

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 1039 OF 2013

DISTRICT : PUNE

Miss Anagha Shriram Dawane,)
R/o: C/o Shri Shriram Kacharu Dawane,))
14, Indraprastha, Ashawamegh Nagar,)
Pune-Satara Road, Pune 411 009)...**Applicant**

Versus

1. The State of Maharashtra)
Through P.O., M.A.T, Mumbai.)
2. The Principal Secretary,)
Women & Child Development,)
Government of Maharashtra,)
New Administrative Building,)
3rd floor, Mantralaya,)
Mumbai 400 032.)

3. The Commissioner of Women & Child Development, M.S.,
28, Queen's Garden,
Pune 411 001.)
 4. The Addl. Chief Secretary,
General Administration Department,
Mantralaya, Mumbai 400 032.)
 5. The Principal Secretary,
Social Justice and Special
Assistance Department, Mantralaya)
Extn Building, Mumbai 400 032.)
 6. The Commissioner of Disabilities
3, Charge Road, Camp,
Pune 411 001.)
-)...Respondents

Shri A.S. Deshpande with Shri V.P. Potbhare, learned advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

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

DATE : 30.07.2014

PER : Shri Rajiv Agarwal (Vice-Chairman)

3 on 5.3.2012 was for selection of Probation Officer. There were 27 vacancies to be filled. There were vertical and horizontal reservation for 26 posts and only 1 post was for open category, free of any reservation. The

ORDER

1. Heard Shri A.S Deshpande with Shri V.P. Potbhare, learned advocate for the Applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents

2. This Original Application has been filed by the Applicant, who has hearing disability which makes her eligible to seek reservation in Government jobs as per the provisions of the Persons with Disabilities (Equal opportunity, Protection of Rights and Full Participation) Act, 1995 (No. 1 of 1996). She had applied for the post of Probation Officer (परीवीक्षा अधिकारी) in the Directorate of Women and Child Development, Maharashtra State, Pune in pursuance of advertisement issued in Marathi daily 'Sakal' on 5.3.2012. The Applicant claims that she had obtained highest marks amongst those claiming reservation for 'persons with disabilities', but she was not selected.

3. Learned Counsel for the Applicant argued that the Applicant belongs to Scheduled Caste (S.C) category and suffers 70% disability, as she is a hearing impaired person. The advertisement issued by the Respondent no. 3 on 5.3.2012 was for selection of 'Probation Officer'. There were 27 vacancies to be filled. There were vertical and horizontal reservation for 26 posts and only 1 post was for open category, free of any reservation. The

Applicant had applied on-line and participated in the selection process and secured 167.25 marks. The persons next in the list of physically handicapped had secured 164 (low vision) and 156.86 (one leg affected) marks respectively. The Applicant was, however, not given selection as one person suffering for hearing impairment was already selected in the past and the reservation as per advertisement was 1 for low vision female from S.C category, 1 for S.C with locomotive disability and 1 for S.T with locomotive disability. Learned Counsel for the Applicant argued that the reservation for physically handicapped persons was not based on any rational criteria. Two posts were reserved for persons with locomotive disabilities, while no post was reserved for persons with hearing disability. As per Act no. 1 of 1996, there is 3% reservation for physically handicapped persons in the public employment. This is to be distributed as 1% for persons with vision impairment, 1% for hearing impairment and 1% for locomotive disability or mentally challenged persons. As per Government circular dated 4.3.2002, these posts are to be reserved for persons with (1) vision impairment, (2) hearing impairment, and (3) locomotive disabilities in that order by rotation. As per circular dated 27.4.2011, persons with disabilities are to be recruited at Sr. No. 1, 34, 67 in 100 point roster. There are a total of 261 posts of Probation Officers in the State. However, only 50%, i.e. 131 are to be filled by direct recruitment. Four posts,

therefore are reserved for persons with physical disabilities at Sr. no. 1, 34, 67 and 101. If a person with hearing impairment was already working, next available vacancies should have been filled by persons with vision impairment and locomotive disability. The fourth post could be filled by the most meritorious regardless of the nature of disability. The reservation of 2 posts for persons with locomotive disabilities was wrong (in the advertisement). Learned Counsel for the Applicant argued that there cannot be rigid reservation for different categories of disabled persons. He relied on judgment of this Tribunal dated 1.12.2009 in O.A no 296/2000.

4. Learned Presenting Officer (P.O) argued that the Applicant has participated in the selection process and was declared unsuccessful. She is, therefore, estopped from challenging the decision of the Respondent no. 3 under section 115 of the Indian Evidence Act. Learned Presenting Officer stated that the advertisement dated 5.3.2012 issued by the Respondent no. 3 had not shown any post reserved for the persons with hearing impairment. As such, the Applicant cannot claim that she should be considered for appointment on that basis. Learned Presenting Officer further contended that the Applicant had chosen to be considered from female S.C category and gave undertaking accordingly. She cannot now claim consideration from physically handicapped category.

5. We have carefully perused the material on record and considered arguments on behalf of the Applicant and the Respondents. It is an admitted fact that the Applicant suffers from 70% hearing disability and is eligible to get the benefit of reservation in public employment under the Persons with Disabilities (Equal Opportunity, Protection of Rights and full Participation) Act, 1995 (Act no. 1 of 1996). This Act, provides for 3% reservation in public employment for persons with disabilities. Government of India has issued Office Memorandum (O.M) on 18.2.1997 and on 4.7.1997 and asked for maintenance of independent 100 point register, keeping point no. 1, 34 and 67 to be reserved for filling in by persons with disabilities. Government of Maharashtra has issued guidelines based on the aforesaid O.M of Government of India by circular dated 4.3.2002, which also provide for maintenance of independent 100 point register and keeping point no. 1, 34 and 67 for persons with Disabilities. If such posts are to be filled in from more than one category of persons with disabilities, then such posts should be filled in by rotation keeping the reservation as (1) blind in low vision, (2) hearing impairment and (3) locomotive disability or cerebral palsy. In the affidavit in reply filed on behalf of the Respondent no. 4 viz the General Administration Department (G.A.D) it is mentioned that if a post is identified suitable only for one category of disability, reservation to that post shall be for that category of

disability only. In such cases, all the posts reserved for disabled persons can be filled from that category. It means that if three posts of say telephone operators are reserved for physically handicapped persons, obviously, persons with hearing impairment or locomotive disability in hands would not be suitable for that post. In such an eventuality all 3 posts can be filled by persons with vision impairment. This is as per Office Memorandum dated 29.12.2005 issued by Government of India. Similarly, if a post is found suitable for two categories of disabilities, reservation shall be available between persons with these categories of disabilities equally as far as possible. It shall, however, be ensured that reservation in different cadre posts, in the establishment is made available in such a way that the persons of three categories of disabilities get equal reservation as far as possible. After this O.M was issued by Government of India, the instruction in earlier O.M dated 4.3.2002 regarding order in which posts for persons with different types of disabilities does not remain valid.

6. We find that the Respondent no. 4 in the affidavit in reply filed on 7.4.2014 has stated in paragraph 8 & 9:

“8. I say and submit that, in the para 95 of the judgment in Indra Sawhney case, the Hon’ble Supreme Court directed that after selection and appointment of candidates under reservation for the

Persons with Disabilities they will be placed in the respective rosters of reserved category or open category respectively on the basis of the category to which they belong. The State Government vide Circular, General Administration No. NYAY-2007/Sa.Nya./C.R. 103(Part-3)/16-A, Dt 19th October, 2007 had issued instructions in accordance with the above directions of Hon'ble Supreme Court to all the departments of the Government of Maharashtra and offices and public sector undertaking under the administrative control of these departments and directed to follow these instructions scrupulously at the time of appointment by direct recruitment of the Persons with Disabilities.

9. I say and submit that, as per the circular dated 19.10.2007 the reserved post for Persons with disability should be shown separately in the advertisement and not under any caste category. After selection and appointment of candidate under reservation for Persons with disabilities they will be placed in the respective rosters of reserved category or open category respectively on the basis of the category they belong." (emphasis supplied).

7. From this, it is clear that the Respondent no. 3 has not followed the law laid down by the Hon'ble Supreme

Court in Indra Sawhney's case (supra) and also ignored the Government Circular dated 19.10.2007. The posts reserved for 'persons with disability, cannot be shown under any caste category (emphasis added). After selection and appointment of candidates under reservation for 'persons with disability' they will be placed in the respective roster of reserved category on the basis of category they belong. The Respondent no. 3, should have shown that 3 posts were reserved for 'persons with disability'. However, he has shown one post for S.C female with low vision. One for S.C with locomotive disability and one for S.T with locomotive disability. If the reservation for S.C/S.T and female category is ignored, three out of 27 posts of Probation Officer were reserved for persons with disability. The post of Probation Officer can be filled by person suffering from any one of the three disabilities. Accordingly, one post each should have been reserved for person from each of the three categories, viz. vision impairment, hearing impairment and locomotive disability. However, the Respondent no. 3 had reserved two posts for persons with locomotive disability and one for vision impaired person. This is against the circular dated 19.10.2007, which is based on O.M of Government of India dated 29.12.2005 as stated by the Respondent no. 4 in his affidavit in reply. Office Memorandum dated 29.12.2005 is on record (P. 87 of the paper book). As per paragraph 15 of the aforesaid O.M, all establishment are required to maintain separate 100

point reservation register and points 1, 34 and 67 of the roster shall be earmarked for persons with disabilities. This roster is separate from the roster kept for filling vacancies by direct recruitment or promotion on the basis of vertical (social) reservation as per G.R issued by the State Government. In the affidavit in reply filed on behalf of the Respondents no 1 to 3 in paragraph 6, it is mentioned that one Shri Kiran Wahule was appointed as Probation Officer from hearing impaired category in 2006. Therefore, no reservation was made for the person with hearing impairment in 2012. In the affidavit in reply filed on behalf of the Respondents no 5 & 6, dated 10.2.2014, in paragraph 9, it is stated that:-

“9. It is further submitted that vide proposal dated 03.04.2013 submitted by the Respondent no. 3, to Respondent no. 2 which is annexed with the petition at exhibit-J, page No. 58, it seems that still there is a vacancy of one post of probationary officer in the establishment of Respondent No. 3. Furthermore, said vacancy is arising out of backlog of one post from the hearing impaired disability, therefore, the Respondent no. 2 and 3 are bound by law to consider that situation and issue appropriate directions on the said proposal. It means to say that if the petitioner's claim is found to be genuine and rightful, the Respondent no. 2 and 3 may issue an

appointment order in her favour with all consequential service benefits.”

Respondent no. 5 is the Principal Secretary, Social Justice and Special Assistance Department of the Government, while the Respondent no.6 is the Commissioner of Disabilities. Both these officers have been given the responsibility of ensuring welfare of backward class persons, including the persons with disabilities. They are clearly of the opinion that the Applicant should have been considered for appointment and have suggested that she may be given appointment in a vacant post, which is available. Respondent no. 4 has also found that the reservation made by the Respondent no. 3 was not in accordance with law, as discussed above. Para 5 of the Office Memorandum dated 29.12.2005 reads:-

“It shall, however, be ensured that reservation in different posts in the establishment is distributed in such a way that the persons of three categories of disabilities as far as possible get equal representation.”

Para 16 of the O.M deals with inter se exchange and carry forward of reservation in case of Direct Recruitment. The Respondents no 1 to 3 have not indicated as how the inter se reservation was made. From

their affidavit in reply, it can be seen that a total of 131 posts of Probation Officer are available for direct recruitment. 4 posts can, therefore, be filled by persons with disability. One person with hearing impairment was selected in 2006, leaving 3 posts of which could be filled one each from vision impairment and locomotive disability categories. Why the 3rd post in the advertisement of 2012 was reserved for persons with locomotive disability is not clear. In fact, if the first person to be selected was from hearing impairment category, logically, 4th person should also be from that category. The Applicant has admittedly scored highest marks from amongst the 'persons with disabilities' category. She should have been considered for selection.

8. Even now, it is possible to do so without disturbing already selected persons as suggested by the Respondents no 5 & 6. The details are given by the Respondent no. 3 in his letter to the Respondent no. 2 dated 3.4.2013. This letter says that 6 posts of Probation Officer are reserved for persons with disabilities. 2 each from hearing impairment, vision impairment and locomotive disabilities may be appointed to the reserved posts. There is clear admission from the Respondent no. 3 that one Shri Karambe, who is from hearing impairment category was not promoted from the quota of persons with disability. (P. 58 and 59 of the paper book). Shri D.T Karamben was appointed in May, 2012 from

O.B.C quota. He cannot be counted from the physically handicapped category. The Applicant, can therefore be considered for appointment from hearing impaired category. From the above discussion, it is clear that if the posts of direct recruitment are taken as 131, 4 posts would be for persons with disability. As only one person with hearing impairment was selected, the next two vacancies were necessarily to be filled from vision impaired and locomotive disability category. Shri Karambe was from O.B.C category and could not be counted from category of persons with disability. The fourth post, therefore could be filled from any of the three category as per O.M dated 29.12.2005, as there is no specific order in which reservation has to be applied among different category of the persons with disability. In such a situation, person getting highest marks from amongst the persons with disability must be selected. The reservation given in the advertisement for the persons with disability was not in accordance with the Government instructions.

If the number of posts for persons with disability is treated as 6, the Applicant be accommodated as per admission of the Respondent no. 3 himself as mentioned above. The Applicant, can be appointed to the post of Probation Officer, without disturbing anyone else.

8. Having regard to the aforesaid facts and circumstances of the case, the Respondents are directed to give appointment to the Applicant in the post of Probation Officer, if she is otherwise found suitable within a period of 3 months from the date of this order. There will be no order as to costs.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 30.07.2014

Dictation taken by : A.K. Nair.