

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.649 OF 2019 AND
ORIGINAL APPLICATION NO.650 OF 2019**

DISTRICT:- AHMEDNAGAR

O.A.NO.649/2019

Mahendra s/o Devidas Koli,
Age : 34 years, Occ. Service as Forest Guard,
In the office of Range Forest Officer,
Social Forestry, Shrirampur,
Tq. Shrirampur, Dist. Ahmednagar.

...APPLICANT

O.A.NO.650/2019

Pravin s/o. Vishwanath Sonawane,
Age : 35 years, Occ. Service as Forest Guard,
In the office of Range Forest Officer
(Territorial), Ahmednagar.

...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through the Secretary (Forests),
Revenue & Forest Department,
Mantralaya, Mumbai.
- 2) The Principal Chief Conservator of Forest,
Maharashtra State,
Vasant Bhavan, Ramgiri Road,
Civil Lines, Nagpur – 440 001.
- 3) The Chief Conservator of Forest
(Territorial), Nasik, Aranya Sankul,
Old Agra Road, Opp. Adivasi Bhavan Nasik.
- 4) The Divisional Forest Officer,
Social Forestry, T.V.Centre,
Ahmednagar.

... COMMON RESPONDENTS

APPEARANCE : Shri J.B.Choudhary, Advocate for
Applicants in both cases.
: Shri M.P.Gude, Presenting Officer
for respondents in both cases.

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

Decided on : 22-07-2022

**C O M M O N O R D E R
(PER: JUSTICE SHRI P. R. BORA)**

1. In these O.As., both the applicants are claiming identical reliefs on identical facts. In the circumstances, we have heard both these O.As. together and the same are being decided by this common reasoning.

2. Both the applicants were appointed as Forest Guard from physically handicap category. On 01-12-2006, both applicants completed training at Forest Guard Training School, Jalna. Vide G.R. dated 08-09-2008, issued by the General Administration Department, State of Maharashtra, Forest Guard, who has completed 3 years' service on the said post is held entitled for promotion on the post of Forester. As contended in the present O.As., Forest Guards working in Pune Region from physically handicapped category have been promoted to the post of Forester in the year 2012. The applicants also, therefore, submitted applications to the Chief Conservator of Forests, respondent no.2 in the present O.As. with a request to

promote them to the post of Forester. Office of respondent no.3, however, informed the applicants that the posts of Assistant Conservator of Forests, Range Forest Officer and Forester have been excluded from the reservation for physically handicapped category. However, thereafter, Additional Chief Conservator of Forests, Maharashtra State, Nagpur vide his letter dated 01-04-2017 proposed to the Government to consider cases of physically handicapped Forest Guards for their promotion to the post of Forester in light of the judgment in the case of Shri Arvind Katkar. It is the case of the applicants that the Government did not accept the said proposal and the applicants were, therefore, constrained to file the present O.A. In the circumstances, applicants have approached this Tribunal with the following prayers:

“(a) Record and proceedings may kindly be called for.

(b) The impugned order dated 1.4.2019, issued by the respondent No.1 may kindly be quashed and set aside.

(c) It may kindly be held and declared that the Government Resolution dated 30.5.2018 issued by the Social Justice and Special Assistance Department is not applicable to the service

conditions of the applicant in respect of his promotion on the higher post.

(d) By issuing a suitable order/ directions, it be declared that the applicant is eligible for promotion on the post of Forester or any other equivalent post from 3% reserved quota for Persons with disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995, and further direct the respondent No.3 to promote the applicant on the post of Forester or any other equivalent post from the date on which the applicant completed three years service and also pay all consequential benefits to the applicant.

(e) Any other relief as the Court deems fit may kindly be granted in the interest of justice.”

3. The contentions raised in the O.As. are resisted by respondents. Shri Baban Bhikaji Phatangale, working as Range Forest Officer, Social Forestry, Rahata, Dist. Ahmednagar has submitted the affidavit in reply on behalf of respondent nos.1 to 4. According to the respondents vide G.R. dated 13-07-2004 the posts enlisted in Schedule-B appended to the said Resolution have been omitted from the reservation to the physically handicapped persons. It is further contended that the judgment in the case of Arvind Mansubrao Katkar may not apply to the

facts of the present case. It is further contended that issue with reference to promotions for physically handicapped persons is pending before the State Government and after the decision of the Government necessary steps would be taken by the respondents. It is further contended that the Government has issued G.R. on 27-09-2007 and has thereby omitted posts of Assistant Conservator, RFO, Forester and Forest Guard from the physically handicapped category quota and cancelled 3% reservation of physically handicapped category w.e.f. 12-07-2004. On these grounds, the respondents have prayed for dismissal of both the O.As.

4. Learned Counsel appearing for the applicants tendered across the bar copy of the order passed by Nagpur Bench of this Tribunal in O.A.No.235/2016. The learned Counsel submitted that the facts in the present matters are identical with the facts which were involved in the aforesaid O.A. The learned Counsel taking us through the said judgment submitted that all the objections which are raised by the respondents in the present matters were also raised before the Nagpur Bench in the aforesaid O.A. However, the Nagpur Bench has turned down the said objections and has allowed the said O.A. and has directed the respondents

to promote the applicant in the said case from the post of Forest Guard to the post of Forester as per the rules if he otherwise fulfills the promotional criteria.

5. Learned Counsel submitted that the issue involved in the case of Arvind Katkar was the same though on facts there may be some variance. The learned Counsel submitted that ratio laid down in the said judgment would squarely apply to the facts in the present matters. Learned Counsel brought to our notice that in the matter of Arvind Katkar the respondent State has gone up to the Supreme Court by filing SLP against the judgment and order passed by the Aurangabad Bench of the Hon'ble Bombay High Court in Writ Petition No.2635/2013 but the said SLP was summarily dismissed by the Hon'ble Supreme Court. The learned Counsel submitted that since the applicants in the present matters stand at par with the applicant in O.A.No.235/2016, both the present O.As. deserve to be allowed.

6. Shri M.P.Gude, learned P.O. in his arguments reiterated the contentions raised in the affidavit in reply and prayed for dismissal of the O.As.

7. We have carefully considered the submissions advanced on behalf of the applicants as well as the respondents. We have gone through the documents filed on record and have also perused the judgments relied upon. In so far as the factual matrix is concerned, there seems no dispute. The only issue which falls for our consideration in the present matters is whether the physically handicapped persons like the applicants in these O.As. can be denied the promotion to the post of Forester on the ground of their disability.

8. Applicant in O.A.No.235/2016 was appointed as Forest Guard against the physically handicapped quota in the year 2007. Said applicant was due for promotion as Forester after completion of 3 years of service as Forester. He submitted representations but they were not decided by the authority concerned. Said applicant was having Orthopedic deformity (अस्थीव्यंग) and was thus a physically handicapped person. Since he was denied promotion, he approached the Maharashtra Administrative Tribunal Bench at Nagpur. The Hon'ble Nagpur Bench has allowed the O.A. filed by the said applicant. Copy of the order passed in the said matter is placed on record by the present applicants.

9. We have gone through the entire text of the said order. The Nagpur Bench of the Tribunal has allowed the said O.A. relying on the case of one Arvind Katkar who was also denied promotion from the post of Forest Guard to the post of Forester under the handicapped category. Said Arvind Katkar approached the Competent Authority and Commissioner, Handicapped Welfare Commissionerate, Maharashtra State, Pune and the said Commissioner passed the following order on 14-05-2012:

“क) वरील परिच्छेद क्र. ब मध्ये नमूद केल्याप्रमाणे अर्जदार यांच्याकडे समकक्ष पद उपलब्ध होईपर्यंत अर्जदार वनपाल पदाच्या पदोन्नतीसाठी पात्र ठरलेल्या दिनांकापासून जाब देणार यांनी अर्जदार यांना वनपाल पदावरील पदोन्नतीचा मानीव दिनांक देऊन वनपाल पदाची वेतनश्रेणी लागू करून अर्जदार यांना देय असणारे वेतन व भत्ते व फरकाची रक्कम पुढील तीस दिवसांत अदा करावी.”

10. The aforesaid order was challenged by the State Government by filing Writ Petition No.2635/2013 before the Aurangabad Bench of the Hon'ble Bombay High Court. The Hon'ble High Court rejected the said Writ Petition. The observations made and findings recorded by the Hon'ble High Court in the judgment and order passed in the aforesaid Writ Petition are material. We deem it

appropriate to reproduce the said observations, which read thus:

“(4) When the petitioner was appointed on 29/12/2006 from the handicapped category as Forest Guard, the respondent was entitled to be promoted as Vanpal in 2009. The Government Resolution dated 27/09/2007 was introduced by virtue of which the said post of Vanpal was not meant for handicapped candidate. Even by the said Government Resolution, the post of Forest Guard is also not meant for handicapped person but the respondent is continued on the said post.

(5) The service conditions of the respondent cannot be changed abruptly. The authority has taken into consideration all the facts of the matter and has passed the order stating that if the said post of Vanpal is not available then the respondent should be promoted to the equivalent post.

(6) Moreover, the said Government Resolution deals with fresh recruits and not with the channel of promotion. Respondent is seeking promotion.

(7) Considering all the aforesaid aspects of the matter, no error has been committed by the Authority while passing the impugned order. Writ Petition is dismissed. No costs.”

11. The State challenged the aforesaid order passed by the Hon'ble Bombay High Court before the Hon'ble Supreme Court by filing SLP. Hon'ble Supreme Court, however, has dismissed the said SLP with the following observations:

“In the peculiar facts and circumstances of the case, we do not entertain the special leave petition. The special leave petition is, accordingly, dismissed. However, the issues arising therein are left open for decision in an appropriate case.”

12. In the order passed in O.A.No.235/2016, Nagpur Bench of the Maharashtra Administrative Tribunal has also referred to one earlier judgment of the Tribunal in O.A.No.257/2016 decided on 26-09-2019. Applicant in O.A.No.235/2016 stood at par with the applicant in O.A.No.257/2016. Said applicant was also having Orthopedic disability and was denied promotion to the post of Forester on the ground that as per the revised government policy, persons with such disability cannot be promoted to the post of Forester. Nagpur Bench of this Tribunal while deciding the said matter has directed the respondents therein to promote the said applicant from the post of Forest Guard to the post of Forester as per the rules if he otherwise fulfills the promotional criteria. The deemed

date and other consequential benefits were also granted in favour of the said applicant.

13. After having considered the facts and circumstances as above, it is difficult to accept the stand taken by the respondents not to promote the applicants in view of G.R. dated 27-09-2007. The applicants admittedly entered into the services of the respondents in the year 2006. When the applicants resumed duties with the respondents the promotional channel was open for them. Vide G.R. dated 27-09-2007, the Government deprived the physically handicapped persons from getting further promotion on the post of Forester. The decision so taken by the Government was contrary to the rules which were in existence when the applicants entered into the services of the respondents. The applicants were, therefore, legitimately expecting promotion on the post of Forester. The applicants cannot be deprived from getting promotion on the post of Forester in view of the subsequent modification of policy by the respondents. As has been rightly contended by the learned Counsel for the applicants the respondents cannot change the recruitment rules abruptly and deprive the applicants from the benefits which were available at the time of their entry in the services.

14. Moreover, as has been submitted by the learned Counsel for the applicants, the Government Resolution dated 27-09-2007 by which the post of Forester was excluded from reservation for physically handicapped persons was in respect of the fresh recruits and not for the employees securing the post of Forester through the channel of promotion. As such, said G.R. may not come in the way of the applicants. Secondly, in view of the subsequent G.R. dated 17-03-2011, the said G.R. must be held to have been superseded. In view of the aforesaid G.R. and in view of the decision in the case of Arvind Katkar as well as in O.A.No.235/2016, the order dated 01-04-2019 has to be set aside and is accordingly set aside.

15. The orders in O.A.No.235/2016 as well as in O.A.No.257/2016 are passed after coming into existence of G.R. dated 30-05-2018. The G.R. dated 30-05-2018 apparently appears to be contrary to the provisions under the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995, which specifically provides that no person shall be denied opportunity for promotion on the ground of physical disability. In the G.R. dated 30-05-2018, the physically

handicapped persons are declared ineligible even for their appointment on the post of Forest Guard.

16. As has been observed by the Hon'ble Bombay High Court in the case of Arvind Katkar in Writ Petition No.2635/2013 the service conditions of the applicants cannot be changed abruptly. Further the said G.R. cannot be made applicable retrospectively. Said G.R. deals with fresh recruits and not with the channel of promotion of employees already in service as has been observed by the Hon'ble Bombay High Court. In the present matter, the applicants are seeking promotion. None of the aforesaid G.Rs. would come in the way of granting promotion to the applicants.

17. For the reasons stated above, both the O.As. are allowed with following order:

ORDER

(i) Both the applicants are held eligible for promotion to the post of Forester or any other equivalent post from the quota reserved for persons with disability.

(ii) Respondents are directed to promote the applicants to the post of Forester or any other equivalent post subject to availability of the vacant posts.

(iii) It is further directed that in case the grant of promotion is not possible at this stage, respondents shall allow the deemed date of promotion to the applicants and make applicable the pay scale of the promotional post from the said date till the post of Forester or equivalent post becomes available.

(iv) The aforesaid exercise is to be completed by the respondents within 6 weeks from the date of uploading this order on the official website of the Tribunal.

(v) Both the O.As. are allowed in the aforesaid terms with no order as to costs.

(BIJAY KUMAR)
MEMBER (A)

(JUSTICE P.R. BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 22-07-2022.

YUK O.A. NO.649.2019 & 650.2019 PRB