

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR.**

**ORIGINAL APPLICATION NO. 91/2016.**

Sau. Surekha Manish Gaikwad,  
(Surekha d/o Tejrao Shewale),  
Aged about 40 years,  
Occupation- Service,  
R/o Mangalwari Bazar, Nai Basti,  
Near Priya Cycle Stores, Nagpur.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Principal Secretary,  
Department of Revenue & Forests,  
Mantralaya, Mumbai-32.
2. The Additional Principal Chief Conservator of Forests,  
(Administration / Subordinate Cadre),  
(M.S.), Van Bhavan, Civil Lines, Nagpur.
3. The Chief Forest Statistician,  
Van Bhavan, Civil Lines, Nagpur.

**Respondents.**

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Shri S.N. Gaikwad, the learned counsel for the applicant.

Shri A.P. Potnis, the Ld. P.O. for the respondents.

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

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**Judgment**

(Delivered on this 27<sup>th</sup> of October 2016).

The applicant Sau. Surekha Manish Gaikwad, has claimed for a direction to respondent No.2 i.e. Additional Principal Chief Conservator of Forests, (Administration / Subordinate Cadre),

Nagpur to grant her deemed date of promotion for the post of Accountant in Physically Handicapped category from 2008 and also to grant appointment date of promotion to the post of Chief Accountant in Physically Handicapped category from 2011.

2. The applicant was appointed as a Clerk from Physically Handicapped category (Ortho) vide order dated 1.9.2014 and joined the service on 26.10.2014. She passed the qualifying departmental examination on 2.12.2008 and, therefore, was due for promotion. Post was, however, kept vacant in the year 2009-2010 and nobody was promoted. The applicant, therefore, filed representation on 27.11.2008. She stands at Sr. No.65 in the seniority list, but was not promoted instead of one R.P. Gedam who was at Sr. No.18, was promoted. Vide letter dated 22.4.2013, the applicant was informed as to why Mr. Gedam was promoted and it was intimated to the applicant that her claim will be considered whenever her turn comes. Requisite communication dated 22.4.2013 reads as under:

“संदर्भिय अर्जाचे अनुषंगाने कळविण्यात येते कि, महाराष्ट्र शासन, सामान्य प्रशासन विभाग, शा.नि.क्रमांक-एसआरव्हि-१०९९/प्र.क्र.३७/९९/१६-अ, दिनांक ०५ मार्च २००२ अन्वये अपंगासाठी ३ % आरक्षण विहित केले असून त्यानुसार अंध/अल्प दृष्टी (Visually Handi Capped ), कर्णबधीर आणि अस्थीवंग प्रत्येकी १ % अशा प्रकारे पदोन्नती करिता आरक्षण ठरविण्यात आले आहे. या कार्यालयात पदोन्नतीद्वारे भरावयाची लेखापालांची ४४ पदे मंजूर असून शासन धोरणानुसार अपंगाचे ३ % आरक्षणानुसार लेखापाल पदावर अपंगाचे १ पद अनुज्ञेय आहे. सन २००८ मध्ये श्री पालथे यांना मुख्य लेखापाल पदावर अपंग (अस्थीव्यंग ) प्रवर्गात पदोन्नती देवून

भरण्यात आले होते. सदर पद रिक्त झाल्यानंतर अंध / अल्पदृष्टी असलेल्या कर्मचारी उपलब्ध नसल्यामुळे आळीपाळीच्या धोरणानुसार कर्णबधीर असलेला कर्मचारी श्री आर.पी.गेडाम,लिपीक यांना सन २०११ मध्ये लेखापाल पदावर अपंग (कर्णबधीर ) प्रवर्गात पदोन्नती देण्यात आलेली आहे. सौ. सुरेखा म.गायकवाड,लिपीक या अपंगांमध्ये (अस्थीव्यंग ) आहेत. वर नमुद केल्यानुसार आळीपाळीच्या धोरणानुसार त्यांचा क्रमांक येत नसल्यामुळे सन २०११ मध्ये लेखापाल पदावर पदोन्नती देतांना पदोन्नतीसाठी त्यांचे नावाचा विचार करण्यात आला नाही.

त्याचप्रमाणे संदर्भिय अर्जांमध्ये श्री आर.पी.गेडाम,लिपीक हे विभागीय परिक्षा पास नसून त्यांच्या विभागीय परिक्षा पास होण्याची वाट पाहून सन २०११ मध्ये लेखापाल पदावर पदोन्नती देण्यात आली असल्याचे खोटे नमुद केले आहे. वास्तविक पाहता त्यांनी प्रकरणाची शहानिशा करून त्याप्रमाणे अर्जात नमुद करणे जरूरीचे होते. श्री आर.पी.गेडाम,लिपीक यांनी दिनांक २७ व २८ जून,२००९ रोजी विभागीय परिक्षा उत्तीर्ण केली आहे. त्याचप्रमाणे त्यांना अपंगाच्या आरक्षण धोरणानुसार तसेच ते कर्णबधीर असल्याने त्यांना लेखापाल पदावर पदोन्नती देण्यात आलेली आहे. विभागीय पदोन्नती समिती कडून संपूर्ण प्रक्रीया नियमानुसार करण्यात आल्यामुळे आपल्यावर कोणत्याही प्रकारचा अन्याय झालेला नाही. तरी योग्य वेळी आपला लेखापाल पदावर पदोन्नतीसाठी जेव्हा क्रम येईल त्यावेळी नियमानुसार आवश्यक ती कार्यवाही करण्यात येईल. तरी याबाबत नोंद घ्यावी“.

3. Being aggrieved by the said communication, the applicant again filed representation and she received another communication dated 29.12.2014 (P.27) whereby her representation was filed. Being aggrieved by both these communications, present O.A. is filed.

4. The respondents resisted the claim by filing affidavit in reply. The respondents justified rejection of applicant's claim.

5. Heard Shri S.N. Gaikwad, the learned counsel for the applicant and Shri A.P. Potnis, the learned P.O. for the

respondents. Perused the affidavit, affidavit in reply and various documents placed on record by respective sides.

6. The only material point to be considered is whether the applicant is entitled for grant of deemed date of promotion to the post of Accountant in Physically Handicapped category from 2008 and consequently deemed date of promotion to the post of Chief Accountant in Physically Handicapped category from 2011.

7. It is material to note that from the correspondence already discussed, it seems that one Shri R.P. Gedam was promoted on the post of Accountant in 2011 from Physically Handicapped category (hearing impaired). It is material to note that this promotion was never challenged by the applicant. The applicant merely filed representation on 12.3.2013 against the promotion of Mr. Gedam, but instead of challenging the said promotion, she remained silent. In fact, her representation was rejected vide impugned letter dated 22.4.2013 and, therefore, she should have challenged the said promotion. Thereafter the applicant did not do anything except filing representation and her representation was again rejected vide letter dated 29.12.2015 and it was informed to her that she was already intimated vide letter dated 22.4.2013 that her claim was not accepted.

8. The learned P.O. has invited my attention to the reply affidavit filed on behalf of the respondents. In the said affidavit, entire

situation has been made clear as to why Shri Gedam was promoted and also as to how Shri S.V. Palthe was promoted. Admittedly this S.V. Palthe is senior to the applicant. The contents in paras 3 to 8 in the affidavit in reply are as under :

**“3.** It is submitted that the applicant was appointed as a Clerk-Typist in Handicapped Category (Orthopedic) on 1.9.2004. Another employee Shri R.P. Gedam was appointed as a Clerk-Typist also in Handicapped Category (dead and dumb) on 8.8.2006. Shri R.P. Gedam appeared for the departmental examination and cleared the said examination in June 2009. Since the applicant as well as Shri R.P. Gedam has passed the examination within requisite time period and therefore, their seniority has been counted from the date of their initial appointment.

**4.** It is submitted that the Govt. of Maharashtra has issued the G.R. dated 5.3.2002 has provided the quota for promotion for handicapped employees 3% and 100 point roster their posts has been shown at Point No.1, 34 & 67 and these three points are reserved for the employees belonging to the Handicapped Category.

**5.** It is submitted that bare perusal of the policy of the Govt. this Hon'ble Tribunal will find that, the reservation provided

for the Handicapped Category employees for promotion has to be given on rotation i.e. (1) Blind, (2) Deaf and Dumb and (3) Ortho. The reservation is provided for Group-C category employees. Similarly, where the particular post has been filled in by adopting both the ways i.e. direct appointment as well as by promotion. The reservation of Handicapped Category is to be given for the same, where the quota of direct recruit is not crossed the 75% of the total posts.

6. It is submitted that the post 100 filled in by promotion, if any particular post is being filled in by promotion then in that circumstances, no reservation in promotion has been provided for the Handicapped Category. It is submitted that the posts of Chief Accountant are to be filled in only 100% by way of promotion and there is no provision for reservation to the Handicapped person in the said post of Chief Accountant because no direct recruitment is provided on the post of Chief Accountant.

7. It is submitted that one Shri S.V. Palthe was working in the cadre of Clerk who was appointed in Handicapped Category, has been given promotion as an Accountant by an order dated 25.11.2002. Subsequently, Shri S.V.

Palthe has been given promotion on the basis of seniority cum merit on the post of Chief Accountant on 18.11.2008. It is submitted that since Shri S.V. Palthe has been given promotion in the category of Physically Handicapped (Ortho.), the point which has been reserved for promotion on the post of Accountant in the category of Physically Handicapped (Ortho.), was completed and, therefore, there was a turn of other Physically Handicapped category person for getting the promotion according to the roster point i.e. to say that blind person. It is submitted that since no blind person was available in the cadre of Clerk-Typist, so he can be considered for promotion according to the roster point for the post of Accountant, since no person was available and therefore, according to the rotation, it becomes a turn of Handicapped (Deaf and Dumb) employee to get the promotion on the post of Accountant. It is submitted that one of the employees Shri Gedam who is Handicapped (Deaf and Dumb) category, was available in Clerk-Typist cadre and, therefore, his candidature has been considered correctly by the respondents and he has been given promotion to the post of Accountant on 15.2.2011 and in such away this Hon'ble Tribunal will find

that, the respondents have not committed any illegality while doing so.

8. It is submitted that it is the contention of the applicant that, the post of Accountant was vacant in the year 2008, because of promotion of Shri S.V. Palthe and the department should have considered her case in the year 2008 itself since she was available. It is submitted that, the applicant herself has admitted that the respondents have not given promotion to anyone in the years 2008, 2009, 2010 and 15.2.2011 on the post of Accountant and, therefore, this Hon'ble Tribunal will find that, an assumption and presumption as soon as the post becomes vacant, the promotion cannot be given and it is the sweet choice of the department to consider the cases of promotion as and when felt necessary to fill up the post. In such circumstances, this Hon'ble Tribunal will find that, the claim made by the applicant that she should have been given promotion on the post of Accountant in the year 2008 and subsequently she should have been given promotion to the post of Chief Accountant in the year 2011 cannot be considered and granted and therefore, the O.A. filed by the applicant is liable to be rejected".



9. Thus, from the affidavit in reply as already stated, it will be clear that the respondents have followed 100 point roster and in the said roster, applicant's category and consequently name of the applicant has not been figured. The respondents have stated that the applicant will be considered as and when her turn comes. There is nothing on record to show that any other person junior to the applicant has been considered for promotion. The respondents have not rejected applicant's claim for promotion and they have merely stated that she will be considered as and when her turn comes. In view of this, I do not find any illegality in the impugned communications whereby the applicant's claim has been rejected. Hence, the following order.

**ORDER**

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

(J.D.Kulkarni)  
Member (J)

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