

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 874 OF 2015

DISTRICT : SATARA

Shri Rahul Subhash Patil,)
Occ : Service, R/o: Mudhal,)
Tal – Bhudargad, Dist-Kolhapur.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Forest Department, Mantralaya)
Mumbai 400 032.)
2. Chief Conservator of Forest,)
[Territorial], Kolhapur,)
“Vanvardhan”, Near Head Post,))
Office, Tarabai Park, Kolhapur.))
Dist-Kolhapur 416 003.)

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3. Deputy Conservator of Forest,)
Kohapur Division,)
"Vanvardhan", Near Head Post,))
Office, Tarabai Park, Kolhapur.)
Dist-Kolhapur 416 003.)
4. Deputy Conservator of Forest,)
Satara Division, "Vanbhavan",)
Godoli Ropvatika, Satara.)
5. Deputy Director,)
Social Forestry Division,)
Satara Division,)
Near Godoli Ropvbatika,)
Satara 415 001.)...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

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

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

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

DATE : 21.01.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri M.D Lonkar, learned advocate for the Applicant and Shri A.J Chougule, learned Presenting Officer for the Respondents

2. This Original Application has been filed by the Applicant challenging the order dated 5.10.2015 issued by the Respondent no. 4 terminating his service as 'Forest Guard'.

3. Learned Counsel for the Applicant argued that the Applicant had applied for the post of Forest Guard, pursuant to advertisement dated 11.8.2014 issued by the Respondent no. 2. He was selected for the post from open category reserved horizontally for P.A.P (Project Affected Person) category. The name of the Applicant was included in the selection list published by the Respondent no. 2 on 4.8.2015. The Applicant had scored 58.06 marks, including 10 marks in Running Test. The Applicant was given appointment in the office of Respondent no. 5, viz Deputy Director of Social Forestry Division, Satara by the Respondent no. 4 by order dated 10.8.2015. However, the Respondent no. 2 published a modified selection list on 5.10.2015 and the Applicant was shown at Sr. No. 6 in the waiting list and his marks in the 'Walking Test' were reduced from 10 to 0. The Applicant's services were terminated by impugned order

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dated 5.10.2015. Learned Counsel for the Applicant argued that the impugned order dated 5.10.2015 is passed behind the back of the Applicant and it is against the principle of natural justice. No reasons for terminating the service of the Applicant have been given in the impugned order. The Applicant has secured 10 marks in 'Running Test'. However, the same have been reduced to 0, while preparing modified selection list dated 5.10.2015 by the Respondent no. 2. Learned Counsel for the Applicant contended that his appointment order of the Applicant did not mention that his appointment was temporary.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the selection for the posts of Forest Guards was made by the 'Selection Committee' headed by the Respondent no. 2 for various Forest Divisions under his jurisdiction. List of eligible candidates for the post of Forest Guards was published by the Respondent no. 2 on 4.8.2015. This list mentioned that it was ad hoc selection list (तात्पुरत्या निवड यादी). The Applicant had scored 58.06 marks including 10 marks in 'Running Test'. Later it transpired that the Applicant was awarded 10 marks in 'Running Test' by mistake. As per the guidelines issued by the State Government by letter dated 21.7.2014 all candidates, who are not in the first 40 candidates in Running Test, are awarded zero marks. However, the Applicant, who was not among first 40

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candidates in the 'Running Test', was awarded 10 marks by mistake. The Applicant was granted 10 marks considering his performance from amongst candidates from Open-PAP category. However, as per G.R dated 22.8.2012, for the Running Test, common list is required to be prepared and as per letter dated 21.7.2014, only first 40 candidates are eligible for getting marks. Accordingly a list of all male candidates who completed 5 kms run in 30 minutes was prepared disregarding category. The marks were given to first 40 persons in the list. The Applicant was not in first 40 male candidates, and was, therefore, not awarded any marks. Learned Presenting Officer argued that if there were some mistakes in awarding marks to the candidates, the same can always be rectified. This rectification has been carried out without any loss of time.

5. We find that for the post of Forest Guard, the Government has prescribed the guidelines for the procedure to be adopted for selection by G.R dated 30.7.2011. In the selection process 87.5% weightage is given to marks obtained in H.S.C examination. For some selected categories, the minimum qualification is S.S.C and 87.5% weightage of marks in S.S.C is given in such cases. Later by G.R dated 22.8.2012, the aforesaid G.R was modified and for male candidates 5 kms Running Test (3 km for women) was introduced. This test was of competitive nature and those who could not complete 5

km running in 30 minutes, were disqualified. By letter dated 21.7.2014, Government of Maharashtra, prescribed marks in Running Test. First 3 candidates are eligible to get 10 marks, while last 15 persons (among 40 person) are eligible to get 2.5 marks. Persons who are not amongst first 40 persons, do not get any marks. To sum up 87.5% weightage is given to H.S.C/S.S.C marks and 12.5% to the Running Test. The requirement of 'Walking Test' (25 kms walk in 4 hours for male candidates) prescribed by G.R dated 30.7.2011 is no longer competitive but qualifying in nature.

6. In the present case, the advertisement was issued by the Respondent no. 2 on 11.8.2014. Vertical as well horizontal reservation was shown for the posts of Forest Guards to be filled. In para 4.2, it was mentioned that the marks will be given in 'Running Test' as per Government letter no. 21.7.2014. It was mentioned that:

“ सदर भारांकन जे उमेदवार प्रवर्गनिहाय रिक्त पदाख्या तीन पट (१:३) लघुयादीसाठी पात्र ठरतील, त्यांनाच गुण देय राहतील.”

This clause in the advertisement has caused the confusion in the present case. It is clear that the selection to the post of Forest Guard is by giving 87.5% weightage to marks in H.S.C/S.S.C and 12.5% to physical test, which includes 5 km (3 km for women) Running Test. Obviously, in any competitive

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examination, marks have to be awarded without any discrimination. After the merit list is prepared, the selection can be on the basis of reservation provided for different vertical and horizontal reservation categories, but the merit list is to be prepared without considering caste or category of any candidate. This clause in the advertisement was obviously wrong and the contention of the Respondents in this regard appears to be correct. The Applicant was awarded 10 marks in Running Test, considering the candidate from open PAP category only. As the number of such candidates was very small, he got undue advantage as compared to other open (and other categories) candidates. When the Respondents realized their mistake, they have corrected it, and awarded marks in Running Test to candidates regardless of their caste or category.

7. The Applicant is, in effect, challenging the right of the Respondents of correcting mistake in awarding marks in the selection process. The Applicant has not challenged the Government letter dated 21.7.2014, which prescribes that only first 40 candidates in the Running Test will be given 10 to 2.5 marks. Rest will be awarded zero (subject to their being qualified by completing 5 km running for males in 30 minutes). Significantly, the Applicant has not challenged this letter of the State Government. Obviously, he wants to take advantage of the mistake of the Respondents in

mentioning category wise awarding of marks in Running Test as per para 4.2 of the advertisement. We have already held that this particular provision in para 4.2 is obviously discriminatory and cannot be upheld in any selection process for public appointment. All candidates are to be treated similarly while judging their performance and awarding marks. Later merit lists can be prepared separately for different categories depending upon reservation. The Applicant has challenged termination of his service, mainly on the ground that no notice was given to him. He has relied upon the judgment of this Tribunal dated 13.12.2011 in O.A no 841/2011. The services of the Applicants in the aforesaid Original Application were terminated without any notice being given to them. The termination order was held to be invalid. However, Hon'ble Supreme Court has held in the case of **M.C MEHTA Vs UNION OF INDIA & ORS**, reported in **(1999) 6 SCC 237** as under:-

"The above case is a clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the Petitioner and against

the opposite party in violation of the principles of natural justice or is otherwise not in accordance with law.”

A court can refuse to grant relief, if any illegal order is likely to be restored as a result of granting of such a relief. In the present case, the selection of the Applicant was result of giving him 10 additional marks to which he was not entitled. He was not eligible to be selected. We will be fully justified in not granting any relief to the Applicant in this regard in the light of the aforesaid judgment of Hon'ble Supreme Court.

8. Learned Counsel for the Applicant had relied on the judgment of Hon'ble Supreme Court in the case of Maharashtra State Road Transport Corporation and others Vs. Rajendra Bhimrao Mandve and others, reported in 2002 SCC (L & S) 720. It was held that reallocation of marks for interview in the middle or after the commencement of selection process was impermissible. The facts in the present case are entirely different. Here, in the Running Test, the persons belonging to various reservation categories were given marks which they were not entitled to. It was akin to giving more marks to such candidates, which can never be justified. This judgment is clearly distinguishable.

9. Learned Counsel for the Applicant cited judgment of Hon'ble Supreme Court in the case of **RAM JUAREY Vs. UNION OF INDIA**, reported in **AIR 1999 SC 309**. It was held that the authorities could not make up their minds about a fact, which could have been shown by the concerned person to be incorrect. This judgment is in the context of order being passed without notice. We have already held that in this Original Application, the Applicant had failed to indicate any fact, which will show that he was eligible to be selected. This case is clearly distinguishable.

10. The Applicant has claimed that his appointment letter never mentioned that he was appointed on temporary basis. However, we find that the letter / memorandum issued by the Respondent no. 2, informing various appointing authorities about selected candidates, clearly mentioned in para 5.18 that the selection was temporary (सदरची निवड ही तात्पुरती असणार आहे.). This makes it clear that the selection list could be modified.

11. We are not convinced that the Applicant was eligible to be selected for the post of Forest Guard if the marks in Running Test were correctly awarded. In the public employment, we cannot held that a person selected on the basis of incorrect award of marks should be allowed to continue in Government service especially

when the mistake was detected and rectified in a very short period.

12. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

Sd/-

(R.B. Malik)
Member (J)

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Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 21.01.2016

Dictation taken by : A.K. Nair.