

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

Original Application No.924/2010

DISTRICT: THANE

Ms.Kirti Dattatray Wagh,)	
aged adult, Occu.Nil,)	
A candidate in the Mumbai)	
Police Recruitment Drive 2009)	
Address for service of Notice:)	
3, Sumeet Apartment,)	
Flat No.13, Bhidewadi Kansai,)	
Ambarnath (East),)	
District: Thane)	.. Applicant

Versus

1. The Commissioner of Police,)
Brihan Mumbai having office at)
L.T.Marg, Opp.Crawford Market,)

Mumbai-400 001)
 2. The State of Maharashtra,)
 through Principal Secretary,)
 G.A.D having office at Mantralaya,)
 Mumbai-32) ..Respondent

Shri A.V.Bandiwadkar, the learned Advocate for the applicant .

Shri D.B.Khaire, the learned Chief Presenting Officer for the Respondents State.

Coram: Dr.Justice S.Radhakrishnan, Chairman

Shri A.P.Sinha, Member (A)

Date: 11.04.2011

Per: Dr.Justice S.Radhakrishnan, Chairman

ORDER

Heard Shri A.V.Bandiwadkar, the learned Counsel for the applicant and Shri D.B.Khaire, the learned Chief Presenting Officer for the Respondents State.

2. The above application has been filed by the applicant, who is a female candidate, belonging to NT (D) category, who had applied for the post of Police Constable was not selected though she had secured 124 marks and the cut off marks for open category of female category was only 117.

3. Mr.Bandiwadekar, the learned Counsel appearing on behalf of the applicant pointed out that the applicant had applied for the post of Police Constable and she belongs to NT (D) category. Shri Bandiwadekar pointed out that the applicant was not selected and from the final merit list of female category the applicant found that the cut off marks for open female category to be 117 and for NT (D) category the cut off marks was 140. The applicant had secured 124 marks. Mr.Bandiwadekar submitted that the Applicant was not selected as she had not secured 124 marks, being the cut off marks for NT (D) category.

4. Shri Bandiwadekar, the learned Counsel for the applicant in this behalf very strongly referred to and relied upon the judgment of the Hon'ble Supreme Court in the case of **Anil Kumar Gupta and Ors. Versus State of U.P & Ors. (1995) 5 SCC 173**. Shri Bandiwadekar pointed out from the said judgment that even a reserved category candidate were to secure higher marks, the said candidates will have to be accommodated along with the open category candidates. Mr.Bandiwadekar's submission is that strict merit list ought to be prepared irrespective of any reservation and if a reserved category candidate is found meritorious to fit in to open category, then such a candidate should be accommodated in open category itself.

5. Shri Bandiwadekar thereafter referred to very recent judgment of the Hon'ble Supreme Court in case of **Ravinder Kumar Versus State of Haryana and Others (2010) 5 Supreme Court Cases 136**, wherein paragraph 11 and part of para 19 read as under:

"11. It was argued by Mr.Patwalia and in our opinion right, so that if an ex-serviceman candidate scored high enough marks entitling him to be selected in the Ex-servicemen (General) category, such candidates ought to be selected in the said category instead of selecting them in the Ex-servicemen BC (A) or BC(B) categories."

"19. It is evident from the above that in Ex-servicemen (General) category the last two candidates, namely, Subhash Chander and Taktet Singh had scored only 25 marks each. Sube Singh and Veer Bhan selected in Ex-servicemen BC(B) category and however scored more marks than Subhash Chander and Taktet Singh. Sube Singh and Veer Bhan could and indeed ought to have been selected against the vacancies in Ex-servicemen (General) category as per their merit -----"

6. Shri A.V.Bandiwadekar, the learned Counsel for the applicant thereafter also referred to the G.R. issued by State of Maharashtra dated 16th march 1999 which was based on the above Anil Kumar Gupta's case, of the Hon'ble Supreme Court.

7. Shri Bandiwadekar, the learned Counsel pointed out from the affidavit in rejoinder that as far as male category candidates are concerned, the Respondents have rightly followed the method of preparing a general meritorious list, which includes all reserved category candidates along with open category candidates. The said list is shown at page 42 onwards. The said meritorious list is strictly on merit

irrespective of reservation category. As a result a number of reserved category candidates are found in the said open category merit list.

8. Mr.Bandiwadekar, therefore, submitted that the Respondents had erroneously adopted the practice showing the applicant in reserved category. The applicant could very well have been selected in the open category as the last cut off marks for open female category was 117 and the applicant had secured 124 marks. Under these circumstances, Mr.Bandiwadekar prays that the Respondent ought to be directed to consider the case of the applicant under the open category female for being selected for the post of Police Constable.

9. Heard Mr.D.B.Khaire, the learned Chief Presenting Officer for the respondents. Mr.Khaire, the learned C.P.O also fairly conceded that the Respondents have issued the aforesaid G.R. dated 16th March 1999 based on the Hon'ble Supreme Court judgment in Anil Kumar Gupta's case. Mr.Khaire also referred to the affidavit in reply filed on behalf of Respondent No.2 that is General Administration Department, Mantralaya, Mumbai dated 25.03.2011, which clearly and categorically states that the office of the Police Commissioner had erroneously ignored the backward class candidate in open category, which is clearly contrary to Anil Kumar Gupta's case as well as G.R. dated 16th March 1999. Shri Khaire, the learned C.P.O was fair enough to point out from the said affidavit, which also makes it clear that the applicant ought to have been considered in the open category of women which closed at 117 marks.

10. After hearing Shri Bandiwadekar, the learned Counsel for the applicant as well as Shri D.B.Khaire, the learned C.P.O and having regard to the judgments of the Hon'ble Supreme Court in the case of Anil Kumar Gupta as well as very recent judgment of the Hon'ble Supreme Court in Ravinder Kumar Versus State of Haryana and Others as well as G.R. dated 16.03.2009 issued by the State of Maharashtra by the G.A.D and also in view of the aforesaid affidavit of Respondent No.2 dated 25th March 2011 the applicant's case ought to be considered under the open category female though the applicant had claimed NT(D) reservation. Accordingly, the Respondents are directed to recompute the merit list of open female category is concerned, which should include also all meritorious reserved category as has been done with regard to open male category of candidates as rightly pointed out by Mr.Bandiwadekar. The Respondent shall complete the exercise of placing the applicant strictly on merit in open female category as the applicant had already scored 124 marks and the applicant ought to be considered for being selected for the post of Police Constable. Accordingly, O.A. is made absolute in terms of paragraph 9 (a), however with no order as to costs.

Sd/-

 (A.P.Sinha)
Member (A)

Sd/-

(Dr. S. Radhakrishnan, J.)
Chairman

Date: 11.04.2011
Place: Mumbai
Dictation taken by:
P.S.Zadkar