

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 220/2019 (D.B.)**

Pankaj Yashwant Hodgir,  
Aged about 24 years, Occ. Nil,  
Resident of Post Khambala, Taluka Vasmat,  
District Hingoli.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Secretary, Department of Forest,  
Mantralaya, Mumbai-32.
- 2) Chief Conservator of Forest (Regional),  
Camp Road, Amravati.
- 3) Deputy Conservator of Forest,  
East Melghat Forest Division,  
Paratwada.

**Respondents.**

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**Shri R.V. Shiralkar, Advocate for the applicant.**

**Shri M.I. Khan, P.O. for respondents.**

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**Coram :- Shri Shree Bhagwan,  
Vice-Chairman and  
Shri Anand Karanjkar, Member (J).**

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**Date of Reserving for Judgment : 7<sup>th</sup> December,2020.**

**Date of Pronouncement of Judgment : 24<sup>th</sup> December,2020.**

**JUDGMENT**

**Per : Member (J).**

**(Delivered on this 24<sup>th</sup> day of December, 2020)**

Heard Shri R.V. Shiralkar, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. The applicant belongs to N.T. (C) category being 'Hatkar Dhangar' by Caste. In the year 2016, the Chief Conservator of Forests, Amravati issued advertisement for filling the posts of Forest Guard and post was reserved for N.T. (C) category candidate. The applicant applied for the post of Forest Guard reserved for N.T. (C) category, he was successful and it was declared that the applicant successfully passed the examination and his name was included in the select list published by the respondent no.2.

3. The applicant was directed to appear before the District Civil Surgeon, General Hospital, Amravati for the medical examination and procure fitness certificate. The applicant appeared before the District Civil Surgeon, Amravati at General Hospital. The District Civil Surgeon, Amravati examined the applicant and he further referred the applicant to Medical Board, Yavatmal for the vision test and colour blindness test etc. The Medical Board, Yavatmal examined the applicant and issued Medical Certificate informing that there was no visual effect and vision was within normal limits. The report was forwarded on 2/5/2017 by the Civil Surgeon, Amravati to the Member Secretary of the Selection Committee and thereafter on 3/7/2017 appointment order was issued and the applicant was appointed in service as Forest Guard.

4. The applicant joined the duty, he was sent to Chandrapur to undergo the forest training at Forest Training Institute. The applicant completed his six months training at the Institute and thereafter the Institute issued him Certificate that the applicant completed the training successfully.

5. It is grievance of the applicant that on 13/4/2018 one Shri Sahadeo Datta Rathod lodged complaint and raised objection that in the Medical Certificate issued by the Medical Board, Yavatmal, it was not specifically mentioned that the applicant was not colour blind, therefore, the respondent no.3 issued letter dated 13/4/2018 and directed the applicant to appear before the Medical Board, Yavatmal for the colour blindness test. The applicant appeared before the Medical Board, Yavatmal, but instead of examining the applicant, the Medical Board, Yavatmal referred the applicant to the Medical Board, Nagpur i.e. the Referee. The Medical Board, Nagpur examined the applicant and reported that the applicant was colour blind and consequently the respondent no.3 terminated the services of the applicant by issuing order dated 17/1/2019. In the present case, it is submitted that the approach of the respondents was contrary to law. The applicant was examined by the Medical Board as per the rules, he was found fit to discharge the duty as Forest Guard and consequently the Medical Board, Yavatmal had issued the Certificate. It is submitted

that there was no propriety to refer the applicant to the Referee. It is submitted that when the applicant was examined by the Medical Board, Yavatmal there was a vision test and no abnormality was found. It is submitted that merely because one Shri Sahadeo Rathod had raised false objection, therefore, the applicant was referred to the Medical Board, Nagpur and Shri Sahadeo Rathod managed the matter and procured the Certificate to the effect that the applicant was colour blind.

6. Second submission of the applicant is that without considering the provisions in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act,1995 (“**1995 Act**”) and the Rights of Persons with Disabilities Act,2016 (“**2016 Act**”), the respondents acted in arbitrary manner and straightway dismissed the applicant from the service. It is submission of the applicant that there was no evidence that the applicant was colour blind since birth.

7. The learned counsel for the applicant invited my attention to the Judgement reported in case of **Union of India & Ors. Vs. Pramod Sadashiv Thakre 2012 (1) Mh.L.J.,738** and the Judgment in Writ Petition No. 9762/2019, decided on 13/7/2020. It is submitted that in view of this Judgments, the entire approach of the respondents was contrary to law, it is submitted that even for a sake of argument it

is accepted that the applicant is colour blind, then also the service of the applicant was very much protected by the provisions under the 1995 Act and 2016 Act. It is submitted that the respondents mechanically considered the case of the applicant and dismissed the service. The learned counsel for the applicant submitted that it was necessary for the respondents to take into account whether there was post in the Forest Department on which the applicant could perform duty, but that exercise is not done. The second submission is that if there was no such post, then also it was burden on the respondents to create supernumerary post for the applicant and to give him relief.

8. The respondent nos. 2&3 have filed their reply which is at page no.38 of the P.B. The main objection of the respondents is that as the disability is not contacted by the applicant during the service, therefore, the applicant is not entitled for the protection under 1995 or 2016, Act. It is contention of the respondents that as per the policy of the Government, there was no reservation for the physically handicapped candidates and therefore the provisions in Section 20 of the 2016, Act and Section 47 of the 1995, Act are not applicable and relief cannot be granted to the applicant.

9. We have heard the oral submissions on behalf of the applicant and on behalf of the respondents. So far as the contention of the applicant that as per policy of the Government of Maharashtra

w.e.f. 27/09/2003 handicapped candidates cannot apply under 3% reserved quota for the handicapped as this 3% reservation quota for handicapped candidates cease to exist for the posts of Forest Guard and Forester. In the first place, we would like to point out that the applicant did not apply for the post under the quota reserved for handicapped candidates. It is nobody's case that the applicant was appointed in service as handicapped candidate. The applicant's contention is that the post of the Forest Guard was reserved for N.T. (C) candidate and being N.T. (C) candidate, the applicant applied for the post. There is no dispute that the applicant was selected by the Committee, he was sent for medical examination to the Civil Surgeon. General Hospital, Amravati, then he was referred to the Medical Board, Yavatmal. The applicant was examined by the Medical Board, Yavatmal and consequently Medical Certificate Annex-A-4 was issued by the Medical Board, Yavatmal. On perusal of this Medical Certificate Annex-A-4 it seems that notes are taken relating to medical examination conducted by the Medical Board. It was observed by the Medical Board that Circulatory System, Respiratory System, Digestive System, Gento Urinary System were within normal limit. Nervous System was also normal. It was observed that the Special senses including remarks of correction of visual defects was within normal limits. On perusal of this Certificate issued by the Medical Board,

Yavatmal on 11/4/2017 it is crystal cleared that the vision of the applicant was perfectly normal and there was no visual defect. It is important to note that the specific proforma is provided by the Government to be used by the Medical Board while issuing the Medical Certificate and the Medical Certificate is issued in the same proforma and there was specific observation made by the Medical Board, Yavatmal that there was no visual defect, then it implies that when the applicant was examined on 11/4/2017 and the Certificate was issued, there was no visual defect and visual defect includes the colour blindness. In this situation, even if it is accepted that the Medical Board, Nagpur concluded that the applicant was colour blind, but it must be remembered that the Medical Board issued Certificate, Annex-A-16 on 6/12/2018. After reading the letter Annex-A-13, dated 13/4/2018, it seems that in para-1 it was observed that when the applicant was examined in Ophthalmology Department of General Hospital, Amravati, it was noticed that there was colour vision defect therefore, removal of doubts, vide letter dated 1/3/2017 the applicant was referred to the Medical Board, Yavatmal for the colour vision test. There is no dispute about the fact that in pursuance of the letter dated 1/3/2017 the applicant was examined by the Medical Board, Yavatmal on 11/4/2017 when specific letter was written by the Civil Surgeon that he had doubts regarding colour vision defect in the applicant.

Thereafter, he was examined by the Medical Board, Yavatmal, then strong inference arises that the colour vision test was conducted by the Medical Board, Yavatmal and consequently it was observed that there was no vision defect. Under these circumstances, it is difficult to draw the inference that when the applicant was appointed in service, the applicant had colour vision defect.

10. Similar situation was examined by the Hon'ble Bombay High Court in case of **Union of India & Ors. Vs. Pramod Sadashiv Thakre 2012 (1) Mh.L.J.,738.** The respondent in that petition was appointed as Civil Mechanical Transport Driver, by the Petitioner. On 29/8/2005, the services of the respondents were terminated on the ground that he was found to be suffering from colour blindness. The respondents challenged that order before the Central Administrative Tribunal (CAT) and vide order dated 24/2/2011, the CAT held that the action of the Petitioner was illegal as it was in violation of the Section 47 of the 1995 Act. Before the Hon'ble High Court it was contended by the Petitioner that the services of the respondents could not be protected by Section 47 of the 1995 Act, as the disability was not acquired during the course of his employment. It was submitted that the respondent's colour blindness was congenital and the respondent was appointed with the colour blindness. In para nos.5&6 the Hon'ble High Court observed as under -

"5. We have no doubt that if the respondent was Colour Blind from birth and continued to be so when he was employed, he could not have been said to be a person who acquired any disability in the course of his employment. However, in the present case, there is no evidence to that effect. In the first place, no medical evidence is placed on record to establish that colour blindness can only be congenital and cannot be acquired. Secondly, there is no evidence that the respondent was Colour Blind when he was employed. On the other hand, the petitioners accepted the respondent's fitness by relying on the certificate granted to him by Civil Surgeon, Nagpur who certified him as normal. The certificate that he was normal must be taken to refer to every functional aspect of the respondent including his eyesight. We are informed that the petitioners do not and in any case did not insist for a proforma in which medical fitness entries to be recorded and do not appear to have referred back the respondent's case for considering whether his vision was normal or he is Colour Blind neither did the petitioners administer any test to the respondent for determining whether he is Colour Blind. The petitioners can hardly claim to have established that the respondent was Colour Blind from birth and, therefore, also Colour Blind on the date of employment. We are, therefore, of the view that respondent is entitled to protection by the Act. It was, however, urged by Mr. Sundaram, learned counsel for the petitioners, that the respondent's services cannot be protected by section 47 of the Act since the respondent was a temporary employee on probation. Section 47 of the Act, reproduced above, protects the services of an employee and makes no distinction between the nature of the services it protects. The purpose and intention of the provisions is to protect an employee from unemployment on the ground that he has incurred disability. Parliament has in its wisdom accommodated the possibility that an employee may not be able to discharge the duties of office prescribed for him and to that effect a provision has been made that an employee shall be employed in some other post with same benefits.

6. In the circumstances, we are of the view that the respondent incurred disability during the course of his employment and his services are liable to be protected. The order of termination, which is made only on the ground that the respondent has been found to be Colour Blind is rightly quashed and set aside by the Central Administrative Tribunal. We Find no merit in the petition. The same is, therefore, dismissed."

11. The learned counsel for the applicant submitted that the case of the applicant is too much strong, because, the applicant was examined by the Medical Board when specific letter was written by the Civil Surgeon that he had doubts that the applicant was colour blind, thereafter the applicant was examined by the Medical Board,

Yavatmal and he was found fit and no visual defect was noticed by the Medical Board and therefore there is no substance in the case of the respondent that since the birth the applicant was colour blind. There is no evidence brought before this Bench that any test was conducted by any Medical Authority for coming to the conclusion that the applicant's colour blindness is congenital, i.e., since his birth and in absence of this evidence and particularly considering the Certificate issued by the Medical Board, Yavatmal it is not possible to say that the applicant was colour blind when he was appointed by the respondents in service. It is nowhere alleged that the Medical Board, Yavatmal was party to fraud and issued false Certificate that there was no vision defect. The term vision defect also includes the colour blindness.

12. In Writ Petition No. 9762/2019 the Hon'ble Bombay High Court placed reliance on the Judgment in case of **Union of India & Ors. Vs. Pramod Sadashiv Thakre 2012 (1) Mh.L.J.,738.** The Hon'ble Bombay High Court has also considered the law in case of **G. Muthu Vs. MTNSTC (Madurai) Limited, 2007 (1) L.W.,146.** In this case, the appellant was appointed as Driver on 26/08/1993. His services were regularised. Thereafter, he was promoted as Senior Driver. On 4/2/2002 the respondents directed the applicant to appear before the Regional Medical Board, Madurai to ascertain whether the

appellant was fit to work as Driver. The Medical Board on 9/2/2002 examined the appellant and issued Certificate that the applicant was colour blind and he was unfit to work as a Driver and consequently vide order dated 26/3/2020 the respondents discharged the appellant from the service on medical ground. The request of the applicant to provide him suitable employment with continuity of service was denied. The appellant challenged this order before the Division Bench of Madras High Court and considering the provision of 1995 Act, it was observed by the Hon'ble Madras High Court that 1995 Act was welfare legislation and wider meaning is to be given to Section 47 of the Act. The case before the Hon'ble Bombay High Court in Writ Petition No.9762/2019 was similar wherein all the Petitioners were appointed as Drivers in MSRTC. Letter was written on 21/12/2017 to Bapaye Hospital for the routine medical check-up of the Petitioners. The applicants were examined by the Hospital and were diagnosed as colour vision defect. Thereafter, the Petitioners were directed to appear before J.J. Hospital for the vision test. The J.J. Hospital confirmed the conclusion drawn by the Bapaye Hospital and reported that the applicants were unfit to discharge the duty, in view of this medical background, the Petitioners were terminated from the service and no relief under 1995 or 2016 Act was given to the Petitioners and same contention was raised that the disability was not contacted in the

course of employment. After considering several Judgments, the Hon'ble Bombay High Court directed the MSRTC to provide alternate job to the Petitioners in accordance with the Section 20 of 2016 Act.

13. In the present case also there is no strict evidence that when the applicant was appointed in service, he was colour blind, on the contrary the Certificate issued by the Medical Board, Yavatmal discloses that there was no vision defect and the Certificate was issued after examining the applicant, as doubts were expressed by the Civil Surgeon, Amravati that there was colour blind defect in vision of the applicant. The respondents were unable to produce before this Bench any evidence to show that the applicant is colour blind is since his birth.

14. In view of this, we do not see any merit in the contention of the respondents that the case of the applicant is not covered either under Section 20 of 2016 Act or Section 47 of the 1995 Act. In view of this, the O.A. is required to be allowed. Hence, we pass the following order –

### **ORDER**

(i) The applicant's termination order dated 17/1/2019 (A-15,P-35) is hereby quashed.

(ii) The respondents are directed to reinstate the applicant in service with back wages by appointing the applicant on any other ministerial post after seeking medical opinion whether the applicant is able to perform duty on any ministerial post, equivalent to the post of Forest Guard and pay him back wages and continuity in service.

(iii) The respondents are directed to comply this order within two months from the date of this order.

(iv) No order as to costs.

**(Anand Karanjkar)**  
**Member(J).**

**(Shree Bhagwan)**  
**Vice-Chairman.**

**Dated** :- 24/12/2020.

\*dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 24/12/2020.

Uploaded on : 24/12/2020.

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