

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6462 OF 2017

- 1] Ajiz Osman Singal,
Age : 49 years,
Occu : Service as Police Constable,
SRPF Group No. 14 (IRB),
Satara Area, Aurangabad
- 2] Uttam Ragho Pawar,
Age : 49 years,
Occu : Service as Police Constable,
SRPF Group No. 14 (IRB),
Satara Area, Aurangabad,
R/o Ekta Swarup Apartment,
Flat No. 3, Plot No. 47,
Sheetal Nagar, Satara, Aurangabad
- 3] Santosh Rajaram Kanadaje,
Age : 47 years,
Occu : Service as Police Constable,
SRPF Group No. 14 (IRB),
Satara Area, Aurangabad
- 4] Dattatray Anantrao Konde,
Age : 46 years,
Occu : Service as Police Constable,
SRPF Group No. 14 (IRB),
Satara Area, Aurangabad

.. Petitioners

Versus

- 1] The State of Maharashtra,
Through its Secretary
(Home Department),
Mantralaya, Mumbai
- 2] The Commandant,
Indian Reserve Police Batalian (IRB),
(Bharat Rakheev Batalian),
Gr. No. 14, Satara Area, Aurangabad
- 3] The Additional Director General of Police,
State Reserve Police Force,
Police Head Quarters, M.S. Mumbai,
Shaheed Bhagat Singh Road,
Colaba, Mumbai 400 001

.. Respondents

...
Advocate for petitioner : Mr. Ajay S. Deshpande
AGP for the respondent – State : Mr. A.S. Shinde
...

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 11 AUGUST 2022

ORAL ORDER (SANDEEP V. MARNE, J.) :

By way of present petition, petitioners take exception to the order dated 16-09-2015 passed by the Maharashtra Administrative Tribunal (Tribunal) in Original Application no. 651 of 2014. The original application was instituted by the petitioners challenging the communication dated 20-01-2014 by which seniority was circulated. It was a prayer of the petitioner before the Tribunal to consider their cases for promotion by modifying seniority list prepared as per the percentage of reservation prescribed and roaster for horizontal reservation and to grant them a deemed date of promotion.

2. The grievance of the petitioners has been captured by the Tribunal in paragraph no. 3 of the order dated 16-09-2015 which reads thus,

“3. Learned counsel for the Applicants argued that the Applicants were selected as Armed Police Constables pursuant to the advertisement dated 8.7.2007 published by the respondent no. 2. 15% posts were reserved for Ex-servicemen. Only 6 Ex-servicemen were selected and only 5 came to be appointed. As on today only the four Applicants who are ex-servicemen, are working. Learned Counsel for the Applicants

argued that the inter-se seniority all 614 candidates have been prepared on the basis of marks obtained by them in the selection process. This method suffers from many shortcomings as the candidates who are selected on the reserved posts do not get appropriate placement. Learned Counsel for the Applicants argued that for vertical reservation 100 point roster should be used for determining seniority in a batch, while for horizontal reservation, it should be done as per number of posts. To give an example, if there is 5% horizontal reservation of any category, the persons from that category should be placed at Sr. No. 20, 40, 60, 80 and 100 in 100 posts. Similarly in the present case, as reservation was 15% they should be placed at Sr. No. 7, 14, 21, 28 and so on."

3. In short, the prayer of the petitioners before the Tribunal was that the persons selected for appointment as Armed Police Constables through 15% Ex-Serviceman quota are required to be granted seniority as per the quota prescribed and not as per the merit obtained by them in the selection.

4. It is axiomatic in service jurisprudence that seniority of all persons selected for initial recruitment has to be determined in the order of merit secured by them in the selection. The said principle finds place in Rule 4(2)(a) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 which reads thus :-

"(2) Notwithstanding anything contained in sub-rule (1) (a) the inter-se seniority of direct recruits selected in one batch for appointment to any post, cadre or service, shall be determined according to their rank in the order of preference arranged by the commissioner, Selection Board or in the case of recruitment by nomination directly made by the competent authority, the said authority, as the case may be, if the appointment is

taken up by the person recruited within thirty days from the date of issue of the order of appointment or within such extended period as the competent authority may in its discretion allow.”

5. By relying on the said Rule, the Tribunal has dismissed the Original Application of the petitioners by recording a finding that the reservation applies only for selection of candidates and not for assignment of seniority.

6. Today, Mr. Deshpande appearing for the petitioners has relied upon Office Memorandum dated 29-08-2005 issued by Department of Personnel & Training and has invited our attention to paragraph no. 22 thereof. Mr. Deshpande candidly admits that said Office Memorandum was not brought to the notice of the Tribunal when the Original Application was decided.

7. We still proceeded to consider the said OM and find that paragraph no. 22 thereof relates to relaxation of standard of suitability for persons with disabilities. Paragraph no. 22 relied upon by Mr. Deshpande do not, in any manner, make reference to the principles for determination of seniority of selected candidates who suffer from disability. We are, therefore, of the view that the said Office Memorandum dated 29-12-2005 relied upon by Mr. Deshpande is of little assistance to the case of the petitioners.

8. Mr. Deshpande has also candidly admitted that there is no specific rule or administrative instruction which provides for determination of seniority of candidates selected through Ex-Servicemen quota as per the reservation rules. Consequently, we do not find any infirmity in the order passed by the Tribunal.

9. The writ petition is dismissed without any order as to costs.

[SANDEEP V. MARNE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/