

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.583 OF 2015
(Subject : Appointment)**

DISTRICT : PUNE

Shri Suraj Sunil Talekar,)
R/o. Tulja Bhavani Nagar,)
Kharadi, Pune.) **..APPLICANT**

VERSUS

1. The Superintendent of Police,)
Dist. Raigad, having office at Alibag,)
Dist. Raigad.)
2. The Additional Director General of Police,)
(Training and Special Unit), (M.S.))
Mumbai, having office at Police Head)
Quarter, Shahid Bhagatsingh Marg,)
Mumbai – 1.)
3. Shri Vashim Mohd. Shabbir Ahmed)
Ainapure, R/o. Mangal Colony,)
A/P. Tal. Miraj, Dist. Sangli.)
4. Shri Jafar Himmat Kurane,)
R/o. Somwar Peth, Kolhapur.)
5. Shri Saagar Rajendra Gurav,)
R/o. Kusumba, Dhule.)

6. Shri Akshay Manoj Salunkhe,)
R/o. Police Head Quarter, Dhule.)
7. The State of Maharashtra,)
Through Principal Secretary,)
Home Department,)
having office at Mantralaya,)
Mumbai 400 032.)

....RESPONDENTS.

Shri A.V. Bandiwadekar, learned Counsel for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

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

DATE : 24.11.2016.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, learned Counsel for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 06.02.2015 issued by the Respondent No.2, informing the Applicant that there was no vertical or horizontal reservation for the post of Bandsman in the Recruitment Rules for Police Constables – 2011 and the

Applicant is also challenging rejection of the Applicant's claim for the appointment to the post of Bandsman.

3. Learned Counsel for the Applicant argued that the Respondent No.2 had issued an advertisement on 29.04.2014 to fill 172 posts of policemen in Maharashtra State Police Constables Recruitment, 2014 in Raigad District. It was stated in para 2 of the advertisement that 5 posts would be filled from Bandsman Category. Learned Counsel for the Applicant contended that physical and educational standards for the post of Bandsman are different from that of Police Constable as per the Maharashtra Police Constable (Recruitment) Rules, 2011. The Applicant had applied for the post of Bandsman from Open Category. As per the final merit list, the Applicant secured 156 marks in the Open Category. Out of 5 vacancies of Bandsman Category, 4 were filled from O.B.C. category and one from the Open Category. Learned Counsel for the Applicant argued that it was necessary to provide social (vertical) and special (horizontal) reservation for the posts of Bandsman separately from the Category of Police Constables. However, the Respondents have selected 80% of the posts of Bandsman from O.B.C. Category. Learned Counsel for the Applicant argued that in the judgment dated 02.09.2014 in O.A.No.535 of 2010, this Tribunal has held that separate reservation should have been provided for the post of Bandsman. Also, it was held that maximum reservation, should not exceed 50%. On that basis, out of 5 posts, 2 or 3 posts could have been reserved for backward classes and 2 posts should have been filled from Open Category candidates

in the present case. The Applicant would have been selected to the post of Bandsman, if two posts were kept for Open Category.

4. Learned Presenting Officer (P.O.) argued that the Applicant got less marks than all the five candidates, who were selected. No prejudice is caused to the Applicant, even if his claim that proper vertical and horizontal reservation for the posts from Bandsman category was not provided is accepted. Learned P.O. further argued that the Applicant is totally misinterpreting the judgment of this Tribunal in O.A.No.535 of 2010. This Tribunal has never held that open posts can be filled from Open Category candidates only. That principle applies to Open posts, which are reserved horizontally. The Applicant has not claimed in this O.A. that he had applied from any horizontal reservation category. He belongs admittedly to Open General Category. For Open posts, candidates from all vertical reservation categories can compete and all five selected candidates from Bandsman category scored more marks than the Applicant. He, therefore, has no case to claim appointment to the post of Bandsman.

5. The Applicant in para 6.2 of the O.A. has stated that he belongs to Hindu Maratha (Open) Category. Nowhere, has he mentioned that he was claiming benefit of horizontal reservation. In para 6.7 of the O.A. he has stated that the candidates selected to the five posts of Bandsman obtained the marks as follows :-

Sr. No.	S/Shri	Marks	Category
1	V.M.S.A. Ainapure	169	O.B.C.
2	J.M. Kurane	166	O.B.C.
3	S.R. Gurav	166	O.B.C.
4	A.M. Salunkhe	166	O.B.C.
5	D.S. Chaudhary	164	Open

The Applicant admittedly scored 156 marks. All the selected candidate scored more marks than the Applicant and he is in no way prejudiced by the selection of those candidates. In O.A.No.535/2010 the Respondents (Superintendent of Police, Railways, Pune) has himself worked out reservation for the post of Bandsman separately from Police Constable and that calculation was found to be wrong as it amounted to 62.5% reservation for various backward categories. It was observed that not more than 50% posts could be reserved. That observation cannot be interpreted to mean that 50% posts, which are Open have to be filled by Open Category candidates only. In fact, for Open posts (not reserved horizontally) any candidate, whether open or belonging to backward classes, can compete. In the present case, even if it is assumed for the sake of argument, that all five posts of Bandsman were unreserved, the Applicant would not be held eligible to be selected for any one of these posts.

6. It is true that different Unit Heads in Police Department cannot take difference stand regarding separate vertical and horizontal reservation for the posts of Bandsman.

However, in the present O.A. we are not required to adjudicate on that issue as the Applicant has failed to make out any case that any prejudice was caused to him due to the action of the Respondent Nos.1, 2 & 7. This Original Application has no merit and it is dismissed with no order as to costs.

Sd/-

(R.B. MALIK)
MEMBER(J)

Sd/-

(RAJIV AGARWAL)
VICE-CHAIRMAN

Place : Mumbai
Date : 24.11.2016
Typed by : PRK

D:\PRK\2016\11 NOV\22.11\O.A.583-15 Appointment.doc