

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.852 OF 2022

DISTRICT : PUNE

Pallavi Laxman Barate,)
Age 28 years, RFO Trainee at GFRC, Rajpipla, Gujrat,)
At Post Wadgaon Darekar, Tal. Daund, Pune 413801)..Applicant

Versus

1. The Secretary,)
Maharashtra Public Service Commission,)
5th, 6th and 7th Floor, Cooperage Telephone)
Exchange Building, M.K. Road, Mumbai 21)
2. The State of Maharashtra,)
Through the Secretary, Revenue & Forest Deptt.)
Mantralaya, Mumbai 400032)..Respondents

Shri S.D. Patil – Advocate for the Applicant

Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson
Smt. Medha Gadgil, Member (A)
RESERVED ON : 16th February, 2024
PRONOUNCED ON: 5th March, 2024
PER : Smt. Medha Gadgil, Member (A)

J U D G M E N T

1. The applicant is working as Range Forest Officer (RFO) Trainee, GFRC. She challenges recommendation list of Assistant Conservator of Forest (ACF) and RFOs published on 20.6.2022.

2. The applicant prays that the Tribunal be pleased to direct the Respondent No. 1 to revise the recommendation list dated 20.6.2022 and thereby appoint candidate at Sr. No. 1 as a General Category candidate and further vacancy shall be filled in through other Horizontal reservation category candidate and accordingly the applicant be given appointment to the post of Assistant Conservator of Forest, through OBC Female Category.

3. Learned counsel for the applicant submits that the applicant is holding the post of Range Forest Officer. Learned counsel submitted that the Respondent No. 1, M.P.S.C issued the advertisement dated 8.3.2019 for filling 29 posts of A.C.F. The applicant applied in the category of OBC Female. The applicant cleared the preliminary and Main Examination. Learned counsel further submitted that the revised notification of the Advertisement dated 12.7.2021 was issued so as to recast the post of SEBC to Open Category. Learned counsel submitted that the Respondent No. 1 published the list of eligible candidates on 17.12.2021 and on 20.6.2022 M.P.S.C finally published the list of recommended candidates and the name of the applicant was not found in the said list.

4. Learned counsel submits that the applicant challenges the appointment of the candidate at Sr. No. 10, i.e., Respondent No. 4 Shri Mahaveer B. Zendage. Learned counsel further submits that this Original Application was filed on 24.8.2022 and during the pendency of this Original Application he pointed out to the revised list of eligible candidates

for recommendation. Learned counsel submitted that the applicant has taken objection to the recommendation of Ghotkar Shweta Ashok that she is eligible for appointment in OBC Female category on the ground of medical grounds by sending email and candidate at Sr. No. 19 is disqualified because she does not have the requisite height. However, M.P.S.C has not excluded her name. Learned counsel further pointed out that applicant sent email on 12.4.2022 to M.P.S.C before the declaration of the revised select list pointing out the fact regarding height of Ms Ghotkar Shweta Ashok.

5. Learned counsel further submitted that the applicant sought information through R.T.I and she was informed that in the first measurement of the height of Ms Ghotkar Shweta Ashok it was found 148.5 cms and in the revised measurement by the Appellate Committee it was measured at 147.4 cms and she was held disqualified. Learned counsel produced copy of the RTI dated 8.12.2023.

6. Learned counsel for the applicant relies on Exh. 'E', Announcement. Learned counsel further submitted that total 10 posts of ACF were advertised. Learned counsel submitted that one post they did not get eligible sports candidate and it was necessary on the part of MPSC that they should select candidate from open General category. Learned counsel submitted that MPSC recommended name of Shri Deshmukh Ashish Ujwalrao against open Sports instead of Ms Pansare Pooja Bhausahab at Sr. No.10 from Female Open General. Ms Pansare unnecessarily occupies open female. The candidate at Sr. No. 21, Ms Shinde Aishwarya Balasaheb, got selected in OBC Female instead of Open Female. Had Ms Shinde Aishwarya Balasaheb selected against open female, one post of OBC Female would have been available and the applicant would have been appointed. The applicant had secured 236 marks and Ms Shide Aishwarya Balasaheb secured 246 marks. Learned counsel submitted

that there is nobody between 246 and 236 from OBC Female and therefore applicant has rightful claim by the applicant and that is not done by MPSC. No female candidate is taken. Open General candidates are filled in. Ms Pansare Pooja Bahausaheb secured 263 marks. NT (D) was considered as open Female. Ms Deshmukh Ashish Ujwalrao who has secured 262 marks is accommodated against Open Sports.

7. The Ld. CPO opposes the submissions made by the Ld. Advocate for the applicant. She relies on the affidavit in reply dated 17.10.2022 filed by Bhalchandra Pandurang Mali, Under Secretary, MPSC, Mumbai. She points out that the MPSC has correctly implemented the horizontal reservation in its recruitment process pursuant to advertisement dated 8.3.2019. She points out that as per requisition received by MPSC the advertisement No.4/19 was published on 8.3.2019 for Maharashtra Forest Services Preliminary Examination, 2019 for 29 posts of ACF Grade-A and 71 posts of RFO Group-B as per the recruitment rules. The applicant applied from the OBC female category. The applicant who belongs to OBC category had given preference only for the post of ACF for which there was only one post reserved for OBC female category. The applicant secured 236 marks and other OBC female candidate belonging to OBC category viz. Aishwarya Shinde secured 256 marks in the examination and was hence recommended for the said post and the applicant could not be recommended for the said post as per merit. She further stated that in the ACF category there were in all 10 posts for Open General, 3 posts for Open Female and 1 post for Open Sports category. As per the provisions of the horizontal reservation, females claiming and entitled for female reservation were allotted the post reserved for female. She further clarified that even if a female tops in the merit list she is eligible for female reservation and is counted on the female reservation post and not from the open category post. The posts for horizontal reservation are allotted in the same manner. Hence, there was no question of considering the

applicant against Open Sports category post and the candidate at merit no.13 Shri Deshmukh Ashish Ujwalrao was eligible for the ACF post and hence recommended against the Open Sports seat. No error was committed by the Commission while recommending the candidates on these posts. Ld. CPO relied on the circular dated 16.3.1999 and corrigendum date 19.12.2018 which provided for the process of implementation of the horizontal reservation. She therefore stated that the applicant has misinterpreted the process of implementation of horizontal reservation provided as per rules. She further stated that there was no candidate available for the post of Sports category and other meritorious candidates in the merit list is rightly selected against this post. Ld. PO further pointed out that the candidate at Sr. No.12 Pooja Pansare in the merit list is a female candidate and was rightly considered for the female reserved post and not against sports reservation. Sr. N.13 is next meritorious candidate and he is rightly recommended against Open Sports post.

8. Considered the submissions of both the sides. The question involved here is of implementation of the provisions of horizontal reservation. In this connection it is necessary to examine the circular dated 16.3.1999 and corrigendum dated 19.12.2018 which specifically provides for the process of implementation of horizontal reservation. The relevant para is quoted below:

“प्रथम टप्पा: - खुल्या प्रवर्गातील (अराखीव पदे) उमेदवारांची गुणवत्तेच्या निकषानुसार निवड यादी तयार करावी. या यादीत खुल्या प्रवर्गात गुणवत्तेच्या आधारावर मागासवर्गीय उमेदवारांचाही (अनुसूचित जाती, अनुसूचित जमाती, वि.जा., भ.जा., वि.मा.प्र., इ.मा.व., व एसईबीसी) समावेश होईल. या यादीत समांतर आरक्षणानुसार उमेदवारांची संख्या पर्याप्त असेल तर कोणताही प्रश्न उद्भवणार नाही आणि त्यानुसार पदे भरावीत. जर या यादीत समांतर आरक्षणानुसार आवश्यक उमेदवारांची संख्या पर्याप्त नसेल तर समांतर आरक्षणाची पदे भरण्याकरीता सदर यादीतील आवश्यक पर्याप्त संख्येइतके शेवटचे उमेदवार वगळून पात्र

उमेदवारपैकी आवश्यक पर्याप्त संख्येइतके समांतर आरक्षणामधील गुणवत्तेनुसार पात्र उमेदवार घेणे आवश्यक आहे”.

9. As per rules of horizontal reservation Sr. No.12 in the merit list is a female candidate and was rightly considered for the post reserved for Female and not for the post reserved for Open Sports. As no candidate was available for the post reserved for Sports category the next meritorious candidate in the merit list is rightly selected against this post. Sr. No.13 is the next meritorious candidate and is rightly recommended against the category of Open Sports.

10. We find that no error has been committed by the Commission in implementing the policy for horizontal reservation as per the provisions of Government circular dated 16.3.1999 and Government corrigendum dated 19.12.2018. Hence, we find that there is no merit in the OA and the same deserves to be dismissed.

11. Original Application is dismissed. No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
5.3.2024

Sd/-

(Mridula Bhatkar, J.)
Chairperson
5.3.2024

Dictation taken by: S.G. Jawalkar.