

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO. 366/2016.

Dnyanesh Bhopidas Rathod,
Aged about 25 years,
Occupation- Nil,
R/o At Post Hiwari, Tehsil & Distt. Yavatmal.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Revenue & Forests,
Mantralaya, Mumbai-32.
2. The Chief Conservator of Forests,
(Territorial), Yavatmal Division,
Yavatmal.
3. The Deputy Conservator of Forests,
Yavatmal Forest Division, Yavatmal and
Member Secretary, Regional Selection Committee,
Yavatmal.
4. The Assistant Director,
Krida and Yuvak Seva, (M.S.), Pune.
5. Shri H.B. Dhulgunde,
Aged Major,
Occupation- Nil,
R/o At Post Malegaon, Tehsil Gangakhed,
Distt. Parbhani.

Respondents.

Shri V.R. Patre, the learned counsel for the applicant.

Shri M.I. Khan, the Ld. P.O. for the respondents 1 to 4.

Shri A.R. Ingole, learned counsel for respondent No.5.

**Coram:- The Hon'ble Shri J.D. Kulkarni,
Member (J)**

Judgment

(Delivered on this 27th of October 2016).

This Division Bench matter has been taken up for final disposal with the consent of learned counsel for the applicant as well as the learned P.O. for the respondents.

2. The applicant and respondent No.5 participated in the recruitment process for the posts of Forest Guard in consequent of the advertisement dated 14.8.2014. The applicant and respondent No.5 participated in the process as candidates from Sportsmen category. After due procedure, waiting list was published as per Annexure A.5 and the applicant was shown in the said list at Sr. No.1 from Open / waiting (sports category).

3. According to the applicant, respondent No.3 i.e. Deputy Conservator of Forests, Yavatmal vide letter dated 29.12.2015 sought guidelines from the Director of Sports and Youth Services (M.S.), Pune as regards the sports certificate submitted by the applicant and also sought guidelines as to whether the said certificates are valid to decide suitability under sports category quota.

4. The applicant submitted requisite certificates before the respondent authority as regards sports events in which the applicant has taken part. The said certificates submitted were in

respect of his participation in State Bench Press Dead Lift Power Lifting Championship and State Junior Power Lifting Championship.

5. The applicant submitted an application on 5.1.2016 to the Deputy Conservator of Forests, Yavatmal and also submitted some other certificates for perusal of the competent authority. These certificates were to be sent for verification. The respondent No.3 Deputy Conservator of Forests, Yavatmal, however, did not send those certificates for verification as required as per G.R. dated 13.10.2010.

6. The applicant filed representations on 23.2.2016 and 1.4.2016 and requested that the certificates shall be sent for verification to the Director of Sports and Youth Services (M.S.), Pune. The respondent however did not send those certificates for verification and ultimately passed the impugned order dated 11.4.2016 and it was intimated to the applicant that he was not suitable for appointment under sportsman category. The applicant was, therefore, constrained to file this O.A.

7. The learned counsel for the applicant invited my attention to the fact that he has also filed W.P.No.5021/2016 before the High Court of Judicature at Bombay, Bench at Nagpur for following reliefs:-

“(i) Direct the respondent No.3 i.e. Deputy Conservator of Forests, Yavatmal Forest Department, Yavatmal and Member Secretary, Regional Selection Committee, Yavatmal to forward the sports certificate of the petitioner to the respondent No.5 i.e. Assistant Director of Sports and Youth Services (M.S.), Pune. For its verification in pursuance of the Govt. Circular dated 13.10.2010 in the interest of justice, by suitable and appropriate writ or direction.

(ii) Direct the respondent No.5 Assistant Director of Sports and Youth Services (M.S.), Pune to verify the sports certificate of the petitioner, within a stipulated period in the interest of justice by suitable and appropriate writ or direction”.

8. In the said writ petition, the Hon'ble High Court vide order dated 7.10.2010 was pleased to observe as under:-

“The relief claimed in the present petition is also claimed in the O.A. before the learned M.A.T. In that view of the matter, we allow the petitioner to withdraw the writ petition.

However, taking into consideration the grounds stated in the petition, we request the learned Tribunal to consider the prayer made in the present petition as expeditiously as possible and preferably within a period of two weeks from today.”

9. According to the learned counsel for the applicant, prayers in the O.A. as well as in the Writ Petition No. 5021/2016 are same and, therefore, it is incumbent upon this Tribunal to issue directions to the respondents as prayed in the O.A.

10. Respondent Nos. 2 and 3 filed their affidavit in reply and submitted that the applicant has suppressed the material facts and on this sole ground, the petition is liable to be dismissed. It is stated that the applicant has not filed certificate of Power Lifting issued by Vidarbha Power Lifting Association, Nagpur for verification. But he has submitted other three certificates which were not considered valid by respondent No.4 for appointment to the post of Forest Guard under sports category.

11. It is further stated in the affidavit in reply that as per G.R. dated 30.4.2015, a candidate must secure first, second or third rank or gold, silver or bronze (Kasya) medals in the State level sports and participation in the State level sports itself is not sufficient for claiming reservation under sports category. All the three certificates submitted by the applicant were invalid and the applicant has not met with minimum qualification to claim reservation under the sports category.

12. So far as claim of respondent No.5 is concerned, it is stated that Non-Creamy Layer certificate was not required in case of

respondent No.5, but the same was asked from him and he was wrongly rejected. The said mistake came to the knowledge of the Competent Regional Selection Committee and the Regional Selection Committee in its meeting has taken decision to reconsider claim of respondent No.5 and, therefore, name of respondent No.5 was taken in waiting list as he stood meritorious.

13. Heard Shri V.R. Patre, the learned counsel for the applicant, Shri M.I. Khan, the learned P.O. for the respondents 1 to 4 and Shri A.R. Ingole, learned counsel for respondent No.5. I have also perused an affidavit, affidavits in reply of the respondents as well as documents placed on record by the respective parties so also citations relied upon by the respective Advocates.

14. The applicant is claiming direction as already stated. Similar directions are claimed in the O.A. as well as W.P. No. 5021/2016 before the Hon'ble High Court. Direction as claimed by the applicant is that the respondent No.3 be directed to forward the certificate of the applicant issued by Vidarbha Power Lifting Association, Nagpur to respondent No.4 for its verification and that respondent No.3 be directed to select the applicant for the post of Forest Guard from sportsman category.

15. The learned counsel for the applicant invited my attention to the G.R. dated 13.10.2010 which is at paper book page

Nos. 49 and 50 (both inclusive). The purport of the said G.R. is that, sometimes the candidates submit the sports certificates after given time i.e. at late stage and their claim is denied because they did not submit the requisite certificates and also because the certificates could not be verified. The Government has, therefore, directed that in such cases even if the certificates are received late, the same shall be sent for verification to the appropriate authority. This G.R. seems to have been issued only with an intention to safeguard the interest of the candidates who are holding genuine claims in the sports category. It is material to note that the applicant's claim is not rejected only because he did not produce the certificate as claimed by him vide his representations dated 23.2.2016 and 1.4.2016. In the representations, it seems, that the applicant has stated that he has submitted the certificates in Power Lifting Game at late stage and, therefore, the same shall be forwarded for verification to the director of Sports. Applicant's claim is not rejected only on that ground. Perusal of the impugned communication on the contrary shows that applicant's claim has been rejected on merits since his certificates were found invalid.

16. The impugned communication is dated 11.4.2016 and it reads as under:-

”आपणास कळविण्यात येते कि, अत्युच्च गुणवत्ताधारक खेळाडूंना शासकीय,निमशासकीय व इतर क्षेत्रात नोकरीसाठी आरक्षण ठेवणे याबाबत आपली क्रिडा विषयक कामगिरीची क्रिडा प्रमाणपत्रे पडताळणीसाठी संचालक,क्रिडा व युवक संचालनालय,पूणे यांचे कडे पाठविले असता त्यांनी त्यांचे कडील वर संदर्भ क्र. २ चे पत्रान्वये शासन निर्णय दिनांक ३०.०४.२००५ मधील अतिउच्च गुणवत्ताधारक खेळाडूंसाठीच्या पात्रतेसाठीचा निकष म्हणजेच राज्यस्तर स्पर्धेमध्ये प्राविण्य प्राप्त करणे आवश्यक असल्याने हा निकष श्री ज्ञानेश भोपीदास राठोड यांनी दिलेली दोन प्रमाणपत्रे पूर्ण करित नाही तर तीसरे प्रमाणपत्र राज्यस्तर स्पर्धा २०१० चे असून डेडलिफ्ट प्रकारामध्ये खेळाडूने द्वितीय क्रमांक प्राप्त केल्याचे आहे. हे स्पर्धेच्या नियमानुसार खेळाडूने फुल स्कॉट,बेंचप्रेस व डेडलिफ्ट अश्या तीन प्रकारामध्ये प्राविण्य प्राप्त करणे आवश्यक आहे. परंतू सदर उमेदवाराने केवळ डेडलिफ्ट प्रकारात सहभाग घेवून प्राविण्य प्राप्त केले आहे, परंतू फुलस्कॉट व बेंचप्रेस या प्रकारात त्यांचा सहभाग दिसून येत नसल्याकारणाने श्री ज्ञानेश भोपीदास राठोड उमेदवार हे विहित केलेली खेळ विषयक अर्हता पूर्ण करित नसल्याचे सहाय्यक संचालक,क्रिडा व युवक सेवा,म.रा.पूणे यांनी संदर्भिय पत्रान्वये या कार्यालयास कळविले आहे”

Plain reading of aforesaid communication clearly shows that the certificates submitted by the applicant were not upto the mark i.e. valid for being considered applicant's candidature under sportsman category. The competent authority has referred to all three certificates submitted by the applicant and it was noticed that the applicant has not obtained distinction in State Level Sports and thus certificate produced by him in respect of Dead Lift Sports was pertaining to sports other than Full Squat, Bench Press and Dead Lift. The applicant has not participated in the games (Full Squat and Bench

Press) and, therefore, he was not qualified. From the impugned letter dated 11.4.2016, it seems that the certificates submitted by the applicant were forwarded to the Director of Sports and Youth Services (M.S.), Pune and the opinion was obtained and on the basis of said certificates, the impugned letter dated 11.4.2016 was issued. Thus, it is clear that it is not that the certificates submitted by the applicant were not forwarded for verification to the sports authority. So far as applicant's request to forward his certificates for verification to the competent authority vide representation dated 5.1.2016 is concerned, it is to be noted that said request has already been addressed by the respondent vide letter dated 12.4.2016 (A.14), the competent authority found certificates filed by the applicant not upto the mark for being considered under sportsman category, there was no need again to for4wrd additional certificates submitted by the applicant for verification.

17. The Hon'ble High Court vide order dated 7.10.2016 has directed this Tribunal to consider the ground taken in the petition as well as the prayer made in the petition. From the discussion in the foregoing paras, it will be thus crystal clear that the submission made by the learned counsel for the applicant that his certificates were not forwarded to the Director of Sports and Youth Services (M.S.), Pune for verification, is not correct. On the contrary, the certificates were

forwarded to the Director of Sports and Youth Services (M.S.), Pune and the Director of Sports and Youth Services (M.S.), Pune verified the said certificates and found the applicant not eligible for being considered as a candidate from sports category and, therefore, there is no need to again issue directions as claimed by the applicant in the O.A.

18. So far as claim of respondent No.5 is concerned, it is stated that he was earlier wrongly considered under the Non Creamy Layer category and, therefore, his claim was not considered. However, it was noticed that his claim was wrongly discarded and, therefore, the competent committee has taken decision to reconsider his claim. The respondents have placed on record minutes of meeting of the Committee at Annexure R-1 dated 30.4.2016 and the Committee unanimously decided to consider the claim of respondent No.5, as the same was found meritorious. The applicant has not challenged the claim of respondent No.5, though respondent No.5 is added as party respondent in the O.A. No specific relief is claimed against respondent No.5. The applicant also did not allege any malafides in the decision taken by competent Committee in favour of respondent No.5.

19. The applicant has filed rejoinder affidavit in reply to the affidavit filed by respondent Nos. 2, 3 and 5 and has merely stated

that respondent Nos. 1 to 3 are estopped from rejecting the claim of the applicant on the ground that respondent No.5 has scored more marks than the applicant. I am unable to accept the contention for the simple reason that the claim of respondent No.5 was rejected, as it was not considered on the ground that he did not produce Non Creamy Layer certificate. In fact, there was no need for respondent No.5 to produce such certificate as he was not claiming under that category and, therefore, though respondent No.5 is meritorious than the applicant, his name was not considered wrongly or mistakenly. The said mistake has been rectified by the respondents in the meeting dated 30.4.2016. Minutes of the said meeting is at Annexure R.1. I do not find any malafides in reconsidering the said case of respondent No.5.

20. The learned counsel for the applicant has placed reliance on the judgment delivered by the Hon'ble Apex Court in case of **Mohinder Singh Gill and others V/s Chief Election Commissioner, New Delhi and others reported in AIR 1978, SC-851.** The learned counsel for the applicant submits that when the statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons. The learned counsel for the applicant further submits that the order passed by the respondent authority

rejecting applicant's claim without sending certificates of the applicant for verification to the competent authority, is not legal. As already stated, it seems from the impugned communication that the certificates submitted by the applicant were forwarded to the competent authority for verification and on the basis of such verification, applicant's claim was found not suitable and, therefore, it was rejected. I have carefully gone through the citations on which the learned counsel for the applicant has placed reliance and I am satisfied that the case in citation is not analogous to the present set of facts.

21. The learned P.O. has placed reliance on **2015 (5) Mh.L.J. 311 Laxman Bhagwan Choudhari V/s State of Maharashtra and others** wherein it is stated that the members of the Committee are best judges to determine requisite experience of candidates and it is not proper for the Court to sit in appeal over their decision unless it is arbitrary, unreasonable or shocking.

22. In the present case, the certificates submitted by the applicant were forwarded to the competent authority for verification and it was noticed that the applicant was not eligible under sports category. Nothing has been placed on record to come to the conclusion that the decision taken by the respondent authority is illegal, arbitrary or

shocking and, therefore, there is no substance in the O.A. Hence, the following order:-

ORDER

O.A. stands dismissed with no order as to costs.

(J.D. Kulkarni)
Member (J)

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