

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
REVIEW APPLICATION NO.03/2024 IN
ORIGINAL APPLICATION No.364/2015(D.B.)

Ku. Dileshwari d/o Dewaji Katre,
(Now Smt. Dileshwari w/o Ramkumar Rahangdale),
a/a 39 yrs., Occ.- Service Presently Posted,
At- Bor Sanctuary, Tah. & Dist.- Wardha.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai -32.
- 2) The Principal Chief Conservator of Forest,
Maharashtra State, Office At- Van Bhavan,
Ram Giri Road, Civil Line, Nagpur,
Tah. & Dist.- Nagpur.
- 3) The Chief Conservator of Forest (Regional),
Office- Near Govt. Printing Press,
Zero Miles, Nagpur,
Near Tah. & Dist.- Nagpur.
- 4) The Asst. Conservator of Forest,
Office At- Jaistambh Chowk,
Gondia Dist.- Gondia.

Respondents

Shri V.R.Borkar, Ld. Counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A.Lovekar, Member (J) &
Hon'ble Shri Nitin Gadre, Member (A).

Dated:- 19th September, 2024.

JUDGMENT

Judgment is reserved on 02nd September, 2024.

Judgment is pronounced on 19th September, 2024.

Member (J)

Heard Shri V.R.Borkar, learned counsel for the applicant and
Shri M.I.Khan, learned P.O. for the respondents.

2. The applicant was appointed as Forest Guard on 12.10.2007. She was shortlisted to appear for examination for filling 25% quota of promotion to the post of Forester. Examination was held on 01.06.2004. She passed the examination. Her name was included in select/wait list. By order dated 12.06.2015 her selection was cancelled on the ground that on the date of the examination she had not completed requisite training. She completed this training in August, 2014. She challenged order dated 12.06.2015 in O.A.No.364/2015. The O.A. was dismissed on 23.02.2024. Review of the Judgment and order dated 23.02.2024 is sought by her on the ground that there is an error apparent on the face of record in it.

3. In the Judgment under Review Rules 7 and 9 of Recruitment Rules of 2011 and 2013 were considered –

**Recruitment Rules of 2013 amended Rules 7 & 9 (2) of
Recruitment Rules of 2011.**

Rule 7 was amended as follows:-

7. (1) *Appointment to the post of Forester in the Forest Department shall be made either-*

(a) by promotion of a suitable person from amongst the persons holding the post of Forest Guard on the basis of seniority as per the circle gradation list and subject to fitness, having not less than three years regular service in that post; or

(b) by selection of a suitable person from amongst the persons holding the post of Forest Guard, on the basis of common merit list prepared by the Additional Principal Chief Conservator of Forests (Administration Subordinate Cadre), Maharashtra State, Nagpur, on the basis of result of the "Limited Departmental Competitive Examination", conducted by the Chief Conservator of Forests (Education and Training), Pune, on the basis of rules made for the Limited Departmental Competitive Examination by the Government, from time to time.

(2) *For appearing to the examination the candidates shall,-*

(a) have completed five years of regular service as Forest Guard in the Forest Department;

(b) possess a degree of a statutory university or any other qualification declared by the Government to be equivalent thereto;

(c) not have any adverse entry duly communicated and confirmed in annual confidential record or should not have recorded doubtful integrity throughout the service period;

(d) not facing any Departmental Enquiry or not undergoing any punishment as the outcome of the Departmental Enquiry; and

(e) not facing any Anti-Corruption Bureau case or criminal case.

Further amendment made by Rules of 2013 is as under:-

4. In rule 9 of the principal Rules, in sub-rule (2), for the words "course of one year" the words "a training course for the period of six months or for the period as may be specified by the Government, from time to time," shall be substituted.

4. It was submitted by Shri V.R.Borkar, learned Advocate for the applicant that this Tribunal, by *inter alia* relying on Rule 9(2) which was applicable to Recruitment of Forest Guard, committed an error apparent on the face of record, and Rule 7 ought to have been solely relied upon which is in respect of appointment to the post of Forester and which does not stipulate the condition regarding completion of training to become eligible for the post of Forester. It was further submitted that this stipulation regarding completion of training as a condition precedent for promotional post of Forester could not have been added by formulating a procedure which is not stipulated in Recruitment Rules framed under Article 309 of Constitution of India. This procedure *inter alia* stated -

सदर मर्यादित विभागीय स्पर्धा परिक्षेमध्ये बसण्यास पात्र होण्याकरीता वनरक्षकांना कोणत्याही राज्य वनरक्षक प्रशिक्षण विद्यालयातून चालविण्यात येणारा वनरक्षकांच्या सहा महिन्यांचा किंवा एक वर्षाचा अभिक्रम प्रशिक्षण पाठ्यक्रम यशस्वीरित्या पूर्ण केलेला असावा.

5. It was submitted by learned P.O. Shri M.I.Khan that Rule 7 was rightly not read in isolation while delivering the Judgment dated

23.02.2024, and consideration of Rules 7 as well as 9 of Recruitment Rules was necessary. Rule 7(1) (b) refers to selection of a suitable person. Rule 9(2) mandates that a candidate appointed to the post of Forest Guard shall complete a training of specified duration. Rule 9(3) lays down that inter-se seniority of Forest Guard shall be determined solely by rank in the merit list of the Training School. The seniority list based on performance of candidates in training, thus, becomes the basis of promotion.

6. The applicant was appointed as Forest Guard on 12.10.2007. She appeared for examination for promotional post of Forester on 01.06.2014. On this day she had not completed training which she ought to have undergone as Forest Guard. She completed such training in August, 2014. Discussion made so far will show that there is no error on the face of record in the Judgment and order under Review.

7. While deciding this matter scope of review is required to be kept in mind. In judgment dated 31.10.2023 (**Sanjay Kumar Agrawal Vs. State Tax Officer (1) Another) - Review Petition (Civil) No. 1620 of 2023 with connected review petitions**) Hon'ble Supreme Court has held:-

11. In Parsion Devi and Others vs. Sumitri Devi and Others (1997) 8 SCC 715, this Court made very pivotal observations: -

“9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise.”

12. Again, in **Shanti Conductors Private Limited vs. Assam State Electricity Board and Others (2020) 2 SCC 677**, a three Judge Bench of this Court following **Parsion Devi and Others vs. Sumitri Devi and Others (supra)** dismissed the review petitions holding that the scope of review is limited and under the guise of review, the petitioner cannot be permitted to reargue and reargue the questions which have already been addressed and decided.

13. Recently, in **Shri Ram Sahu (Dead) Through Legal Representatives and Others vs. Vinod Kumar Rawat and Others (2021) 13 SCC 1**, this Court restated the law with regard to the scope of review under Section 114 read with Order XLVII of CPC.

14. In **R.P. (C) Nos. 1273-1274 of 2021 in Civil Appeal Nos. 8345- 8346 of 2018 (Arun Dev Upadhyaya vs. Integrated Sales Service Limited & Another)**, this Court reiterated the law and held that: -

“15. From the above, it is evident that a power to review cannot be exercised as an appellate power and has to be strictly confined to the scope and ambit of Order XLVII Rule 1 CPC. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.”

15. It is very pertinent to note that recently the Constitution Bench in **Beghar Foundation vs. Justice K.S. Puttaswamy (Retired) and Others (2021) 3 SCC 1**, held that even the change in law or subsequent decision/ judgment of co-ordinate Bench or larger Bench by itself cannot be regarded as a ground for review.

16. The gist of the afore-stated decisions is that: -

- (i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.
- (ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

(iii) *An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.*

(iv) *In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected."*

(v) *A Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise."*

(vi) *Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.*

(vii) *An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.*

(viii) *Even the change in law or subsequent decision/ judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.*

8. For the reasons discussed hereinabove the Review Application is dismissed with no order as to costs.

(Nitin Gadre)
Member(A)

(M.A.Lovekar)
Member(J)

Dated – 19/09/2024
rsm.

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

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J).
Judgment signed on : 19/09/2024.
and pronounced on