

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATIONS 565 & 707 OF 2015

DISTRICT : PALGHAR

1) ORIGINAL APPLICATION NO 565 OF 2015

Shri Damu Davji Wargude,)
Working as Forest Guard in the)
Office at Range Forest Officer,)
Kasa, Tal-Dahanu, Dist-Palghar.)...**Applicant**

Versus

1. The Chief Conservator of Forest,)
Thane, having office at Microwave)
Tower, Bara Bungalow Area,)
Thane [E].)
2. The State of Maharashtra,)
Through Principal Secretary,)
[Forest], Revenue & Forest Dept.)
Mantralaya, Mumbai 400 032.)...**Respondents**

2) ORIGINAL APPLICATION NO 707 OF 2015

Shri Sanjay Laxman Hamare,)
Working as Forest Guard in the)
Office of Mobile Squad, R.F.O ,)
Wada Range, Division Jawahar,)
Dist-Palghar, R/o: Gorwadi,)
Tal-Jawhar, Dist-Palghar.)...**Applicant**

24

Versus

1. The Chief Conservator of Forest,)
Thane, having office at Microwave)
Tower, Bara Bungalow Area,)
Thane [E].)
2. The State of Maharashtra,)
Through Principal Secretary,)
[Forest], Revenue & Forest Dept.)
Mantralaya, Mumbai 400 032.)...**Respondents**

Shri A.V Bandiwadekar learned advocate for the Applicants.

Shri K.B. Bhise learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 12.08.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri A.V Bandiwadekar learned advocate for the Applicants and Shri K.B. Bhise learned Presenting Officer for the Respondents.

2. These Original Applications have been filed by the Applicants, who belong to Scheduled Tribe (S.T) category and who are challenging omission of their names from the select

list of Forest Guards, who were found eligible for promotion of Foresters, on the basis of the Limited Departmental Competitive Examination (L.D.C.E) held in 2014 to fill up 25% vacancies in the cadre of Foresters.

3. Learned Counsel for the Applicants argued that the Range Surveyor Group-B (Non-Gazetted), Chief Accountant, Accountant, Surveyor, Forester, Clerk-cum-Typist and Forest Guard Group-C (Recruitment) Rules, 2011 were amended in 2013 and amended Rules were notified on 22.10.2013. Amended Rules provide for filling up 25% vacancies in the cadre of Forester on the basis of L.D.C.E and 75% on the basis of seniority subject to fitness. Learned Counsel for the Applicants stated that for promotion, reservation is provided for various backward classes, including 7% for Scheduled Tribe category. The Respondents had held L.D.C.E in Thane Forest Circle in 2014 to fill up 23 vacancies of Foresters. 3 vacancies were reserved for S.T category as per circular issued by the Respondent no. 1. The Applicants were allowed to appear for L.D.C.E and the Applicant in O.A no 707/2015 is first in the list from S.T category, while the Applicant in O.A no 565/2015 is the second in S.T category. As three vacancies were to be filled from S.T category, the Applicants are clearly eligible to be promoted from S.T category as Foresters on the basis of L.D.C.E.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that as per the Old Recruitment Rules dated 29.10.1987, the post of Forester could be filled by



promotion or nomination in the ratio of 65 : 35 respectively. Learned Presenting Officer argued that reservation for promotion is 33%, while for direct recruitment it is 52% for different vertical reservation categories. For Group 'C' posts for direct recruitment, quota for S.T category in Thane district is 22%, while it is 9% for Raigad district. There are a total of 461 posts of Foresters in Thane Forest Circle, comprising Thane and Raigad districts. If the 35% of the posts were to be filled by Direct Recruitment and 65% by promotion, posts reserved for S.T category come to 50 (22% of 113 post in Thane and 9% of 135 post in Raigad for Direct Recruit quota and 7% post from promotion quota of a total of 300 posts). 25 posts were reserved from Thane for direct Recruits while 4 posts were reserved for direct recruits from Raigad. 21 posts from both the districts were reserved for promotion. After the new Recruitment Rules were notified on 30.6.2011, all posts of Foresters are required to be filled by promotion only and 7% reservation is provided for promotion in S.T category. 7% of 461 posts comes to 32. After new recruitment rules came into force, the number of posts of Foresters reserved for S.T category was reduced from 50 to 32. Learned Presenting Officer argued that already 35 persons from S.T category are working as Foresters and as such, there were no vacancies from S.T category to be filled on the basis of L.D.C.E. The Applicant did not qualify to be appointed from open category.

5. Learned Counsel for the Applicants argued that the Tribunal has by order dated 21.3.2016 in O.A nos 626 and 646/2014 has held that the persons appointed on the basis of Limited Departmental Competitive Examination

should be treated as direct recruits. On that basis, 25% posts in the cadre of Foresters will have to be treated as direct vacancies, and from that category 22% of vacancies in Thane district and 9% in Raigad district will be reserved for S.T category. These posts would be 18 and 3 respectively. For 75% promotion quota, 7% post would be 24 for S.T category, making a total of 45 posts. On that basis, both the Applicants will qualify for appointment from S.T category.

6. We find that the Respondent no. 1 has held a L.D.C.E on 1.6.2014 to fill a total of 23 posts (25% of the vacancies in the cadre of Foresters). The break up of the posts was given in Schedule-1 which considered the vacancies from 23.10.2013 to 30.4.2015 (Exhibit 'D' in O.A no 565/2015, page 17 of the Paper Book). The posts to be filled on the basis of L.D.C.E were as follows:-

| | | |
|-------|----|-----------|
| Open | - | 14 |
| S.C | -- | 04 |
| S.T | -- | 03 |
| VJ-A | -- | 01 |
| DT-C | -- | <u>01</u> |
| TOTAL | | <u>23</u> |

The Applicant had applied from S.T category for the three posts reserved for that category. Subsequently, the number of posts reserved for S.T category was reduced from 50 to 32 in Thane Forest Circle. It is claimed by the Respondents that for direct recruitment for Group 'C' posts, 22% reservation in Thane and 9% reservation in Raigad for S.T is provided. For promotion, however, reservation of S.T is 7% like rest of the State. There is no dispute about these facts and also about the total number of posts of Foresters in Thane Forest Circle

RH

which is 461 (326 in Thane and 135 in Raigad). Before the new recruitment rules, which were notified on 30.6.2011 (and amended on 22.10.2013), old recruitment rules, notified on 29.10.1987, were in force, which provided for 75% posts of the Foresters to be filled by promotion and 25% by direct recruitment. On that basis, total reservation for S.T category in Foresters cadre came to 50. However, when 100% posts are to be filled by promotion, the reservation is reduced to 32 and break up vacancies to be filled on the basis of L.D.C.E could be as follows:-

| | | |
|-------|-------|-----------|
| Open | - | 13 |
| S.C | - | 03 |
| S.T | - | 02 |
| VJ-A | - | 01 |
| NT-B | - | 01 |
| NT-C | - | 01 |
| NT-D | - | -01 |
| SCB | - | <u>01</u> |
| TOTAL | | <u>23</u> |

Rh

This is as per the communication of the Respondent no. 1 dated 27.7.2015 at Exhibit 'H' in O.A no 707 of 2015, page 26 of the Paper Book. The Applicants claim that the appointment on the basis of L.D.C.E should be treated as Direct Recruitment. They have relied on the judgment of this Tribunal in O.A nos 626 and 646 of 2014 dated 21.3.2016. This Tribunal has held that:-

“However, considering the fact that the rationale and purpose of appointment on the basis of Limited Competitive Departmental Examination is similar to that of direct recruitment, and both encourage talent in the Government, the Applicants are closer to direct

Rh

recruits than promotees. The Applicants, therefore, deserve to be treated as direct recruits.”

The contention of the Applicants that appointment on the basis of L.D.C.E should be treated as direct recruitment has been accepted by this Tribunal in the aforesaid judgment. We do not see how a different view can be taken in the present case. If this contention of the Applicants is accepted, total reservation for S.T category would come to 45 as claimed by the Applicants. The Applicants would be eligible to be considered for appointment in 22 vacancies, worked out by the Respondent no. 1 in Exhibit ‘H’ in O.A no 707/2015.

7. The Respondent no. 1 is directed to consider the claim of the Applicants for appointment in the post of Forester, based on their performance in L.D.C.E held in the year 2014 from S.T category in the light of observations made in the preceding paragraph within a period of one month from the date of this order. These Original Applications are allowed accordingly with no order as to costs.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 12.08.2016
Dictation taken by : A.K. Nair.

