

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 146 OF 2016

DISTRICT:- NANDURBAR

Rakesh S/o Aada Thakre

Age-30 years, Occu. Service,
R/o At Adgaon, Post. Mubarakpur,
Tq. Shahada, Dist. Nandurbar.

.. APPLICANT

V E R S U S

- i) The State of Maharashtra,
Through: The Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.
- ii) The Principal Chief Conservator
of Forest, Maharashtra State,
Vanbhavan, Ramgiri Road,
Civil Line, Nagpur.
- iii) The Chief Conservator of Forest
Dhule (Regional), Dr. Rammanohar
Lohiya Marg, near Police Training
Center, Lenin Chouk,
Dist. Dhule

.. RESPONDENTS

APPEARANCE : Shri S.D. Kotkar, learned counsel for
the applicant.
: Mrs. Deepali S. Deshpande, learned
Presenting Officer for the respondent
authorities.

**CORAM : JUSTICE SHRI P.R. BORA, VICE CHAIRMAN
AND
: SHRI VINAY KARGAONKAR, MEMBER (A)**

DATE : 08.01.2024

ORDER**[Per : Justice Shri P.R. Bora, Vice Chairman]**

Heard Shri S.D. Kotkar, learned counsel for the applicant and Mrs. Deepali S. Deshpande, learned Presenting Officer for the respondent authorities.

2. The present applicant was appointed as Forest Guard in the Forest Department of Maharashtra from the quota reserved for the handicapped persons. After serving for the period of continuous 03 years the applicant became eligible to be promoted to the post of Forester. It is the grievance of the applicant that though he was entitled for the promotion from the quota of disabled persons, according to his seniority in the said cadre, it was wrongly denied to him. In the circumstances, the applicant has approached this Tribunal seeking the following reliefs: -

“a) To allow this Original Application;

b) The impugned order dated 07.09.2015, issued by the respondent No. 3 may kindly be quashed and set aside and the respondents may kindly be directed to promote the applicant on the post of Forester/Assistant Plantation Office w.e.f. the year 2009.

bb) The respondents may kindly be directed to grant the deemed date of promotion to the post of Forester as of 11.05.2010 at par with the similarly situated persons namely Arvind Katkar and Anil Patil and promote the applicant on the post of Range Forest Officer w.e.f. 29.03.2022.”

3. Shri Kotkar, learned counsel appearing for the applicant at the commencement of his arguments itself submitted that the facts involved in the present matter are identical to the facts which existed in O.A. Nos. 649 & 650 both of 2019 decided by this Tribunal on 22.07.2022. Learned counsel submitted that for the similar reason the promotion has been denied to the present applicant. Learned counsel also referred to the judgment of the Hon'ble Bombay High Court in the case of **Arvind Mansubrao Katkar (W.P. No. 2635/2013)** decided on 10.04.2013. Learned counsel submitted that during the pendency of the present O.A. since the applicant has been promoted to the post of Forester vide order dated 3.9.2021, applicant is now praying for the only relief that of Deemed date in the promotional post of Forester.

4. The respondents have resisted the contentions raised and the prayer made in the Original Application by filing their joint affidavit in reply. Learned P.O. reiterating the averments taken in the said affidavit in reply submitted that vide Government Resolution dated 10.02.2009 few posts are deleted from the reservation for the handicapped persons and the post of Forster is one of the said post. Learned Presenting Officer submitted that in view of the Government Resolution,

the respondents have rightly denied the promotion to the applicant from the quota of handicapped persons.

5. We have carefully gone through the contentions raised in the O.A., as well as, in the affidavit in reply filed on behalf of the respondents. We have perused the judgment of the Bombay High Court in the case of Arvind Katkar (cited supra). We have also perused the judgment delivered by this Tribunal in O.A. Nos. 649 & 650 both of 2019. After having gone through the aforesaid judgments, we are convinced that the identical facts existed in both the aforesaid matters which are involved in the present matter. The Hon'ble High Court in the case of **Arvind Katkar** (cited supra) has held that the concerned Government Resolution deals with fresh recruits and not with the channel of promotion. The judgment of the Hon'ble High Court in the case of Katkar was questioned before the Hon'ble Apex Court, however, no interference was caused by the Hon'ble Apex Court in the said judgment. In the present matter also the appointment of the applicant is prior to the period of the aforesaid Government Resolution dated 10.02.2009. As has been observed by the Hon'ble High Court in its judgment in the case of Katkar, the service conditions cannot be changed abruptly. On 20.12.2009 the applicant completed 03 years of

period of his service. Thereafter he successfully underwent the requisite training from Dadasaheb Choudhary Forest Training School, Pal by 30.11.2011. He had therefore become entitled for his promotion.

6. After having considered the facts as aforesaid there has remained no doubt that the promotion to the post of Forester has been wrongly denied to the applicant. Promotion was denied to one Shri Arvind Katkar on the same ground. Shri Katkar is also an employee falling in the category of physically handicapped. After promotion was denied to said Shri Katkar, he has approached the Hon'ble Bombay High Court, Bench at Aurangabad by filing Writ Petition No. 2635/2013. The said petition has been allowed by the Hon'ble High Court vide its order dated 10.04.2013. In the said matter also the defense of the State Government was that by virtue of G.R. dated 27.09.2007 the physically handicapped persons are held ineligible for their promotion to the post of Vanpal. The Hon'ble Bombay High Court, however, turndown the objection raised by the Government by observing that the G.R. on the basis of which the promotion was denied to said Shri Arvind Katkar was of the period subsequent to his appointment. The Hon'ble High Court further observed that the service conditions cannot be

changed abruptly. Moreover, G.R. dated 27.09.2007 deals with the fresh recruits and not with the channel of promotion. With the aforesaid observations the Hon'ble High Court confirmed the decision given by the authority.

7. The applicant entered into the Forest Services on 21.12.2006 from the handicapped category as Forest Guard. After completion of the period of 03 years in service and after having undergone the requisite training, he had become entitled to be promoted as Vanpal. The Government Resolution dated 27.09.2007, which excludes or disentitles the handicapped candidates to be promoted as Vanpal would, therefore, not apply in the case of the present applicant. In the case of **Shri Arvind Katkar** (cited supra) the Hon'ble High Court has clarified the said position. It is thus evident that the order dated 07.09.2015 passed by respondent no. 03 is an erroneous order and deserves to be set aside. This Tribunal has dealt with the issue involved in the present matter while deciding O.A. No. 649/2019 with O.A. No. 650/2019. The order passed by respondent no. 03 is contrary to the rules, which were in existence when the applicant entered into the services of the respondents. The respondents, therefore, cannot deprive the

applicant from getting the promotion to the post of Forester, if otherwise there was no legal impediment.

8. As has been held by the Hon'ble High Court in the case of **Shri Arvind Katkar** (cited supra), G.R. dated 27.09.2007 by which the post of Forester has been excluded from reservation for physically handicapped persons is in respect of the fresh recruits and not for the employees aspiring for the post of Forester through the channel of promotion.

9. From the facts and circumstances discussed above it is evident that though the applicant was eligible for promotion to the post of Forester, the respondent no. 03 wrongly denied him the said promotion. The order passed by respondent no. 03 on 07.09.2015 is erroneous and deserves to be set aside. As has come on record, in the meanwhile period vide order dated 03.09.2021 the applicant has been promoted to the post of Forester and since then he is working on the promotional post. In view of the subsequent development so occurred the applicant got his O.A. amended and as per the amendment made in the O.A. now the applicant has prayed for directions against the respondents to grant him the deemed date of promotion to the post of Forester as 11.05.2010 at par with the similarly situated persons S/shri Arvind Katkar and Anil Patil

and to consider the applicant for the further promotion to the post of Range Forest Officer. The applicant has placed on record the documents showing that S/shri Arvind Katkar & Anil Patil both have been granted '11.05.2010' as the deemed date of their promotion to the post of Forester.

10. Rule 7 of the rules called as 'Range Surveyor, Group-B (Non-Gazetted), Chief Accountant, Accountant, Surveyor, Forester, Clerk-cum-Typist and Forest Guard Group - C (Recruitment) Rules, 2011' provides that the appointment to the post of Forester shall be made by promotion of a suitable person from the Circle gradation list of the Forest Guards, on the basis of seniority subject to fitness from amongst the persons holding the post of Forest Guard having not less than three years regular service in that post. The applicant fulfills the aforesaid criteria. In the circumstances, the applicant has certainly made out a case for accepting his request for grant of deemed date as prayed by him. For the reasons elaborated hereinabove, the following order is passed:-

ORDER

(i) The applicant shall be deemed to have been promoted to the post of Forester on 11.05.2010 and accordingly be placed in the seniority list maintained of the cadre of Foresters.

(ii) The Original Application stands allowed in the aforesaid terms. There shall be no order as to costs.

MEMBER (A)

VICE CHAIRMAN

O.A.NO.146-2016 (DB)-2024-HDD-Promotion