

NATIONAL COMMISSION FOR SCHEDULED TRIBES

File No. RDD/2/2017/STGMH/SEOTH/RU-IV

Report on recommendation of the National Commission for Scheduled Tribes in the matter of representation of Shri Rakesh Devaji Dumada & Others C/o Adivasi Ekta Parishad, District-Palghar, (Maharashtra), regarding irregularities in recruitment of Forest Guard for the year 2014-15 and denial of appointment to the selected ST candidates.

The National Commission for Scheduled Tribes (NCST), setup under Article 338 A of the Constitution of India is vested with responsibility, inter-alia to investigate the individual grievances of Scheduled Tribes and to monitor all matter relating to the safeguards provided to the Scheduled Tribes under the Constitution or under any other law for the time being in force or under any order of the Government and to monitor and evaluate the working of such safeguards. The Commission is required to present to the President annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards.

2. The National Commission for Scheduled Tribes has received one representation dated 05.04.2017 from Shri Rakesh Devaji Dumada & Others, District Palghar (Maharashtra) regarding irregularities in appointment of Forest Guards and denial of appointment to the selected ST candidates by the Forest Department of Government of Maharashtra. It was represented before the Commission that the complainants Shri Rakesh Devaji Dumada & Others had applied for the post of Forest Guard Recruitment in the Thane and Palghar Districts, of Maharashtra against advertisement published by Forest Department dated 22.05.2014, for 113 vacancies for Scheduled Areas. The Forest Department has selected only 94 candidates. The complainant ST candidates passed/cleared all the tests as 25 KM walking test, test showing weightage of HSC marks & marks obtained in 5 KM organized by the forest department. The Forest Department did not fill up all reserved ST vacancies after the eligible candidates were available with the list of Forest Department. The complainants submitted many representations and protest letters to the Chief Conservator of Forest (T), Thane. But he did not give any positive response. The Minister of Maharashtra interfere in the matter and requested to the Chief Conservator of Forest (T). Thane to take appropriate action in this matter. But the Chief Conservator of Forest (T) Thane did not bother. The petitioners have requested the Commission to intervene in the matter and direct the Forest Department to fill up all

reserved ST vacancies to the post of Forest Guards and issue offer of appointment to the selected ST candidates.

3. As per procedure adopted for dealing with representations, the NCST vide letter No. RDD/2/2017/STGMH/SEOTH/RU-IV dated 25.04.2017 has sought a report from the Secretary, Forest Department, Government of Maharashtra as per the duties enshrined under the Article 338 A of the Constitution of India.

4. As no report in the matter was received from the Forest Department, Government of Maharashtra and hence a sitting was held on 10.05.2018 under the Chairmanship of Hon'ble Chairperson, NCST, in the Commission, as per the clause 8 of Article 338 A of the Constitution of India.

5. During the sitting, the Secretary and other Senior Officers from Forest Department, Government of Maharashtra along with the petitioners appeared and submitted their points of view in the case.

6. The petitioners have submitted that the Forest Department, Maharashtra had initially advertised the vacancies exclusively reserved for Scheduled Tribes for the post of Forest Guard for Thane District only in the year 2014. Accordingly, being Scheduled Tribes, they applied for the post of Forest Guard. They also appeared in the qualifying examination and got selected. However, the appointment was denied. In addition, the Government of Maharashtra, General Administration vide its letter dated 26.06.2015 issued instructions that the orders of reduction in the posts will not be applied on those selection process which have been completed prior to issuance of this order. Hence, the Government of Maharashtra G.O. dated 26.06.2015 do not applicable in the case. There are also several vacant ST vacancies which has to be filled up. Since, they are selected ST candidates and reserved vacancies are available. Hence, denial of issuance of offer of appointment to the post of Forest Guard is not justified.

7. The Hon'ble Chairperson, NCST asked to the Secretary, Forest Department, Government of Maharashtra to explain the facts of the case and justification to deny the appointment to the selected ST candidates.

8. The Secretary, Forest Department, Maharashtra submitted that the Forest Department, Thane had issued an advertisement dated 12.08.2014 for recruitment of 133 Forest Guards for the year 2014-15. Out of 133 posts 24 were reserved for candidates belonging to Scheduled Tribes. Thereafter the Hon'ble Governor of Maharashtra vide its notification No. RB/TC/C 130-13(4) 2/474/2014/ 730 dated 14.08.2014 have issued instructions/directions that all the posts to be filled up under

direct recruitment in Scheduled Areas have to be filled up from eligible candidates of Scheduled Tribes belonging to the local Scheduled Area only. No posts should have been filled up from outside Scheduled Area candidates, either by Scheduled Tribe candidates or general candidates. Accordingly, the Forest Department, Thane has issued supplementary advertisement on 05.09.2014 indicating vacancies position i.e. 24 posts from Palghar District and 17 posts in Thane District the total being 41 posts to be recruited from the persons belonging to Scheduled Tribes in Scheduled Area. In the meanwhile, the Government of Maharashtra vide General Administration Department corrigendum dated 26.06.2015, issued instructions to fill the vacant posts in Scheduled Area to the extent of maximum of 20% of the total vacant posts from the candidates belonging to the local Scheduled Tribes from the Scheduled Area. Based on the reference, the Chief Conservator of Forest (T), Thane issued instructions by the Additional Principal Chief Conservator of Forest (Administration-Sub-ordinate cadre), Nagpur vide letter dated 10th August 2015 to recruit 27 posts, instead of 41 posts of Forest Guards from Scheduled Area to comply with the instructions contained in the said GAD's corrigendum dated 26.06.2015. In supplementary advertisement dated 05.09.2014 was clearly indicated the district wise break up of 41 posts as 24 posts for Palghar District and 17 posts for Thane District. As per this proportion, the breakup of revised 27 posts (as per GAD's corrigendum dated 26.06.2015) would have been 16 posts for Palghar and 11 posts for Thane District. On the contrary, Chief Conservator of Forest (T), Thane filled up 21 posts in Palghar district and 3 posts in Thane District on the basis of merit. This has resulted in filling up maximum posts in Palghar District considering the upper limit i.e. 27 posts for giving maximum opportunity to the candidates belonging to Scheduled Tribes of local Scheduled Area.

9. Regarding demand of applicants for application of para 13(5) of corrigendum dated 26.06.2015, it is submitted that as per the original advertisement, 20 posts were reserved for Scheduled Tribe category against the total 133 vacancies. As per district wise roster, the district wise break up of 20 Scheduled Tribes posts were Thane 5 posts, Palghar 8 posts (for Scheduled Area) and Raigad – 4 posts and Thane 3 posts (for Non-Scheduled Area). Instead of this, Forest Department has actually filled more posts (filled 21 posts instead of 8 posts) in Scheduled Area especially in Palghar District. Hence, the demand of the applicant is not valid. In addition, the process of recruitment to fill up the posts has been purely on merit. Hence, it is not appropriate to fill up the vacant posts of one District from the candidates belonging to other Districts.

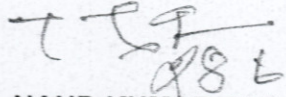
10. Here it is to added that the recruitment of Forest Guard was also initiated in 2016-17 vacancies year. Special efforts were made by the Forest Department to fill up 100% vacancies of Forest Guards by obtaining the special permission from the Government. Advertisement for filling up 100% vacancies of Scheduled Tribes, 61 post from Palghar and 17 post from Thane District (Total 78 Post) was issued in 2016-17. The recruitment process was completed thereby appointing 14 candidates in Thane District in Scheduled Area and 53 candidates from Palghar District Scheduled Area and they have joined the respective posts. Totally 67 posts have been filled up. However, 8 posts could not be filled up because of the unavailability of eligible candidates in Palghar District and 3 posts in Thane District from the Ex-service men category of STs from Scheduled Area.

11. The National Commission for Scheduled Tribes has examined and investigated the case. A Sitting was also held to get clarity and reasons for denial of offer of appointment to the selected ST candidates to the post of Forest Guard. After detailed examination and the issues emerged during the Sitting, the Commission has observed that the Thane District is one forest circle which covered District of Palghar and Raigad. The Hon'ble Governor of Maharashtra is the Administrator of the Scheduled Area and his orders is binding to comply by all the Government Departments. The compliance of the Hon'ble Governor's notification dated 14.08.2014 should have been made applicable in true spirit. Thane District is completely Scheduled Area and Palghar District is partially Scheduled Area. As per the Forest Department's employment notification for vacancies of 2014-15 to the post of Forest Guard, there was 17 ST vacancies in Thane District and 24 ST vacancies in Palghar District. Out of 17 ST vacancies in Thane District, 03 ST vacancies were filled up. Similarly, in Palghar District, out of 24 ST vacancies, 21 ST vacancies were filled up. Thus, 17 ST vacancies still remained unfilled despite available of eligible ST candidates. The Scheduled Tribe selected candidates were Thane and adjoining District of Palghar in Maharashtra and comes under the Scheduled Area. Regarding the Forest Department, Maharashtra's contention to fill up 3 ST vacancies from Ex-servicemen ST category, it is noticed that the eligible ST Ex-servicemen is generally not available. Hence, these posts should have been filled up from the regular Scheduled Tribes of local Scheduled Area along with the remaining unfilled 14 ST posts in compliance with the Hon'ble Governor's Maharashtra's notification. Since, the Raigad District is not a Scheduled Area. Hence, the vacancies of the Raigad District should have been filled up from non-Scheduled Area ST candidates.

12. The Commission has further observed that the ST candidate complainants were selected through duly qualifying selection process (physical test and HSC Marks). At the time of issuing of employment notice in 2014 there was no indication of vacancies exclusively reserved for Scheduled Area. As the Thane District was one forest circle to fill up vacancies of Forest Guard and the ST candidates have been selected. No more ST candidates was also available in Thane District. Hence, the Commission recommends that the Forest Department of Maharashtra may consider to fill up unfilled 14 ST vacancies of Thane District and 03 ST vacancies of Palghar among the selected ST candidates of Palghar District so that they could not lose an employment opportunity.

13. The National Commission for Scheduled Tribes being a Constitutional Body recommends that the Hon'ble Governor of Maharashtra may consider the matter in the interest of the Scheduled Tribe candidates and send recommendation to the State Government of Maharashtra to issue the offer of appointment to the selected ST candidates of Palghar District for the post of Forest Guard by relaxing the norms of the Scheduled Area against the unfilled 17 ST vacancies in one time measure so that the grievances of the ST candidates could be resolved. This should not be treated as precedence in future cases.

15. The Commission also recommends that the Government of Maharashtra may consider to relax the norm of validity of select list of one year to adjust the candidature of the selected ST candidates and after receipt of the Hon'ble Governor's recommendation, necessary urgent action may be taken for issuing of appointment orders of selected ST candidates.


28.6.18

(DR. NAND KUMAR SAI)
Chairperson

National Commission for Scheduled Tribes

नन्द कुमार साय/Nand Kumar Sai
अध्यक्ष/Chairperson
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi