

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**TRANSFER APPLICATION NO. 01/2018**
(WRIT PETITION NO. 15249/2017)

Dist. : Nanded

Chanda d/o Ramrao Hingole,)
 Age 38 years, Occu. Service as)
 Sectional Engineer at Vishnupuri,)
 Pump House Division, Nanded,)
 R/o House No. 1-10-38,)
 Near Nagsen High School,)
 Prabhatnagar, Nanded.)

-- **Applicant**VERSUS

1. Maharashtra Public Service)
 Commission,)
 Through its Secretary,)
 Bank of India Building,)
 3rd Floor, Mahatma Gandhi Rd.,)
 Hutatma Chowk, Mumbai – 01)
2. Sharvaree Mahajan,)
 Dy. Engineer (Mechanical))
 Sub-Division No. 4,)
 Sinchan Bhavan,)
 Tara Bai Park, Kolhapur.)
3. The Secretary,)
 Water Resources Department,)
 Mantralaya, Mumbai –400 032.)

-- **Respondents**

APPEARANCE : Shri S.D. Joshi, learned counsel for applicant.
 Shri M.P. Gude, learned Presenting Officer for
 respondent.

Coram : **Hon'ble Shri Justice P.R. Bora, Vice Chairman**
AND
Hon'ble Shri Bijay Kumar, Member (A)

Reserved on : 13.07.2022**Pronounced on : 28.09.2022**

ORDER

(Per : Justice P.R. Bora, Vice Chairman)

Heard Shri S.D. Joshi, learned counsel for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondent.

2. The applicant has filed the present Application seeking direction against respondent no. 3 to consider her case for appointment to the post of Deputy Engineer (Mechanical) on the basis of merit obtained by her in the said process of selection pursuant to advertisement No. 58/2013 published by respondent no. 1 on 30.8.2013.

3. The applicant belongs to Scheduled Caste category. She possesses the qualification of B.E. (Mechanical) and M. Tech (CAD, CAM). After completing the graduation she initially worked as a Lecturer at Government Polytechnic, Nashik on clock-hour basis. In the year 2007 the applicant was selected for the post of Junior Engineer in Water Resources Department and was posted at Nanded. She is working at the said place and on the same post.

4. Respondent no. 1 issued an advertisement No. 58/2013 thereby inviting applications for filling up 28 posts of Deputy Engineer (Mechanical) under Maharashtra Engineering Services, Group-A. Out of said 28 posts, 08 posts were reserved for Women candidates. Out of said 08 posts, 01 each was reserved for SC, ST and OBC (Female), whereas 5 posts were to be filled in from Open (Female) category. As

contended in the application the applicant applied for the said post by filling up on line application form. As further stated in the application the application form did not contain the column providing Women reservation or questionnaire whether the candidature is being submitted claiming Women reservation. The applicant was permitted to appear for the written examination held for the said post on 01.03.2014. Accordingly she appeared for the said examination. Four months thereafter the result of the said written examination was declared by respondent no. 1. The name of the present applicant was shown in the list of eligible candidates for interview at sr. No. 80 of the said list. The applicant was therefore waiting for publication of the list of selected candidates.

5. On 13.08.2014, however, the General Administration Department issued a Circular providing guidance for operating horizontal reservations while filling in the posts by direct recruitment. As further contended in the application after issuance of the said Circular the MPSC made 02 declarations. In the first declaration there was a reference of the decision taken by the Government that the candidates belonging to Backward Class if have availed the benefit of relaxation in age limit, fees etc. would not be recommended for selection against the unreserved posts. This declaration was made on 19.09.2014 and thereafter on 25.09.2014 other declaration came to be made by the MPSC making the recommendations in the Circular dated 13.08.2014 applicable to the advertisements already published, as well as, to be

published in future. Consequent to the publication of Circular of 13.08.2014 and office Circulars dated 19.09.2014 and 25.09.2014, respondents published revised roll-wise list of additionally qualified candidates. Under the earlier Resolution names of 20 candidates were published. Thereafter list of 30 candidates came to be published on 20.12.2014. In the month of June, 2015 the respondents published combined merit-cum-recommendation list as consequence of changed criteria adopted under Circulars dated 19.09.2014 and 25.09.2014. In the said combined list name of the present applicant was not included. In the subsequent list prepared name of the applicant was shown at Sr. No. 63, but she was stated not to have been recommended for selection for want of availability of the post for SC (Women) category. From the list so published the applicant came to know that she has scored 36 marks in written examination and 28 marks in oral examination totaling to 64 marks.

6. Since name of the applicant was not included in the list of recommended candidates she preferred Writ Petition No. 20/2017 before Aurangabad Bench of Hon'ble Bombay High Court. Hon'ble High Court while disposing of the said Writ Petition on 31.01.2017 directed the respondents to consider the case of the applicant on merit within the period of 06 weeks, keeping her right open to approach the appropriate forum. The MPSC on 16.03.2017 rejected the representation filed by the applicant. The applicant therefore again approach the Hon'ble High Court (and filed W.P. No. 15249/2017).

Subsequently since the Division Bench of the Tribunal became functioning the said matter was transferred by the Hon'ble High Court to this Tribunal and has been numbered as Transfer Application No. 01/2018.

7. Shri Joshi, learned counsel appearing for the applicant submitted that because of some mistakes in interpreting the relevant provisions by the respondent authorities, though the applicant was liable to be selected from SC category, some other candidate has been shown to have selected for the said post from SC category. The learned counsel further submitted that 05 posts which were reserved for Open (Female) candidates were liable to be filled in purely on merit irrespective of caste and creed of Female candidates. The learned counsel submitted that even at the relevant time the legal position was the same that the backward class candidates can compete for the seats reserved for Open Class on his/her individual merit. The learned counsel further submitted that the law in that regard was settled by the Hon'ble Supreme Court in the case of **Saurav Yadav & Ors. Vs. State of Uttar Pradesh & Ors., (2021) 4 SCC 542.**

8. The learned counsel further submitted that the candidate namely Smt. Sharvaree Mahajan (respondent no. 2 in the present TA) had received total 92 marks and was shown to have been selected against the seat reserved for SC (Female). The learned counsel further submitted that considering the marks received by respondent no. 2 in fact her selection must have been shown against the Open (Female)

category and not against the SC (Female) category. The learned counsel submitted that the last selected Open (Female) candidate namely Smt. Pawar Yogini Vtthal had received only 53 marks. The learned counsel further submitted that had said Smt. Sharvaree Mahajan, respondent no. 2 in the present matter, shown to have been selected from Open (Female) category, the post reserved for SC (Female) was liable to be allotted to the applicant having regard to the fact that she was next to respondent no. 2 in order of merit in SC (Female) category. The learned counsel, in the circumstances, prayed for shifting respondent no. 2 to the Open (Female) category and consequently to direct the respondents to recommend and in turn give appointment to the present applicant on the subject post in order of merit.

9. The respondents have strongly resisted the contentions raised in the Transfer Application. It is the contention of the respondents that at the relevant time the legal position, which was in force was correctly applied by respondents in issuing appointment order to respondent no. 2 from SC (Female) category and at a such belated stage now no change can be directed, which may create administrative problems and would cause prejudice to the selected candidates, if anyone of them is required to be removed to accommodate the present applicant. The respondents have further contended that the recruitment process was carried out by the respondents strictly in accordance with the Rules in vogue at the relevant time and on the basis of GRs and Circulars, which were holding the field at the said time. The learned Presenting Officer

arguing on behalf of the respondents reiterated the contentions raised in the affidavit in reply and submitted that the law laid down in the case of **Saurav Yadav & Ors. Vs. State of Uttar Pradesh & Ors.**, (cited supra) cannot be made retrospectively applicable. The learned P.O. submitted that the horizontal reservations were worked out at the relevant time under the guidelines of GAD, which were based on the decisions rendered by the Tribunal. In the circumstances, according to learned P.O. no case has been made out by the applicant for accepting her request. He, therefore, prayed for dismissal of the application.

10. We have carefully considered the submissions advanced on behalf of the parties and perused the documents filed on record. Insofar as factual matrix is concerned, there is no much dispute. Undisputedly respondent no. 2 having received highest marks amongst SC (Female) candidates was shown to have been selected against SC (Female) category. Undisputedly only one post was reserved for SC (Female) candidate. It is further not in dispute that the applicant belongs to SC category. She possesses the caste validity certificate also, copy of which is placed on record. Out of 28 total seats for which the recruitment process was carried out, 14 posts were for the candidates belonging to Open category, out of which 08 posts were for Open (General), 05 were for Open (Female) and one for Open (Sports). The merit list is placed on record at page 60 of paper book. The perusal of the said list reveals that the respondent no. 2 had received second highest marks (92) amongst the Female candidates. Admittedly the last selected Open

(Female) candidate has received 52 marks. In fact the respondent no. 2, who had received 92 marks must have been shown to be selected through Open (Female) category as said category was available for all Female candidates irrespective of their caste and creed. Had the selection of respondent no. 2 been shown against Open (Female) candidates the seat reserved for SC (Female) candidate must have been gone to the share of next meritorious candidate in SC (Female) category. The select list shows that next to respondent no. 2 the applicant is second highest meritorious candidate in SC (Female) category. Since only one post was reserved for SC (Female) category, respondent no. 2 was shown to have been selected against the said post. Obviously, the applicant therefore could not secure the said post.

11. The question arises whether the selection of respondent no. 2 now can be shown against the Open (Female) candidate since all 05 seats reserved for Open (Female) candidates have been filled up. If the respondent no. 2 is to be adjusted against Open (Female) seat obviously last selected candidate in Open (Female) category will have to be removed. Admittedly the said candidate is not a party to the present T.A. As such, it would not be possible to pass any order. 05 posts meant for General (Female) category are shown to have been secured by following candidates :-

Sr. No.	Position in the result sheet	Name of the Candidate	Marks obtained
1.	34	Kadam Jayashree Rahunath Open (F-1)	87

2.	61	Pawar Gayatri Vitthal Open (F-2)	66
3.	64	Sharma Archana Nandkishor Open (F-3)	63
4.	74	Pawar Yogini Vitthal Open (F-4)	53
5.	76	Labhe Vrushali Shankarrao Open (F-5)	52

12. As has been argued on behalf of the applicant following candidates must have been shown against the post reserved for Open (Female) candidates :-

Sr. No.	Position in the result sheet	Name of the Candidate	Marks obtained
1.	26	Sharvari Prithviraj Mahajan Open (F-1)	92
2.	34	Kadam Jayshree Raghunath Open (F-2)	87
3.	61	Pawar Gayatri Vitthal Open (F-3)	66
4.	64	Hingole Chanda Ramrao Open (F-4)	64
5.	74	Pawar Yogini Vitthal Open (F-5)	53

13. As is revealing from the record more particularly from the contents of the letter dated 25.01.2022 received to the office of Chief Presenting Officer from the MPSC, 02 posts are still vacant in the Open (Female) category. As is revealing from the said letter, names of 05 candidates are requisitioned by Department from MPSC from the waitlist. The record also reveals that 02 Male candidates have been given appointment against the said Open (Female) seats. Applicant has brought on record that one candidate who had participated in the

selection process, which is subject matter of the present case, namely Smt. Poonam Hanamantrao Khamkar, had preferred Writ Petition No. 10040/2016 before Hon'ble Bombay High Court claiming appointment on one of the reserved post. Said Poonam Khamkar belongs to NT-C category. It was her contention that for NT-C category, though, no post was shown to be reserved, in view of the marks received by her she must have been selected against the Open (Female) candidates. Poonam Khamkar had received 59 marks, whereas the last selected Open (Female) candidate had received 52 marks. In backdrop of the facts as aforesaid the Division Bench of Hon'ble Bombay High Court directed the respondents to consider the case of the said candidate, Smt. Poonam Khamkar, and to take appropriate decision within 8 weeks. The learned counsel for the applicant submitted that in pursuance of the order passed by Hon'ble High Court in the aforesaid Writ Petition, Smt. Poonam Khamkar has been given an appointment by the respondents.

14. The applicant has also placed on record copy of judgment and order delivered in O.A. No. 580/2015 by Nagpur Bench of this Tribunal. The said O.A. was filed by one Ku. Shashwati D/o. Chandrashekhar Borkar. The said candidate belongs to SC category. She had obtained 62 marks and was placed at Sr. No. 66 in the merit list. Same grievance was raised by the said candidate that female candidates securing 52 & 53 marks have been selected ignoring that she had secured more meritorious position than the said candidates. Nagpur

Bench of this Tribunal has allowed the said O.A. and directed the respondents to appointment applicant therein to the post of Deputy Engineer (Mechanical). When aforementioned female candidates, who have received 59 & 62 marks respectively, first who is petitioner before the Hon'ble High Court and second the applicant in O.A. filed before Nagpur Bench of this Tribunal, have secured reliefs, the present applicant cannot be deprived of the said relief. We are fully satisfied that the applicant is entitled to be selected on her own merit either against the seat reserved for SC (Female) category or against Open (Female) seat. We are, therefore, inclined to allow the present T.A.. Hence, the following order: -

ORDER

- (i) The respondent no. 3 is directed to appoint the applicant to the post of Deputy Engineer (Mechanical) within 04 weeks from the date of this order.

- (ii) The T.A. is allowed in the aforesaid terms without any order as to costs.

MEMBER (A)

ARJ T.A. NO. 01 OF 2018 D.B. (APPOINTMENT)

VICE CHAIRMAN