

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.294 OF 2012
(ORIGINAL APPLICATION NO.146 OF 2012 AT AURANGABAD)**

DISTRICT : BEED

Shri Suresh Narayan Hange,)
R/o. Hangewadi, Taluka Kaij,)
District Beed.)

..APPLICANT

VERSUS

1. The State of Maharashtra,)
Through it's Department of State Excise,)
(Copy to be served on Presenting Officer,)
Maharashtra Administrative Tribunal,)
Mumbai Bench at Aurangabad.)
2. District Selection Committee,)
Raigad-Alibaug for Direct Recruitment-)
2011, Through its Member Secretary)
i.e. Superintendent of State Excise,)
Raigad, Alibaug.)
3. Vijay Balkrishna Mukadam,)
R/o. Revdanda, Taluka and)
District Raigad.)

....RESPONDENTS

Shri S.S. Jadhavar, learned Counsel for the Applicant on 07.10.2016.

Smt. Archana B.K., learned Presenting Officer for the Respondents No.1 & 2.

Shri M.D. Lonkar, learned Counsel for the Respondent No.3.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN
SHRI R.B. MALIK, MEMBER(J)

DATE : 09.11.2016.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

J U D G M E N T

1. Heard Shri S.S. Jadhavar, learned Counsel for the Applicant on 07.10.2016, Smt. Archana B.K., learned Presenting Officer for the Respondents No.1 & 2 and Shri M.D. Lonkar, learned Counsel for the Respondent No.3.

2. This Original Application has been filed by the Applicant, who is seeking appointment as Jawan in the State Excise Department under the Respondent No.2.

3. Learned Counsel for the Applicant argued that the Applicant has applied for the post of Jawan (Constable) in the State Excise Department, pursuant to the advertisement issued by the Respondent No.2 on 16.09.2011. A total of 3 posts were horizontally reserved for Part Time Employees

(अंशकालीन) category, one from O.B.C. and two from Open Category. Learned Counsel for the Applicant argued that the posts horizontally reserved for Part Time Employees categories have been filled on the basis of merit, disregarding the candidates' vertical reservation category in violation of the judgment of Hon'ble Supreme Court in the case of **Public Service Commission, Uttaranchal Vs. Mamta Bisht - AIR 2010 SC 2613**. The Respondent No.3 belongs to O.B.C. category and he was not eligible for appointment from Open-Part Time employees category. If the Respondent No.3 is adjusted against the vacancy of O.B.C. part Time category, the Applicant could be adjusted against Open-Part Time vacancy.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents No.1 and 2 that the Applicant had applied from Open Category. He was, therefore, not eligible to be considered from O.B.C. Category. The Respondent No.3 has also applied from Open Category and therefore, question of adjusting him against O.B.C. Category does not arise.

5. Learned Advocate Shri Lonkar argued that the Respondent No.3 had scored highest marks in the selection process from among Part-time category from all vertical reservation categories, including Open and O.B.C. He was, therefore, eligible to be appointed from both Open and O.B.C. categories.

6. It is seen that the Respondent No.2 had published final selection list for Open-Part Time Category for the post of Jawan on 30.12.2011. The Respondent No.3 is shown as No.1 in the select list, and he scored 69.56 marks, out of 100. The Applicant is shown as No.1 on the waiting list from Open Category (Part time). A person belonging to O.B.C. category cannot be appointed to a vacancy reserved horizontally for Part Time employee in Open Category. The Applicant has also applied from Open Category as he did not have Non-creamy layer certificate as per his application form. The Applicant has relied on the judgment of Hon'ble Supreme Court in the case of **Public Service Commission, Uttaranchal Vs. Mamta Bisht & Others : AIR 2010 SC 2613**. It is held by Hon'ble Supreme Court that nature of horizontal reservation is different from that of vertical reservation and a vacancy reserved horizontally in a vertical reservation category cannot be filled from any other vertical reservation category. However the Respondent No.3 has been selected against Open-Part time post as he has applied from Open Category. The Respondent No.3 also scored highest marks in O.B.C./Open Part Time employees category. If he had applied from Open Category he has rightly been selected from Open Part time category. The person actually selected from O.B.C. Part Time category is not before this Tribunal. His selection has also not been challenged. However, it is quite clear that the Applicant himself could not have been selected from Open Category

when the Respondent No.3 has also applied from Open Category and was found to be more meritorious.

7. Having regard to the aforesaid facts and circumstances of the case, this O.A. is dismissed with no order as to costs.

(R.B. MALIK)
MEMBER(J)

(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 09.11.2016
Typed by : PRK