

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.545/2015. (D.B.)

Nitin Tulshiram Gadpayale,
Aged about 44 years,
R/o Shastri Nagar, Sarda Colony, Armori,
Distt. Gadchiroli.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Principal Secretary (Forests),
Revenue and Forest Department,
Mantralaya Mumbai-400 032.
2. The Principal Chief Conservator of Forests,
Civil Lines, Nagpur-1.
3. The Chief Conservator of Forests,
Chandrapur Circle, Chandrapur.
4. The Chief Conservator of Forests,
Gadchiroli Circle, Gadchiroli.
5. Baba Namdeorao Netam,
R/o Onkar Nagar, Chandrapur.
6. Ajay Kesharao Neralwar,
R/o Karwa, Tq. Sindewahi, Dist. Chandrapur.
7. Vilas Girdhar Pendurwar,
R/o Palideo Mohalla, Bharamata Chowk,
Sindewahi, Dist. Chandrapur.

8. Prakashh Jivandas Sendurkar,
R/o Shivaji Nagar, Kahde,
Tq. Bramhapuri, Distt. Chandrapur.
9. Chandrakant Narayan Rasekar,
R/o Vivek Nagar, Sindewahi, Dist. Chandrapur.
10. S.P. Karodkar,
R/o Gadchiroli.
11. S.S. Girsawade,
R/o Chandrapur (Tukum Ward),
Behind Matoshree Karyalaya, Chandrapur.
12. Kartik Munneshwar Awale,
R/o Malor Stores, Durgarpur, Distt. Chandrapur.
13. Balkrishna Wasudeo Gedam,
R/o Chimur, Distt. Chandrapur.
14. Moreshwar Jagannath Mhaske,
R/o Bondala (Kh.) Post. Nandgaon,
Tq. Mul, Distt. Chandrapur.
15. T. Rajurkar,
R/o Lanjeda Ward, Gadchiroli.

Respondents

Shri Bharat Kulkarni, the Ld. Advocate for the applicant.
Shri P.N. Wajukar, the learned P.O. for the respondents 1 to 4.
Shri N.R. Saboo, Advocate for respondent Nos. 5 to 15.

ORIGINAL APPLICATION NO.761/2015.

Pundlik Murhari Khobragade,
Aged about 51 years,
Occ-Forester,
R/o Bramhapuri Division, Bramhapuri,
Distt. Chandrapur.

Applicant.**-Versus-**

1. The State of Maharashtra,
Through its Principal Secretary (Forests),
Revenue and Forest Department,
Mantralaya Mumbai-400 032.
2. The Principal Chief Conservator of Forests,
Civil Lines, Nagpur-1.
3. The Chief Conservator of Forests,
Chandrapur Circle, Chandrapur.
4. The Chief Conservator of Forests,
Gadchiroli Circle, Gadchiroli.
5. Baba Namdeorao Netam,
R/o Onkar Nagar, Chandrapur.
6. Ajay Kesharao Neralwar,
R/o Karwa, Tq. Sindewahi, Dist. Chandrapur.
7. Vilas Girdhar Pendurwar,
R/o Palideo Mohalla, Bharamata Chowk,
Sindewahi, Dist. Chandrapur.
8. Prakashh Jivandas Sendurkar,
R/o Shivaji Nagar, Kahde, Tq. Bramhapuri,
Distt. Chandrapur.
9. Chandrakant Narayan Rasekar,
R/o Vivek Nagar, Sindewahi, Dist. Chandrapur.
10. S.P. Karodkar,
R/o Gadchiroli.
11. S.S. Girsawade,
R/o Chandrapur (Tukum Ward),
Behind Matoshree Karyalaya, Chandrapur.
12. Kartik Munneshwar Awale,
R/o Malor Stores, Durgarpur, Distt. Chandrapur.

13. Balkrishna Wasudeo Gedam,
R/o Chimur, Distt. Chandrapur.
14. Moreshwar Jagannath Mhaske,
R/o Bondala (Kh.) Post. Nandgaon,
Tq. Mul, Distt. Chandrapur.
15. T. Rajurkar,
R/o Lanjeda Ward, Gadchiroli.

Respondents

Shri G.G. Bade, the Ld. Advocate for the applicant.
Shri P.N. Wajukar, the learned P.O. for the respondents 1 to 4.
Shri N.R. Saboo, Advocate for respondent Nos. 5 to 12 & 14.
None for R. 13 and 15.

ORIGINAL APPLICATION NO.802/2015.

Manohar Lingayya Ghodselwar,
Aged about 52 years,
Occ-Service,
Sai Nagar, Gadchiroli.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Principal Secretary (Forests),
Revenue and Forest Department,
Mantralaya Mumbai-400 032.
2. The Principal Chief Conservator of Forests,
Civil Lines, Nagpur-1.
3. The Chief Conservator of Forests,
Chandrapur Circle, Chandrapur.
4. The Chief Conservator of Forests,
Gadchiroli Circle, Gadchiroli.
5. Baba Namdeorao Netam,
R/o Onkar Nagar, Chandrapur.

6. Ajay Kesharao Neralwar,
R/o Karwa, Tq. Sindewahi, Dist. Chandrapur.
7. Vilas Girdhar Pendurwar,
R/o Palideo Mohalla, Bharamata Chowk,
Sindewahi, Dist. Chandrapur.
8. Prakashh Jivandas Sendurkar,
R/o Shivaji Nagar, Kahde, Tq. Bramhapuri,
Distt. Chandrapur.
9. Chandrakant Narayan Rasekar,
R/o Vivek Nagar, Sindewahi, Dist. Chandrapur.
10. S.P. Karodkar,
R/o Gadchiroli.
11. S.S. Girsawade,
R/o Chandrapur (Tukum Ward),
Behind Matoshree Karyalaya, Chandrapur.
12. Kartik Munneshwar Awale,
R/o Malor Stores, Durgarpur, Distt. Chandrapur.
13. Balkrishna Wasudeo Gedam,
R/o Chimur, Distt. Chandrapur.
14. Moreshwar Jagannath Mhaske,
R/o Bondala (Kh.) Post. Nandgaon,
Tq. Mul, Distt. Chandrapur.
15. T. Rajurkar,
R/o Lanjeda Ward, Gadchiroli.

Respondents

Shri G.G. Bade, the Ld. Advocate for the applicant.
Shri P.N. Wajukar, the learned P.O. for the respondents 1 to 4.
Shri N.R. Saboo, Advocate for respondent Nos. 5,7 to10 & 14
None for respondent Nos.6,11,12,13 and 15.

ORIGINAL APPLICATION NO.805/2015.

Baba Haribhau Deogade,
Aged about 52 years,
Occ-Service,
Vidhya Nagar, Bramhapuri,
Distt. Chandrapur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Principal Secretary (Forests),
Revenue and Forest Department,
Mantralaya Mumbai-400 032.
2. The Principal Chief Conservator of Forests,
Civil Lines, Nagpur-1.
3. The Chief Conservator of Forests,
Chandrapur Circle, Chandrapur.
4. The Chief Conservator of Forests,
Gadchiroli Circle, Gadchiroli.
5. Baba Namdeorao Netam,
R/o Onkar Nagar, Chandrapur.
6. Ajay Kesharao Neralwar,
R/o Karwa, Tq. Sindewahi, Dist. Chandrapur.
7. Vilas Girdhar Pendurwar,
R/o Palideo Mohalla, Bharamata Chowk,
Sindewahi, Dist. Chandrapur.
8. Prakashh Jivandas Sendurkar,
R/o Shivaji Nagar, Kahde, Tq. Bramhapuri,
Distt. Chandrapur.
9. Chandrakant Narayan Rasekar,
R/o Vivek Nagar, Sindewahi, Dist. Chandrapur.

10. S.P. Karodkar,
R/o Gadchiroli.
11. S.S. Girsawade,
R/o Chandrapur (Tukum Ward),
Behind Matoshree Karyalaya, Chandrapur.
12. Kartik Munneshwar Awale,
R/o Malor Stores, Durgarpur, Distt. Chandrapur.
13. Balkrishna Wasudeo Gedam,
R/o Chimur, Distt. Chandrapur.
14. Moreshwar Jagannath Mhaske,
R/o Bondala (Kh.) Post. Nandgaon,
Tq. Mul, Distt. Chandrapur.
15. T. Rajurkar,
R/o Lanjeda Ward, Gadchiroli.

Respondents

Shri G.G. Bade, the Ld. Advocate for the applicant.
Shri P.N. Wajukar, the learned P.O. for the respondents 1 to 4.
Shri N.R. Saboo, Advocate for respondent Nos. 5 to 15.

ORIGINAL APPLICATION NO.97/2016.

Pitambar Gomaji Kumare,
Aged about 46 years,
Occ-Service,
C/o Shri B.D. Ugaonkar's House,
Ramnagar Nagar, Gadchiroli.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Principal Secretary (Forests),
Revenue and Forest Department,
Mantralaya Mumbai-400 032.
2. The Principal Chief Conservator of Forests,
Civil Lines, Nagpur-1.

3. The Chief Conservator of Forests,
Chandrapur Circle, Chandrapur.
4. The Chief Conservator of Forests,
Gadchiroli Circle, Gadchiroli.
5. Baba Namdeorao Netam,
R/o Onkar Nagar, Chandrapur.
6. Ajay Kesharao Neralwar,
R/o Karwa, Tq. Sindewahi, Dist. Chandrapur.
7. Vilas Girdhar Pendurwar,
R/o Palideo Mohalla, Bharamata Chowk,
Sindewahi, Dist. Chandrapur.
8. Prakashh Jivandas Sendurkar,
R/o Shivaji Nagar, Kahde, Tq. Bramhapuri,
Distt. Chandrapur.
9. Chandrakant Narayan Rasekar,
R/o Vivek Nagar, Sindewahi, Dist. Chandrapur.
10. S.P. Karodkar,
R/o Gadchiroli.
11. S.S. Girsawade,
R/o Chandrapur (Tukum Ward),
Behind Matoshree Karyalaya, Chandrapur.
12. Kartik Munneshwar Awale,
R/o Malor Stores, Durgarpur, Distt. Chandrapur.
13. Balkrishna Wasudeo Gedam,
R/o Chimur, Distt. Chandrapur.
14. Moreshwar Jagannath Mhaske,
R/o Bondala (Kh.) Post. Nandgaon,
Tq. Mul, Distt. Chandrapur.

15. T. Rajurkar,
R/o Lanjeda Ward, Gadchiroli.

Respondents

Shri Bharat Kulkarni, the Ld. Advocate for the applicant.
Shri P.N. Wajukar, the learned P.O. for the respondents 1 to 4.
Shri N.R. Saboo, Advocate for respondent Nos. 5,7 to11 & 14
None for respondent Nos.6,12,13 and 15.

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J) and
Shri Shree Bhagwan, Member (A)

JUDGMENT

(Delivered on this 5th day of November 2018.)

Per:Vice-Chairman (J)

Heard S/s Bharat Kulkarni and Shri G.G. Bade, the learned counsel for the applicants and Shri P.N. Wajukar, the learned P.O. for the respondents 1 to 4. Shri N.R. Saboo, the learned counsel for respondent Nos. 5 to 15.

2. In these O.As., the applicants have requested for directions to the respondents to comply with the order of this Tribunal dated 16.6.2015 and further requested that the communication dated 17.8.2015 be quashed and set aside. It is further requested that the discrimination and fixation of seniority of the applicants be removed and the respondents be directed to grant seniority to the

applicants from their entry point in the service so as to maintain equity under Article 14 and 16 of the Constitution of India.

3. During the pendency of the O.A., the seniority of Forest Guards as on 1.1.2015 dated 7.11.2015 was published by respondent No.3 and revised. It is claimed that such seniority be quashed.

4. This Tribunal vide common judgment and order dated 6.1.2017 was pleased to dispose of the applications and directions were issued to respondent Nos. 3 and 4 to prepare a seniority list of Forest Guard of North Chandrapur Forest Circle as on 1.1.2015 within three months from the date of order in the light of observations made by this Tribunal. The aforesaid order was, however, challenged by newly added respondents in this O.A. i.e. the respondent Nos. 5 to 15 in W.P. No.3124/2017 before the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur. In the said writ petition, the Hon'ble High Court was pleased to pass the order on 27.7.2017 and the order of this Tribunal was quashed and set aside and the matter was remanded to this Tribunal for fresh decision.

5. We have perused the order passed by the Hon'ble High Court in W.P. No. 3147/2017. It seems that the order of this

Tribunal has been quashed with some material observations and the sum and substance of these observations are as under:-

- (i) It appears that the Tribunal was not justified in allowing the O.A. filed by the respondent Nos. 5 to 9, especially when the respondent Nos. 5 to 9 had not joined as Foresters and the Forest Guards who would have been seriously prejudiced and affected by favourable order that could have been granted in favour of respondent Nos. 5 to 9. It was necessary for the Tribunal to have directed the respondent Nos. 5 to 9 to join the petitioners and other concerned Foresters and the Forest Guards who would have been affected, if a favourable order was passed in favour of the respondent Nos. 5 to 9.
- (ii) The Circular of the Chief Conservator of Forests who speaks of policy that was in existence for long dated 14.10.2013 was not considered by this Tribunal while deciding the O.A.
- (iii) It was clearly mentioned that in view of transfer orders to the North Chandrapur Circle, the employees would lose seniority and they would be placed from the bottom of seniority list in the North Chandrapur Circle. The Tribunal, however, failed to consider that the respondents in those transfer orders, said condition was incorporated had never challenged the said condition till they filed the O.A. in the year 2015-2016.

(iv) The Tribunal further failed to consider that if there was no policy in the year 2006-2007, that the transferred employee would lose his seniority. If the transfer was on request, such a condition could not have found place in the order of transfer of some of the respondents and the Tribunal erroneously held that the transfer order of all the employees, such a condition was not incorporated.

(v) In any case, since the order of transfer is based on assumption that there is no condition in the order of transfer of respondent Nos. 5 to 9 that they would lose their seniority and since the Tribunal has not taken into consideration the reply of respondent Nos. 1 to 4 and also the fact that the respondent Nos. 5 to 9 had not joined necessary parties in the O.A., it would be necessary to quash and set aside the order. The Tribunal was directed to grant an opportunity to respondent Nos. 5 to 9 to join as necessary parties.”

6. As stated above, the respondent Nos. 5 to 9 mentioned in the order of the Hon'ble High Court are original applicants. Whereas the petitioners mentioned by the Hon'ble High Court are newly added respondent Nos. 5 to 15. Since the respondent Nos. 5 to 15 have been added, they were given an

opportunity to file reply affidavit and accordingly they have filed reply affidavit.

7. The respondent Nos. 5 to 15 are Foresters working in North Chandrapur Circle. The seniority of various Forest Guards has to be prepared circle-wise. In Chandrapur District, there are two circles i.e. North Chandrapur Circle and other being South Chandrapur Circle. The respondent Nos. 5 to 15 were appointed as Forest Guards and were promoted as Foresters in North Chandrapur Circle. Originally, the applicants were not Forest Guards and Foresters working in North Chandrapur Circle. Initially, they were appointed as Forest Guards in South Chandrapur Circle. But on their request, they were transferred to North Chandrapur Circle. The seniority of Foresters and Forest Guards was prepared in the year 2015 and in the said seniority list maintained by North Chandrapur Circle, names of the present applicants were shown below the names of respondent Nos. 5 to 15, as the applicants were placed at the bottom of seniority list, since they were transferred from South Chandrapur Circle to North Chandrapur Circle. In view of this, three newly added respondents were reverted from the post of Foresters to the post of Forest Guards on the basis of seniority list prepared in the year 2015. Being aggrieved by the order of reversion and also by

placing below the respondent Nos. 5 to 15 in the seniority list in view of their transfer from South Chandrapur Circle to North Chandrapur Circle, the applicants have filed separate O.As before this Tribunal for the relief already stated. As already stated, the newly added respondent Nos. 5 to 15 thereafter filed writ petition before the Hon'ble High Court against the judgment passed by this Tribunal and an opportunity has been given to them to file reply. Since, now the opportunity has been given to respondent Nos. 5 to 15 to file their reply affidavit and they were heard on merits, the question will have to be considered as to whether the actions taken by the respondent authorities which are challenged in this O.A. are legal and proper.

8. Since the Hon'ble High Court observed that the Tribunal did not consider the fact as to whether there was a condition or not regarding loss of seniority in the transfer of the applicant, we have perused the orders of transfer of the applicant. The transfer order in respect of Shri Nitin Gadpayale in O.A.No. 545/2015 is at page No. 169 in O.A. No.554/2015. We have perused the order of transfer of the applicant Pitambar Gomaji Kumre dated 30.11.2000 in O.A.No.97/2016. The said order is at page No.110. From both these orders, it seems that the applicant Shri Nitin Gadpayale was transferred from South Chandrapur Circle to North Chandrapur Circle

on request, whereas Shri Pitambar Gomaji Kumre was transferred from South Chandrapur Circle to North Chandrapur Circle on condition that they will be kept at the bottom of seniority list, which in other words, means that they were transferred on the condition that they will lose their seniority after transfer. It was further stated that they will not be entitled to T.A. and D.A., since their transfer was on request.

9. We have perused the order in respect of the applicant Pundlik Murhari Khobragade in O.A. No.761/2015 dated 8.10.1998 (Page 21). The transfer order of the applicant Manohar Lingayaa Ghodselwar in O.A. No.802/2015 is at page No.26 in O.A. No.545/2015 and it is dated 12.12.1999, whereas the transfer order of the applicant Baba Haribhau Deogade is at page No.25 in O.A. No. 545/2015 and it is dated 24.8.1998. It is material to note that, in all these three orders, there is no mention that they will be kept at the bottom of the seniority list or they will lose their seniority in the circle. It is only mentioned that since their transfer is on request, they will not be entitled to TA and DA. Thus, it will be clear that, though in the seniority list, all the applicants are transferred from one circle to other, the applicant Nitin Gadpayale in O.A.No. 545/2015 and the applicant Pitambar Gomaji Kumre in O.A.No.97/2016 were to lose their

seniority or in other words, they will be kept at the bottom of seniority list in the circle, since they were transferred on request, whereas in the similar circumstance, the applicant Pundlik Murhari Khobragade in O.A. No.761/2015, applicant Manohar Lingayya Ghodselwar in O.A. No. 802/2015 and the applicant Baba Haribhau Deogade in O.A. No.805/2015 were not to lose their seniority. There is nothing on record to show that any policy decision was taken by the Government about losing or not losing of seniority on request transfer from one circle to other. No doubt, there are some circulars issued by the Chief Conservator of Forests in this regard. But those circulars seem to have been issued subsequently and not prior to the transfer of any of the applicants. The Hon'ble High Court observed that the circular dated 14.10.2013 was not considered by this Tribunal. The said circular is placed on record at page No.147, it is issued by the Additional Principal Chief Conservator of Forests, Nagpur, on 14.10.2013. This seems to have been issued only because some of the Forest Guards have taken objection to the seniority list as on 1.1.2013 in respect of the Forest Guards. In view of the said objection, it is mentioned in the said circular as under:-

“मुख्य वनसंरक्षक (प्रादे.) चंद्रपूर यांना कळविण्यात येते कि चंद्रपूर वन्वृत्तातील वनरक्षक संवर्गातील कर्मचाऱ्यांचे संदर्भीय निवेदन या

कार्यालयास प्राप्त झालेले असून त्यांनी चंद्रपूर वन्वृत्तातील वनरक्षकाचे जेष्ठतासूचीवर आक्षेप घेतल्याचे निदर्शनास येते. आंतरवृत्तीय बदलीबाबत या कार्यालयाकडून जे आदेश निर्गमित केले जातात त्यात स्पष्टपणे निर्देश दिलेले असते कि, संबंधित वनरक्षकाचे मूळ वृत्तावर असलेला धारणाधिकार संपुष्टात येईल. तसेच संबंधित वनरक्षक नवीन वृत्तात ज्या दिवशी रुजू होईल, जेष्ठतेच्या संबंधात त्या दिवसापासून त्याची सेवा जेष्ठता ग्राह्य धरण्यात येईल. असे असतांना देखील आपले वृत्तात इतर वन्वृत्तातून आंतरवृत्तीय बदलीने रुजू झालेल्या वनरक्षकाची सेवा ज्येष्ठता कायम ठेवण्यात आलेली नाही ही गंभीर बाब आहे. तरी याबाबत खुलासा करावा तद्वतच याबाबत तपासणी करून सदर निवेदनात नमूद मुद्द्यांबाबत नियमानुसार योग्य ती कार्यवाही करून त्याबाबत संबंधितांना कळवावे व केलेल्या कार्यवाहीचा अनुपालन अहवाल या कार्यालयास सादर करावा."

10. It seems that thereafter on 6.8.2015, another circular was issued, a copy of which is at page No.148 to 150 (both inclusive). This refers to one circular dated 1.9.2014 issued by the Government and its relevant statement regarding relevant zero seniority is as under:-

"एका वन्वृत्तातून दुसऱ्या वन्वृत्तात बदली झाल्यानंतर संबंधित वनरक्षकास बदली केलेल्या वन्वृत्तात शून्य जेष्ठतेवर (zero seniority) नेमणूक देण्यात येईल. अशा शून्य जेष्ठतेसंदर्भात आणि भविष्यातील पदोन्नतीबाबत कोणताही दावा किंवा तक्रार किंवा न्यायालयीन प्रकरण

उपस्थित केले जाणार नाही, अशा स्वरूपाचे प्रतिज्ञापत्र अर्जासोबत घ्यावे. या संदर्भातील प्रतिज्ञापत्र जे कोणत्याही न्यायालयात, न्यायालयीन प्रकरणात ग्राह्य धरले जाईल अशा स्वरूपात घेण्यात यावे. सदर प्रतिज्ञापत्राचा नमुना कायदेशीर सल्लागार यांच्याकडून तयार करून घेण्याबाबतची कार्यवाही प्रधान मुख्य वनसंरक्षक, महाराष्ट्र राज्य, नागपूर यांच्या कार्यालयाकडून करण्यात यावी. सदर नमुन्यामध्येच प्रतिज्ञापत्र घेण्यात यावे. तसेच या संदर्भातील अर्जाचा नमुना आणीई त्या सोबत जोडावयाची आवश्यक असणारी कागदपत्रे, प्रधान मुख्य वनसंरक्षक (वनबल प्रमुख), यांनी तयार करावा. सदर नमुन्यात कर्मचाऱ्यांचे अर्ज स्वीकारावेत.”

11. If the circular dated 6.8.2015 aforesaid is concerned, it will be clear that it was decided not to accept the application of transfer from one circle to other unless the employee gives an undertaking on affidavit alongwith the application that he will lose his seniority and he will be at the zero seniority in the transferred circle and that the said affidavit will be considered as valid in the legal proceedings before the Court. It is stated that the application shall be accepted only after obtaining such an affidavit. Transfers of the applicants in these cases from one circle to other were effected long back before issuance of said circulars. Even though, there is a condition in the order of transfer dated 30.11.2000 in case of the applicant Pitambar Kumare in O.A. No. 97/2016 that he will lose the

seniority on transfer from one place to other, there is nothing on record to show that, there was any Government policy or circular at that time. Transfer of the applicant Nitin Gadpayale in O.A. No. 545/2015 from one circle to other though is dated 26.5.2006, at that time also, there was no Circular or a Government policy in this regard, even though it has been mentioned in the order that he will lose seniority. As against this, the transfer of the applicant Pundlik Murhari Khobragade in O.A. No.761/2015 on 8.10.1998, that of Manohar Lingayya Ghodselwar in O.A. No.802/2015 on 17.12.1999 and Baba Haribhau Deogade in O.A.No.805/2015 dated 24.8.1998, nowhere mentions that they will lose the seniority in the circle. There is nothing on record to show that, any of these applicants have ever requested for transfer with clear undertaking that they will lose their seniority or will be brought to the level of zero seniority on their request transfer from one circle to other. Some of the applications are placed on record to show that no such undertaking was given by the respective applicants. For example, the application given by the applicant Shri Nitin Gadpayale dated 9.3.2005 is marked "X" for identification, whereas that was given by the applicant Shri Pitambar Kumare dated 4.12.1999 is marked "X-1" for the purpose of convenience and from both these applications, it will be clear that the

these applicants never accepted that they were ready to lose their seniority. Admittedly, their requests were accepted. In the transfer order, there was no condition that they would lose their seniority. Even the applicant Nitin Gadpayale and Pitambar Kumare also nowhere gave an undertaking that they are ready to accept zero seniority on their transfer from one circle to other. The circulars regarding losing of seniority or bringing the employee at zero seniority on transfer from one circle to other, have been issued subsequently and in any case not before the transfer of the applicants and, therefore, such circular cannot be made applicable to the applicants.

12. From the aforesaid facts on record, it will be thus crystal clear that out of five applicants, there was a condition regarding bringing the employees at zero seniority on transfer from one circle to other in the order of two applicants only, whereas in case of other three applicants, there was no such order. It is true that the applicants Nitin Gadpayale and Pitambar Kumare have not challenged the condition of bringing them to zero seniority till they filed O.A. in 2015. However, it is material to note that the respondent authorities have used different scale for different employees, as will be seen from cases of all five applicants in the present case. The applicants Nitin Gadpayale and Pitambar Kumare will lose their

seniority, because the condition in their transfer order is that they will be placed at the bottom of seniority list, whereas in the similar condition, the applicants Nitin Gadpayale, Manohar Ghodselwar and Baba Haribhau Deogade will not lose their seniority, since their orders of transfer did not mention about losing of seniority or placing them at the bottom of seniority list. This is absolutely a discrimination. We have perused the orders of appointment of different applicants. It is material to note that the applicant in O.A. No. 545/2015 Nitin Gadpayale is working as Forest Guard since 10.7.1995, the applicant in O.A. No. 761/2015 Pundlik Murhari Khobragade was working as Forest Guard since 17.12.1984 and was promoted as Forester vide order dated 2.11.2015. The applicant in O.A. No. 802/2015 Manohar Ghodselwar was appointed as Forest Guard on 10.5.1989 and transferred to North Chandrapur Circle in 1999. The applicant in O.A. No. 805/2015 Baba Haribhau Deogade was appointed as Forest Guard and was transferred as Forest Guard vide order dated 24.10.1998 and was promoted as Forester on 11.6.2013. Whereas the applicant in O.A. No. 97/2016 Pitambar Gomaji Kumare was appointed as Forest Guard on 26.11.1990. If the condition of zero seniority is accepted, all these applicants will lose their seniority in the cadre of Forest Guard

for the period of their appointment till they were respectively transferred in the circle. Thus, they will lose their long continuous service only because their request was accepted for transfer from one circle to other. Admittedly, there was no rule or legal provision as regards losing of seniority in case of such transfers at the time when their request was accepted. Admittedly, none of the applicants have given any undertaking or affidavit even subsequently regarding losing of their seniority.

13. The learned counsel for respondent Nos. 5 to 15 as well as the learned P.O. submit that some of the applicants were transferred long back on the condition that they will lose their seniority and this was never challenged by them till filing of the earlier O.As i.e. O.A. No. 637/2013 and others. It is material to note that, the seniority list of Forest Guards has been prepared for the first time and it was challenged in 2015 in O.A. Nos. 637, 641, 642 and 729 of 2013 and O.A. No. 40/2014. Except the fact that some of the applicants have not challenged the order of their transfers whereby they have been kept on zero seniority, cannot come in the way of the applicants, since there was no occasion for them to challenge the seniority list except when they have filed O.A. No. 637/2013 and others.

Therefore, it cannot be said that the applicants are estopped from challenging the seniority list.

14. It seems that the applicants challenged the zero seniority list after their transfer in the different circles by filling O.A. Nos. 637, 641, 642 and 729 of 2013 and O.A. No. 40/2014. All the O.As stood disposed of on 16.6.2015 with following observations:-

“It is submitted here that, the respondents are taking appropriate steps to correct the discrepancies, came to their notice during the course of hearing of the matter. The respondents further undertake that, they will correct the seniority list and will take necessary steps in accordance with law and will show the proper placement of the individual employee i.e. Forest Guard in the seniority list considering the effect of request transfer made by the Forest Guard from one circle to another circle. The respondents further undertake that they will not give any discriminatory treatment while preparing the fresh seniority list of the Forest Guards. After preparation of the fresh seniority list, the respondents will take further necessary steps to rectify the mistake occurred on earlier occasions and these process will be carried out within a period of 6 months from the date of order of this Tribunal. In view of the aforesaid undertaking the Tribunal will

find that the issue involved in the present O.A. has been resolved and therefore, the O.A. filed by the applicant is liable to be disposed of.

The learned counsel for the applicant has no objection for passing the order accordingly.

In view of the above, the O.A. stands disposed of. It is expected that the respondents shall abide by the undertaking given as above. No order as to costs.”

15. It is an admitted fact that, in view of the directions given by this Tribunal as aforesaid on 16.6.2015, the respondents have revised the seniority list and have given proper placement to the applicants. However, prior to that; the seniority list of 2015 was published in which the applicants were considered at zero level seniority in view of conditions in the order of transfer of some of the applicants.

16. As already stated, there is no Government policy nor there is any amendment to the seniority rules made by the respondent authorities so as to legalize losing of seniority in case of transfers of Foresters / employees from one circle to other. The seniority has been shown at zero level only on the basis of some circulars issued by the Chief Conservator of Forests and the

Additional Principal Chief Conservator of Forests, Nagpur. Even for argument sake, such circulars are issued, but the same cannot take place of law, since such circulars will be against the provisions of Maharashtra Civil Services (Regulation of Seniority) Rules, 1982.

17. It is material to note that, after the judgment delivered in O.A. Nos. 637, 641, 642 and 729 of 2013 and O.A. No. 40/2014 on 16.6.2015, the respondents have correctly published the seniority list vide letter dated 12.6.2017 as on 1.1.2017. The letter accompanying the seniority list is at page Nos. 156 and 157 and in the said letter, in the very opening para, it has been admitted that there were no rules or circulars regarding zero seniority list of transfer from one circle to other. This fact can be seen from the following para in the said letter:-

“विषयांकित प्रकरणी आंतरवृतीय बदलीने चंद्रपूर वनवृत्तात आलेल्या वनरक्षकांच्या सेवाजेष्ठतेबाबत मा. प्रशासकीय न्यायाधिकरण खंडपीठ, नागपूर येथे मूळ अर्ज क्र. ५४५/२०१५, ७६१/२०१५, ८०२/२०१५, ४०५/२०१५ व ९७/२०१६ दाखल करण्यात आले होते. सदर प्रकरणात दि. ६.१.२०१७ रोजी मा. न्यायालयाने निर्णय दिलेला असून “शासन निर्णय क्र. एफएसटी०३/१५/प्र.क्र.१५६/फ-४ दि. ६.८.२०१५ पूर्वी आंतरवृतीय बदलीने आलेल्या वनरक्षकांच्या सेवाजेष्ठतेबाबत कोणताही शासन निर्णय नसल्यामुळे सदर शासन निर्णयापूर्वी जे वनरक्षक आंतरवृतीय बदलीने या वनवृत्तात आलेले असतील त्यांची सेवाजेष्ठता ही वनरक्षक पदावरील मूळ

नियुक्ती दिनांकापासून धरण्यात यावी. व त्याप्रमाणे वनरक्षक संवर्गाच्या जेष्ठता यादीमध्ये सुधारणा करून ३ महिन्यांचे आत जेष्ठता यादी प्रसिद्ध करण्याबाबत आदेश प्राप्त झालेले होते.”

18. The seniority list has been corrected in view of undertaking given by the respondent authorities in those O.As and the Tribunal was also pleased to observe in the order as under:-

“It is submitted here that, the respondents are taking appropriate steps to correct the discrepancies, came to their notice during the course of hearing of the matter. The respondents further undertake that, they will correct the seniority list and will take necessary steps in accordance with law and will show the proper placement of the individual employee i.e. Forest Guard in the seniority list considering the effect of request transfer made by the Forest Guard from one circle to another circle. The respondents further undertake that they will not give any discriminatory treatment while preparing the fresh seniority list of the Forest Guards. After preparation of the fresh seniority list, the respondents will take further necessary steps to rectify the mistake occurred on earlier occasions and these process will be carried out within a period of 6 months from the date of order of this Tribunal. In view of the aforesaid undertaking the Tribunal will find that the issue involved in the present O.A. has

been resolved and therefore, the O.A. filed by the applicant is liable to be disposed of.

The learned counsel for the applicant has no objection for passing the order accordingly.

In view of the above, the O.A. stands disposed of. It is expected that the respondents shall abide by the undertaking given as above. No order as to costs.”

19. From the aforesaid circumstances, it will be clear that when the services of the applicants were transferred from one circle to other, there was absolutely no law / rule or circular or policy decision of the Govt. to transfer the employees on zero level seniority basis. On the contrary, the respondents have taken different views while transferring the employees, as some of the applicants were transferred without losing their seniority, whereas the others were transferred on the condition that their seniority will be brought back to zero level in the transferred circle. This is totally a discriminatory action on the part of the respondent authorities.

20. The learned counsel for the applicants submits that the respondents / Govt. of Maharashtra also tried to bring Junior Clerk on zero seniority basis on their transfers from one division to another and this aspect was considered by this Tribunal in O.A. No.

571/2015 in case of Sanjiv Tryambak Shinde V/s State of Maharashtra and others. The judgment was delivered in the said case by Principal Bench of this Tribunal at Mumbai on 22.12.2015 and held that such circular was against the provisions of Rule 4 (2) (a) and 5 (2) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. It was further held that, these rules have been framed under Article 309 of the Constitution of India and will prevail over the provisions of any G.R. / Circular. We are satisfied that the G.Rs issued in this case as regards zero seniority to the transferred employees from one circle to other are definitely against the provisions of Rule 5 of 1982 and the G.R. cannot supersede the rules framed under constitutional provision.

21. We have perused the rules of Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. Rule 4 (1) of the Rules reads as under:

“4:- General principles of seniority:- (1) Subject to the other provisions of these rules, the seniority of a Govt. servant in any post, cadre or service shall ordinarily be determined on the length of his continuous service therein :

Provided that, for the purpose of computing such service, any period of absence from the post, cadre or

service due to leave, deputation for training or otherwise or on foreign service or temporary officiating in any other post shall be taken into account, if the competent authority certifies that the Govt. servant concerned would have continued in the said post, cadre or service during such period, had he not proceeded on leave or deputation or been appointed temporarily to such other post :

Provided further that, the service, if any, rendered by him as result of a fortuitous appointment (except in a case where the competent authority certifies that it was not expedient / possible or practicable to make a regular appointment strictly in accordance with the ratio of recruitment as prescribed in relevant recruitment rules, with the brief reasons recorded therefor), shall be excluded in computing the length of service and for the purpose of seniority he shall be deemed to have been appointed to the post or in the cadre or service on the date on which his regular appointment is made in accordance with the provisions of the relevant recruitment rules.”

The Hon'ble Apex Court in case of **Ashok Gulati** **V/s B.S. Jain reported in AIR 1987 SCC 424** has laid down the following proposition relating to determination of seniority:-

“The date from which seniority is to be reckoned may be laid down by rules or instructions :

- (a) on the basis of date of appointment.
- (b) on the basis of confirmation.
- (c) on the basis of regularization of service.
- (d) on the basis of length of service, or
- (e) on any other reasonable basis.

It is well settled proposition that in the absence of any rule, the length of continuous officiation is a valid principle of determining the seniority.”

22. The learned counsel for the applicants also invited our attention to the judgment delivered by the Hon’ble Apex Court in case of **Scientific Advisor to the Defence Minister V/s V.M. Joseph reported in AIR 1998 SC 2318.** In the said case, the employee on compassionate ground was transferred on request and was placed at the bottom of seniority list at a transferred place, thereby the period of service rendered by employee at earlier place was excluded from considering in determining his eligibility for promotion. The Hon’ble Apex Court has held that, eligibility and seniority are two distinct and different factors. It was, however, held that even if an employee is transferred at his own request from one place to another, on the same post, the period of service rendered by

him at earlier place where he held on permanent basis and had acquired permanent status, cannot be excluded from consideration for determining his eligibility for promotion, though he may have been placed at the bottom in the seniority list at a transferred place.

23. The learned counsel for the applicants has filed list of Forest Guards in the year 2015 which includes newly added respondents. It is material to note that, all private respondents seem to be quite junior to the applicants and the service rendered by the applicants in the circle prior to their transfers, cannot be discarded for the purpose of promotion.

24. The learned counsel for the applicants also placed reliance on the judgment delivered by the Hon'ble Apex Court in case of **Union of India and others V/s C.N. Punnappam reported in AIR 1996 SC 764.** In the said case also, it was held by the Hon'ble Apex Court that the transferred employee from one Unit to other on compassionate ground and employee resultantly placed at the bottom of seniority of service done by such an employee at the place from where he has been transferred, being regular service is to be counted as experience for purposes of eligibility for promotion at a transferred place.

25. The learned counsel for the applicants also placed reliance on the judgment delivered by this Tribunal in **O.A. Nos. 5 and 6 of 2015 in case of Madhav Uddhavrao Yadao V/s State of Maharashtra and Rahul Ashokrao Sarsamkar and others V/s State of Maharashtra and others. The common judgment was delivered on 16.8.2017.** In the said case, the provisions of Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 has been discussed and the Tribunal observed by referring to the judgment of this Tribunal in Mumbai Bench in O.A. No. 36/2006 delivered on 14.3.2007 as under:-

“12.The applicant’s services all the while being valid, legal and proper as such, his placement in the seniority, has to be in terms of Rule 4 of the Seniority Rules. Even assuming that his transfer to Pune Division was on his request, and his placement at Pune Division being in excess of quota thus fortuitous one, but for that matter, applicant will not lose his placing in the State seniority, which has to be prepared and maintained in terms of Rules.”

Rule 4 (2) (c) of the aforesaid Rules reads as below:

“(c) the seniority of a transferred Govt. servant vis-à-vis the Govt. servants in the post, cadre or

service to which he is transferred shall be determined by the competent authority with due regard to the class and pay scale of the post, cadre or service from which he is transferred, the length of his service therein and the circumstances leading to his transfer.”

It is clear that length of service of an employee is a relevant factor while deciding his seniority when his cadre is changed. He cannot be asked to forego his earlier service even when transfer is on request. In O.A. No. 785/2014, Nagpur Bench of the Tribunal by judgment date d 13.2.2017 has held that para 3 (8) of the G.R. dated 3.6.2011 is not in consonance with Rule 4 (2) (c) of the Regulation of Seniority Rules and Rules will prevail over the G.R. In the present case, the applicants cannot be made to lose their seniority, even if their transfer to Aurangabad Division was on their request. At the most, they may be placed below those employees, who were promoted in the same year in Aurangabad, when the applicants were promoted in other divisions, as Cooperative Officer, Grade-I, before their respective transfers to Aurangabad Division.”

26. On a conspectus of discussion in foregoing paras, it will be thus crystal clear that in the order of transfer of the applicants

i.e. Pundlik Murhari Khobragade, Manohar Lingayya Ghodselwar and Baba Haribhau Deogade, there was absolutely no condition that their seniority will be brought to zero level seniority and, therefore, such conditions in case of the applicants Nitin Tulshiram Gadpayale and Pitambar Gomaji Kumare will be discriminatory. Admittedly, all these applicants are senior to respondent Nos. 5 to 15 and they cannot be brought below the respondent Nos. 5 to 15, merely because they are transferred from one circle to other and the seniority gained by them in the earlier circle before transfer cannot be ignored. We, therefore, find merit in these O.As and hence proceed to pass the following order:-

ORDER

- (i) The O.A. Nos. 545, 761, 802 and 805 of 2015 and O.A. No.97/2016 are allowed.
- (ii) Final seniority list of Forest Guards as on 1.1.2015 dated 7.11.2015 published by respondent No.3 is quashed and set aside.
- (iii) Since the respondents have complied with the order of this Tribunal dated 16.6.2015, we quash the communication dated 17.8.2015.
- (iv) The respondents are directed to remove the discrimination for fixing of seniority of the

applicants and to consider them from the date of entry point of their service.

- (v) We hold that the seniority list published by respondent authorities as on 1.1.2017 and communicated vide letter dated 12.6.2017 shall prevail.
- (vi) No order as to costs.

(Shree Bhagwan)
Member (A)

(J.D.Kulkarni)
Vice-Chairman (J)

Dated:- 5. 11.2018.

Pdg

