

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 424 OF 2017

DIST. : AURANGABAD

Sheshrao s/o Ramrao Kharate,)
Age. 58 years, Occu. : Service (now retired),)
R/o Plot no. 1, Gut no. 16,)
Harising Nagar, Satara Parisar,)
Aurangabad.) .. **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai – 32.)
2. The Deputy Director,)
Social Forestry,)
Aurangabad Division,)
Aurangabad.)
3. The Chief Conservator of Forest,)
(Regional), Aurangabad,)
District Aurangabad.)
4. The Divisional Forest Officer,)
Social Forestry, Yavatmal,)
Dist. Yavatmal.).. **RESPONDENTS**

APPEARANCE :- Shri S.D. Dhongde, learned Advocate for
the applicant.
: Shri S.K. Shirse, learned Presenting Officer
for the respondents.

CORAM : Hon'ble Shri B.P. Patil, Acting Chairman

RESERVED ON : 17th October, 2019

PRONOUNCED ON : 05th November, 2019

ORDER

1. The applicant has challenged the order dated 22.5.2017 issued by the res. no. 4 the Divisional Forest Officer, Social Forestry, Yeotmal, thereby directing recovery of an amount of Rs. 59,183/- from the applicant and also prayed to quash & set aside the said order, by filing the present Original Application.

2. The applicant joined the service with the respondent no. 2 as a Watchman on 1.6.1982 on daily wages basis. Thereafter he was given the post of Forest Guard since 20.11.1984 on daily wages. On 1.5.1986, by the letter dated 24.2.1986 issued by the respondent – the Sponsorship for Employment by the Social Welfare Department he was appointed as Ropawan Kotwal, subject to physical, written and oral tests. Thereafter he was posted at Pishor, Tq. Kannad, Dist. Aurangabad Range. On 1.3.1987 his services were terminated by the respondents orally and therefore he approached the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad by filing writ petition No. 1524/1990. The Hon'ble High Court decided the said writ petition in his favour, but the respondents have not obeyed the said order. Therefore, the applicant filed Contempt Petition before this Tribunal and this Tribunal on 19.6.1995 directed the respondents to reinstate the applicant. Accordingly he was appointed as a

Ropawan Kotwal on 11.7.1995 by issuing G.R. dtd. 15.6.1995. His services were treated as continuous one from 1.5.1986 i.e. from the date of initial appointment. On 1.5.1998 the applicant had completed 12 years continuous service on the post of Ropawan Kotwal. Therefore the respondents granted benefits of time bound promotion scheme to him as per the policy and G.Rs. issued by the Government from time to time.

3. On 25.4.2011 the applicant applied for correction in the seniority list and also for grant of benefits of second time bound promotion as per the Assured Career Progression Scheme on completion of next 12 years continuous service since 1.5.2010, but the said benefit was not granted to him. It is his contention that the said benefit of second time bound promotion as per the Assured Career Progression Scheme has been granted to his colleagues namely S/shri L.B. Kale, N.C. Nikule, A.A. Rathod and B.K. Magar. On 30.6.2017 the applicant retired from the service on attaining the age of superannuation. At the time of his retirement his service book was sent to the Pay Verification Unit, Aurangabad on 11.1.2017. The Pay Verification Unit, Aurangabad returned the service book of the applicant with a query as to since which date the initial appointment of the applicant should be treated. Pursuant to the said query the Deputy Conservator of

Forest, Aurangabad sent a letter to the Deputy Director of Social Forestry, Aurangabad on 3.3.2017 with a request to enclose the order since when the appointment of the applicant is to be treated and directed to make compliance of the objection raised by the Pay Verification Unit, Aurangabad. The res. no. 2 the Deputy Director of Social Forestry, Aurangabad without giving reply to the said query raised by the Pay Verification Unit, Aurangabad and without application of mind withdrew the first benefit of time bound promotional scale granted to the applicant arbitrarily after lapse of 18 years and directed recovery of Rs. 59,183/- from the applicant on the ground that the excess amount has been paid to him due to wrong pay fixation though he was not entitled to get the same. It is his contention that the res. no. 2 passed the impugned order illegally, arbitrarily and without giving an opportunity of hearing to the applicant and therefore the said order is illegal.

4. It is contention of the applicant that he never misrepresented or played any fraud on the respondents in getting the first benefit of time bound promotion scheme. It is his contention that the impugned order passed by the res. no. 2 directing recovery of an amount of Rs. 59,183/- is against the guidelines given by the Hon'ble Supreme Court in **Civil Appeal**

No. 11527/2014 arising out of S.L.P. (C) No. 11684/2012 & Ors. (State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.) reported at **AIR 2015 SC 596**. He has submitted that in case of similarly situated person the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in **writ petition No. 9246/2014 with Civil Application no. 15149/2015 (Shinde Balasaheb Sonaji Vs. the State of Maharashtra & Ors.)** relied on the decision of Hon'ble the Supreme Court in case of **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc.** (supra) and granted relief to the petitioner in the said matter. It is his contention that the impugned order is illegal and therefore he prayed to quash and set aside the same by allowing the present O.A.

5. The respondent nos. 2 & 3 have filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact that the applicant was appointed on 1.5.1986 and on 1.3.1987 he was terminated from the service and thereafter he filed writ petition bearing no. 1524/1990 before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad and thereafter as per the G.R. dtd. 15.6.1995 the applicant was reappointed on 11.6.1995. They have denied that the services of the applicant has been continued from the date of

his initial appointment i.e. from 1.5.1986 and therefore on completion of 12 years continuous service he was entitled to get the first benefit of time bound promotion scheme. The applicant was reappointed vide G.R. dtd. 15.6.1995 on certain conditions and one of the conditions is that his earlier service rendered to the Department would be considered for pension and death cum retirement gratuity benefits as a qualifying service and not for promotion etc. and another condition was that his seniority will be counted from the date of reappointment only. It is their contention that the earlier service of the applicant is counted for pension and D.C.R.G. but the same cannot be counted for promotion. The first benefit of time bound promotion scheme was granted to the applicant in contravention of the said condition. When the said mistake was noticed by the respondents they had withdrawn the same by the order dtd. 22.5.2017 issued by the Divisional Forest Officer, Social Forestry Division, Yeotmal based upon the orders passed by the Joint Director, Social Forestry Circle, Nagpur vide order dtd. 27.11.2001 as he was not eligible for the promotion. It is their contention that the applicant has given undertaking at the time of reappointment that the G.R. dtd. 25.6.1985 is binding on him. He had not challenged the clause (b) of the terms & conditions mentioned in the said G.R. It is their contention that in case of S/shri Kale, Nikule etc. the benefit of

time bound promotion was given to them as they were not reappointed and there was no break in their service. Therefore the case of the applicant cannot be compared with the case of those persons. It is their contention that other colleagues of the applicant have filed O.A. before this Tribunal for the similar relief, but it was dismissed. Those applicants have challenged the order of this Tribunal before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad by filing writ petition no. 217/2015, but the said writ petition was also dismissed by the Hon'ble High Court by the order dtd. 24.2.2015.

6. It is their contention that the Pay Verification Unit, Aurangabad returned the service book of the applicant raising some query. The letter of the Deputy Conservator of Forest, Aurangabad dtd. 3.3.2017 has already been complied with by the Deputy Director, Social Forestry Division, Aurangabad vide letter dtd. 18.3.2017. On the basis of the said letter the Deputy Conservator of Forest, Aurangabad replied to the Accounts Officer, Pay Verification Unit, Aurangabad on 15.2.2018. It is their contention that on the basis of the said orders the Government of Maharashtra and the Director of Social Forestry, Pune, the first benefit of time bound promotion given to the applicant has been withdrawn. There is no illegality in the impugned order and

therefore they supported the impugned order. Therefore, they prayed to dismiss the O.A.

7. The res. no. 4 has filed his affidavit in reply and resisted the contentions of the applicant. He also raised the similar contentions to that of the contentions raised by the res. nos. 2 & 3 in their affidavit in reply and prayed to dismiss the O.A.

8. During the course of the hearing the applicant deleted the prayer clause (D) and pressed the prayer clauses (B) & (C) only.

9. I have heard the arguments advanced by Shri S.D. Dhongde, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents. I have also gone through the documents placed on record.

10. Admittedly the applicant was initially appointed as a Watchman on 1.6.1982 on daily wages in the office of the res. no.2. Thereafter he was posted on the post of Forest Guard since 20.11.1984 on daily wages. On 1.5.1986, he was appointed as Ropawan Kotwal as per the letter dated 24.2.1986, subject to physical, written and oral tests. On 1.3.1987 his services had been terminated by the respondents orally. Therefore he approached the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad by filing writ petition No. 1524/1990. The

Hon'ble High Court decided the said writ petition in applicant's favour. Thereafter the applicant has been reinstated in the service as a Ropawan Kotwal w.e.f. 11.7.1995 in view of the G.R. dtd. 15.6.1995 on certain terms and conditions. Admittedly on 1.5.1998 the respondents granted the benefit of first time bound promotion to the applicant on completion of 12 years service on the post of Ropawan Kotwal. Admittedly the applicant retired from the service on attaining the age of superannuation on 30.6.2017. At the time of retirement of the applicant his service book was sent to the Pay Verification Unit, Aurangabad and it raised a query regarding his date of initial appointment. In pursuant to the said query, the res. no. 2 passed the impugned order and withdrew the benefit of first time bound promotion granted to the applicant on the basis of the order passed by the Joint Director, Social Forestry Circle, Nagpur vide order dtd. 27.11.2001 and directed recovery of Rs. 59,183/- from the applicant. Admittedly the applicant retired as a Forest Guard, which is a Group – C post.

11. Learned Advocate for the applicant has submitted that the respondents granted the benefit of first time bound promotion to the applicant on 1.5.1998 on completion of 12 years service on the post of Ropawan Kotwal. He has argued that the applicant was

appointed as a Ropawan Kotwal on 1.5.1986. Thereafter he was terminated but his services has been continued in view of the directions given by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in writ petition No. 1524/1990. He has submitted that the services of the applicant were treated as continuous service from 1.5.1986 and accordingly the first time bound promotion has been granted to him on completion of 12 years service i.e. on 1.5.1998. He has submitted that the respondents illegally cancelled the order granting benefit of first time bound promotion to the applicant by the impugned order. Therefore the impugned order is illegal. He has submitted that this Tribunal as well as the Hon'ble High Court in case of similarly situated persons has held that the earlier service of those applicants will be considered for granting time bound promotion in view of G.R. dtd. 8.6.1995, but the respondents had not considered the said aspect and had wrongly withdrawn the benefit of first time bound promotion.

12. He has relied on the order passed by this Tribunal in **O.A. no. 743/2006 (Tulshidas Vishwanath Dhanwade & Ors. Vs. the State of Maharashtra & Ors.)** dtd. 27.6.2007. He has submitted that the said decision has been challenged by the respondent State before the Hon'ble High Court of Judicature at Bombay,

Bench at Aurangabad in **writ petition No. 581/2008 (The State of Maharashtra & Ors. Vs. Tulshidas Vishwanath Dhanwade & Ors.)**, wherein the Hon'ble High Court upheld the decision of this Tribunal and dismissed the writ petition by the order dtd. 23.9.2019. He has submitted that the said issue has been finally settled and therefore the respondents ought not to have withdrawn the benefit granted to the applicant and directed the recovery from the applicant. Therefore, he prayed to quash the impugned order.

13. The learned Advocate for the applicant has further submitted that the applicant retired as a Forest Guard i.e. Group-C post. He never misrepresented the respondents in getting the benefit of first time bound promotion. He never practiced fraud on the respondents in getting the benefit of first time bound promotion. Even if it is presumed that there was mistake in granting the time bound promotion, then it is a mistaken on the part of the respondents. Therefore the applicant cannot be blamed therefor. He has submitted the respondents directed recovery of an amount of Rs. 59,183/- from the applicant when he was on the verge of retirement. The said recovery is not permissible in view of the guidelines given by the Hon'ble Supreme Court in **Civil Appeal No. 11527/2014 arising out of S.L.P. (C)**

No. 11684/2012 & Ors. (State of Punjab and others etc. Vs.

Rafiq Masih (White Washer) etc.) reported at **AIR 2015 SC 596**

on 18.12.2014, wherein the Hon'ble Supreme Court has observed

as under :-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employees, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

14. He has submitted that the case of the applicant is squarely covered under the guidelines given by the Hon'ble Supreme court in the above case and therefore he prayed to quash the impugned

order issued by the res. no. 2 directing recovery from the applicant, by allowing the present O.A.

15. Learned Presenting Officer has submitted that the applicant was not eligible to get the first time bound promotion in the year 1998 as he has been reappointed on 11.7.1995 in view of the G.R. dtd. 15.6.1995. He has submitted that in view of the clause (b) & (d) of the terms and conditions of the said G.R. dtd. 15.6.1995, the applicant was not entitled to get the benefit of the earlier service for promotion and his earlier service can be counted for pension & D.C.R.G. only. He has argued that as per the terms and conditions the seniority of the applicant can be counted from the date of reappointment, but mistakenly his earlier services were counted for grant of first benefit of time bound promotion. The said mistake has been noticed by the respondents when the Pay Verification Unit, Aurangabad has raised objection after verifying the record of the applicant at the time of his retirement. In view of the objection of the Pay Verification Unit, Aurangabad the respondents corrected the said mistake and withdrew the first benefit of time bound promotion and directed recovery of Rs. 59,183/- from the applicant. There is no illegality in the impugned order. Therefore, he prayed to reject the O.A.

16. I have gone through the documents produced on record. The only issue involved in this matter is regarding recovery of an amount from the applicant when he was on the verge of retirement. Therefore I have to consider the case of the applicant in that regard only. The applicant has challenged the order of withdrawing the first time bound promotion granted to him and not the re-fixation of the pay. Therefore the order passed by this Tribunal in **O.A. no. 743/2006 (Tulshidas Vishwanath Dhanwade & Ors. Vs. the State of Maharashtra & Ors.)** dtd. 27.6.2007 and the order of the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in **writ petition No. 581/2008 (The State of Maharashtra & Ors. Vs. Tulshidas Vishwanath Dhanwade & Ors.)** dtd. 23.9.2019, wherein the Hon'ble High Court has upheld the decision of this Tribunal and dismissed the said writ petition, are not relevant in the present matter.

17. Admittedly the applicant retired as a Group-C employee from the post of Forest Guard. The benefit of first time bound promotion was granted to the applicant w.e.f. 1.5.1998 after completion of 12 years service counting his earlier service. The said benefit was given to the applicant on their own account. Neither the applicant misrepresented the respondents nor practiced fraud on them in getting the said benefit. Therefore the

applicant cannot be blamed for it. The applicant received the said benefit w.e.f. 1.5.1998 till issuance of the impugned order. When the applicant was on the verge of retirement, the impugned order came to be issued on the basis of the objections raised by the Pay Verification Unit, Aurangabad. The said order was passed by the respondents without giving an opportunity of hearing to the applicant. The principles of natural justice have not been followed by the respondents while directing recovery against the applicant from his retiral benefits. Such type of recovery is impermissible in view of the guidelines given in the judgment of Hon'ble Supreme Court in case of **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc.** (supra). The case of the applicant is squarely covered by the clauses (i), (ii) & (iii) of guidelines given by the Hon'ble Supreme Court in the above said judgment. Therefore the impugned order is not legal one. Hence it requires to be quashed by allowing the present O.A.

18. In view of the discussions in foregoing paragraphs, the O.A. stands allowed. The impugned order dated 22.5.2017 issued by the res. no. 4 the Divisional Forest Officer, Social Forestry, Yeotmal directing recovery of an amount of Rs. 59,183/- from the applicant is hereby quashed and set aside. Respondents are directed to refund the amount of Rs. 59,183/-, if recovered, from

the applicant, to him within a period of 3 months from the date of this order, failing which the said amount shall carry interest @ 9% per annum from the date of this order till its realization. There shall be no order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 5TH November, 2019.

ARJ-O.A. NO. 424-2017 BPP (RECOVERY)