

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 202 OF 2015

DIST. : AURANGABAD / HINGOLI / NANDED

- (1) Anil s/o Suryakant Jondhale,
Age. 25 years, Occu. Service,
(as Dirver), R/o D-91/10,
Shivaji Nagar, 11th Scheme,
Garkheda Area, Aurangabad.
- (2) Ganesh s/o Kailas Aakhade,
Age. 31 years, Occu. As above,
R/o H. NO. 10.322, Main Road,
Ranjangaon Shenpunji,
Near Balkrishna Petrol Pump,
Aurangabad.
- (3) Santosh s/o Vasantao Adsul,,
Age. 31 years, Occu. As above,
R/o N-11, G-10/11, Navjeevan
Colony, Hudco, Aurangabad.
- (4) Shaikh Azim Shaikh Karim,
Age. 32 years, Occu. As above,
R/o Kiradpura, Behind Arafat Masjid,
Galli no. 3, Aurangabad.
- (5) Uday s/o Prahlad Dasare,
Age. 32 years, Occu. As above,
R/o H. No. 63 (MHADA),
Rankrupa Colony, Shahnoorwadi,
Aurangabad.
- (6) Dinkar s/o Wamanrao Shinde,
Age. 30 years, Occu. As above,
R/o at Jalal Dhaba,
Post Pimpaldari, Tq. Aundha (Nagnath),
Dist. Hingoli.

- (7) Sandeep s/o Devidas Thamke,
Age. 34 years, Occu. As above,
R/o Plot no. 4, Mayur Aptmt.,
Kailas Nagar (Shri Nagar),
Nanded.
- (8) Pratap s/o Mangilal Pawar,
Age. 30 years, Occu. As above,
R/o Galli No. B-06, Smashan
Maruti Road, Sanjay Nagar,
Baijipura, Aurangabad. -- APPLICANTS

VERSUS

- (1) The State of Maharashtra,
(copy to be served on C.P.O.,
MAT, Bench at Aurangabad).
- (2) The Additional Principal Chief
Conservator of Forests (Admin.
Subordinate Cadres),
M.S., Nagpur.
- (3) The Chief Conservator of Forests,
(Territorial), Aurangabad.
- (4) The Deputy Conservator of
Forests, Aurangabad Forest
Division, Aurangabad. -- RESPONDENTS

APPEARANCE : Shri A.S. Deshmukh, learned Advocate for the
applicants.

: Shri N.U. Yadav, learned Presenting Officer for
respondent nos. 1 & 2.

: Shri Vivek Bhavthankar, learned Special
Counsel for respondent nos. 3 & 4.

**CORAM : HON'BLE SHRI RAJIV AGARWAL, VICE CHAIRMAN
AND
HON'BLE SHRI J. D. KULKARNI, MEMBER (J)**

J U D G M E N T**(Delivered on this 13TH day of December, 2016)**

1. The applicants are claiming that the impugned communications dated 9.3.2015 & 6.4.2015 issued by the res. no. 2 the Additional Principal Chief Conservator of Forests (Admn. Subordinate Cadres), M.S., Nagpur (Annex. A.6 & A.7 respectively) be quashed and set aside and the respondents be restrained from taking any adverse action in relation to the appointment of all the applicants as Drivers.

2. It is an admitted fact that all the applicants participated in the process of recruitment for the post of Drivers pursuant to the advertisement issued by the res. no. 4 on 29.2.2012 and the corrigendum to it on 7.3.2012. By the initial advertisement dated 29.2.2012, 4 posts of Drivers were to be filled in, which were enhanced to 8 by the corrigendum issued on 7.3.2012. The applications of the eligible candidates were called for filling the posts of Drivers and other posts such as Accountant, Forest Guard, Khalsuma, Mali etc.

3. The applicants participated in the selection process and the competent authority i. e. the res. no. 4 the Deputy Conservator of Forests, Aurangabad Forest Division, Aurangabad issued the appointment orders in favour of the applicants. The said appointment orders are at paper book pages 26 to 41 (both the pages inclusive). Accordingly, the

applicants join on the respective posts as Drivers and were accordingly serving on the said posts.

4. In the meantime, one O.A. bearing no. 756/2012 was filed against the selection of the applicants and the said O.A. was dismissed by this Tribunal on 9.1.2013. According to the applicants, all the procedure and formalities and / or requirements were duly complied with by the res. no.4 before issuing appointment orders in favour of the applicants. However, on 9.3.2015, the res. no. 2 issued a communication (Annex. A.6), thereby the appointment orders of the applicants have been cancelled. The said impugned order of cancellation of applicants appointment to the post of Drivers is as under :-

“विषय :- औरंगाबाद वनवृत्तातील सन २०१२ मधील वाहन चालक पदाच्या भरतीत झालेला घोटाळा.

संदर्भ :- मुख्य वनसंरक्षक (प्रादे), औरंगाबाद यांचेकडील गोपनीय पत्र क्र. कक्ष—२/१२/आस्था/अराप/प्र.क्र. /१९९/१४—१५, दि. २२.१.२०१५.

सन २०१२ मधील वाहन चालक भरती प्रक्रियेबाबत मुख्य वनसंरक्षक (प्रादे), औरंगाबाद यांनी संदर्भिय पत्रान्वये सादर केलेल्या अहवालाचे अवलोकन केले असता, सदरची भरती प्रक्रिया शासन निर्णयातील तरतुदीनुसार झालेली नसल्याचे खालील प्रमाणे निदर्शनास आलेले आहे.

२.०० वाहन चालक गट—क चे पद आहे. त्यांचे भरती करीता शासन निर्णय साप्रवि क्र. प्रानिमं—२००७/प्र.क्र. /४६/०७/१३—अ, दि. १९.१०.०७ अन्वये २(अ) प्रमाणे किंवा महसूल व वनविभाग शासन निर्णय क्र. एफएसटी ०८/१८/प्र.क्र. ४६९/फ—४, दि. २१ जुलै, ०९ अन्वये जिल्हानिवड समिती स्थापन करणे अपेक्षित होते. परंतु उपवनसंरक्षक (प्रादे), औरंगाबाद यांनी वरील प्रमाणे समिती गठीत न करता, शासन नियमाचे उल्लंघन करून भरती प्रक्रिया राबविलेली आहे.

३.०० उपवनसंरक्षक (प्रादे), औरंगाबाद यांनी वाहन चालक पदाची दि. २९.०२.२०१२ रोजी प्रसिध्द केलेली जाहिरातीमध्ये वाहन चालक पद भरती करीता शासन निर्णय दि. १९ ऑक्टो. २००७ चे क्र. ५(३) नुसार “शालांत परीक्षा उत्तीर्ण पेक्षा कमी अर्हता आवश्यक असलेल्या उदा. सुतार, गवंडी, वाहन चालक इत्यादी संवर्गातील पदांसाठी व्यावसायिक चाचणी, आवश्यक तेथे शारिरीक क्षमतेची व्यावसायिक चाचणी, आवश्यक तेथे ४० गुणांची शारिरीक क्षमतेची चाचणी व मुलाखतीसाठी १० गुण ठेवून उमेदवारांची निवड करण्यांत यावी. ज्या पदासाठी शारिरीक क्षमतेची चाचणी घेण्याची आवश्यकता नाही अशा पदांसाठी ९० गुणांची व्यावसायिक चाचणी व मुलाखतीसाठी १० ठेवून उमेदवारांची निवड करण्यात यावी,” अशी तरतुद आहे. परंतु, उपवनसंरक्षक औरंगाबाद यांनी सदर तरतुदीचे पालन केले नाही व लेखी परीक्षा ४० गुण, व्यावसायिक परीक्षा ९० व तोंडी परीक्षा ६० गुणांची असे एकूण १९० गुणांची परीक्षा घेउन, भरती प्रक्रिया राबविण्यात आलेली असल्याचे दिसून आलेले आहे.

४.०० अंतिम निवड यादी प्रसिध्द करतांना झालेली चूक समितीने त्यांचे निदर्शनास आणून दिलेली असतांना उपवनसंरक्षक, औरंगाबाद यांनी ठराविक उमेदवारांस अंतिम निवड यादीत आणण्यासाठी नव्याने समितीची बैठक बोलावून नवीन पध्दतीने गुणांची कार्यवाही करून ठराविक उमेदवारांना अंतिम निवड यादीत आणण्याचा नियमबाह्य प्रयत्न केला आहे.

५.०० विभागीय वन अधिकारी (तेंदू व इतर) औरंगाबाद आणि प्रशासकीय अधिकारी, दिग्द. विभाग औरंगाबाद यांचे समितीस चौकशीसाठी उमेदवारांचे गुणांचा अधिकृत तक्ता दिला होता, तो तक्ता श्री. ओ.एस.चंद्रमोरे, तत्कालीन उपवनसंरक्षक (प्रादे) औरंगाबाद यांचे स्वाक्षरीचा आहे. तसेच दि. १४.८.२०१४ रोजी झालेल्या बैठकीत तयार करण्यात आलेला तक्ताही अध्यक्ष म्हणून त्यांचेच स्वाक्षरीचा आहे. या दोन्ही तक्त्यांत श्री. आडसुळ संतोष वसंतराव यांची अंतिम निवड होईल, अशा पध्दतीने गुणांची बेरीत केलेली आहे, असे स्पष्ट दिसत आहे.

६.०० उपरोक्त गट—क वाहन चालक पदाची भरती प्रक्रिया व नमणुका ह्या पुर्णतः शासनाने विहित केलेल्या कार्यपध्दतीशी विसंगत असून, शासन निर्देशाप्रमाणे झालेल्या नाहीत, हे स्पष्ट झालेले आहेत. यास्तव उप वनसंरक्षक (प्रादे), औरंगाबाद यांनी गट—क वाहन चालक पदाची केलेली भरती प्रक्रिया व तदनुषंगाने उमेदवारांच्या झालेल्या नेमणुका रद्द बादल ठरविण्यात येत आहेत. सदर आदेशाची अंमलबजावणी तात्काळ करून अनुपालक अहवाल उलट टपाली या कार्यालयास सादर करावा.”

5. On 6.4.2015, the res. no. 2 against issued one more communication (Annex. A.7) and reiterated the conclusion reached earlier regarding cancellation of selection process and consequential cancellation of appointment orders of the candidates. Both these communications are challenged by the applicants in the present O.A.

6. The res. nos. 2 & 3 have filed affidavit in reply, which has been sworn in by Shri Ashok Rajendra Mande, Chief Conservator of Forest (Territorial), Aurangabad. According to the respondents, the Selection Committee for selection of eligible candidates on the post of Drivers constituted by the res. no. 4 was not as per the law i. e. as per G.R. dated 19.10.2007. As per the said G.R., the concerned Dist. Collector is supposed to be the President of the Selection Committee, however, Selection Committee was constituted by the Deputy Conservator of Forest (Territorial), Aurangabad under his Chairmanship and the concerned Assistant Conservator of Forest, Aurangabad was appointed as a Member Secretary. The said Selection Committee prepared the select list in such a manner so as to include the names of the particular persons in the select list though such persons were not eligible and entitled to the post of Driver as per merit and, therefore, entire Selection Committee was illegal and the process conducted by it was also illegal.

7. It is further stated that the advertisement was not issued as per the provisions of G.R. dated 19.10.2007 and particularly as per clause 5 (3) of the said G.R., which says that the post of Driver requiring qualification lesser than S.S.C. shall be filled in by competitive examination and whenever necessary by physical examination with oral interview. The said clause further states that for such posts, 50 marks shall be provided for competitive examination, 40 marks shall be provided for physical fitness and 10 marks shall be provided for oral test. It is further stated in the said clause that where physical fitness test is not required, then in such cases 90 marks shall be provided for competitive examination and 10 marks shall be provided for oral interview. The said instructions have not been followed by the Deputy Conservator of Forest. It is further stated that the corrigendum for additional 4 posts of Drivers was issued without obtaining sanction of the Dist. Collector.

8. The respondents further submitted that illegal and improper calculation was done in the merit list. The said illegality has been specifically mentioned in para 8 of the affidavit in reply, which is as under :-

%&. That, it is also pertinent to note that, the concerned Deputy Conservator of Forest under whose Chairmanship the recruitment process was initiated had prepared the final selection list in such a manner that, particular candidates are shown in the merit list. For doing this,

the marks prescribed under the different heads were incorrectly calculated. For doing this, the addition of marks was deliberately done incorrectly. As per the merit list prepared by the concerned selection committee, the marks of the selected candidate is shown as under,

Sr. No.	Name of Candidate	Written Exam. Marks	Marks given by RTO	Marks given by S.T. Corp.	Total of Column No. 4 and 5	Marks given by Dy. C.F.	Oral Exam Marks	Total
1	2	3	4	5	6	7	8	9
1	Shaikh Ajim Sk. Karim	34	36	36	36.18	8	7.33	85.51
2	Shinde Dinkar Wamanrao	25	35	32	35.16	9	6.00	75.16
3	Aadsul Santosh Vasantrya	27	31	26	31.13	8	8.83	74.96
4	Aakhade Ganesh Kailash	31	29	30	29.15	8	5.83	73.98
5	Choudhari Sanjan Anandrao	29	33	33	33.17	8	2.83	73.00
6	Pawar Rahul Sheshrao	29	31	32	31.16	8	4.50	72.66
7	Mote Dhiraj Ramdas	24	33	29	33.15	9	5.00	71.15

Where, the actual calculation, the chart of the candidate would be as follows,

Sr. No.	Name of Candidate	Written Exam. Marks	Marks given by RTO	Marks given by S.T. Corp.	Total of Column No. 4 and 5	Marks given by Dy. C.F.	Oral Exam Marks	Total
1	2	3	4	5	6	7	8	9
1	Shaikh Ajim Sk. Karim	34	36	36	36.00	8	7.33	85.33

2	Aakhade Ganesh Kailash	31	29	30	29.50	8	5.83	74.33
3	Shinde Dinkar Wamanrao	25	35	32	33.50	9	6.00	73.50
4	Pawar Rahul Sheshrao	29	31	32	31.50	8	4.50	73.00
5	Aadsul Santosh Vasantrao	29	33	33	33.00	8	2.83	72.83
6	Choudhari Sanjan Anandrao	28	31	26	28.50	7	8.83	72.33
7	Mote Dhiraj Ramdas	24	33	29	31.00	9	5.00	69.00

By doing the above illegal and improper calculation, the candidate, who was actually in merit list at Sr. No. 3 was shown at Sr. No. 2 and the candidate who was at Sr. No. 2 was shown at Sr. No. 4. The above exercise had been undertaken by the concerned Deputy Conservator of Forest with malafide intention so as to favour particular candidate.”

9. It is stated that some complaints are received about illegality committed in the selection process of the post of Drivers and, therefore, enquiry was initiated and therein it was found that the selection process initiated by the res. no. 4 was grossly illegal and improper and the provisions of the G.Rs. 19.10.2007 and 21.7.2009 were not followed by the res. no. 4 and, therefore, the selection was done for extraneous consideration and, as such, it was cancelled. It is stated that the

findings of the Tribunal in the judgment and order delivered on 9.1.2013 in the O.A. no. 756/2012 cannot obstruct the respondents from cancelling the appointment orders of the applicants.

10. We have heard Shri Avinash Deshmukh, learned Advocate for the applicants, Shri N.U. Yadav, learned Presenting Officer for respondent nos. 1 & 2 and Shri Vivek Bhavthankar, learned Special Counsel for respondent nos. 3 & 4. We have also perused the affidavit, affidavit in reply and various documents placed on record.

11. The only material point to be considered in this O.A. is whether the impugned communications dated 9.3.2015 (Annex. A.6) and 6.4.2015 (Annex. A.7) cancelling the appointment orders of the applicants are legal and proper ?

12. The learned Advocate for the applicants Shri A.S. Deshmukh submitted before us that the applicants have participated in the due process of selection conducted for recruitment of the Drivers and they have already been appointed and are working on the post of Drivers and, therefore, act of cancellation of their appointment orders is absolutely illegal and arbitrary.

13. The learned Advocate for the applicant has placed reliance on the judgment delivered by the Hon^{ble} Supreme Court in the case of **GIRJESH SHRIVASTAVA & ORS. VS. STATE OF M.P. & ORS. {2010 (10) SCC 707}**, wherein in para nos. 28 & 29 the Hon^{ble} Supreme Court has observed as under :-

28. More importantly, in deciding these issues, the High Court should have been mindful of the fact that an order of cancellation of appointment would render most of the appellants unemployed. Most of them were earlier teaching in Non-formal education centers, from where they had resigned to apply in response to the advertisement. They had left their previous employment in view of the fact that for their three year long teaching experiences, the interview process in the present selection was awarding them grace marks of 25 per cent. It had also given them a relaxation of 8 years with respect to their age. Now, if they lose their jobs they cannot even revert to their earlier jobs in the Non-formal education centers, which have been abolished since then. This would severely affect the economic security of many families. Most of them are between the age group of 35-45 years, and the prospects for them of finding another job are rather dim. Some of them were in fact awaiting their salary rise at the time of quashing of their appointment by the High Court.

29. With utmost respect to the High Court, we are constrained to observe that equities were not properly balanced in the exercise of discretion by the High Court.+

14. The learned Advocate for the applicants also placed reliance on the judgment in the case of **BHAVIKKUMAR SHRIRAMJI TANDALE & ORS. VS. STATE OF MAHARASHTRA THROUGH ITS SECRETARY & ORS {2013 (7) BOM. C.R. 716}**, wherein in para 11 it is held as under :-

%1. In the case of Inderpreet Singh Kahloon & ors. Vs. State of Punjab & Ors (supra), inspite of the fact that there was an allegation of large-scale fraud being made in the selection process, the Apex Court had set aside the decision of the Government resorting to the cancellation of all the appointments en masse by treating unequals as equals. The Apex Court in the said case observed thus:

%Indoubtedly, in the selection process, there have been manipulations and irregularities at the behest of the then Chairman, Punjab Public Service Commission. But on careful scrutiny of the facts and circumstances of the case, the High Court ought to have made a serious endeavour to segregate the tainted from the nontainted candidates. Thought the task was certainly difficult, but by no stretch of imagination, it was not an impossible task. The Government, instead of discharging its obligation, unjustly resorted to the cancellation of all the appointments en masse by treating unequals as equals without even prima facie examining their cases. This is clearly arbitrary and unconstitutional.

It can thus be clearly seen that even in the case of selection process which was alleged to have been conducted

with serious mal-practices, the Apex Court has held that en masse cancellation of appointments was not permissible and effort ought to have been made to weed out tainted from non-tainted candidates.+

15. In view of the aforesaid observations, the cases of the present applicants in the present O.A. will have to be considered.

16. In the present case, the recruitment rules process of the Drivers and other posts have been initiated in view of the advertisement dated 29.2.2012 and the subsequent corrigendum dated 7.3.2012. The learned P.O. has invited our attention to the G.R. dated 19.10.2007, which is as regards appointment on the post of Class-III and the process therefor. The title of the said G.R. is as under :-

भूतपूर्व दुय्यम सेवा निवड मंडळाच्या कक्षेतील
नामदिर्नेशनाच्या कोटयातील गट 'क' वर्गीय पदे भरताना
अनुसरावयाची कार्यपध्दती.+

17. Clause 2 of the said G.R. states about the Dist. Selection Committee and the said Committee shall be as under :-

॥. निवड समित्यांची स्थापना

(अ) जिल्हा निवड समिती :- जिल्हास्तरीय गट क ची पदे भरण्याकरिता जिल्हास्तरावर खालीलप्रमाणे जिल्हा निवड समितीची रचना करण्यात येत आहे :-

(१)	जिल्हाधिकारी	अध्यक्ष
(२)	मुख्य कार्यकारी अधिकारी	सदस्य
(३)	जिल्हा सेवायोजन अधिकारी	सदस्य
(४)	जिल्हा समाजकल्याण अधिकारी	सदस्य
(५)	जिल्हा अदिवासी विकास अधिकारी	सदस्य
(६)	जिल्हा सैनिक कल्याण अधिकारी	सदस्य
(७)	ज्या कार्यालय/विभागातील पदे भरावयाची आहेत त्या कार्यालयाचे/विभागाचे विभाग प्रमुख अथवा त्यांचे गट अ मधील प्रतिनिधी	सदस्य

(सामायिक संवर्गातील उदा :लिपिक—टंकलेखक, वरिष्ठ लिपिक, वाहनचालक इ. पदांवर भरती करताना अ.क्र. ७ येथील सदस्याचा समितीमध्ये समावेश असणार नाही.)+

18. It is material to note that, in the present case the Selection Committee was not as per the said clause of the G.R. dated 19.10.2007.

19. The learned P.O. was directed to place on record the copy of the minutes of the meeting of the Selection Committee to know as to whether such Committee was formed by Chief Conservator of Forest. The learned P.O. submitted that the minutes of the meeting are not available. He has placed on record one communication, whereby it was informed to

the Deputy Conservator of Forest by the Deputy Collector, Aurangabad that one Shri R.S. Baviskar, Deputy Collector (Rehabilitation), was authorized to remain present in the Interview Committee. The said communication is taken on record and marked as document Xq for the purpose of identification. There is nothing on record to show that the so called Selection Committee was formed as per guidelines in G.R. dated 19.10.2007.

20. In the impugned communication dated 9.3.2015, which has been specifically mentioned that the Dist. Selection Committee was not as per G.R. dated 19.10.2007. Similar fact has been stated in the subsequent communication at Annex. A.7 of the present O.A.

21. As per G.R. dated 19.10.2007 specific directions were given as regards holding written test and oral interview in clause no. 5. The said instructions are as under :-

%. लेखी व तोंडी परीक्षा घेण्याबाबत :-

(१) लिपिक वर्गीय पदांसाठी उमेदवारांची निवड करताना मुलाखती न घेता फक्त लेखी परीक्षा घेण्यात यावी व लेखी परीक्षेमध्ये उमेदवारांनी प्राप्त केलेल्या गुणांच्या आधारे निवड यादी तयार करून निवड यादीतील उमेदवारांची गुणवत्तेनुसार शिफारस करण्यात यावी.

(२) ज्या पदांसाठी व्यावसायिक चाचणी (proficiency Test) घेणे आवश्यक असेल अशा पदांसाठी ५०% गुणांची लेखी परीक्षा, ४०% गुणांची व्यावसायिक चाचणी व मुलाखतीसाठी १०% इतके गुण ठेवून उमेदवारांची निवड करून गुणवत्तापात्र उमेदवारांच्या नियुक्तीसाठी शिफारशी करण्यात याव्यात. जे उमेदवारा लेखी परीक्षेत उत्तीर्ण होतील अशानाच ही व्यावसायिक चाचणी देता येईल.

(३) शालांत परीक्षा उत्तीर्णपेक्षा कमी अर्हता आवश्यक असलेल्या उदा. सुतार, गवंडी, वाहनचालक इत्यादी संवर्गातील पदांसाठी व्यावसायिक चाचणी, आवश्यक तेथे शारिरीक क्षमतेची चाचणी व मुलाखत घेणे आवश्यक असल्यामुळे अशा उमेदवारांची निवड करताना ५० गुणांची व्यावसायिक चाचणी, आवश्यक तेथे ४० गुणांची शारिरीक क्षमतेची चाचणी व मुलाखतीसाठी १० गुण ठेवून उमेदवारांची निवड करण्यात यावी. ज्या पदांसाठी शारिरीक क्षमतेची चाचणी घेण्याची आवश्यकता नाही अशा पदांसाठी ९० गुणांची व्यावसायिक चाचणी व मुलाखतीसाठी १० गुण ठेवून उमेदवारांची निवड करण्यात यावी.

(४) अन्य पदांसाठी २०० गुणांची लेखी परीक्षा व २५ गुणांची तोंडी परीक्षा घेउन उमेदवारांची निवड करण्यात यावी.

वरीलप्रमाणे कार्यवाही करताना ज्यावेळी लेखी व तोंडी परीक्षा घेउन उमेदवारांची निवड करण्यात येईल त्यावेळी तोंडी परीक्षेस एकूण गुणांच्या १२.२ टक्के इतक्या गुणांपेक्षा अधिक गुण ठेवता येणार नाहीत.+

22. Vide communications at Exhibits A.6 and A.7 it has been intimated to the applicants that the guidelines under clause 5 for written test or oral interview were not followed.

23. The averments in para 8 of the affidavit in reply of res. nos. 2 & 3 have already reproduced in earlier paragraphs will show that the calculation of marks obtained by the candidates in the merit list were improper and the concerned Deputy Conservator of Forest has favoured of the particular candidates. In view of this appointment orders of the applicants were cancelled.

24. The learned Advocate for the applicants submitted that the selection process was earlier challenged in O.A. no. 756/2012 and the process were justified by the Tribunal. We have perused the order in O.A. no. 756/2012. It is material to note that in the said O.A., the process of recruitment were not challenged. On the contrary, this Tribunal observed in para 6 of the said order as under :-

¶ Thus, the contention of the applicant is that though he is not challenging the selection process per-se and not even challenging the written examination conducted by the authorities during the process of selection, he is only challenging the process of preparing the select list.+

The said O.A. was dismissed in view of the observations in para 13 on the basis of the judgment reported in **AIR 1986 SUPREME COURT 1043 {OM PRAKASH SHUKLA VS. AKHILESH KUMAR SHUKLA AND OTHERS}**. The said observations by the Tribunal in para 13 are as under :-

3. With these above referred ration laid down by Hon. Apex Court, as the appellant participated in the process of selection is stopped in challenging the selection process on the ground that, the marks obtained in written examination should not have been including and considering by preparing the final select list.+

25. Perusal of the order in O.A. no. 756/2012 clearly shows that, none of the points raised in the present O.A., such as validity of the Selection Committee etc. were not raised therein and, therefore, the said judgment may not help the applicant to justify their selection.

26. The learned Advocate for the applicants states that the applicants have been appointed as Drivers at the respective places in view of the orders annexed at paper book pages 26 to 41 (both pages inclusive). All the appointment orders are dated 4.4.2012. The said orders of appointment came to be cancelled vide the impugned communications dated 9.3.2015 & 6.4.2015 issued by the res. no. 2 the Additional Principal Chief Conservator of Forests (Admn. Subordinate Cadres), M.S., Nagpur (Annex. A.6 & A.7 respectively). This Tribunal vide order

dated 8.4.2015 has been pleased to grant the Status quo to the impugned order passed by res. no. 2 and the said interim order is continued till today. The applicants are, therefore, serving as Drivers at their respective places in view of the order dated 4.4.2012 i. e. almost for 4 years.

27. It is definite the applicants have not played any fraud or misrepresentation for getting such appointment orders. They were not given opportunity to explain as to why their appointments be cancelled and, therefore, in such circumstances, it will be grave injustice on the applicants, if now their services are terminated or their appointment orders are cancelled. It is also necessary to consider that some illegalities are committed by Selection Committee, but the some candidates are also appointed on other different posts and they are very much working in view of their respective appointment orders. The respondents have not cancelled the entire recruitment process and, therefore, on the ground of parity also the applicants in the present O.A. will have to be protected and it will not be in the interest of justice and equity to cancel their appointment orders merely because the Selection Committee was illegal. The respondents can very well adjust the applicants on the vacant posts or posts to be filled in, in future.

28. We cannot restrain ourselves from expressing our deep concern & displeasure towards the illegalities committed by the Chief Conservator of

Forest (Territorial), Aurangabad in carrying out the selection process without following the due procedure and without following the guidelines issued by the Govt. from time to time and it is highly objectionable and the Chief Conservator of Forest (Territorial), Aurangabad has acted as per his own whims. Even the Collector, Aurangabad has not considered the fact as to whether the committee was constituted as per the provisions of G.R. dated 19.10.2007. The respondents are, therefore, wholly responsible for formulating the unlawful Committee for carrying out the process of recruitment in contravention of G.R. dated 19.10.2007. In fact, this is a fit case where the Govt. shall take a strong action against the erring Officers.

29. In view of discussion in foregoing paras, We pass following order :-

ORDER

- (i) The O.A. no. 202/2015 stands allowed.
- (ii) The impugned communications dated 9.3.2015 & 6.4.2015 issued by the res. no. 2 the Additional Principal Chief Conservator of Forests (Admn. Subordinate Cadres), M.S., Nagpur (Annex. A.6 & A.7 respectively) are quashed and set aside.
- (iii) The State Govt. is directed to initiate enquiry as regards illegalities committed by the res. authorities in respect of recruitment of various posts consequent to the advertisement issued by the res. no. 4 on 29.2.2012 and the corrigendum to

it on 7.3.2012 and to take action against the erring Officers as may be deemed fit in the circumstances and shall intimate about the action thereon to this Tribunal within a period of 6 months from the date of this order.

There shall be no order as to costs.

MEMBER (J)

VICE CHAIRMAN

ARJ-OA NO.202 -2015 JDK (SELECTION)