

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12205 OF 2018

Shri. Altaf Badshah Mujawar]
Age about 43 years,]
Occupation : Retired,]
R/o. Malli Galli, Somvar Peth,]
Tal. Tasgaon, District Sangali.] ... Petitioner

Versus

1. The State of Maharashtra]
Through its Chief Secretary,]
Having its office at Mantralaya,]
Maharashtra State, Mumbai.]
2. General Manager,]
M.S.R.T.C.,]
Office at Maharashtra Vahtuk Bhavan,]
Dr. Anandrao Nayar Marg,]
Mumbai - 08.] ... Respondents

*Mr. Sharad Bhosale a/w. Mr. Amar Dhumal & Mr. Mohsin Khan for the
Petitioner.*

Mr. S.B. Kalel, A.G.P. for the Respondent No.1-State.

Coram : M. S. Karnik &
Ajit B. Kadethankar, JJ.

Date : 25th November 2025.

JUDGMENT (Per : Ajit B. Kadethankar, J.) :-

1. Rule. Rule made returnable forthwith.
2. At the instance of the Petitioner, the matter is being heard finally.
3. Heard Mr. Sharad Bhosale, learned counsel for the Petitioner and Mr. Kalel, learned A.G.P. for the Respondent No.2. As none present for the Respondent No.2-M.S.R.T.C., at our request Mr. Kalel, learned A.G.P. assisted this Court.

4. Subject Matter :

By the present Petition the Writ Petitioner has sought directions to the Respondent No.2-Maharashtra State Road Transport Corporation ("**M.S.R.T.C.**" for the sake of convenience) to consider Petitioner's claim for appointment on the post of "Transport Inspector (Junior)", bearing post No.16, (hereinafter referred as "**subject matter post**") pursuant to advertisement dated 14th August 2009.

5. The Petitioner has put forth his prayers as follows :

- (a) Rule be issued and record and proceedings be called for;
- (b) This Hon'ble Court be pleased to quash and set aside the impugned order/ letter dated 25.07.2016 issued/passed by Respondent No. 2 thereby direct the Respondent No. 2 to consider the claim of the Petitioner as per provisions of

guidelines/orders issued by the Govt. of Maharashtra and Central Govt. of India in the above said circular dated 10.10.1980 and 27.11.2012.

(c) Pending the hearing and final disposal of the present Writ Petition this Hon'ble Court be pleased to stay the effect/operation/ implementation of letter/order dated 25.07.2016 passed/issued by Respondent No. 2.

(d) Interim/ad-interim order in terms of prayer clause (c) above be granted;

(e) Such other and further reliefs be granted as the nature and circumstances of the case may require.

6. The Facts in brief :-

6.1 According to the Petitioner, he opted voluntary retirement on 25th August 2001 from Central Reserved Police Force [“CRPF” for the sake of brevity] while serving on the post of ‘Soldier’.

6.2 The Petitioner would submit that on 14th August 2009 the Respondent No.2-M.S.R.T.C. published an advertisement to fill up various posts including a post at Sr.No.16, titled as “Transport Inspector (Junior)”. It further submits that out of the total 122 posts of Transport Inspector (Junior), 53 posts were meant for General category.

6.3 The Petitioner filed his application for the subject matter post online. Accordingly a Hall-ticket to undergo written examination dated 21st March 2010 was also issued to the Petitioner.

6.4 The Petitioner would further submit that after written examination he received no correspondence from the Respondent No.2, nor has got the appointment. He would submit that time and again he wrote to the R.No. 2 MSRTC thereby inquiring about his case and also to issue appointment order pursuant to his merit.

6.5 The Petitioner would further submit that it is only in response to the application dated 15th June 2016 filed under the Right to Information Act, 2005, the Respondent No.2 vide its letter dated 25th July 2016 intimated the Petitioner that he was not eligible to be considered under the category of General-Ex serviceman nor deserved to be considered from General category as was found age bar from the documents produced on record.

6.6 The letter dated 25th July 2016 issued by the Respondent No.2 to the Petitioner is reproduced as follows for the sake of convenience.

क्र.राप/कर्मवर्ग/राज्यसंवर्ग/ससेभ-२०१४/वा.नि./३४९३

दिनांक रू २५ जुलै, २०१६

प्रति,

अल्ताफ बादशहा मुजावर

माळी गल्ली, सोमवार पेठ,

तासगांव, ता.तासगांव,

जिल्हा सांगली

विषय :- वाहतूक निरीक्षक (क.) पदात नियुक्ती मिळणेबाबत.

संदर्भ :- आपला अर्ज दिनांक १५.०६.२०१६

आपल्या संदर्भित अर्जाच्या अनुषंगाने कळविण्यात येते की, रा.प. महामंडळातील वाहतूक निरीक्षक (क.) पदाच्या भरतीसाठी दिनांक १४.०८.२००९ रोजी देण्यात आलेल्या जाहिरातीच्या अनुषंगाने आपण अर्ज सादर केला होता. सदर अर्जामध्ये आपण माजी सैनिक असल्याचे नमूद केले होते.

सदर भरतीच्या जाहिरातीत स्पष्ट करण्यात आले होते की, लेखी परीक्षा अर्जाच्या छाननी शिवाय घेण्यात येणार असल्याने अर्ज करण्यापुर्वी उमेदवाराने स्वतः खात्री करावयाची आहे, की ते आवेदित पदाच्या सर्व अटी व शर्ती पूर्ण करतात. जर निवड प्रक्रियेच्या कोणत्याही टप्प्यावर असे दिसून आले की, उमेदवार पात्रतेचा निकष पूर्ण करीत नाही तर त्याची / तिची उमेदवारी / नेमणूक तात्काळ विनानोटीस रद्द करण्यात येईल.

आपण अर्ज सादर करताना अर्जामध्ये माजी सैनिक नमूद केलेले असल्याने छाननीपुर्व तयार करण्यात आलेल्या यादीमध्ये आपला खुल्या प्रवर्गातील माजी सैनिकांमध्ये समावेश होता. अर्जाची छाननी करताना आपण सेंट्रल रिझर्व्ह पोलिस फोर्समधील उमेदवार असल्याने माजी सैनिकांसाठी असलेल्या समांतर आरक्षणासाठी पात्र ठरला नाहीत. परंतु आपण माजी सैनिकांचे आरक्षणातर्गत येत नसल्याने आपला खुल्या प्रवर्गासाठी विचार करण्यात आला, परंतु आपली जन्मतारीख ३०.०६.१९७४ असल्याने दिनांक २४.०८.२००९ रोजी आपले वय ३३ वर्षांपेक्षा जास्त असल्याने आपण खुल्या प्रवर्गासाठी सुध्दा अपात्र ठरले होते. त्यामुळे मुलाखतीसाठी बोलविण्यात येणाऱ्या उमेदवारांच्या यादीमध्ये आपला समावेश होऊ शकला नाही.

स्वाक्षरी/—

महाव्यवस्थापक (क.व औ.सं.)

6.7 It is thus feeling aggrieved by the said communication declining the Petitioner to be considered for appointment on the subject matter post, present Petition is lodged by the Petitioner in the year 2017.

7. Petitioner's argument :-

7.1 Mr. Sharad Bhosale, learned counsel for the Petitioner would submit that the impugned rejection of his claim and the reasons contained therein are obviously contrary to the policy of the Central Government as also of the State Government. He would further submit that without considering the Government directions, Respondent No.2-M.S.R.T.C. has wrongfully rejected his claim.

7.2 Mr. Bhosale would invite our attention to the Circular dated 10th October 1990 issued by the Government of Maharashtra, General Administration Department, wherein it is stated that, there would be reservation for the Ex-Serviceman in the Class III and Class IV posts, which would be applicable to the Zilla Parishads, Corporations, Boards and Authorities under the administrative control of the State Government. He would submit that the R.No. 2 is also under mandate to provide reservation to the Ex-Servicemen in view of the said Circular.

7.3 Mr. Bhosale further submits that on 23rd November 2012, Government of India, through the Ministry of Home Affairs, Police Division-II, Resettlement and Welfare Directorate, issued an Office Memorandum, whereby the retired personnel from the Central Reserve Police Force [CRPF], Border Security Force [BSF], Indo-Tibetan Border Police (TBP) and Sashastra Seema Bal (S.S.B.), be given status as "Ex-Central Armed Police Force Personnel" (Ex-CAPF personnel).

7.4 Mr. Bhosale would further submit that vide the same said Office Memorandum, the State - Union Territories Governments concerned were to extend suitable benefits to such designated personnel on the lines of the benefits extended by the State-U.T. Governments to the Ex-Serviceman.

7.5 For the sake of convenience, both the clauses of the Office Memorandum dated 23rd November 2012 are reproduced as follows :

"1. There has a demand from various for that the retired Central Armed Police Force (CAPF) personnel may be given the status of Ex-CAPF personnel accordingly a proposal was sent to the Government for their consideration. Cabinet Committee on Security has approved the proposal of this Ministry to declare retired Central Armed Police Force personnel from Central Reserve Police Force (CRPF), Border Security Force (BSF), Central Industrial Security Force (CISF), Indo- Tibetan Border Police (TBP) and Sashastra Seema Bal (SSB) as "Ex-Central Armed Police Force personnel" (Ex-CAPF personnel).

2. Based on such designation, the State/UT Governments concerned_ extend suitable benefits to them on the lines of the benefits extended by the State/UT Governments to the Ex-Servicemen of Defense forces."

7.6 Thus, Mr. Bhosale would submit that the Respondent No.2 ought to have treated the Petitioner from the category of "Ex-Serviceman" and reservation applicable to the Ex-Serviceman ought to have been given to the Petitioner.

7.7 He would further submit that as the case of the Petitioner ought to have been considered under the quota for Ex-Serviceman, he could not have been debarred even on the point of over,age.

7.8 Last, but not least Mr.Sharad Bhosale submitted in view of the 2nd clause of the Office Memorandum dtd.23-11-2012, the R.No. 2-MSRTC was under obligation to provide reservation benefit to the Petitioner since he has been awarded status of Ex-CAPF Personnel. He would submit that as it was recorded in the Office Memorandum that the suitable benefits as awarded to the Ex-Servicemen be given to Ex-CAPF Personnel, the R.No.2 was bound to give reservation to the Petitioner, he being Ex-CAPF Personnel.

7.9 With these submissions, Mr. Bhosale strenuously argued to allow the Writ Petition in terms of its prayers.

8. Respondent's arguments :-

8.1 The Respondent would submit that it is apparent that the Petitioner was not qualified to be considered for the subject matter post.

8.2 Mr. Kalel, learned A.G.P. would submit that the explanation given by the M.S.R.T.C. by its letter dated 25th July 2016 is self explanatory.

8.3 That, considering that the selection procedure was conducted in the year 2009, it would not be possible to consider the Petitioner's case for any appointment, even if he found eligible.

8.4 With this the Respondents prayed to dismissed the Writ Petition.

9. Discussion and consideration :-

9.1 We have thoroughly heard Mr. Sharad Bhosale, Id. counsel for the Petitioner and the Ld. AGP. The moot question in the present Writ Petition is whether (i) the Petitioner falls under the category of Ex-Servicemen (Maaji Sainik), and (ii) whether the R.No. 2 was under obligation to provide reservation to the Ex-CAPF in view of the Office Memorandum dtd.23-11-2012.

9.2 From the documents produced on record, it appears that the Petitioner's date of birth is 30th June 1974. That means on the date of application, the Petitioner was at-least 35 years of his age. Thus, it is also seen that the Petitioner belongs to Other Backward Class of citizen, falling in Mujawar caste/Community.

9.3 The copy of the Entry Card, reveals that the Petitioner lodged his application from General category claiming reservation as "Ex-Serviceman".

9.4 The R. No.2, explaining rejection of Petitioner's claim addressed that the services of the Petitioner i.e. under CRPF do not fall under the category of Ex-Serviceman.

9.5 That, the Petitioner would neither get any reservation applicable to Ex-Serviceman nor could get the age relaxation applicable to the Ex-Serviceman category.

9.6 It further reveals that on failure to be considered from the Ex-Serviceman category to claim age relaxation, the Petitioner was rightly held disqualified for consideration of appointment as age barred.

9.7 This invites us to discuss as to whether the Petitioner could be termed as “Ex-Serviceman” in the light of the Office Memorandum dated 23-11-2012, issued by the Government of India (supra). To that, Clause No.2 of the O.M. dtd.23-11-2012 is self explanatory. It clearly shows that the category of Ex-CAPF Personnel is different from the category of Ex-Servicemen of defense personnel. Hence we have no doubt in our mind that the Petitioner can not be termed as a member of ‘Ex-Servicemen category’. Suffice to note, defense personnel means a member of either Army, Navy or Air Force under the Indian Defense Services. Admittedly, the Petitioner was not member of any such wing. We don’t accept the argument of the Petitioner that a member of Central Reserve Police Force can be termed as ‘Ex-Serviceman’ or is entitled for the service benefits applicable to the Ex-Servicemen.

As such we have answered first point recorded at above para. No. 9.1.

9.8 The State policy under Circular dated 10th October 1990 stands on different footing. It is about grant of concessions applicable to Ex-Serviceman of the Zilla Parishads. Corporations, Boards, Authorities under the administrative control of the State Government.

9.9 We also have to answer the Petitioner's contention that his case is covered by the Circular dated 10th October 1990.

9.10 It is to be noted that Circular dated 10th October 1980 was issued by the Government of Maharashtra, previously in respect of reservation in Class III and Class IV to the Ex-Serviceman category. The Circular dated 10th October 1990 follows the Circular dated 10th October 1980. Those are in respect of the benefits/concessions to be given to the members of Class-III and Class IV category of the the Ex-Servicemen i.e. members of Army, Navy or Air Force of Indian Defense Services.

9.11 On the keen study of the O.M. dtd. 23-11 2012, it appears that the personnel from CRPF, BSF, CISF, TBP and SSB were given status of Ex-Central Armed Police Force Personnel (Ex-CAPF personnel).

9.12 We have categorically expressed our disinclination to comprehend with the contention of Mr. Bhosale, Id. counsel for the Petitioner that 'CAPF personnel means Ex-Serviceman category'. The terms used in the said O.M. are very clear and unambiguous.

9.13 So also noting in the Office Memorandum dtd.23-11-2012 to extend suitable benefits to holder of Ex-CAPF personnel sets on the same line as benefits extended by the State / Union Territories to the Ex-Serviceman of defence forces, in our considered view, would not entitle the Petitioner for the appointment on the subject matter post.

9.14 Grant of reservation to a certain category is a creation of statute/service rules or by a Judicial Pronouncement. Noting in an Office Memorandum doesn't *ipso facto* apply as a service rule or condition of service unless accepted or applied as a statutory provision. For that, a suitable provision needs to be incorporated in the Service Rules.

9.15 We hold Petitioner's argument that 'the Office Memorandum noting has to be applied by the R.No. 2- MSRTC' as wholly misconceived for another reason. The Subject-matter Recruitment Procedure was of 2009, and the Office Memorandum is issued on 23-11-2012. By no stretch of imagination it could be accepted that the noting in the said Office Memorandum would retrospectively mandate application of reservation to Ex-CAPF Personnel in the Recruitment Process of 2009.

9.16 As such we find no error in the application of mind by the Respondent No.2-M.S.R.T.C. in declining Petitioner's claim for consideration of his candidature under the category of Ex-Servicemen. We also hold that the Office Memorandum dtd.23-11-2012 doesn't mandate the R.No. 2 – MSRTC to provide reservation to the EX-CAPF Personnel. As such, the R.No. - 2 was also even otherwise right in holding the Petitioner disqualified from General Category as being age barred i.e. by not applying age relaxation applicable to the Ex-Servicemen category.

9.17 There is another realistic reason for which we refrain from allowing the Petition. The advertisement is dated 14th August 2009. Although the Petitioner contends to be in correspondence with the Respondent No.2, the Writ Petition is filed in 2017 and has been insisted to be heard now in 2025. Obviously the advertisement of 2009 is complied. As such the Petitioner is too late in the day to agitate his claim even otherwise.

9.18 Therefore we have no hesitation to hold that the Writ Petition is a misconceived one, and is liable to be dismissed.

10. Hence, we pass the following order :

- (A) The Writ Petition stands dismissed.
- (B) Rule discharged.

[Ajit B. Kadethankar, J.]

[M. S. Karnik, J.]

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