

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

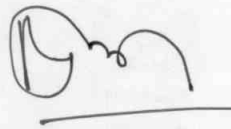
ORIGINAL APPLICATION NO.128 OF 2016

DISTRICT : SINDHUDURG

Shri Uday Madhukar Tirodkar. )  
Working as Forest Guard on the )  
Establishment of Respondent No.4 and )  
Residing at 1012, Shreyas Colony, )  
New Garad, Majgaon, Sawantwadi, )  
District : Sindhudurg. )  
)...Applicant

**Versus**

1. The State of Maharashtra. )  
Through the Principal Secretary, )  
Revenue & Forest Department, )  
Mantralaya, Mumbai - 400 032. )
2. The Principal Chief Conservator of )  
Forest, State of Maharashtra, )  
Van Bhavan, Ramgiri Road, Civil )  
Line, Nagpur 440 001. )
3. The Chief Conservator of Forest, )  
Vanvardhan, Opp. Head Post Office, )  
Tarabai Park, Kolhapur 416 003. )
4. The Deputy Conservator of Forest, )  
Sawantwadi, Vanbhavan, Salaiwada, )  
District : Sindhudurg. )  
)...Respondents



**Ms. S.P. Manchekar, Advocate for Applicant.**

**Shri K.B. Bhise, Presenting Officer for Respondents.**

**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 05.01.2017**

**JUDGMENT**

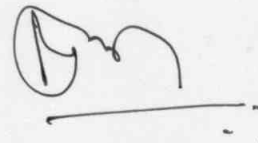
1. This Original Application (OA) is brought by a Forest Guard who met with such a serious accident that his spinal cord got completely crushed on 5.5.1987 which has since then left him pinned down to the bed. He seeks the relief inter-alia under the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (to be hereinafter called "the said Act"). He seeks all the benefits including the salary, allowances, arrears, etc.

2. I have perused the record and proceedings and heard Ms. S.P. Manchekar, the learned Advocate for the Applicant and Mr. K.B. Bhise, the learned Presenting Officer for the Respondents.

3. The perusal of the pleadings of the parties would show that it is an indisputable factual position that on 5.5.1987, the Applicant met with an accident which was



horrendous to say the least about it. Ever since then, he is completely pinned down to the bed. Shorn of unavoidable details ever since 1988, the Applicant was in correspondence with the Respondents. He initially wanted to be retired and his brother to be absorbed in his place. Later in point of time, he made a case that his daughter be appointed in his place. It is absolutely clear that ever since 1987, the Respondents did not take any action at all in the matter in the sense, that the services of the Applicant were not terminated because he has become completely disabled and incapacitated. That even otherwise, they could not have done as per law is a different matter and that they did not do so is a fact. It appears to be the case of the Applicant that post accident, he settled down in Village Majgaon, Taluka Sawantwadi, District : Sindhudurg. One can easily understand the kind of predicament that he has been and is being through. From the order of this Tribunal in **OA 1160/2010 (Shri A.M. Pawar Vs. State of Maharashtra and 2 others, dated 13.4.2011)** and **OA 337/2011 (Shri G.R. Makasare Vs. State of Maharashtra and 2 others, dated 25.1.2012)** he realized that certain rights have become available to the persons of his ilk. In the ultimate analysis, he brought this OA for the relief aforestated.



4. The Respondents have caused filing of Affidavit-in-reply by Shri Prakash M. Bagewadi, Assistant Conservator of Forest, who did it for and on behalf of Respondents 1 to 4. The claim is denied. There is an issue raised with regard to the limitation.

5. Ms. Manchekar and Mr. Bhise faithfully adhered at the time of addresses to their respective briefs.

6. It needs to be quite clearly understood that the provisions of the said Act enshrine within itself the salutary and laudable principles of general welfare of physically afflicted people. Section 47 shall be presently reproduced, but it is very clear that the cases falling within this particular category are a class by themselves, and therefore, the principles laid down by the judicial pronouncements in relation to some other set of laws or rules, cannot just be bodily lifted and applied to the cases to which the provisions of the Act apply. Just like any other wing of the Government, the judiciary also is bound by the legislative mandate of showing clear awareness to the object and purpose, underlying the social welfare legislation like the Act.



7. In this background, the provisions of the Chapter VIII of the Act has a broad heading, "Non-discrimination". Section 47 deals with Non-discrimination in Government employment. It may now be reproduced hereinbelow.

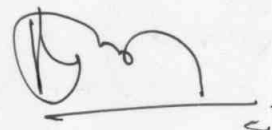
**"47. Non-discrimination in Government employment.-** (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service.

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits;

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or, he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability;

Provided that the appropriate Government may, having regard to the type of work carried on



in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

8. It is quite pertinent to note that the above quoted Section casts unquestionably the duty and responsibility on the Government and it is an injunction against dispensing with or reduction in rank of an employee who acquired disability during his service in which bracket, the present Applicant squarely falls. Since I have already reproduced the Section entirely, it may not be necessary for me to paraphrase the same. But it is very clear that the legislative mandate is absolutely unequivocal and clear that such an employee who has acquired a disability would in no circumstance be put to any disadvantage at all. The net result of a literal and plain reading of the said provision would result in this conclusion. Ms. Manchekar, the learned Advocate for the Applicant in this connection relied upon **Bhagwan Dass and Another Vs. Punjab State Electricity Board, (2008) 1 SCC 579**. Their Lordships were pleased to denounce in strong language the attitude and conduct of the Officers who glossed over or ignored the beneficial aspect enshrined in Section 47 above quoted. That in fact was a matter where the employee lost his

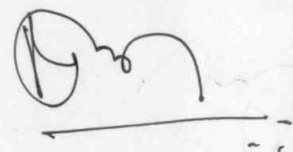




vision completely and may be in a fit of frustration or whatever he even submitted resignation with a request that his wife be employed. Their Lordships were pleased to interpret his letter of resignation and it was held that it could not be said that he had in that sense voluntarily resigned, and therefore, the relief was granted to the said employee. The observations of Their Lordships in various Paragraphs of **Bhagwan Dass** (supra) are of great education for the students of law wherever they may be in so far as the beneficial provisions of the said Act are concerned.

9. Mr. Bhise, the learned PO who naturally bound by his brief did his best to salvage the case of his clients, relied upon **Administrator of Union Territory of Daman and Diu Vs. R.D. Valand, Civil Appeal Nos.7223-24/1993, dated 27<sup>th</sup> July, 1994.** He also relied upon **C. Jacob Vs. Director of Geology and Mining, AIR 2009 SC 264** and also on **Union of India Vs. M.K. Sarkar, AIR 2009 SC 2158.**

10. I have already indicated above that in dealing with the provisions of the Act, its beneficial nature and in that sense, the legislative mandate can never be lost sight of. In so far as the three Judgments cited by Mr. Bhise,



the learned PO are concerned, none of them was under the provisions of the said Act. The crux of the matter was and that was in all the three cases that by any contrivance, the Court should not allow a claim which has become stale by efflux of time to be enlivened for that would lead to multiple complications and will not be in the interest of justice. Mr. Bhise told me that the Applicant should at least have moved this Tribunal after the Act was enforced, and therefore, I cannot possibly lose sight of the fact that enormous lapse of time which is now close to 30 years has taken place. In all fairness to Mr. Bhise, the issue of limitation was raised at the outset, even in the Affidavit-in-reply. However, in my opinion, if the disability continues as far as the Applicant was concerned, which unfortunately does, then this is not a case where the time would stop running as it were. Each day of the suffering, to my mind gives a fresh cause of action and on basic principles, I find it impossible to agree with the learned PO in so far as the issue of limitation is concerned. Relying upon the three Judgments above referred to, Mr. Bhise contended that in any case, the Applicant allowed the things to drag on and now it would be too late in the day for him to seek benefit of the said provisions. Here again, I disagree completely. The basic and fundamental principles underlying the provisions of Section 47 of the Act is not

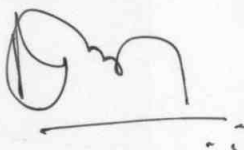
A handwritten signature or set of initials, possibly 'B' or 'BH', with a long horizontal stroke extending to the right.



any fault or otherwise of the concerned employee so much, as it is the duty and responsibility of the employer and in this case, whether Mr. Bhise likes it or not, the Respondents have performed their duties in its complete breach, and therefore, in my view, the submissions of the learned PO cannot prevail.

11. Going by the mandate of **Bhagwan Dass** (supra), it is very clear that it matters not where the accident took place before the Act was enforced on 7<sup>th</sup> February, 1996 or whenever. The benefit thereof would be available to the employee and in this particular matter, the Applicant having never been discontinued, he shall be entitled to all the benefits that accrue to him as a result of the application of Section 47 to the present facts.

12. The upshot, therefore, is that the Applicant would be entitled to the relief claimed. He having been born on 30.11.1958 has already crossed the age of superannuation. However, that would be no stumbling block in as much as his dues will have to be calculated and even his pensionary benefits will have to be worked out. In so far as the terminus-a-quo that is the period of commencement is concerned, it appears from 'Exh. A-6' (Page 23 of the Paper Book) that his absence from duty



from the date of the accident till 20.10.1989 was treated as Extra-Ordinary Leave Without Pay. In my opinion, therefore, his entitlement would commence from 1<sup>st</sup> November, 1989.

13. It is hereby held and declared that the Applicant is entitled to the benefit of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The Respondents are directed to grant to the Applicant all service benefits in every respect from 1.11.1989 till 30.11.2016 and then work out his pension and other retiral benefits and pay them over to him. Compliance within three months from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**05.01.2017**

05.01.17

Mumbai

Date : 05.01.2017

Dictation taken by :

S.K. Wamanse.

E:\SANJAY WAMANSE\JUDGMENTS\2017\1 January, 2017\O.A.128.16.w.1.2017.Backwages.doc