

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
BENCH AT AURANGABAD**

**MISC. APPLICATION NO.424 OF 2015  
WITH  
ORIGINAL APPLICATION NO.628 OF 2015  
(M.A. for Delay Condonation & O.A. for Promotion)**

**DISTRICT : DHULE**

**Vijay s/o Wamanrao Chahakar,** )  
Age:55 years, Occu.: Service )  
(as Plantation Kotwal, Karle), )  
R/o. At Post Karle, )  
Tal. Sindhkheda, Dist. Dhule. )...**Applicant**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Secretary, )  
Revenue & Forest Department, )  
M.S., Mantralaya, Mumbai-32. )
2. **The Additional Principal,** )  
Chief Conservator of Forest )  
[Administration-Subordinate )  
Cadres], M.S., Nagpur. )
3. **The Chief Conservator of** )  
**Forest** [Territorial], )  
Dhule. )
4. **The Deputy Chief Conservator** )  
of Forest, Dhule Forest Division, )  
Dhule. ) **....Respondents.**

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**Shri A.S. Deshmukh, learned Advocate for the Applicant.**

**Shri M.P. Gude, learned Presenting Officer for the Respondents.**  
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**CORAM** : **SHRI B.P. PATIL, ACTING CHAIRMAN**  
**SHRI P.N. DIXIT, VICE CHAIRMAN (A)**

**RESERVED ON** : **16.9.2019.**

**PRONOUNCED ON** : **20.09.2019.**

**PER** : **SHRI P.N. DIXIT, VICE CHAIRMAN (A)**

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**ORDER**

1. Heard Shri A.S. Deshmukh, learned Advocate for the Applicant and Shri M.P. Gude, learned Presenting Officer for the Respondents. Heard Misc. Application for condonation of delay as well as Original Application together.

**Brief facts are as follows:-**

2. The Applicant was appointed as Forest Guard on 6.8.1984. He was directed to undergo mandatory training in 1994 to proceed to the Forest Training School. He was deputed for mandatory training on following occasions. However, he remained absent from Training School as per the chart mentioned below:-

Sr. No.	Period of selection for Training	Training location	Remarks
1.	1-1-1994 to 30-6-1994	Jalna	Absent at the training session.
2.	1-7-1994 to 31-12-1994	Jalna	Absent at the training session.
3.	1-1-2000 to 30-6-2000	Jalna	Absent at the training session for personal purpose.

4.	1-7-2000 to 31-12-2000	Jalna	Absent at the training session for personal purpose.
5.	1-1-2001 to 30.6.2001	Jalna	Absent at the training session.
6.	1-1-2003 to 30-6-2003	Jalna	Absent for first quarter examination and continuous absence hence Applicant was sent back to his original Division.
7.	1-5-2008 to 30-4-2009	Jalna	Absent at the training session for personal reasons.
8.	1-5-2009 to 30-4-2010	Jalna	No medical checkup and absence at training session and applicant was on leave from 2-5-2009 on medical ground without approval of competent authority.
9.	1-7-2009 to 30-6-2010	Pal	Medical examination was not done on time. Hence order to resume training session was not issued.
10.	1-5-2010 to 30-4-2011	Jalna	District Civil Surgeon has declared the applicant unfit, hence he was absent at the training session.
11.	1-7-2010 to 30-6-2011	Pal	Absent at training session
12.	1-1-2011 to 31-12-2011	Shahapur	District Civil Surgeon has declared the applicant unfit, hence he was absent for the training session.
13.	1-5-2011 to 30-4-2012	Jalna	District Civil Surgeon has declared the applicant unfit, hence he was absent for the training session.
14.	1-7-2011 to 30-6-2012	Pal	District Civil Surgeon has declared the applicant unfit, hence he was absent for the training session.
15.	1-11-2014 to 30-4-2015	Pal	He proceed on two days C.L. & after tat proceed on Medical Leave. Then he has refused to take the letter for training course.

16.	1-5-2015 to 31-10-2015	Pal	District Civil Surgeon has declared the applicant unfit, hence he was absent for the training session.
17.	1-11-2015 to 30-4-2016	Pal	Mail regarding applicant's training course was already sent to his authority i.e. Deputy Director, Social Forest Division, Dhule (D.D. SFD) on 16-10-2015, but no response from D.D. SFD Dhule.

(quoted from page nos.79 to 81 of the O.A.)

3. As the Applicant did not complete training period, the Respondent No.2 issued following impugned order on 14.8.2014.

The relevant portion of the order is as under:-

“४.०० श्री. व्ही.व्ही. चहाकर, रोपवन कोतवाल, यांचे प्रशिक्षणास अनेकवेळा निवड करून देखील ते जाणून बुजून प्रशिक्षणास उपस्थित राहिले नाहीत. त्यांनी वनरक्षक पदासाठी आवश्यक असलेले प्रशिक्षण पूर्ण न केलेले शासन कर्तव्य बजावतांना त्यांचे सेवेचा पुरेपूर उपयोग झाला नाही असे विचारात घेणे आवश्यक ठरत असल्याने त्यांना वनरक्षक प्रशिक्षणातून सूट देणे योग्य नसून, वनरक्षक सेवा प्रवेशामध्येही अशी तरतुद कोठेही दिसून येत नसल्याने त्यांनी केलेले अपील अमान्य करण्यांत येत आहे.”

(quoted from page no.70 'A' of the O.A.)

4. The Applicant, being aggrieved by above mentioned impugned order has challenged the same with following prayers:-

“12 (A) This Original Application may kindly be allowed thereby quashing and setting aside the impugned order/communication dtd. 14/08/2014 (Annex. A-14) issued by the Resp.No.2.

- (B) *This Original Application may kindly be allowed thereby holding and declaring that the applicant was/is deserving to be granted exemption from undergoing the training of Forest Guards in view of and upon attaining the age of 45 years on 25/02/2005.*
- (C) *This Original Application may kindly be allowed thereby directing the Respondents in general and the Resps.No.2 & 3 in particular to issue necessary order/s granting exemption to the applicant from undergoing the training of Forest Guards w.e.f. the date of his attaining the age of 45 years i.e. w.e.f. 25/02/2005.*
- (D) *This Original Application may kindly be allowed thereby further directing the Respondents to extend to the Applicant all the consequential service benefits (s.a. grant of benefits of Time Bound Promotion/ Assured Progress Scheme, functional promotion to the cadre of Foresters with appropriate deemed date and all consequential financial benefits) to which he would become entitled in view of grant of Prayer Clauses "A" to "C" in his favour."*

*(quoted from page Nos.25 & 26 of the O.A.)*

5. In support of the same, the learned Advocate for the Applicant has furnished following grounds:-

- III. *The impugned action of Resp. No.2 of rejecting applicant's request for grant of exemption from undergoing the training of Forest Guards vide the impugned communication dtd.14/08/2014 is illegal and untenable being contrary to and in violation of the Rules for Admission to Forest Guard School as amended vide Annex. A-2 Circular dtd.30/09/1983.*
- IV. *The impugned action of Resp.No.2 of refusing to grant exemption to the applicant is further bad and untenable being in contravention & violation of the*

*basic policy decision of the State Government taken vide Annex. A-3 (Colly.) G.R. dtd.01/11/1977 and Circular dtd.04/12/2008.*

- V. *It needs consideration at the hands of this Hon'ble Tribunal that the applicant having attained the age of 45 years on 25/02/2005 it had not only become essential & incumbent but obligatory on the part of the Respondents to grant him exemption from undergoing the training for Forest Guards in view of the Rules for Admission to Forest Guard School as amended in 1983 and the policy decision of the State Government originally taken in 1977 and as reiterated in 2008.*
- VI. *It also needs consideration that in view of the amended Rules of 1983 and the policy decision of the State Government of 1977 as reiterated in 2008, it was simply impermissible nay illegal for the Respondents to repeatedly direct the applicant to undergo Forest Guards training subsequent to 25/02/2005 when he had attained the age of 45 years.*
- VII. *It further needs consideration at the hands of this Hon'ble Tribunal that by indulging in the impugned action of rejecting applicant's request for grant of exemption the Resp.No.2 has clearly prevented the consequence of the amended Rules of 1983 and the policy decision of 1977 as reiterated in 2008 from coming into being.*
- VIII. *By indulging in the impugned action of rejecting the applicant's request the Resp.No.2 has not only thrown to the winds the amended Rules introduced in the year 1983 and the G.R. dtd. 01/11/1977, but he has violated the very letter and spirit thereof.*
- IX. *It needs consideration at the hands of this Hon'ble Tribunal that none of the three grounds used by the Resp.No.2 in the impugned communication/order dtd. 14/08/2014 for rejecting applicant's request is sustainable or palatable due to which the said order of the Resp.No.2 is deserving to be quashed and set aside.*

X. *In the light of the specific provisions contained in the Rules for Admission to Forest Guard School as amended in the year 1983 as also the provisions in the G.R. dtd.01/11/1977 and Circular dtd.04/12/2008 which specifically prescribed that persons attaining the age of 45 years shall not be required to undergo the training and/or be required to appear for the Departmental Examination, it was simply impermissible for the Resp.No.2 to reject applicant's request on the pretext that there was no provision for grant of exemption in the Recruitment Rules of the post of Forest Guards."*

*(quoted from page nos.21 to 23 of the O.A.)*

6. Applicant contends that he has been penalized for not completing the training in the form of holding back his one increment for two years without affecting his future increments as well as forgoing the 1<sup>st</sup> Time Bound Promotion. As he has completed 45 years, he may be considered for promotion as Forester.

7. Learned Advocate for the Applicant has also filed Misc. Application No.424 of 2015. Misc. Application No.424 of 2015 is filed for condoning alleged delay of 436 days. The learned Advocate for the Applicant has submitted following reasons for the same:-

*"This is caused only because the matter was under active consideration of the Resps.No.2 to 4 and it was not at all the case that the matter was lying in a cold storage and still the applicant had not taken any steps."*

*(quoted from page no.9 of the M.A.)*

8. Learned Advocate for the Applicant has relied on the judgment given by the Hon'ble Supreme Court in the following

text:-“1992 DGLS (SC) 249 (SUPEREME COURT). The relevant portion of the same reads as under:-

*“If the objections raised by the appellants are still pending for consideration as stated by respondent No.1, how is it proper to accuse the appellants of undue delay in approaching the Court? The appellant could not, therefore, be non-suited on that account.”*

*(quoted from page no.2, para no.4 of above mentioned judgment)*

**Submissions by the Respondents:-**

9. The Respondent Nos.1 to 4 have filed their affidavit-in-reply in the Misc. Application and resisted the condonation of delay. The relevant portion of the same reads as under:-

*“10. The applicant is claiming exemption since 2005 in that situation he is required to file the Misc. Application within one year from the said date. The applicant is serving in the department since 1984 therefore the contention of the applicant is not acceptable that he is not having knowledge about the communication dated 27-6-2000 of Respondent No.2 and same and cannot be relied. In this circumstances delay calculated by the applicant apparently not proper and correct and therefore there is more than 436 days delay which is not counted by the applicant and no sufficient ground and explanation is given in respect of said delay as cause of action arose on 25-2-2005 and not in the year 2013 as contended by the applicant.*

*12. The application dated 12-1-2013 was made by Applicant to the Respondent No.3, on which the guidance was sought by Respondent No.3 vide their letter No.Kaksh-1/Astha/Pra-Kra-88/07-08/1652 dated 25-3-2014 to the Additional Chief Conservator of Forests (Administration-Subordinate Cadre) Maharashtra State, Nagpur upon which Additional Chief Conservator of Forests (Administration-Subordinate Cadre) Maharashtra State Nagpur vide*

*their letter No.Kaksh-10(2)/Astha/3/Pra-Kra-656 dated 14-8-2014 have rejected the same application.*

13. *It is submitted that applicant first time submitted application for exemption on 12-1-2013 claiming exemption from 25-2-2010. However applicant in Original Application prayed exemption from 25-2-2005. The ground mentioned by the applicant is not substantial proper and legal for condonation of delay.*
14. *Delay of 436 days for filing the Original Application is not incidental. Applicant was knowing the all rules orders and Government Resolutions, but Applicant by misleading and wrongly interpreting the meaning of rules orders and Government Resolutions and have intentionally and deliberately caused delay in filing the Original Application.*

*(quoted from page nos.34, 35 & 36 of the M.A.)*

The Respondents therefore submitted that the delay is barred by law of limitation and therefore, should be rejected.

10. In the Original Application, the Respondent Nos.1 to 4 have submitted the affidavit-in-reply and contested the claims being made by the Applicant. The affidavit-in-reply clarifies that every Forest Guard has to undergo mandatory training as per the availability of the seat in the Forest Training School and has to complete the same and pass the examination conducted thereafter. The Respondents have clarified that this is not Departmental Examination for promotion. Through the Applicant joined the Government service in 1984, Review and

Forest department had issued Recruitment Rules on 29.10.1987.

Rule 4(2) of Recruitment Rules, 1987 provides as under:-

*“The Forest Guards after appointment shall undergo training at the State Forest Guards Training School and obtain certificate of competency and good conduct. It is further provided that he shall not be eligible for promotion to the post of Forester, unless he completes the training course and obtains a certificate of competency and good conduct.”*

(quoted from page no.77 of the O.A.)

11. Forest Guard who have been sent for training but could not complete the training course for the circumstances beyond their control, relaxation was granted to such Forest Guards upto the age of 52 years. This was specially for those who have sent for training earlier, but did not complete the same.

12. The General Administration Department (GAD) vide their G.R. dated 4.12.2008 clarify that those who are performing duties and responsibilities of technical nature, their department should provide specific provision in the departmental examination rules of respective cadre. The Respondents have further contended in their affidavit-in-reply as follows:-

*“8. The recruitment rules of the Forest Guards have been further modified and amended in toto by supersession of earlier recruitment rules vide Notification of Revenue and Forest Department dated 30.6.2011. The Rule 9 (2) provides that a candidate appointed to the post of Forest Guard, after executing indemnity bond with two sureties,*

*shall be required to undergo an inducting training course of one year at any of the State Forest Guard's Training School conducted by the Forest Department and pass a final examination in the said training course within the specified period. In case of failure to complete the specified training course or pass the final examination during first attempt, the candidate shall be given one more chance to complete the training course and pass the final examination at his own cost. If the candidate is unable to complete the training course or pass the final examination in second chance, he shall be liable to be discharged from service and shall be liable to repayment of training cost and the salary paid to him as per the indemnity bond so executed.*

9. *From the various provisions mentioned above it would be seen that the applicant has been completely misconstrued the provisions mentioned above for his own benefits. The Forest Guard is an important post at the frontline under forest department for protection and conservation of forest. The duties and responsibilities of the incumbent to the post are technical in nature. The prohibition of illicit tree cutting, poaching and other forest related crimes are the primary duties of the Forest Guard. Likewise he is also responsible for protection and conservation of wildlife and Bio-diversity. Similarly to increase green cover on the Forest, Private and Community Lands in the State as a part of maintaining Environment and Ecological balance is also an important ground level function required to be performed by Forest Guards. Looking these functions and so as to create disciplined force the Government has purposely made the training and passing the examination as compulsory to the Forest Guards. No relaxation from training is provided in the recruitment rules framed by the Government from time to time.*

10. *Similarly the GR of GAD dated 4/12/2008 is pertaining to departmental examination rules and not for exemption from training as contemplated by the applicant in the present O.A. The applicant wants to take advantage of the provisions of GR of GAD dated 4/12/2008 for which is not entitled to.”*

*(quoted from page nos.78 & 79 of the O.A.)*

13. The Respondents have therefore submitted that the Original Application is devoid of any merit and therefore, deserves to be dismissed.

**Issue for consideration:-**

14. Whether the Applicant who did not participate in the Training programme deliberately is entitled for exemption and needs to be considered for promotion?

**Observations and Findings:-**

15. I have perused the Rules for Recruitment and Promotion issued from time to time as well as the pleadings made by the Applicant and the Respondents. Firstly, I have gone through the Rules of Recruitment which are as under:-

(1) Rule No.8 of Rules for admission in Foresters and Forest Guards Training School,1972 provides as under:-

Rule 8:- If a candidate refuses to go for training after being selected he should not be considered for further promotion. If he is unable to go for training for genuine

reasons to be kept on record exception may be made with specific orders of the Conservator of Forests and such orders should be kept on record and further promotions may not be debarred to him if he undergoes the training subsequently.

(quoted from memorandum dated 14.4.1972)

(2) Circular issued on 30.9.1983 states as under:-

This circular pertains to those who could not complete the Training Course satisfactorily or those who failed in the same. The circular mentions that such Forest Guards may be sent for Training Course again. However, persons who are completed 45 years of age, their cases should be examined by the Departmental Selection Committee separately.

(3) Amended Rules were issued on 29.10.1987.

Rule 4(2) of the amended Rules provides as under:-

“4(2) A person appointed to the post of Forest Guard shall be required to undergo training course at the State Forest Guard Training School and obtain a certificate of competency and good conduct. A Forest Guard **shall not be eligible for promotion to the post of Forester**, unless he completes the training course and obtains a certificate of competency and good conduct. (emphasis added)

(quoted from page no.95 of the O.A.)

(4) The Revenue and Forest Department issued notification on 30<sup>th</sup> June, 2011. Relevant portion of the same reads as under:-

“7.(1) Appointment to the post of Forester in the Forest Department shall be made by promotion of a suitable person from the Circle gradation list of the Forest Guards, on the basis of seniority subject to fitness from amongst the persons holding the post of Forest Guard having not less than three years regular service in that post.

(2) A person appointed as Forester shall complete a refresher training successfully of such duration as may be prescribed by the Additional Principal Chief Conservator of Forests (Human Resource Management and Administration) from time to time at the Foresters' Training School immediately after his promotion. In the event of failure to successfully complete such training, his increment shall be withheld until he successfully completes the prescribed training. However, the candidate shall not be eligible to draw arrears of increments so withheld. The promoted Forster shall be exempted from undergoing such training after attaining age of fifty-four years. Increments shall not be withhold in the event of failure of the concerned authorities to conduct such training programmes during the relevant year.”

(quoted from nos.104 & 105 of the O.A.)

16. Perusal of above mentioned Rules, notification and circular issued by the department of Revenue and Forest indicates that all along completion of training and passing the examination thereafter has been reiterated from time to time. In case of those who could not complete the Training Course for the circumstances beyond their control, exemption is considered after completion of 45 years.

17. Secondly, I have perused the pleadings of both the parties. The case of the Applicant distinguishes itself from the above mentioned provisions. The record furnished by the Respondents in case of the Applicant indicates that the Applicant remained absent willfully, deliberately and avoided to undergo the Training Course possibly due to fear for failure or he was not interested in the same. Even though, the Respondents did not provide him Time Bound Promotion/Assured Progression Scheme and penalized him by holding back his one increment for two years without affecting his future increment, the Applicant refused to improve his behavior.

18. The responsibilities discharged by the Forest Guard and by the Forester are technical in nature. It is imperative in order to discharge these technical responsibilities, the Government Servants must possess necessary skills and display his competency in the form of passing of examination conducted at the end of the Training Course. A person, who does not complete the same with diligence and does not take his work seriously, cannot be expected to be given promotion. The prayer made by the Applicant that he should be exempted from passing of the examination could have been considered, provided, if he

had appeared and failed in the examination. In case of the Applicant, he has preferred to remain absent rather than appear for examination. Thus there is no merit in his prayers.

19. The judgement relied on by the learned Advocate for the Applicant has different circumstances and therefore, considered not relevant in the present case. The Applicant has failed to demonstrate any sound and legal reason to justify interference in the impugned order. Moreover, the delay in filing the Original Application is barred by law of limitation. Even by his own admission, the delay is of 436 days. The impugned order is issued in the year 2005. Thus the delay is more than 10 years, hence barred by law of limitation. This delay of 10 years is inordinate delay and Applicant has not furnished any reasonable explanation in this regard. The Original Application is hopelessly barred by law of limitation. Therefore, the inordinate delay cannot be condoned. Consequently, the Misc. Application as well as the Original Application deserves to be dismissed. If the case is considered on merit, then also there is no merit in the Original Application.

20. In view of the above, the Misc. Application for condonation of delay is dismissed. Consequently, the registration of Original Application is dismissed as there is no merit in the same. No order as to costs.

**(P.N. DIXIT)**  
**VICE CHAIRMAN (A)**

**(B.P.PATIL)**  
**ACTING CHAIRMAN**

**PLACE :- AURANGABAD**

**DATE :- 20.09.2019**

Sas. M.A.No.424/15 with O.A.628/15