

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 366 /2015

Shri Sukhdeo S/o Sahadeo Shendre,
aged about 58 years, Occ. Retired
R/o Forest Colony, Qtr. No.4, Boshe Nagar,
Tumsar, District Bhandara.

Applicant.

Versus

- 1) Government of Maharashtra,
through Secretary, Finance Department,
Mantralaya, Mumbai-440 032.
- 2) Chief Conservator of Forest (Regional),
Nagpur, near Government Printing Press,
Zero Mile, Nagpur-440 001.
- 3) Deputy Conservator of Forest,
Bhandara forest division, Jaistambh Chowk,
Bhandara-441 203.

Respondents

Shri S.R. Charpe, A.V. Neware, Advocate for the applicant.

Smt. M.A. Barabde, Id. P.O. for respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGEMENT

(Delivered on this 13th day of April,2017)

Heard Shri S.R. Charpe, Id. counsel for the applicant and
Smt. M.A. Barabde, Id. P.O. for the respondents.

2. The applicant was appointed as a Forest Guard on
10/2/1986. After completion of 12 years service he got first time

bound promotion on 10/2/1998. He completed his 24 years of continuous service on 10/2/2010 but did not get benefit of second time bound promotion. He therefore filed number of representations. The Departmental Promotion Committee (DPC) meeting considered his case for promotion on 19/9/2013, 30/6/2014 & 3/3/2015. However he was not considered on the ground that his Confidential Reports (C.Rs.) were not upto the marks. In the meantime the applicant got retired on superannuation on 31/3/2015.

3. The respondent no.1 on 31/3/2015 intimated the applicant as under :-

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fnukad 31@3@2015-

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4. The applicant has therefore filed this O.A. The applicant has claimed that the communication dated 31/3/2015 issued by respondent no.1 (A-7,P-42) as aforesaid be quashed and set aside and it be declared that the findings and conclusions reached by the DPC in its meeting dated 19/9/2013 and 30/6/2014 holding the applicant ineligible for promotion to higher promotional post so also the findings and conclusion reached by the DPC in meeting dated 22/1/2015 holding the applicant ineligible for second benefit as per the G.R. dated 1/4/2010, as absolutely perverse illegal and unsustainable in the eye of law. The applicant is also claiming direction to respondents to provide the second benefit as stipulated in G.R. dated 1/4/2010 and to fix an appropriate revised pension to the applicant.

5. The respondent nos. 2 & 3 have resisted the claim. It is admitted that the first time bound promotion was given to the applicant w.e.f. 12/2/1998. It is stated that the case of the applicant has been put up in the DPC meeting on 30/4/2011 but at that time C.Rs. of the applicant were not available and therefore his matter was kept in the next meeting. Thereafter on 19/9/2013 the case of the applicant was again considered and the applicant was not found fit and therefore the benefit of G.R. w.e.f. 1/12/2010 has not been provided to the applicant. It is stated that the C.Rs. of the applicant were considered

and the applicant's C.Rs. were not upto the mark and therefore he is not fit for promotion.

6. The learned counsel for the applicant submits that earlier the C.Rs. of the applicant were not available and the applicant cannot be held responsible for non availability of such C.Rs. He further states that the applicant was never sworn with the C.Rs. which are alleged to be adverse. Unless and until the adverse C.Rs. are served on the employee, the employee cannot be denied the promotion. The applicant has placed on record the chart in respect of the C.Rs. from 5/7/2004 to 31/3/2010 which is at P.B. page no.111. The said C.Rs. are as under :-

Sukhdev S/o Sahadev Shendre, Designation : Forest Guard		
Sr.No.	Period	Remark/ Grade
1	5/7/2004 to 31/3/2005	Reporting officer A-Very good Reviewing Officer A-Very good
2	25/11/2005 to 31/3/2006	Reporting officer B-Average Reviewing Officer B-Positively good
3	1/4/2006 to 31/3/2007	Reporting officer B-good Reviewing Officer B-good
4	1/4/2007 to 30/9/2007 and 17/12/2007 to 31/3/2008	Reporting officer B-Average Reviewing Officer B-Positively good
5	1/4/2008 to 31/3/2009	Reporting officer B-Average Reviewing Officer No remark
6	1/4/2009 to 31/3/2010	Reporting officer B-Positively good Reviewing Officer, good

7. The respondents could not place on record any contrary evidence to show that the so called adverse reports of the applicant were served on him.

8. I have perused the Minutes of the DPC meetings. The copies of which are placed on record. The said minutes are at P.B. page nos. 45 to 48. It is the Minutes of the Meeting dated 30/6/2014. As regards the applicant's claim it is stated that the average grade of the C.Rs. required for promotion is not upto the mark and therefore the applicant has been shown not eligible. The minutes of the DPC meeting dated 19/9/2013 were also placed on record which is at P.B. of page nos. 53 F to 53 J and as regards the applicant it is stated that his reports were not upto the mark. Similar observations have made in the DPC meeting dated 30/6/2014. The minutes of the meeting are placed on record which are at P.B. of page nos. 53 B to 53 E. There is nothing on record to show that these C.Rs. were served on the applicant.

9. The learned counsel for the applicant has also invited my attention to DPC meeting dated 29/4/2011 which is at P.B. page nos. 37 to 41 (both inclusive). In the said meeting the case of the applicant was not considered because his five years C.Rs. were not available and his case was kept open. If it is so, it is not known as to when the

C.Rs. were made available and whether the same were really served on the applicant. There is no other ground to deny the applicant the promotion or second time bound promotional scale.

10. Considering the aforesaid facts and that the applicant has already retired on superannuation on 31/3/2015, I am satisfied that the denial of promotional scale as per the G.R. dated 1/4/2010 to the applicant is illegal and consequently the decision taken by the DPC in its meeting dated 19/9/2013 and 30/6/2014 that the applicant is not eligible for promotion because his ACRs., were not upto the mark that too without serving the adverse report to the applicant, is not legal and proper. Hence the following order :-

ORDER

The O.A. is allowed in terms of prayer clause 7 (a) (ai) and (b) (bi). The respondents are directed to extend the benefit of second time bound promotion to the applicant as per G.R. dated 1/4/2010 and other consequential reliefs as prayed within three months from the date of this order. No order as to costs.

(J.D. Kulkarni)
Vice-Chairman (J).