MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 235/2016 (D.B.)

Shri Pranay Vijay Ganvir,
Aged about 36 years, Occ. Service,
R/o Flat No.S201, Sidhivinayak Apartment II,
Sumitra Nagar, Tadoba Road,
near Balki Ata Chakki, Tukum,
Chandrapur-442 401.

Applicant.

Versus

1) The Secretary,
Forest, State of Maharashtra,
through the Ministry of Forest,
Mantralaya, Mumbai.

2) Chief Conservator of Forest (T),
Dr. Ambedkar Bhavan,
Gadchiroli Division,
Gadchiroli- 442 605.

3) Chief Conservator of Forest (Establishment),
Chandrapur Circle, Dist. Chandrapur.

4) Deputy Chief Conservator of Forest,
Central Chanda, District Chandrapur.

Respondents.

Shri Manoj Kumar Mishra, Advocate for the applicant.

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

Coram :- **Shri Shree Bhagwan,**
Vice-Chairman and
Shri Justice M.G. Giratkar,
Member (J).

Date of Reserving for Judgment : 7th June,2022.

Date of Pronouncement of Judgment : 13th June,2022.

JUDGMENT

Per : Vice Chairman.

(Delivered on this 13th day of June, 2022)

Heard Shri Manojkumar Mishra, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. The applicant belongs to Scheduled Caste against horizontal reservation (S.C.) category and was appointed in the physically handicapped quota as Forest Guard under Conservator of Forest, Ballarshah Area, South Chandrapur vide order dated 29/01/2007 (A-1,P-10). The applicant was due for promotion as Vanpal/Forester after completion of three years of service as Forest Guard. The applicant submitted representations dated 24/04/2015 (P-12) and 23/12/2015 (P-16). However, these applications have not been decided. The applicant is having Orthopaedic deformity (अस्थिव्यंग) and comes under physically handicapped quota. The applicant was due for promotion in 2011, but he has not been promoted. Aggrieved with this, the applicant has approached to this Tribunal.

3. In a similar case, as per submission made by the learned counsel for the applicant, the Chief Conservator of Forests, Aurangabad had denied the promotion to one Mr. A.M. Katkar from the post of Forest Guard to the post of Forester under handicapped

category. The matter was heard by Competent Authority and Commissioner, Handicapped Welfare Commissionerate (M.S.), Pune and final order was passed on 14/05/2012 (A-8,P-24 to 29). The final order is at page no.29 which is reproduced below –

‘‘ क) वरील परिच्छेद क्र. ब मध्ये नमूद केल्याप्रमाणे अर्जदार यांच्याकडे समकक्ष पद उपलब्ध होईपर्यत अर्जदार वनपाल पदाच्या पदोन्नतीसाठी पात्र ठरलेल्या दिनांकापासून जाब देणार यांनी अर्जदार यांना वनपाल पदावरील पदोन्नतीचा मानीव दिनांक देऊन वनपाल पदाची वेतनश्रेणी लागू करुन अर्जदार यांना देय असणारे वेतन व भत्ते व फरकाची रक्कम पुढील तीस दिवसांत अदा करावी.’’

4. The Government of Maharashtra vide G.R. dated 5/3/2002 (A-14,P-53) has taken policy decision regarding promotion to the disabled persons (दिव्यांग) and detailed guidelines have been given in the Govt. G.R. dated 5/3/2002. The learned counsel for the applicant has relied on that G.R. which is placed on record at Annex-A-14,P-53.

5. The learned P.O. pointed out Govt. G.R. dated 12/07/2004 (A-11,P-33). In this G.R. also the Forest Department has given policy decision that reservation to disabled persons should be granted as 1% for blindness, visual deformed (अंध, अल्पदृष्टी, दृष्टीहीनता) , 1% for deafness (बहिरेपणा) and 1% for Orthopaedic deformity and mentally retarded (अस्थिव्यंग किंवा मंदमती) i.e. total 3% for disabled persons.

6. The Government of Maharashtra has also taken policy decision vide G.R. dated 10/02/2009 (A-13,P-38) and in internal page

of 38 of G.R. in para-3 it has been made clear that in the Forest Department, the Officers or employees who are supposed to work at field level like ACF, RFO, Forester and Forest Guard only, these posts will be excluded from G.R. dated 12/07/2004 related to disabled persons (दिव्यांग) and only those posts have been excluded from 3% reserved quota of handicapped quota. This G.R. was issued after taking various opinions of experts and after consultation with the Govt. of Maharashtra GAD.

7. This issued was decided in case of the **State of Maharashtra Vs. Arvind Mansubrao Katkar** by the Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.2635/2013 and Judgment was passed on 10/04/2013. In this case party Shri Arvind Katkar was denied promotion to Vanpal/ Forester from Forest Guard on the ground that he was handicapped person by the Chief Conservator of Forest, Aurangabad. The Hon'ble High Court has observed in para nos.4 to 7 and particularly in para-6 (P-31). The para nos.4 to 7 are reproduced as below –

" *(4) When the petitioner was appointed on 29/12/2006 from the handicapped category as Forest Guard, the respondent was entitled to be promoted as Vanpal in 2009. The Government Resolution dated 27/09/2007 was introduced by virtue of which the said post of Vanpal was not meant for handicapped candidate. Even by the said*

Government Resolution, the post of Forest Guard is also not meant for handicapped person but the respondent is continued on the said post.

(5) The service conditions of the respondent cannot be changed abruptly. The authority has taken into consideration all the facts of the matter and has passed the order stating that if the said post of Vanpal is not available then the respondent should be promoted to the equivalent post.

(6) Moreover, the said Government Resolution deals with fresh recruits and not with the channel of promotion. Respondent is seeking promotion.

(7) Considering all the aforesaid aspects of the matter, no error has been committed by the Authority while passing the impugned order. Writ Petition is dismissed. No costs. "

8. In SLP before the Hon'ble Supreme Court against the Judgment of Bombay High Court Bench at Aurangabad in Writ Petition No.2635/2013 in case of **State of Maharashtra Vs. Arvind Mansubrao Katkar** and the last para at Annex-A-10,P-32 is reproduced as below –

" *In the peculiar facts and circumstances of the case, we do not entertain the special leave petition. The special leave petition is, accordingly, dismissed. However, the issues arising therein are left open for decision in an appropriate case*."

9. The SLP was dismissed by the Hon'ble Apex Court. The case of the applicant is fully covered by the decision of the Competent Authority and Commissioner, Handicapped Welfare Commissionerate

(M.S.), Pune and final order was passed on 14/05/2012 (A-8,P-24 to 29). The final order is at page no.29 which is reproduced below –

‘‘ क) वरील परिच्छेद क्र. ब मध्ये नमूद केल्याप्रमाणे अर्जदार यांच्याकडे समकक्ष पद उपलब्ध होईपर्यत अर्जदार वनपाल पदाच्या पदोन्नतीसाठी पात्र ठरलेल्या दिनांकापासून जाब देणार यांनी अर्जदार यांना वनपाल पदावरील पदोन्नतीचा मानीव दिनांक देऊन वनपाल पदाची वेतनश्रेणी लागू करुन अर्जदार यांना देय असणारे वेतन व भत्ते व फरकाची रक्कम पुढील तीस दिवसांत अदा करावी.’’

10. Then it is covered by the Judgment of Hon’ble Bombay High Court, Bench at Aurangabad in Writ Petition No.2635/2013 decided on 10/04/2013 and finally SLP was dismissed by the Hon’ble Apex Court at Annex-A-10,Page no.32.

11. The similar issue was discussed in O.A.No. 257/2016 and order was passed on 26/09/2019 (P-115 to 118) by this Tribunal. The operative portion of the order is as follows –

“(1) The O.A. is allowed.

(2) The impugned orders dated 14 October,2015 (Annexure A-1, page no.15) and dated 31 January,2019 Annexure-2 (Page No.17) are hereby quashed and set aside.

(3) The respondents are directed to prepare seniority list of physically handicapped Forest Guards and promote them as Foresters, subject to availability of vacant posts.

(4) There shall be no order as to costs. "

12. The learned counsel for the applicant has filed letter dated 28/03/2012 (P-19&20) issued by the Chief Conservator of Forests, Pune in which Forest Guards have been promoted to the Foresters from disabled quota. In the same Department, when the Chief Conservator of Forests, Pune implemented same criteria, then how other Officers are facing same problems.

13. The learned counsel for the applicant has filed document (P-112) which is marked Exh-X for identification in which the Chief Conservator of Forests, Nagpur vide order dated 10/05/2021 has issued promotion order from Forest Guards to Foresters under handicapped quota. In whole it appears that in the background of legal backing and policy of the Government, the Chief Conservator of Forests, Nagpur (P-112 to 114) and the Chief Conservator of Forests, Pune (P-19&20) and the Chief Conservator of Forests, Amravati vide letter dated 24/5/2015 (A-7,P-23) has promoted the disabled persons from Forest Guards to Foresters so in the similar facts and circumstances as per the policy of Government the Chief Conservator of Forests, Chandrapur and Chief Conservator of Forests, Gadchiroli i.e. respondent nos.2&3 cannot deny promotion to the handicapped persons from the post of Forest Guard to the post of Forester.

14. In view of above discussion, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The respondents are directed to promote the applicant from the post of Forest Guard to the post of Forester as per the rules within three months, if he fulfils promotional criteria.

(iii) The respondents are directed to grant deemed date of promotion from 1/4/2011 to the applicant to the post of Forester as per the rules and pay consequential and monetary benefits.

(iv) No order as to costs.

(Justice M.G. Giratkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 13/06/2022.

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 : 13/06/2022

Uploaded on : 13/06/2022.