IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO 16 OF 2017

DISTRICT : PUNE

Shri Gangadhar Tukaram Mendke)
Occ : Service, R/o: Mahalunge Padval,)
Manchar, Tal-Ambegaon, Dist-Pune.)...**Applicant**

Versus

1. The State of Maharashtra)
Through its Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai – 32.)
2. Chief Conservator of Forest,)
Pune.)
3. The Member Secretary,)
Regional Selection Committee,)
Pune.)

OR

Deputy Conservator of Forest,)
Ghod Project, Forest Division,)
Junnar, Dist-Pune.)...**Respondents**

Shri V.P Kadam, learned advocate for the Applicant.
Shri A.J Chougule, learned Presenting Officer for the Respondents.

CORAM : Shri Justice A.H Joshi (Chairman)
Shri P.N Dixit (Member) (A)

RESERVED ON : 13.02.2019
PRONOUNCED ON : 20.02.2019

PER : Shri Justice A.H Joshi (Chairman)

J U D G M E N T

1. Heard Shri V.P Kadam, learned advocate for the Applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents.

2. The case proceeds in admitted background as follows:-

(i) Case pertains to recruitment to the post of Forest Guard.

(ii) Process of recruitment was undertaken and completed resulting in appointments.

(iii) Trimbak A. Jagtap, one of the candidates filed O.A 1099/2015 making a grievance about fairness and legality of selection.

3. The grievance of Shri Trimbak A. Jagtap found favour with the Tribunal and Division Bench of this Tribunal allowed the Original Application by judgment and order dated 27.9.2016. This Tribunal directed reverification of the video recording of the physical test, running test etc., and redo the merit ranking upon exact fact finding as may emerge.

4. The judgment and order of this Tribunal is accepted and obeyed by the Respondents.

5. The Chief Conservator of Forest, (Territorial), Pune, has undertaken the exercise ordered by this Tribunal and has rearranged and notified the merit list.

6. After reassessment of marks, he has been given 4 marks in running test as against 6 marks awarded to him, and his merit ranking has undergone change and he has gone below one S.T candidate Shri R.V Kukre.

7. In regard to the marks allotted and altered merit ranking, applicant has no grievance.

8. Category wise merit list cum waiting list was prepared. Two lists are relevant, first one relates to S.T category and second list relates to open general category.

9. Merit list of S.T candidates reads as follows:-

--- अनुसूचित जमाती प्रवर्गातील एकूण ४ पदापैकी सर्वसाधारण ३ पदासाठी निवडयादी व प्रतिक्षायादी---

अ. क्र.	उमेदवाराचे नाव	जन्म दिनांक	जात/प्रवर्ग	HSC Marks	धावण्याचे गुण	HSC Marks as per ८७. ५% weightage	एकूण गुण	निवडीचा प्रवर्ग
१	श्री. गायकवाड एस. यू.	२५.०५.०९	अ.ज.	७०.८३	२.५	६१.९७	६४.४७	सर्वसाधारण
२	श्री. पोत्रे बी. एच.	१९.०१.९०	अ.ज.	६०	८	५२.५	६०.५	सर्वसाधारण
३	श्री. डुकरे आर. व्ही	०९.०२.९३	अ.ज.	४०.८३	१०	३५.७२	४५.७२	सर्वसाधारण

(Copied from page 132 of O.A)

10. The merit list of open general category as seen at page 120, reads as follows:-

--- प्रतिक्षा यादी---- अनुसूचित क्षेत्र महिला

उमेदवार उपलब्ध न झालेने निरंक

<u>अनुसूचित क्षेत्राबाहेरीत पदे भरणेबाबत.</u>

--- खुला प्रवर्गातील एकूण १९ पदापैकी सर्वसाधरण ८ पदासाठी निवडयादी व प्रतिक्षायादी ---

अ. क्र.	उमेदवाराचे नाव	जन्म दिनांक	जात/प्रवर्ग	HSC Marks	धावण याचे गुण	HSC Marks as per ८७. ५% weightage	एकूण गुण	निवडीचा प्रवर्ग
१	बेबले एस.डी	०१.०६.८९	इमाव	८१.६७	०	७१.४६१	७१.४६१	सर्वसाधारण
२	शेख एस. ए.	१३.०६.९१	विभाग-अ	७३.६७	६	६४.४६	७०.४६०	सर्वसाधारण

३	पीचड टी. आर.	१७.०८.९१	अ.ज.	६९.००	१०	६०.३७०	७०.३७०	सर्वसाधारण
४	तांदळे व्ही. एस.	०१.०१.९६	खुला	७५.८५	४	६६.३६०	७०.३६०	सर्वसाधारण
५	श्री. हिमोने के. एम.	३०.०३.९४	खुला	७०.८३	८	६१.९७०	६१.९७०	सर्वसाधारण
६	श्रीमती काणे एस.पी	२०.११.९३	इमाव	६९.३३	६	६०.६६	६६.६६	सर्वसाधारण
७	श्री. जाधव एम. के.	०४.०८.९३	खुला	७१.२३	४	६२.३२	६६.३२	सर्वसाधारण
८	श्री. गायकवाड आर. यू	१०.०७.९१	अ.ज.	६९.८३	४	६१.१	६१.१	सर्वसाधारण

(Copied from page 120 of O.A)

11. The waiting list of open general category reads as follows:-

--- प्रतिक्षा यादी (सर्वसाधारण)

अ. क्र.	उमेदवाराचे नाव	जन्म दिनांक	जात/प्रवर्ग	HSC Marks	धावण्याचे गुण	HSC Marks as per ८७.५% weightage	एकूण गुण	निवडीचा प्रवर्ग
१	श्री. कदम एम.सी	११.०७.९०	खुला	७०.३३	२.५	६१.५३८	६४.०३८	सर्वसाधारण
२	श्री. तांदळे एस. एस.	१५.०८.९६	खुला	७१.६९	००	६२.७२८	६२.६२८	सर्वसाधारण
३	श्री. जगताप टी.ए.	०३.०१.९४	खुला	६८	२.५	५९.५	६२	सर्वसाधारण
४	श्री. गणगे.ए.एम.	२९.१०.९३	खुला	६१.१७	४	५३.५२	५७.५२	सर्वसाधारण

(Copied from page 121 of O.A)

12. As it is seen from the merit list which is on record applicant's revised marks are 44.976, which is seen at page 147.

13. In the aforesaid premises, applicant's claim in the Original Application is to be examined.

14. Through oral submission, learned advocate for the applicant has argued only one point which is as follows:-

> That the candidate which is at serial no. 1in the merit amongst S.T candidate who is Shri S.U Gaikwad, who has secured 64.47% marks was liable to be accommodated in open general category and if he is so accommodated in open general category, applicant can get placement in the select list below Shri R.V Dukare. Since Shri S.U Gaikwad has retained at serial no. 1 in the S.T category, applicant has lost the opportunity of inclusion in the merit list of candidates belonging to S.T category.

15. We have perused the open merit list. It is seen that last candidate in the open general category has secured 65.1 marks which is evident from the text of the list from page 120 quoted hereinabove. In the event any candidate in the waiting list of open general category is eventually appointed, he could be Shri S.C Kadam, who has secured 64.38 marks.

16. Shri S.U Gaikwad has admittedly scored 64.47% marks, which are more than the marks scored by Shri S.G Kadam at serial no. 1 in the waiting list of open general category candidate.

17. Thus applicant's entitlement for being continued in the employment is contingent upon whether Shri S.C Kadam gets an order of appointment.

18. Original Application is totally silent on the point as to whether Shri S.C Kadam who is from open general has been appointed.

19. Since Shri S.U Gaikwad has scored more marks than Shri S.C Kadam, Shri Gaikwad would be pushed in open category and a vacancy shall arise in the S.T category in favour of the applicant if Shri S.C Kadam is eventually appointed.

20. In view of the policy decision of the Government which is relied upon by the Respondents as much by Shri Kadam, Advocate for applicant, which is dated 13.8.2014, Exh. R-1, copy whereof is at page 102 of the O.A, Shri U.S Gaikwad is bound to be pushed in open general category on his own merit. The position of enforceability of Circular dated 13.8.2014, Exh. R to O.A is not in dispute, rather it is an admitted fact and position of law.

21. We are therefore, unable to hold in favour of the applicant as far as eligibility to be appointed or continue in the employment. We, hold that applicant would be entitled to represent before the Competent

Authority and ascertain whether Shri S.C Kadam, is appointed and in the event he finds that Shri Kadam is appointed, then applicant's claim for appointment on his merit ranking is liable to be considered.

22. With above observations, this Original Application is disposed of. No order as to costs.

Sd/-
(P.N Dixit)
Member (A)

Sd/-
(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 20.02.2019
Dictation taken by : A.K. Nair.

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