

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 667 OF 2014

DISTRICT : THANE

Shri Ashok Ajinath Misal)
Occ : Nil, R/at Daganchiwadi,)
Post : Ambelner, Tal-Patoda,)
Dist-Beed, Maharashtra 413 207.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Principal Secretary)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. The Director General of Police,)
M.S, Colaba, Mumbai.)
Maharashtra.)
3. Commissioner of Police,)
Thane City, Court Naka,)
Thane [W].)...**Respondents**

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

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

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

DATE : 30.08.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri S.S Deokar, learned advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. This Original Application has been filed challenging the selection list 2014 issued by the Respondent no. 3 for the post of Police Constable in Maharashtra State Police Recruitment-2014 for Thane Police Commissionerate.

3. Learned Counsel for the Applicant argued that the Respondent no. 3 had issued advertisement on 29.4.2014 for recruitment of a total of 772 Police Constables in Maharashtra Police Recruitment-2014. The Applicant has applied from NT-D category to the post

reserved horizontally for Project Affected Persons (P.A.Ps). As per the advertisement one post was reserved for PAP from NT-D category. The Applicant had applied for this post reserved horizontally for Project Affected Persons (P.A.s) from NT-D category. A total of 39 posts were reserved for PAPs from various categories. Subsequently, by advertisement dated 16.5.2014, the number of posts was increased to 868 and the posts reserved horizontally for PAPs were increased to 43. The Applicant was allowed to participate in the selection procedure and he obtained 170 marks, which were second highest in NT-D/PAP category. The person who was selected from NT-D/PAP category, viz. Shri Navnath Ramdas Garkal scored 173 marks. Learned Counsel for the Applicant argued that Shri Garkal should have been selected from open-PAP category, as he had scored more marks than the last candidate from open-PAP category. If that was done, the Applicant could have been selected from NT-D/PAP category.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that this Original Application is totally misconceived. The Applicant has not understood the nature of horizontal (special) reservation, which is compartmentalized in nature. This reservation is different from vertical (social) reservation. Posts which are horizontally reserved are allocated to different vertical reservation categories, viz. Scheduled Caste, Scheduled

Tribe & Other Backward Classes. The posts reserved horizontally in one vertical reservation category cannot be transferred to another vertical reservation category. If no suitable candidate from a particular vertical reservation category are found for posts horizontally reserved for that category, the unfilled posts are transferred to that vertical reservation category, without horizontal reservation. Learned Presenting Officer argued that instructions as to how to fill horizontally reserved posts are contained in Government Circular dated 16.3.1999, which was issued on the basis of judgment of Hon'ble Supreme Court in the case of **ANIL KUMAR GUPTA Vs. STATE OF U.P & ORS : JT-1995(5) SC 505**. Learned Presenting Officer argued that in **RAJESH K. DARIA Vs. RAJASTHAN PUBLIC SERVICE COMMISSION & ORS : (2007) 8 SCC 785**, Hon'ble Supreme Court has held that nature of horizontal reservation is different from the vertical reservation and posts reserved horizontally in open category, cannot be filled by candidates from other vertical reservation categories. If no suitable candidates are available, the post is treated as open with no vertical reservation. Learned Presenting Officer argued that the Applicant was no. 2 in the select list of NT-D/PAP candidate and only one post was reserved for NT-D/PAP category. The Applicant was not eligible to be considered for appointment against open post, where the cut off marks were 193.

5. We find that the cut off marks for open-PAP category were 171 and Shri Keshav Limbaji Lahane, was selected from open PAP category. There were three candidates above Shri Lahane, who scored 172 marks, and they were also selected from open-PAP category. The Applicant obtained 170 marks, and the person selected from NT-D/PAP category viz. Shri Navnath RAMdas Garkal scored 173 marks. The claim of the Applicant is that Shri Garkal should have been selected from open-PAP category and in that event, the Applicant would have been selected from NT-D/PAP category. This claim of the Applicant is not acceptable. This Tribunal (Aurangabad Bench) by judgment dated 26.8.2009 in O.A no 301 of 2009 has held that open posts horizontally reserved for Home Guards could not be filled by Home Guards from other vertical reservation category. That judgment was upheld by Hon'ble High Court (Aurangabad Bench) in W.P no 272 of 2010 by judgment dated 15.11.2010. This judgment was upheld by Hon'ble Supreme Court while dismissing SLP no 15802 of 2011 against the judgment of Hon'ble Bombay High Court on 27.9.2011. What applies to Home Guards category, also applies to PAPs and a PAP from any vertical reservation category, NT-D in this case, cannot be selected in a open post horizontally reserved for PAP. The Respondents did not commit any mistake by not selecting Shri Garkal from open PAP category, though he had scored 173 marks against the cut off of 171 marks for open-PAP

category. The Applicant was not eligible to be considered from open-general category or NT-D/PAP category.

6. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

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

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 30.08.2016
Dictation taken by : A.K. Nair.