

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 969 OF 2019**

**DISTRICT : NASIK**

Shri Raghunath Dinkar Avhad, )  
Occ-Service, R/o: At Post-Belgaon Tarhale )  
Tal-Igatpur, Dist-Nasik. )...**Applicant**

**Versus**

1. The Principal Secretary, )  
Through the Department of Excise, )  
State of Maharashtra, )  
Mantralaya, Mumbai. )
2. The Principal Secretary, )  
General Administration Department,) )  
Mantralaya, Mumbai. )
3. Maharashtra Public Service )  
Commission, through its Secretary, )  
Floor 5-8, Cooperage, MTNL Bldg, )  
M.K Road, Cooperage, )  
Mumbai 400 001. )
4. Ambure Janaradhan Mahadev, )  
Add:Vitthal Nagar, Jamgaon Rd, )  
Solapur, Barshi, MCI 413 401. )
5. Suryavanshi D. Shyamrao, )  
Add:Narayan Bhavan Sahyog Nagar )  
Nanded Waghala, (M Corp) 431605. )
6. Wagh Jalindar Vitthal, )

Add: At Nandesar, NA- )  
At Post-Pimpalgaon, Jala, )  
Nasik, Yevala, Nandesar 423 401. )...**Respondents**

Shri C.R Nagare, learned advocate for the Applicant.

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

**CORAM : Justice Mridula Bhatkar (Chairperson)**  
**Mrs Medha Gadgil (Member) (A)**

**DATE : 05.04.2022**

**PER : Justice Mridula Bhatkar (Chairperson)**

### **J U D G M E N T**

1. The applicant by this Original Application seeks directions to Respondent no. 3, M.P.S.C, to select him for the post of Sub-Inspector in State Excise Department, from Open Ex-Servicemen category.

2. Learned counsel for the applicant prays that he wants to add Commissioner, State Excise as Party-Respondent no. 7. Permission granted. Amendment to be carried out forthwith.

3. Learned counsel for the applicant submits that the applicant has applied for the post of Sub-Inspector, State Excise, through NT(D) Ex-servicemen category, pursuant to advertisement dated 13.1.2017. The cut-off marks for candidates from NT(D) Ex-servicemen category is 88 marks and the applicant secured 88 marks. Learned counsel for the applicant has submitted that there was one vacancy from NT(D) Ex-Servicemen category.

However, other candidate from NT(D) Ex-servicemen category has also secured 88 marks. The said candidate being elder in age, as per the rules of M.P.S.C, was selected and the applicant was not selected.

4. Learned counsel for the applicant submits that however, in Ex-servicemen (open) category, the cut-off marks is 86 marks and therefore, he claims shifting from NT(D) Ex-servicemen category to Ex-Servicemen (open) category. Learned counsel for the applicant has added Respondents No. 5, Ambure Janardhan Mahadev as Party-Respondent, Respondent no. 6, Suryavanshi D. Shyamrao and Respondent no. 7, Wagh Jalindar Vitthal as Party Respondents, vide order dated 10.3.2021 who have applied in Open Ex-servicemen Category. Learned counsel for the applicants submits that all the three private Respondents are served and to that effect he has filed affidavit of service. Learned counsel for the applicant submits that Mr Jalindar Vitthal Wagh has applied in open Ex-Servicemen category and has secured 85 marks, Dinesh S. Shyamrao fom open Ex-servicemen category and secured 83 marks and Ambure J. Mahadev from open Ex-Servicemen category and obtained 86 marks. Thus, all the Respondents have secured marks which is below the cut-off marks. Learned counsel for the applicant submits that the cut-off marks for open Ex-servicemen category is 86 marks and the applicant who is from NT(D) Ex-servicemen category has secured 88 marks. Learned counsel for the applicant further submits that the person who has secured 86 marks and who has appeared in Ex-servicemen category are already appointed. Hence, he can be accommodated in the remaining three posts on merit, as he has secured more marks than the cut-off marks in the Open Ex-servicemen category.

5. Learned counsel for the applicant has relied on the following decisions:

- (i) **Judgment of the Hon'ble Supreme Court in Saurav Yadav & Ors Vs. State of U.P & Ors, M.A 2641/2019 in S.L.P (Civil) No. 23223/2018.**
- (ii) **Judgment of the Hon'ble High Court of Judicature of Bombay, Bench at Aurangabad in Charushila T. Chaudhari & Ors Vs. The State of Maharashtra & Ors, W.P 4159/2018.**

6. Learned P.O for the Respondents on instructions from the office of the Commissioner, State Excise, informs that as on today one post is vacant from open General category. Learned P.O submits that as on today, one post is vacant for open General category. Learned P.O relied on the short affidavit in reply dated 7.4.2022 filed by Anup B. Puranik, Deputy Commissioner in the office of the Commissioner, State Excise, M.S, Mumbai, answering to the query of the vacant position to the post of Sub-Inspector in State Excise Department in Open Ex-servicemen category as per advertisement of 2017. In para 3 of the said affidavit in reply, it is mentioned that as per the advertisement of Sub Inspector of State Excise, 2017, there were total 300 posts, out of which 150 posts were reserved for open category. As per 15% quota of parallel reservation for Ex-servicemen category, i.e. 23 posts were reserved for the same in Open Ex-servicemen category. Out of these 23 posts, 17 posts are filled up and currently working as Sub-Inspector, State Excise. Out of 23 posts, 3 posts are kept vacant as per the order of Hon'ble Tribunal, Aurangabad Bench. Therefore, excluding these 3 posts which are kept vacant as per order of the Hon'ble Tribunal, Aurangabad Bench, 3 posts are vacant in Open Ex-servicemen category to make a good of 23 posts in Open Ex-servicemen category.

7. We make it clear that though the Applicant has secured 88 marks i.e. two marks more than cut-off marks of 86, which is fixed for open ex-serviceman, yet he cannot be appointed there because he has applied in NT(D) Ex-servicemen category. However, even if there is a vacancy, he cannot be considered as all the vacancies in open ex-serviceman category are filled-up. Moreover, we make it clear that even though the candidate from open ex-serviceman who has secured 87 marks i.e. one mark less than the applicant, is eligible candidate and will get preference over the applicant because he has applied in open ex-serviceman category and he belongs to open ex-serviceman and he has secured more than cut-off marks, hence he is eligible.

8. G.R. dated 13.08.2014 was then into force and many appointments were made as per the said G.R. bearing migration from the horizontal reservation and now situation is changed and shifting from horizontal reservation to open is allowed due to the judgment of Hon'ble Supreme Court in case of **Saurav Yadav & Ors. v/s. State of Uttar Pradesh and Ors. in Miscellaneous Application No.2641 of 2019 in Special Leave Petition (Civil) No.23223 of 2018 and decided on 18.12.2020.** However appointments made earlier cannot be disturbed giving retrospective effect of the judgment of **Saurav Yadav (supra)**, thereby causing injustice to the persons who are appointed in large number by. However we tried to give retrospective effect to **Saurav Yadav (supra)**, if candidate is found eligible in open general category.

9. In view of the above, we pass the following order.

(a) Original Application is partly allowed.

- (b) M.P.S.C is directed to recommend the name of the applicant, if he is eligible and Respondent-State to issue order of his appointment.
- (c) The entire exercise to be carried out within five weeks from the date of this order.

**Sd/-**  
**(Medha Gadgil)**  
**Member (A)**

**Sd/-**  
**(Mridula Bhatkar, J.)**  
**Chairperson**

**Place : Mumbai**  
**Date : 05.04.2022**  
**Dictation taken by : A.K. Nair.**