

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No.178 of 2024(D.B.)

1. Pornima D/o. Gyaniram Atkari,
Aged about 25 years, Occupation: Educated Unemployed,
R/o. Village Dhiwarwada, Tahsil: Mohadi, District: Bhandara.
2. Sapna D/o. Ashok Vyavhare,
aged about 24 years, Occupation: Educated Unemployed,
R/o. Village Falegaon, Tahsil: Mangarulpur, District: Washim.
3. Rajani D/o. Dasaram Raut,
aged about 22 years, Occupation: Educated Unemployed,
R/o. Village Bapera (Sihora), Tahsil: Tumsar, District: Bhandara.

Applicants.

Versus

- 1) The State of Maharashtra, through its Secretary,
Revenue and Forest Department, Mantralaya, Mumbai-32.
- 2) The Principal Chief Conservator of
Forests (Head of Forests Force), State of Maharashtra,
Nagpur Office, "Vanbhavan", Ramgiri Road, Civil Lines,
Nagpur- 440001.
- 3) The District Forest Officer,
Gadchiroli, Member Secretary, Divisional Recruitment Committee/
Deputy Conservator of Forests (Divisional) Gadchiroli Forest
Division, District: Gadchiroli.
- 4) Amol S/o. Sanjay Sonawane,
aged about 24 years, Occupation: Educated Unemployed,
R/o C/o the Office of District Forest Officer, Gadchiroli,
Tahasil& District: Gadchiroli.
- 5) Mahesh S/o. Pandhari Athawale,
aged about 30 years, Occupation: Educated Unemployed,
R/o C/o the Office of District Forest Officer Gadchiroli,
Tahasil& District: Gadchiroli.
- 6) Sonu S/o. Nilkanth Wadhai,
aged about 29 years, Occupation: Educated Unemployed,
R/oC/o The Office of District Forest Officer, Gadchiroli,
Tahasil& District: Gadchiroli.

Respondents.

**Shri V.B. Gawali, Advocate for the applicants.
Shri M.I. Khan, learned P.O. for respondent nos.1 to 3.
S/Shri Madhur Deo, Sumeet Ambade, Advs. for resp. nos. 4 to 6.**

**Coram :-Hon'ble Shri Justice M.G. Giratkar,Vice Chairman and
Hon'ble Shri Nitin Gadre, Member (A).**

Date of Reserving for Judgment : 20th August, 2024.

Date of Pronouncement of Judgment : 28th August, 2024.

JUDGMENT

Per : Member (A).

(Delivered on this 28th day of August,2024)

Heard Shri V.B. Gawali, learned counsel for applicants,
Shri M.I. Khan, learned P.O. for respondent nos.1 to 3 and Shri
Madhur Deo, learned counsel for respondent nos.4 to 6.

2. The applicants have challenged the action of the respondents that they were selected as Forest Guard, Group-C in view of the selection list published by respondent no.3 on 20/02/2024 and on the very next day i.e. on 21/02/2024, the respondent no.3 issued a corrigendum showing the applicants in the waiting list by cancelling their selection.

3. The applicants have stated that, as per the advertisement, only 5 posts were allotted for O.B.C. (General) category candidates and 7 posts were reserved for O.B.C. (female) candidates. However, as per the Corrigendum, 8 candidates are being selected from male

candidates O.B.C. category. The applicants claimed that the first selection list dated 20/02/2024 was prepared following the vertical and horizontal reservations properly. However, the corrigendum selection list dated 21/02/2024 amounts to discrimination against the woman. Therefore, the applicants filed the present O.A. for the following reliefs-

“(7) (i) quash and set aside the corrigendum dated 21.02.2024 (Annexure-A5) issued by respondent no. 3- The District Forest Officer Gadchiroli, Member Secretary, Divisional Recruitment Committee/ Deputy Conservator of Forests (Divisional) Gadchiroli Forest Division, District: Gadchiroli whereby the selection list dated 20.02.2024 is being modified in respect of OBC category and the applicants who were in the selected candidates list are now shown as waiting list candidates cancelling their selection replacing respondent no. 4 to 6;

(ii) uphold and confirm the selection list dated 20.02.2024 (Annexure-A4) issued by the respondent no. 3- The District Forest Officer Gadchiroli, Member Secretary, Divisional Recruitment Committee/ Deputy Conservator of Forests (Divisional) Gadchiroli Forest Division, District: Gadchiroli whereby the applicants were selected as Forest Guard Group-C and respondent no. 4, 5 and 6 were waiting list candidates following reservation properly;

(8) (a) By way of interim relief, stay the effect an operation of corrigendum dated 21.02.2024 issued by respondent no. 3- The District Forest Officer Gadchiroli, Member Secretary, Divisional Recruitment Committee/ Deputy Conservator of Forests (Divisional) Gadchiroli Forest Division, District: Gadchiroli whereby the selection list dated 20.02.2024 is being modified in respect of OBC category

and the applicants who were in the selected candidates list are now shown as waiting list candidates cancelling their selection replacing respondent no. 4 to 6;

b. Or in alternatively direct the respondent no. 3-The District Forest Officer Gadchiroli, Member Secretary, Divisional Recruitment Committee/ Deputy Conservator of Forests (Divisional) Gadchiroli Forest Division, District: Gadchiroli to keep 3 posts vacant/ not to issue appointment Orders from the category of OBC on which respondent no. 4 to 6 are selected;

c. Grant interim/ad-interim ex-parte relief in terms of prayer clause (a) and (b) above.

4. The respondent nos. 4 to 6 in their reply have stated that there is a fundamental difference between vertical reservation and horizontal reservation. They have stated in their reply that in case of horizontal reservation, even if a woman candidate is selected on merit within the vertical reservation quota, her candidature has to be counted against the horizontal reservation quota for women.

5. The respondents have stated that there was a fundamental error while preparing the said select list dated 20/02/2024. The names of 3 female candidates who were much more meritorious than the applicants were wrongly included in the O.B.C. (General) list. They should have been included in the O.B.C. (female) list. This error was rectified by respondent no.3 by issuing the corrigendum dated 21/02/2024. The respondents have also stated that

mere inclusion in the select list does not give any right in favour of the applicants to get order of appointment.

6. The scheme of horizontal reservation has been explained in the Government G.Rs. dated 19/12/2018 and 25/01/2024. In the G.R. dated 19/12/2018 the scheme is explained as follows -

“(अ) - 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.अ.ज., 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 उमेदवारांपैकी आवश्यक पर्याप्त संख्येइतके समांतर आरक्षणामधील गुणवत्तेनुसार पात्र उमेदवार घेणे आवश्यक आहे.”

हे शासन शुध्दीपत्रक निर्गमित झाल्याच्या दिनांकापासून अंमलात येईल. ”

7. As per the submission of learned counsel for the applicants, if the respondent nos. 4 to 6 are meritorious candidates then they could have been shown in the Open category. If it was done, then the applicants should have been selected on the said posts. They were rightly shown in the first selection list.

8. The learned counsel for applicants has pointed out the Judgment of the Hon'ble Supreme Court in the case of **Saurav Yadav & Ors. Vs. State of Uttar Pradesh & Ors. (2021) 4 SCC,542.**

9. The present matter is not about open candidates. The posts under consideration are in OBC (General) and OBC (female) category.

10. Shri Madhur Deo, the learned counsel has submitted that respondent nos. 4 to 6 applied in O.B.C. (General) category. Therefore, it cannot be said that respondent nos. 4 to 6 are to be selected only in the Open category. He has submitted that the present matter is about filling of OBC (general) and OBC (female) category as per the policy regarding horizontal reservations. In support of his submission, he pointed out the Judgment of the Hon'ble Supreme Court in the case of ***Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Others (2007) 8 SCC,785***. The para-6 of the Judgment is reproduced below-

“(6) Before examining whether the reservation provision relating to women, had been correctly applied, it will be advantageous to refer to the nature of horizontal reservation and the manner of its application. In *Indra Sawhney v. Union of India* the principle of horizontal reservation was explained thus:

"[A]ll reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under Clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the

vertical reservations-what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of Backward Class of citizens remains----and should remain ---- the same."

11. The scheme has been further explained in the Judgment of the Hon'ble Supreme Court in the case of ***Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and Others (2007) 8 SCC,785***. The material portion of the Judgment is reproduced below –

"But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Caste women". If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social)

reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women.”

12. Argument advanced by the side of applicants that the respondents should be appointed in the open category is not acceptable because the posts under consideration were reserved for O.B.C.s, therefore, the applicants cannot say that respondent nos. 4 to 6 should have been appointed in the open category. The candidates are to be adjusted in a suitable category based on their marks and the reservation policies regarding vertical and horizontal reservations.

13. In view of this discussion, the facts of the case seem to be as follows-

The first select list is declared on 20/02/2024. In the O.B.C. (general) select list, out of total 8 candidates, 3 candidates are women. In addition to this, another 7 female candidates have been selected in the O.B.C. (female) category. After realizing that this selection list is not as per the provisions of the Government G.R.s, the respondent no.3 published another select list on 21/02/2024 by following the provisions of the Government policy of female reservation. By observing the two select lists dated 20/02/2024 and 21/02/2024, it becomes clear that -

(i) In the new list dated 21/02/2024, adequate number of female candidates has been selected, in line with the reservation policy for women.

(ii) The three candidates who have been shifted from the waiting list (OBC- general) of 20/02/2024 to the select list (OBC-general) of 21/02/2024 have secured more marks than the applicants who have now shifted from the select list of O.B.C.–female, dated 20/02/2024 to the waiting list of O.B.C.–female, dated 21/02/2024.

14. Hence, it is incorrect to say that the new select lists and waiting lists of OBC (general) and OBC (women) dated 21/02/2024 are not as per provisions of the reservation policy for women. In view of these observations, we proceed to pass the following order –

ORDER

(i) The O.A. is dismissed.

(ii) Interim order granted by this Tribunal dated 01/03/2024 not to fill three posts of Forest Guard, is hereby vacated.

(iii) No order as to costs.

(NitinGadre)
Member(A).

(Justice M.G.Giratkar)
Vice Chairman.

Dated :- 28/08/2024.

*dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman and
Member (A).

Judgment signed on : 28/08/2024.