

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO. 510 OF 2015  
WITH  
ORIGINAL APPLICATION NO. 297 OF 2016**

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**ORIGINAL APPLICATION NO. 510 OF 2015**

**DISTRICT :MUMBAI**

Mr. Anant Gajanan Kotapkar )  
Age:35 yrs, Occ: Service )  
R/at:575/2, Municipal Chawl, )  
Dr. Ambekar Marg, Parel, Mumbai. )...**Applicant**

**VERSUS**

1. The State of Maharashtra )  
The Secretary, )  
General Administration Department, )  
Opp. Mantralaya, Sachivalaya )  
Gymkhana, First, Floor, Mumbai 32. )
2. The Controller, )  
Government Transport Services, )  
S.P. Road,Worli, Mumbai 400 030. )
3. The Additional Chief Secretary(Protocol)  
General Administration Dept. )  
(Rajshistachar) )  
Mantralaya, Mumbai 32. )....**Respondents**

**WITH****ORIGINAL APPLICATION NO. 297 OF 2016****DISTRICT :MUMBAI**

Shri Sanjay Janardan Chavan, )  
 Age : 40, Occ. Nil )  
 Address: 604/6, Wing-A, Building No.3, )  
 Ramshyam Krupa Hsg. Society, )  
 Bhavani Shankar Road, Dadar, )  
 Mumbai – 400 028. )...**Applicant**

**VERSUS**

1. The Controller, )  
 Govt. Transport Service, )  
 Sir Pochkhanwala Road, )  
 Worli, Mumbai – 400 030. )
2. The Secretary, )  
 General Administration Department, )  
 (Rajshistachar), Mantralaya, )  
 Mumbai 32. )
3. Shri Anant Gajanan Kotpakar )  
 575/2, Municipal Chwal, )  
 G.D. Ambekar Marg, )  
 Mumbai – 400 012. ) ....**Respondents**

Shri K.R. Jagdale, the learned Advocate for the Applicant  
 (O.A.No.510 of 2015).

Shri C.T. Chandratre, the learned Advocate for the Applicant  
 (O.A.No.297 of 2016)

Smt. N.G. Gohad, learned Presenting Officer for the  
 Respondents.

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

**DATE : 30.11.2016**

**PER : Shri Rajiv Agarwal, Vice-Chairman**

**ORDER**

1. Heard Shri K.R. Jagdale, the learned Advocate for the Applicant (in O.A.No.510 of 2015), Shri C.T. Chandratre, the learned Advocate for the Applicant (in O.A.No.297 of 2016) and Smt. N.G. Gohad, learned Presenting Officer for the Respondents.

2. These Original Applications were heard together and are being disposed of by a common order as the issues to be decided are more or less identical.

3. In O.A.No.510 of 2015, the Applicant is seeking appointment to the post of Driver from O.B.C. category in Government Transport Service, Mumbai.

4. Learned Counsel for the Applicant argued that the Applicant had applied for the post of Driver, pursuant to the advertisement issued by the Respondent No.2 on 31.3.2012 to fill up inter-alia, 7 posts of Drivers, including one post from O.B.C. category. In the merit list for the posts of Driver the Applicant was declared as eligible for the post from O.B.C. category. However in the select list, one Shri Vishal



Subhash Bhagwat was shown as selected candidate to the post of Driver from O.B.C. category. Learned Counsel for the Applicant argued that there were large scale irregularities in the selection process. A committee was appointed to look into the whole affair. As Shri Bhagwat expired on 1.8.2.12, the post of Driver from O.B.C. category is still vacant, and the Applicant can be accommodated in the said post. Learned Counsel for the Applicant argued that the other candidates selected for the post of Driver e.g.S/ Shri Wagh, Pawar and Nalawade did not fulfil eligibility criterion.

5. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant had secured third rank in the merit list for the post of Driver from O.B.C. category. Shri Vishal Bhagwat had secured first rank and he was appointed to the post. He expired later on. As complaints were received about the selection process, a committee was appointed under the Chairmanship of Under Secretary, General Administration Department to inquire into the whole selection process. The committee submitted its report on 10.9.2014. There were some adverse comments about Drivers selected from other categories, however, the same have no relevance in the present case, as the Applicant is seeking appointment from O.B.C. category. Learned P.O. argued that Shri Bhagwat was appointed from O.B.C. category as Driver and he joined the post. Once he joined the post, the waiting list became inoperative. As such, the Applicant could not be considered for that post. In any case, he was number three in the waiting list from O.B.C. category,

and he could not be selected for the post unless the candidate at Sr.No.2, who happens to be Applicant in O.A.No.297 of 2016, was also found ineligible.

6. Learned Counsel for the Applicant in O.A.No.297 of 2016 argued that the Applicant was placed at Sr.No.2 in the merit list for O.B.C. candidate. He is, therefore, eligible to be appointed as Driver, as the person, who was selected from O.B.C. category has died during the currency of the waiting list. The waiting list remains valid for one year after publication of the select list. Learned Counsel for the Applicant cited the judgment of this Tribunal dated 13.4.2016 in O.A.No.690 of 2015 in which this Tribunal has held that a waiting list is valid for a year after publication, and during that period, if a selected candidate joins and dies/ resigns, the resultant vacancy can be filled up by operationalising the waiting list.

7. We find that there were several complaints against the selection process pursuant to the advertisement dated 31.3.2012 issued by the Respondent No.2. A committee under the Chairmanship of the Under Secretary, General Administration Department was appointed to look into the complaints of irregularities in the selection process. The committee submitted its report on 10.9.2014. A copy of the report is annexed as Exhibit R-3 (page no.132 of the Paper Book of O.A.No.510 of 2015). The advertisement dated 31.3.2012 was in respect of many cadres including that of Drivers. The present O.A.s have been filed by the persons,





who had applied for one post of Driver reserved for O.B.C. category and both of them admittedly belong to O.B.C. category. The merit list for O.B.C. category for the post of Driver is at Exhibit 'D' (page 16 of the Paper Book in O.A.No.510 of 2015). There are five names in the list. However, there was only one post of Driver from O.B.C. category. Shri Bhagwat was at Sr.No.1 and was selected for the post. He joined the post and expired after working for about 40 days, but within one year of declaration of the select list. The committee has given the following finding regarding Shri Vishal Bhagwat, viz:

“ श्री भागवत यांनी नॉन क्रीमीलेअर प्रमाणपत्र व जात वैधता प्रमाणपत्र ही दोन महत्वाची प्रमाणपत्रे सादर केलेली नसूनदेखील त्यांची वाहनचालक पदावर करण्यात आलेली नियुक्ती अवैध ठरते. तथापि श्री भागवत यांचे ०१ ऑगस्ट, २०१२ रोजी निधन झालेले असल्यामुळे या प्रकरणाबाबत समितीने आता कोणतेही अभिप्राय नमूद करण्याची आवश्यकता दिसून येत नाही.”

For many other candidates for various posts, the committee had recommended cancellation of appointment.

8. The committee had considered complaints of non-selected candidates also. However, the present Applicants had not made any complaints. The question which is to be considered is what happens if the selection of a selected candidate is held to be invalid. In this case, the committee had found appointment of Shri Bhagwat as invalid. Shri Bhagwat had joined the post and before removing him from service he would have been heard. Now, that issue no longer survives. It cannot be concluded that Shri Bhagwat was not

eligible to be appointed to the post of Driver from O.B.C. category. Once he was appointed as Driver from O.B.C. category, the validity of the waiting list was over. This Tribunal in O.A.No.895 of 2015 by judgment dated 21.11.2016 has held that once a candidate is appointed to a post by virtue of his inclusion of his name in the select list, the waiting list does not survive. This has been held in view of the judgment of Hon'ble Supreme Court in the case of **Rakhi Ray Vs. High Court of Delhi : (2010) 2 SCC 637.**

9. We find that once Shri Bhagwat was appointed as Driver from O.B.C. category, the validity of waiting list expired. The Applicants were eligible to be considered from O.B.C. and Open categories. It is, however, seen from the select list, that the persons selected from Open category were following :-

Name	Marks
(1) Shri Pawar Ashok Maruti	79
(2) Shri Hindalekar Ganesh Parshuram	68

It is seen that the Applicant in O.A.No.297 of 2016 had scored 70 marks, so also the Applicant in O.A.No.510 of 2015. Shri Hindalekar is, however, not a party to the present O.A., nor has his appointment been challenged. The committee had also not examined this aspect, because, it was probably not brought to its notice. No further comments on this aspect are necessary. The Applicants are, however, clearly not eligible to be considered from O.B.C. category as the waiting list ~~was~~ expired.

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10. The Applicant had failed to make out any case for interference by this Tribunal, and these O.As are dismissed with no order as to costs.

(R.B. MALIK)  
(MEMBER) (J)

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(RAJIV AGARWAL)  
(VICE-CHAIRMAN)

**Date : 30.11.2016**

**Place : Mumbai**

**Dictation taken by : SBA**