

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.351 OF 2022

**DISTRICT : MUMBAI
SUBJECT : REGULARIZATION
OF SERVICE**

Mr Pradip Shakti Panda, Age 48 years,)
Occupation – Van Major, Sanjay Gandhi,)
National Park,)
R/at 1/2, Mali Quarters, Sanjay Gandhi)
National Park, Borivali (E) 400 066.)... **Applicant**

Versus

The Conservator of Forest & Director, Sanjay)
Gandhi National Park, Borivali (E), Mumbai.)...**Respondent**

Shri Kishor R. Jagdale, learned Advocate for the Applicant.

Shri Ashok J. Chougule, learned Presenting Officer for the Respondent.

CORAM : A.P. KURHEKAR, MEMBER (J)

DATE : 17.10.2022.

JUDGMENT

1. In this second round of litigation Applicant has challenged communication dated 17.11.2021 issued by Respondent - Conservator of Forest, Sanjay Gandhi National Park stating that the Applicant's case does not fall within parameter of G.R. dated 16.10.2012 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. This is second round of litigation for absorption in terms of G.R. dated 16.10.2012. Initially the Applicant had filed O.A. No.802/2020 inter-alia contending that he worked as Van Major from 01.11.1994 and liable for absorption in terms of G.R. dated 16.10.2012. In that

O.A. he had placed on record information collected under R.T.I. Act and also produced certain certificates. O.A. was disposed of on 06.08.2021 giving liberty to the Applicant to make representation to the Respondent for claiming relief of absorption in terms of G.R. dated 16.10.2012 and it was to be decided within a month from date receipt of representation. In Para 3,4,5 & 6 Tribunal held as under:-

“3. The Applicant contends that he worked as Van Majoor from 01.11.1999 to 30.06.2004 and was eligible for absorption in terms of G.R. dated 16.10.2012. the Applicant has placed on record the information collected under RTI which shows that he had worked for more than 240 days only in three years i.e. 1994, 1995 and 1998. Apart, he has produced the certificates issued by RFO dated 01.11.1999 showing that he worked for more than 240 days in the year 1996 as well as in 1999. On the basis of these, the Applicant sought to contend that he had worked for more than 240 days for five years and he is eligible for absorption.

4. Whether the Applicant has really worked for 240 days for five years in terms of G.R. dated 16.10.2012 is the question of fact which needs to be decided by Respondent No.1 in first place.

5. As such, the Applicant is required to make representation to the Respondent No.1 for claiming relief of absorption in terms of G.R. dated 16.10.2012. However, no such representation seems to have been made.

6. Learned Counsel for the Applicant, therefore, seeks permission to withdraw the O.A. with liberty to file representation to the Respondent No.1 for absorption.”

3. The Applicant accordingly made representation which came to be rejected by impugned communication dated 17.11.2021 stating that the record is examined but it does not disclose that the Applicant fulfill necessary parameter /conditions in terms of G.R. dated 16.10.2012 and accordingly his representation came to be rejected. The relevant contents of the impugned order is as under:-

“वनविभाग सामाजिक वनीकरण व वनविकास महामंडळातील रोजंदारी मजुरांना नियमित करणेबाबत राज्यशासनाने दिनांक १६.१०.२०१२ रोजी शासन निर्णय घेण्यात आला. त्यानुसार योजना/योजनेत्तर निधीतुज दैनंदिन मजुरी घेण्या-या व दिनांक ०१.११.१९९४

पासुन दिनांक ३०.०६.२००४ पर्यंत सलग पध्दतीने अथवा तुटक तुटक रित्या प्रतिबंध किमान २४० दिवस याप्रमाणे किमान ५ वर्ष काम केलेल्या मजुरांना दिनांक ०१.०६.२०१२ पासुन अटी व शर्तीच्या अधिन राहुन शासन सेवेत कायम करण्याचा निर्णय घेण्यात आला. त्याअनुषंगाने श्री.प्रदीप पांडा हंगामी मजूर यांना कळविण्यात येते कि, आपले अभिलेख्याची तपासणी केली असता आपण शासन निर्णयानुसार दिनांक ०१.११.१९९४ पासुन दिनांक ३०.०६.२००४ पर्यंत सलग पध्दतीने अथवा तुटक तुटक रित्या प्रतिवर्ष किमान ५ वर्ष २४० दिवस भरत नसल्याने अपात्र ठरत आहेत.”

4. Shri K.R. Jagdale, learned Advocate for the Applicant again sought to assail communication dated 17.11.2021 and referred to same information availed by him in R.T.I. and certificate produce in O.A. No.802/2020 which was disposed of with directions.

5. In O.A. Respondent has not filed Affidavit-in-Reply though enough time is granted. Learned P.O. submits that from time to time communication was made with Respondent but he did not respond. However, on the basis of record he submits that Respondent had already examined the record and found that the Applicant has not worked 240 days for five years in terms of G.R. dated 16.10.2012 and O.A. is devoid of merit.

6. The perusal of G.R. dated 16.10.2012 reveals that Government had taken policy decision to regularize the services of Van Majoor who had worked for 240 days at least in five years continuously without interruption in the period from 01.11.1994 to 30.06.2004 and who were in services on 01.06.2012 as Van Majoor.

7. In this O.A. also the Applicant has produced information sought by him under R.T.I. on 04.01.2020 which shows the following position:-

विषयांकीत प्रकरणी संदर्भीय अर्जान्वये मागणी केलेली माहिती खालीलप्रमाणे सादर केली आहे.

अ.क्र.	माहितीचा विषय	उत्तर		
		अ.क्र.	वर्ष (जानेवारी ते डिसेंबर)	एकूण भरलेले दिवस
१	१९९३ साली पासून २००० पर्यंतचे भरलेल्या दिवसांची माहिती मिळणेबाबत	१	१९९३	१३९
		२	१९९४	२४६ १/२
		३	१९९५	३०३
		४	१९९६	निरंक
		५	१९९७	५८२
		६	१९९८	२९३
		७	१९९९	निरंक
		८	२०००	निरंक

8. Thus, as per the information obtained by the Applicant under R.T.I, apparently he has not worked for 240 days for five years. In the year 1996, 1999, 2000, it is shown nil. However, to overcome it, he sought to place reliance on certificate which is on Pg.29 & 30 of P.B. Pg.29 is purported to be certificate issued by Shri V.G. Jakar, Forester stating that in 1996 the Applicant had worked for 240 days. Whereas, Pg.30 certificate issued by Shri K.S. Bawadekar, Forester stating that in 1999 the Applicant had worked for 240 days. Out of these two documents, Pg 29 is simple typed copy, whereas Pg.30 is photo copy of certificate issued by Shri K.S. Bawadekar. Except these certificates no other authenticated document in the shape of attendance sheet or any other material is produced. In absence of any other authenticated and reliable record no reliance can be placed on such typed copy of certificate at Pg.29 & 30.

9. Shri K.R. Jagdale, learned Advocate for the Applicant in reference to some contents if the minutes of meeting of committee dated 30.01.2014 (Pg 51 of P.B.) sought to contend that the Department itself was at fault for not maintaining the record properly about the attendance, and therefore the Applicant cannot be allowed to suffer for their mistake. The perusal of it reveals that the said committee was formed to take decision for the regularization of some Van Majoor. As per the decision of committee, five Van Majoor namely 1) Shri Umesh H. Thorat 2) Smt. Ganga D. Suryawanshi 3) Shri Anant S. Netkar 4) Shri Madhu L. Varkhande & 5) Shri Mukesh P. More were found entitled to absorption. The relevant contents of the said minutes of meeting on Page 51 which is as under:-

‘‘वरील अधीक्षक सिंहविहार यांचे अहवालाची वरीलप्रमाणे अपात्र १२ नावे वगळून शिल्लक राहिलेली ५ मजूर १.श्री.उमेश हरिभाऊ थोरात, २.सौ.गंगा दामोदर सुर्यवंशी, ३. श्री.अनंत सुदाम नेतकर, ४.श्री.मधू लाडक्या वरखंडे, ५.श्री.मुकेश पुनमचंद मोरे असे एकूण ५ मजूर पात्रता निकषानुसार पात्र ठरतात असे अहवालानुसार आढळून आले. तथापि, सन १९९६ मधील सन १९८९ ते १९९४ या कालावधीतील वनमजूरांना नियमित करण्याचे शासन निर्णयानुसार वनविभागातच नवीन बारमाही वनमजूर कामावर ठेवण्यास स्पष्टपणे बंदी करण्यांत आली होती. त्याप्रमाणे त्यांचे परिणामस्वरूप ३महिऱ्यापेक्षा जास्त कालावधीकरीता मजूर लावण्यास बंदी असल्याने मजूरांचे हजेरीपत्र न ठेवता नमुना ३२ प्रमाणकांवर मजूरी वाटप करण्यांत येते. रोकडवहीत देखील परिपुर्ण नावानिशी महिना वार नावे इतर दिवसांची नोंद ठेवलेली नाही. मात्र त्रोटक स्वरूपात एका मजूराचे नाव लिहून इतर मजूरांची संख्या नमूद केलेली आढळते. त्यामुळे प्रत्येक मजूरांच्या उपस्थितीचा स्पष्ट अभिलेख तपासणीत उपलब्ध झाला नाही. सिंहविहार परिक्षेत्र येथील विशिष्ट प्रकारची कामे व त्याठिकाणी काम करणारे मजूरांचे गट सातत्याने त्याच ठिकाणी काम करतात व आजही काम करीत आहेत. त्यामजूरांना देखरेख करणारे वनरक्षक/वनपाल यांचे जाब जबाब तत्कालीन वनक्षेत्रपाल/पशुवैदयकिय अधिकारी/उपवनसंरक्षक यांनी दिलेले दाखले या सर्व बाबींचा विचार करता अधीक्षक सिंहविहार यांनी सा दर केलेला अहवाल ग्राह्य धरणे उचित ठरते. यास्तव अधीक्षक सिंहविहार यांचे दिनांक २८/०६/२०१३ रोजी अहवालातील नमूद ५ मजूर यांना नैसर्गिक न्यायाच्या दृष्टीने पात्र करावे अशी समितीने शिफारस केली.’’

10. True, committee found that the record of the attendance is not kept properly. Emphasizing on these observations learned Advocate for the Applicant sought to contend that the Department itself was at fault

for not maintaining the record for which the Applicant cannot be blamed.

11. As stated above, initially in O.A. No.802/2020 directions were given to the Respondents to examine the record and it is in pursuance to it, Respondent found that the Applicant does not fulfil necessary conditions for absorption in terms of G.R. dated 16.10.2012. The Applicant has not produced any documents in rebuttal or to show that the finding recorded by Respondents is incorrect. The certificates place on record which are at Pg.29 & 30 cannot be accepted as gospel truth. Since, the Applicant has approached the Tribunal it was for him to produce relevant record and to establish fulfilment of requirement in terms of G.R. dated 16.10.2012. He cannot take benefits of certain observation stating that record was not maintained properly. If the record is not maintained properly, on that basis alone we cannot jump to the conclusion that Applicant worked for 240 days for five years in terms of G.R. dated 16.10.2012. No such finding can be recorded when there is no such record. Otherwise, it would be amounting to recording decision on the basis of surmises and conjuncture which is not permissible in law.

12. The totality of the aforesaid discussion leads me to sum up that the Applicant has failed to establish his claim for absorption.

13. The Original Application is dismissed with no order as to costs.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 17.10.2022
Dictation taken by: N.M. Naik.

Uploaded on: _____
G:\NAIK\2022\03-Judgment\10-October 2022\O.A. No.351 of 2022_J. 17.10.2022 (Regularization of Service).doc