

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**ORIGINAL APPLICATION NO.655 OF 2015
(Subject : Appointment)**

DISTRICT : PUNE

Shri Deelip Laxman Anuse,)
"Sai-Niwas", Plot No.15, S.No.27,)
Munjoba Vasti, Dhanori, Pune 411 015.)

..APPLICANT

VERSUS

1. State of Maharashtra,)
Through Chief Secretary,)
Mantralaya, Mumbai 400 032.)
2. Additional Chief Secretary,)
Home Department,)
Mantralaya, Mumbai 400 032.)
3. The Chairman,)
Maharashtra Public Service Commission,)
Fort, Mumbai.)
4. Commissioner of Transport,)
4th floor, Administrative Building,)
Government Quarters, Wandre (E),)
Mumbai 400 051.)

5. Shri Dattatraya Kisanrao Deshmukh,)
 Probationary Assistant Motor Vehicle)
 Inspector, Deputy Regional Transport)
 Office, Plot No.18, MIDC Area,)
 Osmanabad 413 501.)
6. Shri Prabhakar Vitthal Sawant,)
 Flat No.104, Building No.7,)
 Vardhaman Garden, Balkum,)
 Near Fire Station, Bhivandi Road,)
 Thane 400 608.)
7. Shri Rajendra Balwantrao Borse,)
 Plot No.2, Bhaskar Socceity No.2,)
 Mhasrul Borgad Road, Mhasrul,)
 Nashik 422 004.)

....RESPONDENTS

Smt. Punam Mahajan, learned Counsel for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents No.1 to 4.

Shri B.A. Bandiwadekar, learned Counsel for the Respondents No.5 and 6.

None for Respondent No.7.

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

DATE : 15.11.2016.

PER : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

J U D G M E N T

1. Heard Smt. Punam Mahajan, learned Counsel for the Applicant, Shri K.B. Bhise, learned Presenting Officer for the Respondents No.1 to 4 and Shri B.A. Bandiwadekar, learned Counsel for the Respondents No.5 and 6. None for Respondent No.7.

2. This Original Application has been filed by the Applicant who is seeking appointment to the post of Assistant Motor Vehicle Inspector (A.M.V.I.) from Open-Ex-Servicemen Category, claiming that the appointment of the Respondent no.5 from the category is illegal, as he had already availed benefit from Ex-servicemen Category and cannot do so twice.

3. Learned Counsel for the Applicant argued that the Respondent No.3 had conducted Examination for selection to the post of A.M.V.I., pursuant to advertisement dated 11.10.2013. The Applicant had applied from Open-Ex-Servicemen Category, for which 18 posts were reserved. The Applicant's name was not included in the list of recommended candidates. However, the Respondent No.6 viz. Shri Prabhakar Vittal Sawant, scored 64 marks and he is at Sr. No.205 in the merit list. The Respondent no.5 scored 80 marks and was selected from Ex-Servicemen Category at Sr. No.189. However, the Respondent No.5 had already been given benefit of Ex-Servicemen Category when he was appointed as Statistical Analyst and he cannot be considered

for concession second time by virtue of G.R. dated 30.12.2011. Similarly, the Respondent Nos.6 and 7 have also taken benefit of Ex-Servicemen in earlier appointments and are not eligible for appointment as A.M.V.I. Even if any one candidate out of them is held ineligible, the Applicant is next in the list and will be eligible for appointment as A.M.V.I. However, the Respondent No.4 has not taken any decision about the eligibility of the Respondent No.5, 6 and 7 for the post of A.M.V.I., despite many representation sent by the Applicant. Learned Counsel for the Applicant prayed that the Respondent No.4 may be directed to take decision about the eligibility of the Respondent Nos.5, 6 and 7 for appointment to the post of A.M.V.I. from Ex-Servicemen Category in terms of G.R. dated 30.12.1991, and if any one of them is found to be ineligible, the Respondent Nos.3 and 4 may be directed to recommend / appoint the Applicant for the post.

4. Learned Presenting Officer (P.O.) argued on behalf of Respondents No.1 to 4 that the matter regarding eligibility of the Respondent No.5, for the post of A.M.V.I. is pending with the Government as he was given a permanency certificate in an earlier appointment on the basis of Ex-Servicemen Certificate. As regard, the Respondent No.6, he had valid experience certificate from the Air Force and he is eligible to be appointment from Ex-Servicemen Category. The Respondent No.7 is not included in the list of selected candidates so, there is no cause of action.

5. Learned Advocate Shri Bandiwadekar argued on behalf of the Respondents No.5 and 6 that both are fully eligible to be appointed from Open Ex-Servicemen Category. He stated that the Applicant belongs to NT(C) category and is not eligible to be appointed from Open Ex-Servicemen Category. Both the Respondents No.5 and 6 are more meritorious than the Applicant and the Applicant has no valid claim for the post.

6. It is seen that the Applicant is basically claiming that the Respondent No.5 is ineligible to be appointed from Ex-Servicemen Category in terms of G.R. dated 30.12.1991. The Respondent No.4 by letter dated 22.02.2014 (Exhibit 10, page 106 of the paperbook) has sought guidance from the Government regarding eligibility of the Respondent No.5 for appointment to the post of A.M.V.I. from Open Ex-Servicemen Category. It appears that if the Respondent No.5 is declared ineligible, one vacancy from Open Ex-servicemen Category will be available. As the Respondent No.7 is also said to have availed the benefit of reservation from Ex-Servicemen category in the past, and if he is held ineligible, the Applicant will probably become eligible for the appointment to the post of A.M.V.I. However, the Respondent No.6 has claimed that the Applicant is from NT(C) Category and cannot be considered from Open Ex-servicemen Category.

7. We feel that this O.A. can be disposed of by giving directions to the Respondent Nos.2 and 4 to decide the eligibility of the Respondent Nos.5, 6 and 7 for appointment to

the post of A.M.V.I. from Open Ex-servicemen Category within a period of 8 weeks from the date of this order. If any one of them is found to be ineligible and if there is a resultant vacancy, person next in the select list, who may be eligible to be appointed from Open Ex-servicemen Category may be considered for such appointment within a further period of one month from the date of this order. The Respondent no.3 will recommend eligible candidate, on requisition by the Respondent no.2 in this regard. There will be no order as to costs.

Sd/-

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

Sd/-

**(RAJIV AGARWAL)
VICE-CHAIRMAN**

**Place : Mumbai
Date : 15.11.2016
Typed by : PRK**