

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 597 /2016 (D.B.)

Nisha Arjunrao Deshmukh,
Aged Major, Occ. Service,
R/o C/o A.M.Gurmule, Journalist,
Nagar Parishad School No. 2,
Ward No. 3, Peth Vibhag,
Narkhed, District Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Forest,
Mantralaya, Mumbai-32.
- 2) Chief Conservator of Forest,
(Regional)/ Chairman, Selection Committee,
Near Zero Milestone,
Nagpur.

Respondents

Shri T.Patil, Id. Advocate for the applicant.
Shri S.A.Sainis, Id. P.O. for the respondents.

**Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman &
Hon'ble Shri M.A.Lovekar, Member (J).**

JUDGMENT

Judgment is reserved on 14th Nov., 2022.

Judgment is pronounced on 30th Nov., 2022.

(Per:-Member (J))

Heard Shri T.Patil, learned counsel for the applicant and Shri
S.A.Sainis, learned P.O. for the Respondents.

2. Case of the applicant is as follows. In response to advertisement dated 17.02.2009 the applicant applied for the post of Forester from O.B.C. (Female) Category. She participated in the selection process. She underwent partial physical test on rescheduled date. However, due to advanced pregnancy, on medical advice, she could not undergo walking test. Her name featured at Sr. No. 23 in the select list declared on 08.06.2010 and name of one Sheetal Bhiwagade featured at Sr. No. 3. Sheetal Bhiwagade approached this Tribunal. The Tribunal ruled by quashing the select list dated 08.06.2010 by directing preparation of select list, including candidates from O.B.C. (female) category, only of six candidates who had cleared all the tests including the walking test. Being aggrieved by this order of the Tribunal the applicant filed W.P.No.1488/2012. In this W.P. Sheetal Bhiwagade was respondent no. 4. The Hon'ble High Court allowed the W.P. by judgment dated 17.10.2012 (A-1) and ordered as follows:-

"9. Having regard to that, on account of nobody's fault, the petitioner as well as respondent no. 4 have been prevented from being appointed and their cases will have to be considered as exceptional and extra ordinary cases requiring the respondents to appoint the petitioner and respondent no. 4 as O.B.C. category candidates.

10. As such, respondent no. 2 is directed to appoint the petitioner as well as respondent no. 4 against the post reserved for O.B.C. category. Needless to state if on account of the order passed by us, at present the quota of O.B.C. candidates exceeds, respondent – authority shall be at liberty to adjust the same in future vacancies falling vacant in O.B.C. quota, by filling in the vacancy from open category candidate.”

One Rajendra Ghunkikar whose actual posting on the post of forester was delayed for no fault on his part had filed O.A. No. 637/2014 before this Bench. He was held eligible to be appointed as forester from the date of selection, by judgment and order dated 05.10.2015 (A-2). Case of the applicant is identical. She issued a notice (A-3) that she be given seniority from the date of her selection i.e. 08.06.2010. Appointment letter dated 16.12.2013 (A-5) was issued to her. She underwent training of one year between 01.03.2013 and 28.02.2014. By communication dated 27.04.2016 (A-4) the applicant was informed as follows:-

“महाराष्ट्र शासनाने दिनांक २९ ऑक्टोंबर १९८७ रोजी वनपालाकरिता नियुक्तीचे नियम जारी केलेले आहेत. सदर नियुक्तीचे नियमानुसार वनपालाकरिता असलेले १ वर्षाचे नियुक्तीपुर्व प्रशिक्षण यशस्वीरित्या पुर्ण केल्यावर वनपाल पदावर नियुक्ती देण्याची तरतूद आहे. त्यानुसार त्यांना दिनांक ०१.०३.२०१३ ते २८.०२.२०१४ या कालावधीचे प्रशिक्षण पुर्ण केल्यानंतर आदेश क्रमांक

कक्ष-१/आस्था/अ/पदभरती/वनपाल/ससे/६३१० दिनांक ०१.०३.२०१४ अन्वये वनपाल पदावर नियुक्ती देण्यात आली.

उपरोक्त वरून न्यायलयाने वेळोवेळी दिलेल्या निर्णयानुसार कार्यवाही करून शासन निर्णयातील तरतुदीनुसार वनपाल पदावर नियुक्ती देण्यात आली.

कु. निशा देशमुख यांचे वैयक्तिक अडचण व न्यायालयीन प्रकरणामुळे शासन निर्णयातील तरतुदीनुसार प्रशिक्षण पुर्ण झाल्यावर नियुक्तीचे आदेश देण्यात आले. निवड केलेल्या दिनांकापासून वनपालांना ज्येष्ठता देण्याची तरतूद नसल्याने त्यांना दिनांक ०८ जून २०१० पासून वनपालांची ज्येष्ठता देणे शक्य नाही.”

Hence, this original application.

3. Reply of respondents 1 & 2 at pages 57 to 63 contains following averments. In select list dated 08.06.2010 (A-R-2) name of the applicant was included provisionally. The order dated 17.10.2012 (A-R-4) passed in W.P. No. 1488/2012 only directed that the applicant be given an appointment. It did not deal with the question of seniority. Rule 3(1)(b)(iv) of Forester, Forest Guard, Ranger - Surveyor, Surveyor, Head Clerk, Accountant and Clerk-cum-typist (Recruitment) Rules, 1987 (A-R-5) reads as under:-

“(iv) have passed the final examination of the Foresters’ Training Course of one year conducted by the Forest Department at any of the Foresters’ Training School of Government.”

4. We have considered rival submissions. The only question that needs to be answered is whether on account of not undergoing training with her batchmates seniority of the applicant would be adversely affected. In view of Judgment of this Tribunal in O.A. No. 637/2014 (A-2) this question will have to be answered in the negative. Relevant observations in O.A. No. 637/2014 are as under:-

“5. We find that the Applicant had earlier filed two O.As in the matter of selection to the post of Forester. In the first O.A. No. 670/2008, by order dated 10.02.2009 this Tribunal directed the Respondents to consider the case of the Applicant for appointment to the post of Forester on the basis of marks obtained by him in B.A. (as he did not pass H.S.C. and got B.A. degree from Yashwantrao Chavan Maharashtra Open University). The Applicant is from VJ-A category. In the select list originally published by the Respondent no. 2, the name of the Applicant was not included. Extracts from the select list are at p. 65 of the Paper Book. After the order of this Tribunal in O.A. No. 670/2008 dated 10.02.2009, the select list was revised and the Applicant was placed at Sr. No. 3 below Shri Shiktire Sachin Bhanudas in the list of VJ-A (P. 64 of the Paper Book). Copy of the advertisement is at P. 58 of the Paper Book.

It can be seen that 3 posts were reserved for VJ-A category, out of which one post was reserved horizontally for Ex-Servicemen. Even after the Applicant's name was included at Sr. No. 3 in VJ-A category, pursuant to the order of this Tribunal in O.A. No. 670/2008, he was not given appointment as the post was reserved horizontally for Ex-servicemen. The Applicant filed O.A. No. 400/2000, wherein it was held by this Tribunal that horizontally reserved post cannot be carried forward as per circular dated 16.03.1999 and provision in earlier circulars providing for carrying forward posts reserved for ex-servicemen for one year, were no longer valid. This order was passed on 09.11.2010 and was to be implemented within six weeks. However, the Respondents actually issued orders only on 21.08.2012. In letter dated 23.03.2009 from the Respondent no. 2 to the Respondent no. 3 (P. 63 of the Paper Book), it is clearly mentioned that persons from VJ-A category at Sr. Nos. 1 & 2 were sent for training on 01.07.2008. The Applicant claims that if he is held to be eligible to be selected as Forester on the basis of select list in which these two persons were also selected, he is entitled to the same seniority as has been given to them. We see no ground on which this request of the Applicant can be denied.

Though it took him to file two Original Applications, but ultimately, the decision was that he was eligible to be appointed as Forester along with persons at Sr. Nos. 1 & 2 from the category of VJ-A candidates.

6. Having regard to the aforesaid facts and circumstances of the case, the Applicant is held eligible to be appointed as Forester from 01.07.2008. He will be eligible to get all service benefits except back wages. His seniority may be fixed on the basis of marks obtained by him in the selection process.”

5. In view of these observations the O.A. is allowed in terms of prayer clause A. It is made clear that seniority of the applicant in the select list dated 08.06.2010 shall be fixed on the basis of marks obtained by her. No order as to costs.

(M.A.Lovekar)
Member(J)

aps

Dated - 30/11/2022

(Shree Bhagwan)
Vice Chairman

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

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman
& Hon'ble Member (J).

Judgment signed : 30/11/2022.
on and pronounced on

Uploaded on : 01/12/2022.