

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION 216 OF 2015**

**DISTRICT : MUMBAI**

Shri Nasir Ayub Sayyed,	)	
R/o: Police Head Quarters,	)	
Block No. 3, Room No. 19,	)	
Old Lines, Solapur 413 005.	)	
Add for service of notice:	)	
Shri A.V Bandiwadekar, advocate for	)	
the Applicant. Having office at 9,	)	
“Ram Kripa”, Lt. Dilip Gupte Marg,	)	
Mahim, Mumbai 400 016.	)	<b>...Applicant</b>

**Versus**

The Commissioner of Police,	)	
Solapur, having office at Solapur.	)	<b>...Respondent</b>

Shri A.V Bandiwadekar., learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**Shri R.B. Malik (Member) (J)**

**DATE : 24.08.2016**

**PER : Shri Rajiv Agarwal (Vice-Chairman)**

**ORDER**

1. Heard Shri A.V Bandiwadekar., learned advocate for the Applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 23.3.2015 issued by the Respondent informing him that he cannot be appointed to the post of Police Constable, in which he was selected in 2009-10, as the said vacancy has already been filled.

3. Learned Counsel for the Applicant argued that the Applicant had filed Original Application no 700 of 2012 before this Tribunal and by judgment and order dated 12.9.2014, this Tribunal had directed the Respondents that the height of the Applicant be measured by the Standing Medical Board of Sir J.J Group of Hospitals, Mumbai. Accordingly, the Applicant's height was measured by the Standing Medical Board of Sir J.J Hospital, Mumbai on 2.12.2014 and his height is found to be 163 cms. Learned Counsel for the Applicant argued that the Applicant was medically fit for the post of Police Constable from Sports quota and he was found eligible for appointment for the post of Police Constable in the selection process held by the Respondent in 2009-10. The Respondent is, therefore, duty

bound to appoint the Applicant as Police Constable, as he was not given appointment earlier only on the ground that he did not meet the requisite standards of height. Now that Standing Medical Board of Sir J.J Hospital, Mumbai, has found his height to be 163 cms, he is fully eligible to be appointed as Police Constable.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondent that there is no vacancy of the post of Police Constable from 2009-10 selection process. The selection process to fill the vacant posts in 2009-10 was over long time back. Since then there have been selection in 2011, 2013 and 2014. The Applicant can, therefore, not be given appointment at this stage.

5. We have perused our judgment and order dated 12.9.2014 in O.A no 700/2011. We had directed that the height of the Applicant be remeasured by the Standing Medical Board of Sir J.J Hospital, Mumbai. This was done as the Respondent himself had first referred the Applicant to Standing Medical Board, Solapur for measurement of Applicant's height and then refused to accept the decision of the aforesaid Board. This Tribunal had observed that it was not really necessary to refer the matter to the Medical Board, Solapur. However, the Respondent has chosen to adopt that course of action and, therefore, it was necessary to reach a final conclusion in the matter. Based on the judgment of Hon'ble Supreme Court in a similar case, viz. Md Masud Aslam Vs. State of Bihar & others, this Tribunal directed the Respondent to refer the case of the Applicant to Standing

Medical Board at Sri J.J Hospital at Mumbai. Now that Medical Board has found the height of the Applicant to be 163 cms and he was found eligible for appointment from Sports person category. The matter regarding the height of the Applicant was pending before this Tribunal and the stand of the Respondent that all vacancies in 2009-10 selection have been filled and, therefore, the Applicant cannot be appointed has to be rejected. If no vacancy from 2009-10 selection process is available, the Applicant can be accommodated in any of the current vacancy from OBC/Sports quota.

6. The Respondent is directed to appoint the Applicant as a Police Constable from OBC/Sports quota within one month from the date of this order. This Original Application is allowed accordingly with no order as to costs.

**Sd/-**  
**(R.B. Malik)**  
**Member (J)**

**Sd/-**  
**(Rajiv Agarwal)**  
**Vice-Chairman**

**Place : Mumbai**  
**Date : 24.08.2016**  
**Dictation taken by : A.K. Nair.**