausaheb Dhole, | 19 Minakshi Arjun Kamble,
R/at. Room No. 2, Line No.3, Jail
Washtait, Dist. Solapur- 413003. |
| 18 Shubhangi Nandoo Takit | |
| 21 Mayuri Rurushottam Pawar | |
| 24 Supriya Sbbhashrao Kendre | |
| 27 Sharvari Yeshwant Kale | |
| 28 Devkanya Vithal Maindad | |
| 32 Ashwini Dhanaji Gholave | |
| 34 Kavita Kakaso Bandgar | |
| 35 Suvarna Shraavan Umap | |
| 36 Amruta Rajendrasing Rajput | |
| 38 Yogita Gabru Rathod | |
| 39 Diksha Sambhaji Zadte
C/o. Shri V.V. Ugle, Advocate for the
Respondents, Add. M/A/713,
Cosmopolitan CHS, Behind
Panchamukhi Hanuman Mandir,
Panvel-410206. | |

- 20 Savita Ramkrushn Sanap, Add. At. Jamgaon, Post. Paste, Tal. Sinnar, Dist. Nashik, Maharashtra-422103.
- 22 Varsha Sudhakar Patil, R/at. Plot No.34, Gut No.12, Near New Water Tank, Dandekar Nagar, Pimprala, Jalgaon, Tal. Jalgaon, Dist. Jalgaon, Maharashtra-425001.
- 23 Amol Ramkrishna Deshmukh, A/p. Deshmukh Wada Jamner, C/o. R.T. Deshmukh, Tal. Jamner, Dist. Jalgaon Maharashtra-424206.
- 25 Archana Sampat Sangale, 1527, Wagh Niwas, Shelke lane Gavthan Sinner, Tal. Sinner, Dist. Nashik-422103.
- 26 Suchita Madhavrao Shingade, Sonai Niwas, Mamata Colony Bidar Road, Nilanga Tal. Nilanga, Dist. Latur.
- 29 Geeta Namdeo Dhulubulu, C/o Swapnil Sambhaji Mainkar, Saraswati Nagar, Vasumbe, A/p. Tasgaon, Tal. Tasgaon, Dist. Sangli-416312.
- 30 Ashwini Raosaheb Kasare, A/p. Bhangaon, Tal. Shrigonda, Dist. Ahmednagar-413728.
- 31 Manisha Arun Pate, C/o. Arun Jagtal Brhamankar Roopmoti, Kailas Nagar, Bhadgaon Road, Tal. Chalisgaon, Dist-Jalgaon-424101.
- 33 Prachi Narayanrao Lohakare, Add. Sushil Nagar, Near Gajanan Maharaj Mandir, Badnera Road, Amravati-444601.
- 37 Poonam Anil Agarkar, Kanade Mala, Solapur Road, Ahmednagar-414001.

Copy to : The C.P.O. M.A.T., Mumbai.

...RESPONDENT/S

*The applicant/s above named has filed an application as per copy already served on you, praying for reliefs as mentioned therein. The Tribunal on the 18th day of **April, 2016** has made the following order:-*

APPEARANCE : Shri S.D. Patil, Advocate for the Applicants.
Shri A.J. Chougule, P.O. For the Respondents Nos. 1 to 3.
Shri S.D. Kulkarni, Respondents No. 4.
Shri V.V. Ugale, Advocate for Respondent Nos. 5,8,9,10,11,15,16,18,21,24,27,28,32,34,35,36,38 & 39.

CORAM : **HON'BLE SHRI R.B. MALIK, MEMBER (J).**

DATE : **18.04.2016.**

ORDER : Order Copy Enclosed/Order Copy Over Leaf.

Amal
21/4/2016

**Research Officer,
Maharashtra Administrative Tribunal,
Mumbai.**

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

MISC. APPLICATION NO.253 OF 2015
IN
ORIGINAL APPLICATION NO.921 OF 2015

DISTRICT : SOLAPUR/SANGLI

1. Abasaheb Vishnu Disale & 4 ors.)...Applicants

Versus

1. The State of Maharashtra & 38 ors.)...Respondents

Shri S.D. Patil, Advocate for Applicants.

Shri A.J. Chougule, Presenting Officer for Resps. 1 to 3.

Shri S.D. Kulkarni, Advocate for Respondent No.4.

**Shri V.V. Ugale, Advocate for Respondent Nos. 5, 8, 9, 10,
11, 15, 16, 18, 21, 24, 27, 28, 32, 34, 35, 36, 38 & 39.**

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 18.04.2016



ORDER

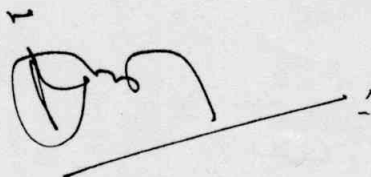
1. This is an application for condonation of delay in bringing the Original Application (OA) which in turn questions the selection to the post of Police Sub Inspectors as per the select list dated 24.7.2013.
2. I have perused the record and proceedings and heard the submissions of Mr. S.D. Patil, the learned Advocate for the Applicants, Shri A.J. Chougule, the learned Presenting Officer for the Respondents 1 to 3, Shri S.D. Kulkarni, the learned Advocate for Respondent No.4 and Shri Vaibhav V. Ugale, the learned Advocate for Respondent Nos. 5, 8, 9, 10, 11, 15, 16, 18, 21, 24, 27, 28, 32, 34, 35, 36, 38 & 39.
3. The sum and substance of the case of the Applicants is that they applied for being selected as P.S.I. pursuant to the advertisement No.223/2012. The select list was published by M.P.S.C. on 24.7.2013. Another list of non-recommended candidates came to be published on 7.4.1014. It came about that the list had not been properly prepared in accordance with the relevant Government Resolutions dated 16.3.1999 and 5.5.2001. The Applicants gained the knowledge of Government



Circular of 13.8.2014 issued in deference to a judgment of this Tribunal in OA 437/2012, dated 2.4.2014. They met the 3rd Respondent and pointing out the irregularities, but nothing came about. The principles of horizontal reservations were not accurately and correctly applied and in this set of circumstances, on 13.5.2015, this application was moved. According to the Applicants, the delay is of 314 days, the condonation whereof is sought.

4. The Director General of Police – Respondent No.2 and M.P.S.C – Respondent No.3 filed their Affidavit-in-reply and so also did the private Respondent No.4. They have opposed this M.A. According to them, the period has to be counted from 24.7.2013 when the select list was published. According to the MPSC, a Government Circular dated 13th August, 2014 came to be issued which was in accordance with the order of this Tribunal and the MPSC started following the same. However, according to them, the present facts would be governed by the earlier Government instruments. In substance, it is their case that the principles of horizontal reservation were accurately applied.

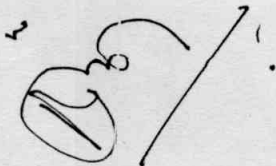
5. The Respondent No.4 has generally denied all the allegations and has pointed out that the Applicants



remained indolent, even after the Circular of 13.8.2014 issued in accordance with the order of this Tribunal in OA 437/2012, dated 2.4.2014, and therefore, no case is made out for condonation of delay.

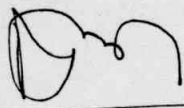
6. I must make it quite clear that in this MA, I am not called upon to determine any issue which exclusively falls within the domain of the OA. All my observations herein are restricted for the purposes of this MA. By this order itself, even if this MA were to be allowed, all that is going to happen is that the OA will be taken up on Board for hearing and final disposal, but no other rights are going to be created and no right will be extinguished only on the basis of the order on this MA.

7. In fact, I am in agreement with the case of the Respondents that actual cause would arise from the date of publication of select list on 24.7.2013 because on that day, the Applicants came to know that they had not been selected. Therefore, in that behalf, it cannot be argued that any subsequent date including the date of publication of non-recommended candidates, etc. should be taken into consideration. Even if, that were to be done and at the highest, the delay would be of about one year and in that sense, not inordinate as it were.



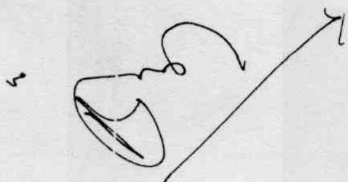
8. The nature of the controversy must have become clear by the above discussion. The issue that the Applicants seek to raise pertains to the proper application of the principles of horizontal reservation. That really would provide to this matter a constitutional hue. That is because a proper selection for public services including the reservations has to be in accordance with the constitutional norms and that being the state of affairs, even if there was delay, the same shall have to be condoned, more particularly because as mentioned above, no selected candidate is going to be immediately disturbed. The fact of the matter is that more than the individual rights of the candidates, it is the question of proper appointment in accordance with the principles enshrined in the Constitution and that is something which is considerably high in degree when compared with the individual's interest.

9. Mr. Vaibhav Ugale, the learned Advocate invited attention to **H. Dohil Constructions Company Private Limited Vs. Nahar Experts Limited & Anr., (2015) 1 SCC 680**. In that particular matter, the issue of limitation arose in the context of special provisions applicable to the Delhi High Court, Appellate Side. There was a delay of 9 days in filing the appeals of 1727 days in re-filing the


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same. That delay was condoned by the Hon'ble High Court of Delhi. The Hon'ble Supreme Court upon consideration of facts and the relevant legal provisions disagreed with the Hon'ble High Court and set aside the impugned order. The result was that the cause for delay was held insufficient. In this particular matter, however, I find that it is not a commercial transaction governed by the laws and rules of contract, but as mentioned above, it is a case where upholding of the constitutional principles is involved and as already mentioned above, nobody is going to be disturbed immediately including those who have been selected and in this regard, I may usefully refer to a judgment of 2nd Bench of this Tribunal in **MA 170/2016 in OA 269/2016 (S.B. Nangnure Vs. State of Maharashtra, dated 13.4.2016)**. This reliance is not so much because it is a pronouncement of this Tribunal, but it is because of a number of momentous judgments of the Hon'ble Supreme Court referred to therein. Applying the principles emanating from those judgments of the Hon'ble Supreme Court referred therein, I think I am fortified in the conclusions that I am inclined to draw herein.

10. For the foregoing, the delay is hereby condoned. The Office and the Applicants are directed to process the matter so as to get it placed before the appropriate Bench



on 10th June, 2016. The Misc. Application is allowed in these terms with no order as to costs.


(R.B. Malik)
Member-J
18.04.2016

18-04-16

Mumbai

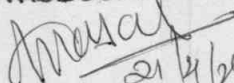
Date : 18.04.2016

Dictation taken by :

S.K. Wamanse.

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21/4/2016

Asstt. Registrar / Research Officers.
Maharashtra Administrative Tribunal
Mumbai