

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.1099 OF 2015

DISTRICT : PALGHAR

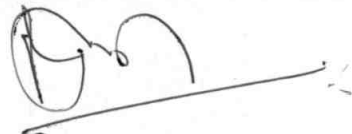
Shri Trimbak Arun Jagtap.)
Age : 22 Yrs. Occu.: Nil,)
Presently Residing at C/o. Amol Prakash)
Jagdale, 302/B Wing, Mangalmurti)
Apartment, Sai Hil Nagar, Kopri Naka,)
Chandansar, Virar (E), Tal.: Vasai,)
District : Palghar - 401 303.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai - 400 032.)
2. Principle Chief Conservator of Forest)
Nagpur, Dist : Nagpur.)
3. Chief Conservator of Forest, Nagpur,))
District : Nagpur.)
4. Deputy Conservator of Forest.)
Ghod Project, Forest Division,)
Junnar, Dist : Pune.)...**Respondents**

Smt. Lata Patne, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondents.



CORAM : **RAJIV AGARWAL (VICE-CHAIRMAN)**
R.B. MALIK (MEMBER-JUDICIAL)

DATE : **27.09.2016**


PER : **R.B. MALIK (MEMBER-JUDICIAL)**

JUDGMENT

1. The Applicant failed to make it to the select list of Forest Guards. He is up before us in this Original Application (O.A) mainly disputing the evaluation and marking of his performance in the race. His claim is based mainly on a C.D. which according to him supports his case that he made it to the destined point soon behind one Mr. Shaikh (19 minutes 57 seconds) in 19 minutes, 59 Seconds and not 20 minutes, 59 seconds which came to be recorded is Respondents' case.

2. We have perused the record and proceedings and heard Mrs. Lata Patne, the learned Advocate for the Applicant and Mr. A.J. Chougule, the learned Presenting Officer for the Respondents (P.O).

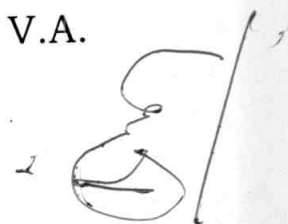
3. It is indisputable that the Applicant applied on-line for the post of Forest Guard (the said post). He was called for the tests. He participated in the selection process. He cleared the Physical Test on 03.11.2014. That



success paved the way for getting qualified for running race as far as the Applicant was concerned. Exh. 'E' (page 48 of the Paper Book (P.B)) would show that in Physical Test, one Shri Shaikh Sultan Abdul (Chest No.1120) was at Sr.No.437 and the Applicant (Chest No.1125) was at Sr.No.440. He participated in running race at Balewadi Stadium Pune on 10.11.2014. The results are at Exh. 'F' colly. The last column was "complete the running race Time". It was in minutes and seconds. Mr. Shaikh was at Sr.No.307 and Applicant at Sr.No.308. Mr. Shaikh completed the running race in 19 minutes, 57 seconds. and the Applicant in 20 minutes, 59 seconds. The dispute arises here. According to the Applicant, he made it within just a few seconds after Mr. Shaikh. Instead of 19 minutes, 59 seconds, it was wrongly recorded as 20 minutes, 59 seconds. In the cut off list at page 66 of the Paper Book, going only by the Running Time, the Applicant is at Sr.No.15 (00.20 m. 59 s.). Those above him took the running time of 00.20.58, 00.20.57, 00.20.53, 00.20.38, 00.20.36, 00.20.36. 00.20.33, 00.20.33, 00.20.30, 00.20.18, 00.20.06, 00.19.57 (Mr. Shaikh S.A.), 00.19.24 and 00.19.19. This one must remember is about the running list only. On page 67 of the Paper Book, there is a provisional selection list (तात्पुरती निवड यादी). That is the list which is category-wise and includes Running Test and




Qualification (वनरक्षक पदाकरिता धावण्यांची स्पर्धा व शैक्षणिक गुणक्रमानुसार संवर्ग निहाय तात्पुरती निवड यादी). The columns are H.S.C. mark percentage, waitage 8 7.5 present (?) Running test marks and total. In the Open General Selection list which the Applicant and Mr. Shaikh Sultan Abdul both belong to, Shri Shaikh is at Sr.No.2 in the select list of eight and the Applicant is 3rd in the waiting list. No candidate was found from the categories of Home Guard, Anshkalik (Part time) and Vanmajur (Forest Labour). Therefore, these vacancies were filled from Open General and were included in the 8 selected thereunder. The total marks secured by the eight selected and the first two in the waiting list above the Applicant were 71.46, 70.46 (Mr. Shaikh Sultan Abdul), 70.37, 70.36, 69.97, 66.66, 66.32 and 65.1. The two in the waiting list in Open General got 64.03 and 62.72. The Applicant got 62. In this background, the case of the Applicant is that had his score been based on completion of the running test in 19 minutes, 59 seconds rather than 20 minutes, 59 seconds, his marks would have been enhanced. According to the Applicant, after perusal of the said list and after securing the C.D. and the information under Right to Information Act (RTI), he made several representations and paid several visits to the Respondent No.3 - Chief Conservator of Forest, Pune. In Para 6.13 of the OA, he has named Dy. Forest Conservator - Shri V.A.



Dhokte who he met and who was In-charge of recruitment and played before him the CD. He also met the Chief Conservator of Forest - Shri Jeet Singh. He was also shown the CD. The Applicant was kept on hopes which were belied when the final selection list (Page 76 of the PB.) was put up showing those very eight whose names appeared in the provisional list.

4. It is no doubt true that this Tribunal exercising the jurisdiction of judicial review of administrative action lacks in expertise in the matter of running race, etc. Therefore, this Tribunal like any other Judicial Forum would surely not substitute just for the asking its own conclusions for those drawn by the men at the spot. However, even for restraint in Jurisdiction, there cannot be any straight Jacketed tenet suggesting that in no case can there be judicial interference. The matter will be fact specific. Otherwise, there is no point in the provision for Judicial review. Circumscription in the manner of exercise of jurisdiction cannot be so construed as to mean total absence of it.

5. Further, on facts, if the evidence based on CD produces certain results, then the Judicial Forum will have to work on it. That is by the very reason of the nature and type of evidence. Quite pertinently, the Applicant has

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named two highly placed officials before whom the CD was played and who according to him, assured him of favourable action. The Respondents have not filed the Affidavits of these two officials for the reasons which are totally obscure. The Affidavit-in-reply is filed by one Shri Mohite, Assistant Conservator of Forest who has despite assertions of having been authorized to swear the Affidavit has failed to indicate as to how come, he had the knowledge of facts and facts at issue. These facts especially those that are set out in Paras 9 and 10 of Mr. Mohite's Affidavit-in-reply reflect personal knowledge. They will be referred to again presently.

6. Mrs. Lata Patne, the learned Advocate for the Applicant laid emphasis based on CD on the fact and in our view, rightly that the Applicant was next to make it to the final point and soon after Mr. Shaikh did it. The difference could not have been of 62 seconds as is the case of the Respondents.

7. In Paras 6.13 and 6.14 of the OA, the Applicant has pleaded that he played the CD before two highly placed Officials and they gave assurance as discussed above. In Paras 9 and 10 of the Affidavit-in-reply, those facts are sought to be traversed. Let us reproduce them.



"9. With reference to contents of para no.6.13, I state and submit that it is not true that the Applicant played the CD and showed the footage of the running test to the Respondent no.4 in his office and that the Respondent no.4 assured the Applicant that he would place the matter before the selection committee by correcting the running time and that he will issue an appointment order. It is further submitted that there is no question of reliance on the C.D. as the CD was prepared for shooting of the entire process of running test. The CD cannot be taken as an evidence for recording of the time of the running race. The time recorded by the Time Keepers is the correct timing recorded in the record by the Time Keepers is the correct timing recorded in the record sheet which have been signed by the Applicant, other similar candidates who underwent running test and as well as the Time Keepers. (emphasis supplied)

10. With reference to contents of para no.6.14, I say and submit that it is not true that the Applicant played the CD and showed the footage of the running test to the Respondent no.3 in his

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office and that the Respondent no.3 assured the applicant that he would call report from the Respondent no.4 and will take further action. It is not true that the Respondent gave false excuses to the Applicant and killed time and then published the final merit list. The timing in which the applicant covered the running distance has been correctly recorded in the record sheet and he was placed in the merit list at his appropriate place. Therefore, all the allegations made by the applicant in this para are hereby denied.”

8. The portion which is underlined exemplifies the nervousness and discomfort which can be barely secreted. It has no other supporting contemporaneous evidence to show that the CD though taken at that time was to be for restrictive user. In fact, it cannot be. That in any case is the reason why the Affidavits of those two high Officials were necessary. As between the time keepers record even though signed by the Applicant and the CD, the CD is a surer piece of evidence. The circumstances therefrom emanating would be device driven while signature can be obtained. We need not elaborate on that. We would prefer CD instead. Though we may not at the stage be in a



position to conclusively hold that the Applicant had made it. But then the Respondents have apparently become suspicious of its own CD which was obtained by the Applicant through R.T.I. Our own reading of the material on record is that the Applicant must have made it within a few seconds of Mr. Shaikh who has figured above. The Respondents will have to, objectively and fairly re-verify the whole thing treating the CD as a piece of evidence. Time limit will be set for this exercise.

9. This Original Application is disposed of with directions that the concerned Respondents shall re-verify the performance of the Applicant and others who made it by taking help of the CD as discussed in the body hereof. The compliance within six weeks from today and its outcome be informed to the Applicant within one week thereafter. No order as to costs.

Sd/-

(R.B. Malik)
Member-J
27.09.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
27.09.2016

Mumbai

Date : 27.09.2016

Dictation taken by :

S.K. Wamanse.