

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.1148 OF 2016**

**DISTRICT : PUNE**

Shri Vidyadhar Kashinath Gandhile, )  
Age 48 years, Forest Guard, R/at Post Banergaon, )  
Near P.M.C. Office, Baner Gaothan, Pune 411045 )..Applicant

Versus

1. The State of Maharashtra, )  
Through Chief Secretary, )  
Mantralaya, Mumbai 400032 )
2. The Additional Chief Secretary, )  
Revenue & Forest Department, )  
Mantralaya, Mumbai 400032 )
3. The Chief Conservator of Forest (Regional), )  
Old P.M.T. Building, Swargate, Pune 411037 )..Respondents

Ms. Punam Mahajan – Advocate for the Applicant

Ms. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson  
Smt. Medha Gadgil, Member (A)

DATE : 12<sup>th</sup> April, 2023

**J U D G M E N T**

1. The applicant has filed this OA seeking promotion to the post of Forester from handicapped quota and deemed date of 11.5.2010 with consequential benefits of arrears of pay etc.

2. The applicant was appointed by order dated 18.11.2006 as Forest Guard from Physically Handicapped category. As per GR dated 8.9.2008 3% quota is reserved for promotion of Handicapped employees in Group C and D cadre. He was declared ineligible for promotion to the post of Forester as he had not undergone training. In the minutes of the meeting of DPC dated 13.2.2012 it is mentioned that the applicant has not undergone training and hence he is ineligible.

3. Ld. Advocate for the applicant has argued that applicant is 40% disability for Orthopedic. On 21.2.2012 applicant was sent for six months training and he has completed the same from 1.3.2012 to 31.8.2012 and certificate dated 31.8.2012 to that effect is filed at Annexure A-5. On 27.9.2012 he was considered for promotion by DPC but it was kept pending because there was query of his date of birth, which is at Annexure A-6. Letter dated 19.12.2012 was sent by Chief Conservator of Forest, Pune to Dy. Conservator of Forest, Pune making query whether applicant was age barred at the time of appointment, which is at Annexure A-7. His date of birth is 25.12.1968 and he was 37 years and 11 months at the time of appointment. Letter dated 27.5.2013 from Deputy Conservator of Forest, Pune to Chief Conservator of Forest, Pune that in the advertisement of 2006 age limit for Forest Guard from physically disabled persons was 45 years maximum. So the applicant is within age limit. He was not considered in the DPC held in 2014, 2015 & 2016 and therefore he has filed present OA on 9.12.2016 seeking promotion.

4. Ld. PO has relied on the affidavit dated 7.1.2017 filed by Sopan Rambhaji Girhe, Administrative Officer in the office of Chief Conservator of Forest (Territorial), Pune on behalf of respondents no.1 to 3. We have gone through this affidavit dated 7.1.2017 and the sur-rejoinder dated 29.6.2022 filed by Samadhan Sukhlal Shire, Assistant Forest Statistician, in the office of Chief Conservator of Forest, Pune on behalf of respondents no.1 to 3. The respondents have admitted the fact that promotion shall not be denied to person on the ground of his disability and if the disability does not affect his competency to discharge functions of promotional post. However, it was stated that the post of Forest Guard and Forester are exempted from Section 33 of the Rights of Persons with Disabilities Act, 1955 and therefore he could not be considered for promotion. The respondents have relied on GR dated 10.2.2009. On this point they rely on paras 3 & 4 of the said GR. However, there is earlier GR dated 12.7.2004. As per this GR dated 12.7.2004 the Forest Guard and Forester were made eligible for reservation.

5. Ld. Advocate for the Applicant refers to rejoinder dated 5.8.2021 filed by the applicant. He relies on GR dated 12.7.2004 wherein the reservation for the physically handicapped persons was declared. Forest Guard is shown at Annexure-A, Sr. No.45. Promotional post of Forester is shown at Sr. No.88.

6. Ld. Advocate for the applicant refers to sur-sur-rejoinder dated 30.3.2023 filed by the applicant and submits that applicant has been promoted to the post of Forester on 9.11.2021.

7. Similarly it as pointed out by Ld. Advocate for the applicant that Shri Kiran Vasudeo Dhankute and Shri Satish Kisan Shende were appointed by order dated 17.11.2006 to the post of Forester and they were promoted by order dated 31.8.2019 to the post of Range Forest Officer

from physically disabled quota. Shri Girish Narain Kshirsagar, Shri Dyaneshwar Dattatray Salunkhe and Shri Sarvar Safar Khan are promoted by order dated 28.3.2012 to the post of Forester from physically handicapped category.

8. Ld. Advocate for the applicant relied on order dated 10.4.2013 passed by the Hon'ble High Court, Bench at Aurangabad in W.P. No.2635 of 2013 The State of Maharashtra Vs. Arvind Mansubrao Katkar. Ld. Advocate also relied on promotion order dated 9.5.2013 of Shri Arvind M. Katkar as Forester and order dated 10.11.2016 giving deemed date of 11.5.2010 to Shri Katkar as Forester & also exemption from training. Hence, Ld. Advocate for the Applicant prays for deemed date of promotion of 11.5.2010 as the applicant is similarly placed like Shri Katkar.

9. Thus, there are instances of promotion under the Disabled quota in the Forest Department.

10. Our attention was also drawn to letter dated 29.8.2013 sent by Chief Conservator of Forest, Pune to Additional Chief Conservator of Forest, Nagpur. She has pointed out specifically that regularly though there is provision in the GR that they are not to be given 3% reservation under the Disabilities Act however the Govt. has regularly recruited Forest Guard and Forester and also promotions were given to them regularly. We fail to understand that if at all earlier Forest Guard is a post in the field where he has to be physically very active and earlier the reservation quota was made applicable for promotion and there are other colleagues of the applicant who were given benefit of reservation in promotion under the quota. Hence, on the basis of parity which is required to be maintained in the service law, the applicant should get this benefit.

11. Ld. Advocate for the applicant relies on the order dated 26.9.2019 passed by Nagpur Bench of this Tribunal in OA No.257/2016 (DB) (Asha Tribuvan Dongre Vs. The State of Maharashtra & Ors.) wherein the Division Bench held that similarly situated Forest employees are entitled to the benefit of horizontal reservation in disabled quota.

12. At the end Ld. Advocate for the applicant pointed out the proposal dated 14.9.2022 sent by Conservator of Forest, Gadchiroli to Additional Chief Conservator of Forest, Nagpur for granting promotion to the post of Forester in case of one Shri Pranay Vijay Ganvir in the disabled quota.

13. Thus, in view of the above we hold that the applicant is entitled to the reliefs prayed for in the OA. The applicant is already promoted to the post of Forester on 9.11.2021.

14. Original Application is allowed. The respondents are directed to grant deemed date of promotion to the applicant of 11.5.2010, as given to Shri Arvind M. Katkar, and other consequential benefits as per rules within a period of two months from the date of this order. No orders as to cost.

Sd/-

**(Medha Gadgil)**  
**Member (A)**  
**12.4.2023**

Sd/-

**(Mridula Bhatkar, J.)**  
**Chairperson**  
**12.4.2023**

Dictation taken by: S.G. Jawalkar.