

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 943 OF 2019

DISTRICT : JALNA

Dattu S/o Ganpati Gaikwad,)
Age : 60 years, Occu. : Retired,)
R/o 8/12, Veer Savarkar Nagar, Roshangaon)
Road, Badnapur, Tq. Badnapur, Dist. Jalna.)

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APPLICANT

V E R S U S

1. **The Principal Secretary (Forest)**)
Revenue and Forest Department,)
Mantralaya, Mumbai-32.)

2. **The Addl. Principal Chief Conservator of Forest,**)
(Administration- Sub-Cadre),)
Forest Department, Van Bhavan, Ramgiri)
Road, Civil Lines, Nagpur-440 001.)

3. **The Chief Conservator of Forest,**)
(Regional) Aurangabad, Van Bhavan,)
Osmanpura, Railway Station Road,)
Aurangabad – 431005.)

4. **The Deputy Director,**)
Social Forestry Division, Plot No. 10,)
Pangarkar Nagar, Ambad Road, Jalna.)

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RESPONDENTS

APPEARANCE : Shri A.S. Shelke, Advocate for the
Applicant.

: Shri M.S. Mahajan, Chief Presenting Officer for
respondents.

CORAM : **Justice Shri P.R. Bora, Member (J)**
and
Shri Bijay Kumar, Member (A)

DATE : **05.04.2022.**

O R A L - O R D E R

(Per : Shri Bijay Kumar, Member (A))

1. This Original Application was filed on 27.02.2019 by one Shri Dattu Ganpati Gaikwad, a Forester, by invoking provisions of Section 19 of Administrative Tribunals Act, 1985, challenging the order of punishment passed by Respondent No. 2 on 01.08.2016. The impugned order had been passed by the Respondent No. 2 in appeal filed by the applicant against the original order of punishment passed by Respondent No. 3 on 23.12.2015 on the basis of a Departmental Enquiry held under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, in short, "Discipline & Appeal Rules"). The applicant had challenged in impugned order by filing second appeal before the Respondent No. 1 on 09.09.2016 however, the same has not been decided in spite of representations made by the applicant on 21.03.2017 and 13.04.2018. Therefore, the applicant filed this Original Application before this Tribunal.

2. Issue of Jurisdiction and Limitation :- The cause of action arose in the jurisdiction of this Tribunal and also that the Respondent No. 3 has his office in Aurangabad; therefore, this Bench of this Tribunal has jurisdiction. However, there is a delay in filing the Original Application, for which the applicant had filed Miscellaneous Application No. 119/ 2019. As no plausible explanation was given by the applicant, this Tribunal imposed a cost of Rs. 5000/- on the

applicant its vide order dated 03.10.2019. As the cost of Rs. 5000/- was duly paid by the applicant on 15.10.2019, the Original Application was registered vide order of this Tribunal dated 15.10.2019.

3. Background Facts :- The main facts of the matter as submitted by the applicant may be summed up as follows :-

(a) Applicant was initially appointed as Forest Guard on 27.11.1979 and was granted benefits of first time-bound promotion w.e.f. 05.06.1996. The applicant got regular promotion to the post of Forester w.e.f. 06.10.2003 as per order dated 25.09.2003.

(b) The applicant was working as Forester in Badanapur Range of Jalna District from 01.09.2009 to 31.06.2013 under supervision and control of respondent No. 3. It is in the night of 11.12.2012 that a Flying Squad comprising of Divisional Forest Officer and Deputy Conservator of Forest, Aurangabad made surprise inspection of Laxmi Saw Mill, Dabhadi Saw Mill and Bajrang Saw Mill, Keligavhan and found the said Saw Mills were in operation without license.

(c) Based on the report of the said surprise inspection, the applicant was subjected to Departmental Inquiry under Rule 8 of "Discipline & Appeal Rules" leveling two charges, statement of

imputations for which in Marathi are reproduced for accuracy and ready reference as follows :-

“दोषारोप क्र. १ शासकीय कर्तव्यात कसुर करणे. (Charge No. 1 Dereliction of Official Duty)

श्री डी जी गायकवाड हे वनपाल बदनापुर म्हणुन दि ०१.०९.२००९ पासुन कार्यरत आहेत.

वनक्षेत्रपाल जालना उत्तर यांचे कार्यक्षेत्रांतर्गत जालना शहरातील विना परवाना आरागिरण्या चालू राहू नयेत यासाठी करावयाच्या कार्यवाही बाबतच्या लेखी सुचना औरंगाबाद वन विभागीय कार्यालयाकडून वेळोवेळी निर्गमित करण्यात आलेल्या आहेत. तसेच त्यांनी आरागिरण्यांची नियमित तपासणी करुन विना परवाना आरागिरण्या चालू असल्याचे निदर्शनास आल्यास गुन्हा नोंदवून नियमातील तरतूदीनुसार आवश्यक ती कार्यवाही तातडीने करुन अहवाल वरिष्ठ कार्यालयास वेळीच सादर करणे हे अपचारी श्री डी जी गायकवाड, वनपाल बदनापुर यांचे शासकीय कर्तव्य आहे. मुंबई वन संहिता खंड-१ (Bombay Forest Manual Vol-I) मध्ये वनपालाची शासकीय कर्तव्ये नमूद करण्यात आलेली आहेत.

विभागीय वन अधिकारी (तेंदु व दक्षता), दिग्दर्शन विभाग, औरंगाबाद व उपवनसंरक्षकए औरंगाबाद यांनी दिनांक ११.१२.२०१२ रोजी रात्री अचानक तपासणी केली असता लक्ष्मी सॉमील, दाभाडी व बजरंग सॉमील, केळीगव्हाण या विनापरवाना चालू असल्याचे दिसून आले. या बाबत उपवनसंरक्षक, औरंगाबाद यांनी कारणेदाखवा सुचना जा.क्र. अनुक्रमे (१) ब/आगि/अवैध आरागिरण्या/तपासणी/३९६३ दिनांक १२.१२.२०१२, (२) ब/आगि/अवैध आरागिरण्या/तपासणी/३९६३ दिनांक १२.१२.२०१२ व (३) ब/आगि/अवैध आरागिरण्या/तपासणी/४२४० दिनांक २१.११.२०१३ अन्वये कारणे दाखवा सुचना निर्गमित केली. सदर कारणे दाखवा सुचनेस अपचारी श्री डी जी गायकवाड, वनपाल बदनापुर यांनी सादर केलेले स्पष्टीकरण संयुक्तीक नसल्याचे दिसून येते.

वर नमुद अभिलेख्यांवरुन अपचारी श्री डी जी गायकवाड, वनपाल बदनापुर यांनी त्यांचे शासकीय कर्तव्यामध्ये कसुर केल्याचे निष्पन्न होते. त्यामुळे त्यांनी महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ चे नियम ३ मधील तरतूदीचे उल्लंघन केले आहे.

दोषारोप क्र. १ वरिष्ठांच्या आदेशाचे पालन न करणे बाबत (Charge No. 2 Regarding Disobedience of Orders of Seniors)

मा. सर्वोच्च न्यायालय यांनी रिट याचिका क्रमांक २०२/९५ व १७१/९६ मधील दिनांक ४.३.१९९७ अन्वये विनापरवाना चालू असलेल्या आरागिरण्या त्वरीत बंद करण्याबाबत आदेश आहेत. त्यानुसार कोणतीही विनापरवाना आरागिरणी किंवा परवाना प्राप्त आरागिरण्यांमध्ये परवानगी दिलेल्या आरायंत्रा व्यतिरिक्त इतर आरायंत्रे चालू राहणार नाही याची खात्री करणे व

विना परवाना आरागिरणी यांचा विद्युत पुरवठा खंडीत करणे, तपासणीत विनापरवाना आरागिरण्या, नुतनीकरण न झालेल्या आरागिरण्या चालू असल्यास नियमाप्रमाणे कारवाई करणेबाबतच्या सुचना प्रधान मुख्य वनसंरक्षक (वन बल प्रमुख), म.रा. नागपूर यांचे कडील पत्र क्रमांक कक्ष-१६/आगि/२४७ दिनांक २०.१२.२००४, पत्र क्रमांक कक्ष-१६/आगि/प्र.क्र. ९१(०४-०५)/भाग-४/२२ २४७ दिनांक १६.०४.२००७ अन्वये निर्गमित करण्यात आलेल्या आहेत. तसेच मा. उच्च न्यायालय, नागपूर खंडपीठ येथे सुरु असलेली फौजदारी रिट याचिका क्रमांक ६७७/२००८ चे संदर्भात सुध्दा वनक्षेत्रपालांच्या अधिपत्याखालील सर्व आरागिरण्यांच्या (बंद किंवा चालू) परवान्याची तपासणी करणे व अनियमितता निदर्शनास आल्यास त्यांचेविरुद्ध नियमानुसार आवश्यक कार्यवाही करून अहवाल सादर करण्याबाबतच्या सुचना प्रधान मुख्य वनसंरक्षक (वन बल प्रमुख), म.रा. नागपूर यांचे कडील पत्र क्र. कक्ष-१६/आगी/भाग-१४/प्र. क्र. ९१(०४-०५) ४९५ दिनांक २८.०९.२०११ अन्वये निर्गमित करण्यात आलेल्या असून त्यांचे अधिनस्त सर्व वनक्षेत्रपालांचे निदर्शनास आणून दिलेली आहे.

वरिष्ठांचे सदरील आदेशानुसार अपचारी वनपाल यांनी कारवाई केली नसल्यामुळे लक्ष्मी सॉमील, दाभाडी व बजरंग सॉमील, केलीगढाण या विनापरवाना आरागिरण्या चालू असल्याचे निदर्शनास आले, ही बाब मा. सर्वोच्च न्यायालयाचे दिलेल्या निर्णयाची अवमानना होणारी व वरिष्ठांच्या आदेशाचे पालन न करणारी असल्याचे दिसून येते. त्यामुळे अपचारी श्री व्ही एम मोघे, वनपाल जालना उत्तर यांनी महाराष्ट्र नागरी सेवा (वर्तणून) नियम १९७९ चे नियम ३ मधील तरतुदींचे उल्लंघन केले आहे.”

(c) The Applicant was held guilty of both the charges by the Departmental Enquiry Officer. Based on the said enquiry report, the Respondent No. 3, vide order dated 23.12.2015, passed the order inflicting punishment reverting the applicant to the lower time-scale of pay of the post of Vanpal till retirement. The increment of pay of the applicant was also stopped from the date of the order till his retirement and the period from the date of order till retirement is treated as bar for promotion of the applicant.

(d) The appellate authority decided the appeal filed by the applicant on 01.08.2016 and modified the order of punishment,

according to which reversion of applicant to the lower time scale of pay on the post of Forester from the date of the order till his retirement is maintained and other components of punishment were set aside. The order passed by the appellate authority in Marathi is being reproduced for ready reference :-

“

आदेश

१. मुख्य वनसंरक्षक (प्रा.), औरंगाबाद तथा शिस्तभंगविषयक प्राधिकारी यांचे आदेश क्रमांक कक्ष-२ /१२/आस्था/विचौ/३३३३, दिनांक २३.१२.२०१५ मध्ये याद्वारे खालील सुधारणा करण्यात येत आहे.
२. श्री. डी.जी. गायकवाड, तत्कालीन वनपाल, बदनापूर यांना हे आदेश निर्गमित केलेल्या तारखेपासून सेवानिवृत्तीपर्यंत वनपाल पदाच्या वेतनश्रेणीच्या खालच्या टप्प्यावर आणण्यात येत आहे. पदावनीच्या काळात श्री गायकवाड यांना वेतनवाढ देय राहणार आहे. तसेच सदर कालावधी त्यांचे बडतीस रोधक ठरणार नाही.”

4. **Relief Prayed For** :- The applicant has prayed for following reliefs in terms of para XII of the Original Application, which is reproduced verbatim as follows :-

“XII. RELIEF SOUGHT :

- A. *The Original Application may kindly be allowed.*
- B. *By way of appropriate order or directions, the impugned order bearing outward No. Desk-10(A) 1/EST/DE/PK78 (15-16)/ 338/16-17 dated 01.08.2016 passed by the respondent No. 2 may kindly be quashed and set aside.*
- C. *By way of appropriate order or direction, the order dated 13.09.2017 passed by the Respondent No. 4 revising the pay fixation be quashed and set aside.*

D. Any order suitable and equitable relief may kindly be granted in favour of the applicant.”

5. Pleadings and Arguments :-

(i) Affidavit in reply on behalf of respondent Nos. 1 to 4 was filed on 22.11.2021, which was followed by filing of rejoinder affidavit on behalf of the applicant on 29.03.22. As pleadings were complete the matter was fixed for final hearing on 05.04.2022, thereafter, the matter was reserved for orders.

(ii) The applicant has taken following defence in writing through submissions made in Original Application :-

- (a) Penalty imposed on him is disproportionate to the alleged misconduct,
- (b) He has been singled out as no action has been taken against the forest guards and Range Forest Officer, who were equally responsible for continuation of saw mills' operation in that area,
- (c) Saw Mill owners did not disclose since when the machines were in operation, nor does Panchnama prepared by the Flying Squad has mention of the same,
- (d) That the applicant was holding additional charge of Forester, Bhokardan from 01.06.2012 to 30.11.2012 and therefore, he was over-burdened with work.

(e) The applicant had a clean service record and had no direct or indirect involvement on allowing the saw mills to run illegally without license.

(iii) The applicant has challenged mainly the quantum of punishment through the rejoinder affidavit and subsequently during final argument on the matter. He has taken mainly the ground that after 37 years of service, he has been brought down to the pay-scale at which he joined the service as a forest guard. He had earned benefits of first time bound promotion scheme on completion of satisfactory service of 12 years, which was given to him vide order dated 05.06.1996 and was followed by benefits of Assured Career Progression Scheme on completion of 24 years' of service, w.e.f. 01.10.2006. The benefits of ACPS has already been withdrawn by order of respondent No. 3 dated 22.12.2015 on the ground that the applicant was not SSC pass, and it was directed to revise the pay scale and recover the amount of excess paid. The said order was challenged by the applicant by filing O.A. No. 131 of 2016 before this Tribunal. However, on account of retirement from service w.e.f. 30.06.2017, the applicant had withdrawn the Original Application as order dated 29.10.2018 in M.A. No. 249/2018.

6. **Analysis of Facts and Conclusions** :- Upon consideration of facts on record and oral submissions made by the contesting parties, we are of the considered opinion that the applicant has not been able

to contradict the findings of the flying squad during their surprise visit, by adducing any convincing evidence. His pleadings of contributory default by Forest Guards and Range Forest Officers too, cannot be considered as a valid ground for mitigating the gravity of charges leveled against the applicant during the Departmental Enquiry. Further, the applicant has not offered any explanation, as to how a Saw Mill can be commissioned and made operational which requires establishing elaborate infrastructure at site and stocking a minimum required stock of wooden logs, which is a sizeable quantity, stocked in open, which could not come to his notice. On the other hand, the applicant has claimed to have paid regular visits to the said saw mills, which gives rise to reasonable doubt about the efficiency and purpose of such visits. We have also taken cognizance of the fact that Hon'ble Apex Court has ordered to take strict action against unlicensed saw mills following which the Principal Chief Conservator of Forest (Head, Forest Force) had issued guidelines vide his letters dated 20.12.2004 and 16.04.2007. We have also taken cognizance of the fact that the applicant had been made aware of the Criminal Writ Petition No. 677/2008 pending before Hon'ble High Court of Judicature at Bombay, Bench at Nagpur and instructions issued by the Principal Chief Conservator of Forest (Head, Forest Force) vide his letter dated 28.09.2021, covering action to be taken. In spite of all these, the applicant had failed to take his duties in this regard seriously. Therefore, in our considered opinion, the punishment

imposed on the applicant is not disproportionate to the charges leveled and proved against him. Therefore, we pass following order :-

ORDER

- (A) The Original Application No. 943 of 2019 is hereby, dismissed for reason of being devoid of merit.
- (B) No order as to costs.

MEMBER (A)

MEMBER (J)

Kpb/D.B. O.A. 943 of 2019 PRB & BK 2022 Reversion