

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 934 OF 2019

DIST. : AURANGABAD

Madhukar s/o Kisan Shingade,)
 Age : 46 years, Occu.. Service)
 (as Forest Guard, Working Plan)
 Division, Aurangabad),)
 R/o: Plot No. 5, Prithvi Lok Clny.,)
 Padegaon, Aurangabad, Dist. Aurangabad.)

.. **APPLICANT**

V E R S U S

1. **The Chief Conservator of Forest)**
[Territorial),)
 Aurangabad, "Van Bhawan",)
 Station Road, Osmanpura,)
 Aurangabad.)
2. **The Deputy Conservator of Forests,)**
 Aurangabad Forest Division,)
 Aurangabad, "Van Bhawan",)
 Station Road, Osmanpura,)
 Aurangabad.)
3. **Mr. Ajinath Vitthalrao Bhosale,)**
 Forester, Forest Research Centre,))
 Adjacent to Forest Guard Training)
 School, Ring Road, Jalna - 03.)
4. **Mr. Ganesh Papat Misal,**)
 Forester, C/o O/o: Divisional)
 Forest Officer, Hingoli, Oppo.)
 Mosikal, Riwy. Stn. Road,)
 Hingoli-431 513.)
5. **Smt. Priya Ashokrao Salve,**)
 Forester, Waranga,)
 C/o O/o: Divisional Forest Officer,))
 Hingoli, Oppo. Mosikal, Rlwy. Stn.))
 Road, Hingoli - 431 513.)

6. **Mr. Shridhar Manikrao Yadav,**)
Forester, Nichpur, C/o O/O)
Deputy Conservator of Forest,)
Nanded Forest Division, Vazirabad,))
Chikhalwadi Corner, Nanded 01.)
7. **Smt. Alka Raghunath Rathod,**)
Forester, Mantha, Social Forestry)
Division, Jalna, Rajureshwar)
Complex, Pagarkar Nagar, Ambad)
Road, Jalna - 03.)
8. **Mr. Madan Bapurao Dhembre,**)
Forester, Goratha, C/o O/O:)
Deputy Conservator of Forest,)
Nanded Forest Division, Vazirabad,))
Chikhalwadi Corner, Nanded 01.)

.. RESPONDENTS

 APPEARANCE :- Shri Avinash Deshmukh, learned counsel
 for the applicant.

: Shri S.S. Dambe, learned Presenting
 Officer for the respondent authorities.

CORAM : **Hon'ble Shri Justice V.K. Jadhav,**
Vice Chariman
AND
Hon'ble Shri Vinay Kargaonkar,
Member (A)

RESERVED ON : **04.12.2024**
PRONOUNCED ON : **20.12.2024**

ORDER

(Per : Justice V.K. Jadhav, Vice Chairman)

1. Shri Avinash Deshmukh, learned counsel for the
 applicant and Shri S.S. Dambe, learned Presenting Officer for
 respondent authorities, are present.

2. The matter is finally heard with consent of both the sides at the admission stage.

3. By filing this Original Application, the applicant is seeking declaration that the action of respondent No. 01 of deferring the applicant's promotion as Forester on the ground of his undergoing a minor punishment is unsustainable in law and also seeking direction to respondent No. 01 to forthwith promote the applicant as Forester and award him 19.09.2019 as the deemed date of said promotion.

4. Brief facts as stated by the applicant giving rise to the present Original Application are as follows:-

(i) The applicant was selected and appointed as Forest Guard on 10.04.2008 by respondent No. 01. Since then, the applicant is working as such and presently posted in the Working Plan Division, Aurangabad. The meeting of the Departmental Promotion Committee (for short DPC) was held on 13.02.2019 for considering the cases of eligible Forest Guards for promotion to the cadre of Foresters. Applicant's name was considered by the DPC for promotion and he was also held "fit" for to be promoted as Forester on the basis of all the relevant considerations

including his annual confidential reports etc. In spite of the aforesaid factual position, by order dated 15.02.2019, the respondent No. 01 was pleased to issue an order of promotion of only 19 Forest Guards out of total 34 Forest Guards, who were named in the above referred select list.

(ii) The applicant further contends that in the aforesaid background, one more meeting of DPC was held on 19.09.2019, wherein names of 16 Forest Guards mentioned therein and they were held to be “fit” for promotion as Foresters. So far as the present applicant is concerned, in para No. 10 of the minutes of meeting of the DPC, it is mentioned that his name was kept in sealed cover inasmuch as he was undergoing punishment of withholding of one yearly increment for a period of one year imposed upon him by respondent No. 2 vide order dated 21.09.2018 and the appeal filed by the applicant against the said punishment was dismissed by respondent No. 1 vide order dated 19.12.2018. Hence, the present Original Application.

5. Learned counsel for the applicant submits that in the previous meeting of DPC dated 13.02.2019, the applicant was held “fit” for promotion and his name was also included in the

select list, however, in the subsequent meeting of DPC held on 19.09.2019 his name was not included in the select list and his name was kept in sealed cover only on the ground that he was undergoing punishment.

6. Learned counsel for the applicant submits that after holding the meeting of DPC on 19.09.2019, respondent No. 01 was pleased to issue promotion order promoting respondent Nos. 3 to 8 as Foresters, who are junior to the applicant in the cadre of Forest Guards. The respondent No. 01 has promoted the persons junior to the applicant in the cadre of Forester Guards in supersession of legitimate claim of the applicant.

7. Learned counsel for the applicant submits that vide order dated 21.09.2018, the respondent No. 02 was admittedly pleased to impose minor punishment of withholding of one yearly increment for the period of one year and the applicant's appeal preferred against the said order came to be dismissed by the respondent No. 01 vide order dated 19.12.2018. Thus, on the date of meeting of DPC dated 13.02.2019, the applicant was in fact not undergoing any punishment of withholding of one yearly increment for the period of one year and order passed by respondent No. 02 on 21.09.2018 was to come to an effect w.e.f. 01.07.2019. Thus, in the meeting dated 13.09.2019 the DPC

has rightly held the applicant “fit” for promotion. The applicant has been illegally deprived of his promotion as Forester.

8. Learned counsel for the applicant submits that ground of undergoing the punishment should not have been considered by the DPC or the respondents for deferring the promotion of the applicant from the cadre of Forest Guards to the cadre of Foresters, because doing so results in imposition of one more punishment of withholding of promotion for the same delinquency for which the applicant has already been suffered punishment of withholding of one yearly increment for the period of one year.

9. Learned counsel for the applicant has placed his reliance in the case of **Suresh Hariram Sakharwade Vs. the State of Maharashtra** decided by the Principal Seat of this Tribunal at Mumbai by judgment and order dated 30.04.2019 in **O.A. No. 886/2017** (Annexure ‘A-6’ page 41 of the paper book). The Principal Seat of this Tribunal at Mumbai has considered various judgments delivered by the Hon’ble Supreme Court and various High Courts on this point and held that, if DPC has found a person “fit” then he/she cannot be deprived of the promotion because of the punishment being undergone by him/her.

10. The learned counsel for the applicant submits that the present Original Application deserves to be allowed in terms of the prayer clauses.

11. The learned Presenting Officer on the basis of the affidavit in reply filed on behalf of respondent nos. 01 and 02 submits that though the name of the applicant was included in the seniority list, however, he had not been given promotion as Forester due to departmental enquiry in terms of G.R. dated 15.12.2017 issued by the General Administration Department, Mantralaya, Mumbai. The respondent No. 01 for filling in the posts of Forester called the list of eligible Forest Guards and the applicant is not entitled for the promotion merely because his name has figured in that list.

12. Learned Presenting Officer submits that the applicant came to be appointed as Forest Guard in the year 2008. His work was not satisfactory and the Deputy Conservator of Forest, Aurangabad received number of complaints against him. Accordingly, departmental enquiry was initiated against the applicant in which punishment of withholding for one yearly increment for a period of one year was imposed on him by order dated 21.09.2018 issued by respondent No. 2 and same was confirmed in the appeal vide

order passed by respondent No. 01 dated 13.12.2018. The applicant is not entitled for the promotion to the post of Forester as the applicant has been served with punishment in the departmental enquiry on 21.09.2018. Once the order of punishment is issued, the period of punishment begins. Thus, the applicant cannot be promoted till he is undergoing the punishment. There is no substance in the Original Application and the same is liable to be dismissed.

13. Undisputedly by order dated 21.09.2018 issued by respondent No. 02 the applicant was inflicted with punishment owing to the departmental enquiry initiated against him of withholding of one yearly increment for the period of one year and same was confirmed in the appeal by respondent No. 01 vide order dated 13.12.2018.

14. We have carefully gone through the minutes of the meeting of DPC held on 13.02.2019. The service record including the annual confidential reports of near about 38 Forest Guards seem to have been analyzed by the DPC. The confidential reports for the years 2013-14 to 2017-18 were considered. Applicant's name is appeared at Sr. No. 28 in the select list and he is held "fit" for promotion as Forester as his ACRs for the aforesaid period come to grade 'A'.

15. It further appears that by order dated 15.02.2019 only 19 persons out of those 34 persons were promoted. On perusal of the minutes of the meeting of next DPC dated 19.09.2019 (Annexure 'A-3' page 25 of the paper book) it appears that in para 10 thereof the applicant's proposal is discussed with observations that the applicant is undergoing the punishment in terms of the order dated 21.09.2018 imposed upon him in connection with the departmental enquiry held against him and that his name will be considered for promotion only after undergoing the said punishment of stoppage of one yearly increment for the period of one year.

16. In a case of **Suresh Hariram Sakharwade Vs. the State of Maharashtra** (cited supra) the Division Bench of Principal Seat of this Tribunal at Mumbai almost on similar set of facts has referred and discussed the view taken by the Hon'ble Supreme Court and various High Courts with regard to stoppage of increment and promotion. In **Rani Laxmibai Kshetriya Gramin Bank & Ors. Vs. Manoj Kumar Chak, Civil Appeal No.2970-2975 of 2013** decided by Hon'ble Supreme Court on 9.4.2013, wherein the Hon'ble Supreme Court has held in para 2 that the persons, who have been awarded

censure entry or other minor punishments, thus cannot be excluded from the zone of consideration for promotion.

17. In terms of the ratio laid down by the Hon'ble Supreme Court and various High Courts, as detailed in paragraph Nos. 18 and 19 of the judgment, the Principal Seat of this Tribunal at Mumbai in the case of **Suresh Hariram Sakharwade Vs. the State of Maharashtra, (O.A. No. 886/2017)**

(cited supra) made the following observations:-

“18. The record summarized hereinbefore indicates that the DPC held on 7.2.2018 and 3.12.2018 reveals that committee's observation about the fitness or otherwise of the Applicant are recorded and are kept in sealed cover. The DPC has further kept one post vacant. As has been underlined by various judgments given by the Hon'ble Supreme Court and other Courts, the findings of the DPC and the decision to withhold his promotion as he is undergoing punishment are two separate things. The Hon'ble Supreme Court's verdict has further pointed out that if the DPC has found him fit for promotion, he cannot be deprived of the same only because of the punishment being undergone by the Applicant.

19. We, therefore, find merit in the prayer made by the Applicant and direct the Respondents to decide the case of the Applicant for promotion from the date the DE was concluded and minor penalty was imposed, if he is found fit for promotion. We further direct the Respondents to provide all consequential service benefits to the Applicant as per the decision reached by the DPC. The Respondents should implement this order within a period of one month from 23rd May, 2019.”

18. In the instant case the applicant is on better footing. He was found “fit” for promotion in the DPC meeting held on 13.02.2019. We are also in agreement with the observations made by the Principal Seat of this Tribunal at Mumbai in the case of **Suresh Hariram Sakharwade Vs. the State of Maharashtra** (cited supra). The findings of the DPC to withhold the promotion of the applicant as he is undergoing the punishment of stoppage of one yearly increment for a period of one year are two separate things. The applicant was found “fit” for promotion and thus, in our considered opinion, he cannot be deprived of for promotion only because he is undergoing the punishment.

19. In the result, we partly allow this Original Application with similar direction as are given in the case of **Suresh Hariram Sakharwade Vs. the State of Maharashtra, (O.A. No. 886/2017)** by the Principal Seat of this Tribunal at Mumbai. Hence, the following order: -

ORDER

(i) The Original Application No. 934/2019 is hereby partly allowed.

(ii) The respondents are directed to decide the case of the applicant for his promotion to the post of Forester from the date the departmental enquiry was concluded and minor punishment was imposed on the applicant.

(iii) The respondents are also directed to pay all the consequential service benefits to the applicant as per decision taken by the DPC.

(iv) The respondents shall comply the aforesaid directions within a period of 02 months from the date of receipt of this order.

(v) In the circumstances there shall be no order as to costs.

(vi) The Original Application is accordingly disposed of.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 20.12.2024