

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
AURANGABAD BENCH, AURANGABAD**

ORIGINAL APPLICATION NO.288 OF 2012

DISTRICT : OSMANABAD

Amol Vishnu Mundhe,)
R/o. Lokare Niwas, Narhari Mandir,)
Osmanabad.)

....APPLICANT

VERSUS

1. The State of Maharashtra,)
Through it's Home Department,)
(Copy to be served on Presenting)
Officer, Maharashtra Administrative)
Tribunal, Mumbai Bench at Aurangabad.)
2. Superintendent of Police,)
Osmanabad, District Osmanabad.)
3. Bhimrao Narayanrao Samundra,)
R/o. Ramana, Taluka Gangakhed,)
District Parbhani.)

....RESPONDENTS.

Shri S.S Jadhav, learned Advocate for the Applicant.

Mrs P.R Bharaswadkar, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal, (Vice-Chairman)
Shri J.D Kulkarni (Member) (J)**

DATE : 18.10. 2016

PER : Shri Rajiv Agarwal, (Vice-Chairman)

O R D E R

1. Heard Shri S.S Jadhav, learned Advocate for the Applicant and Mrs P.R Bharaswadkar, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant seeking selection to the post of Police Constable in Osmanabad district, from the Project Affected Persons (P.A.P) category pursuant to the advertisement dated 30.9.2011 issued by the Respondent no. 2.

3. Learned Counsel for the Applicant argued that the Applicant had applied for the post of Police Constable from P.A.P category pursuant to the advertisement issued by the Respondent no. 2 dated 30.9.2011. As per instructions, 5% posts are reserved horizontally for Project Affected Persons (PAP). The Applicants secured 166 marks in the selection process. Select list was published by the Respondent no. 2 on 4.4.2012. 6 out of 12 candidates selected from PAP category have scored less marks than the Applicant. All these candidates belong to open category. Learned Counsel

for the Applicant argued that the Respondent no. 2 has applied wrong mechanism for selecting candidates against seats reserved vertically. Hon'ble Supreme Court has held that a reserved category candidate can be appointed in an open seat. As a result, the Applicant, who belongs to NT-D category should have been appointed in a post reserved for PAP category in open post. Learned Counsel for the Applicant argued that the Applicant is fully eligible to be appointed from Open-PAP category as he has scored more marks than the persons selected from Open-PAP category.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that this Original Application is misconceived. The Applicant has not appreciated the nature of horizontal (special) reservation vis-a-vis the vertical (social) reservation. In Maharashtra, Government Circular dated 16.3.1999 clearly provides that vertical reservation is compartmentalized, which means that for each vertical reservation category, horizontal reservation will be provided. To give an example, 30% posts are reserved for women and each vertical reservation category like S.C, S.T, VJ-NT. etc., 30% seats will be reserved for women. This Tribunal in O.A no 301/2009 by judgment dated 26.8.2009 has held that this principle will apply to horizontally reserved post from open category also and a post from open-Home Guard category can be filled only from open category. This judgment was upheld by Hon'ble High Court by judgment dated 15.11.2010 in W.P no 272/2010. Special Leave

Petition against the order of Hon'ble High Court was dismissed by Hon. Supreme Court. Learned Presenting Officer argued that for open-PAP category, only open candidates can be selected and the Applicant belongs to NT-D category and is not eligible to be considered for posts horizontally reserved from open category. He can only be considered for open posts not reserved horizontally.

5. We have carefully perused the material on record and considered the arguments on behalf of the Applicant and the Respondents. The Applicant has not mentioned in his Original Application regarding the vertical reservation category to which he belongs nor has he appended a copy of his application, which would have disclosed such details. However, from the affidavit in reply of the Respondent no. 2 dated 12.1.2013, it is seen that the Applicant had applied from NT-D category. It is held by this Tribunal in O.A no 301/2009 by judgment dated 26.8.2009 that open-Home Guards posts can be filled from open category candidates. Circular dated 16.3.1999 provides that horizontal reservation from one vertical reservation category, cannot be transferred to another vertical reservation category. This is as per law laid down by Hon. Supreme Court in the case of **ANIL KUMAR GUPTA Vs. STATE OF U.P & ORS : JT-1995 (5) SC 505**. Nature of horizontal reservation of PAP and Home Guards is the same. A open-PAP post cannot be filled by any other vertical reservation category candidate. The Applicant is not eligible for appointment to a post from open PAP

category as he belongs to NT-D category as per judgment of this Tribunal in O.A no 301/2009, which was upheld by Hon. High Court and Supreme Court.

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

J.D KULKARNI
(MEMBER. J)

RAJIV AGARWAL
(VICE-CHAIRMAN)

Date : 18.10.2016
Place : Aurangabad
Dictation taken by : A.K Nair

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