

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION OF 502 OF 2015

DISTRICT : LATUR

Shri Yuvraj Vasant Poul,)
Occ : Unemployed / Education,)
At Post : Khandali, Tal-Ahmednagar.)
Dist-Latur.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Chief Secretary,)
Tribal Department,)
State of Maharashtra)
2. The State of Maharashtra,)
Through Additional Commissioner,)
Tribal Development Department,)
Thane, Vardan Sankul,)
9th floor, Infront of M.I.D.C office,)
Wagale Estate, Road no. 16,)
Thane [W], 400 604.)
3. Chandramuni B. Daware,)
Ramabai Ambedkar Nagar,)

Opp. Ware House, Parbhani,)
Tal & Dist-Parbhani.)...**Respondents**

Shri S.S Dere, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)
Shri R.B. Malik (Member) (J)

DATE : 29.08.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri S.S Dere, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the selection of the Respondent no. 3 for the post of Senior Clerk from Open-Sports person category in the select list prepared by the Respondent no. 2 on 5.12.2014 and the Applicant is seeking selection for the post himself.

3. Learned Counsel for the Applicant argued that the Respondent no. 2 has issued an advertisement on 18.2.2014 for recruitment for various posts in Thane Division. One post of Senior Clerk was reserved horizontally for Sports person from Open category. The Applicant had applied for the post. A written examination was conducted and the Applicant scored 111/200 marks while the Respondent no. 3 scored 112/200 marks. The Respondent no. 3 belongs to S.C category and he has been selected for the post reserved for Open category from Sports person category. Learned Counsel for the Applicant argued that it is the settled legal position that horizontal reservation is compartmentalized and a post reserved horizontally for a particular vertical reservation category cannot be filled by a candidate from another reserved category. This Tribunal (Aurangabad Bench) in O.A no 301/2009 has held by judgment dated 26.8.2009 that an open post horizontally reserved for Home-Guard cannot be filled by a candidate (Home Guard) from other vertical reservation category. It was held that an open post reserved vertically can be filled only by an open category candidate. This judgment of the Tribunal was upheld by Hon'ble Bombay High Court (Aurangabad Bench) in W.P no 272/2010 and also by Hon'ble Supreme Court by judgment dated 27.9.2011 in Special Leave Petition no. 15802/2011. Learned Counsel for the Applicant argued that there is no denial by the Respondents no 1 & 2 that

the Respondent no. 3 belongs to S.C category but he has been selected from Open-Sports category.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents no 1 & 2 that the Respondent no. 3 had admittedly scored more marks than the Applicant and therefore, he was selected for the post reserved for Sports category. Learned Presenting Officer stated that the G.R dated 19.10.2007 is applicable for selection for Group 'C' posts and it clearly provides that a person who scores more marks has to be selected.

5. It is surprising that the Respondents no 1 & 2 have not responded to the averments in para 6(IX) of the Original Application regarding Government Circulars dated 16.3.1999 and 13.8.2014 regarding horizontal reservation. The affidavit in reply dated 6.10.2015 states in para 15 that:-

“15. With reference to para 6(IX), I humbly say and submit that the Applicant has described the guidelines of G.R dated 16.3.21999 and 13.8.2014. In this connection I rely upon the G.R dated 16.3.1999 and 13.8.2014 which are annexed to the present O.A and marked as Annexure 'H' colly.”

As a result, the most crucial issue raised by the Applicant in this Original Application has not even been

considered by the Respondents no 1 & 2. They are harping on G.R dated 19.10.2007, which admittedly does not deal with the issue of horizontal reservation. Applicant has referred to judgment of Hon'ble Supreme Court in the case of **RAJESH KUMAR DARIA Vs. RAJASTHAN PUBLIC SERVICE COMMISSION & ORS : AIR (2007) SC 3127** in para 6(XI) of the Original Application and the judgment of this Tribunal (Aurangabad Bench) in O.A no 301/2009 in para 6(XII) of the Original Application. The reply of the Respondents no 1 & 2 in paras 17 & 18 of the affidavit in reply dated 6.10.2015, which are reproduced below:-

“17. With reference to para 6(XI), I deny the contention of the Applicant at the outset stated herein. It is humbly submitted that in the open category for the post of Senior Clerk one post was to be filled from the candidate having Specialization Sportsman. The selection of candidates in the open category ought to be done strictly on merit basis irrespective of caste. According to the select list received by the Respondent no. 2 only one candidate has been selected against the Sports category, i.e. the Respondent no. 3. The Respondent no. 2 vide letters dated 21.12.2014 informed the Respondent No. 3 about his selection to the post of Senior Clerk. However, the Respondent no. 3 failed to report or join at the office of the Respondent no.

2. It is submitted that the Applicant is not a part of the select list for the cadre of Senior Clerk. It is humbly submitted that on perusal of the select list. It is observed that the Applicant is not at all a part of the select list for the cadre of Senior Clerk.

18. With reference to para 6(XII), I humbly submit that the issue challenged in O.A no 30/2009 is different from the issue challenged in the present case, therefore, the contention of the Applicant is denied at the outset.”

It is clear that the Respondents have either deliberately or in ignorance have failed to apply the provisions of the Government Circular dated 16.3.1999 and 13.8.2014. The Applicant appear to be unaware of the important decision of Hon’ble Supreme Court and decisions of this Tribunal on this issue. The selection of a Scheduled Caste candidate for the post reserved horizontally for open category is impermissible in view of the law laid down by Hon’ble Supreme Court in the case of RAJESH KUMAR DARIA (supra). If no suitable candidate from open category was available, then the post was required to be considered as ‘open’ without horizontal reservation. The Applicant had admittedly scored 111/200 marks which is more than 55% in the written examination. He was, therefore, not ineligible for selection for a Group ‘ C’ post. From the general merit list appended by the

Applicant (Annexure-E). I is seen that there is no candidate between Respondent no. 3 (Sr. No. 80 in the list) and the Applicant (Sr. No. 89) from Sports category. The claim of the Applicant that he was the first in the merit list from Open Sports category appear to be correct. In para 17 of the affidavit in reply, dated 6.10.2015, it is mentioned that the Respondent no. 3 failed to report or join at the office of the Respondent no. 2. The post must be still vacant.

6. Having regard to the aforesaid facts and circumstances of the case, the Respondent nos 1 & 2 are directed to appoint the Applicant to the post of Senior Clerk from Open-Sports category, if he is otherwise fit for the post, 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 : 29.08.2016
Dictation taken by : A.K. Nair.