

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NOS 545, 761, 802,  
805/2015 & 97/2016**

**DISTRICT : GADCHIROLI**

**1) ORIGINAL APPLICATION NO 545 OF 2015**

Shri Nitin Tulshiram Gadpayale, )  
R/o: Shastri Nagar, Sarda Colony, )  
Armori, Tal-Armori, )  
Dist-Gadchiroli., )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through its Principal Secretary )  
[Forest], Revenue & Forest )  
Department, Mantralaya, )  
Mumbai 400 032. )
2. The Principal Chief Conservator )  
of Forest, Civil Lines, )  
Nagpur. )
3. The Chief Conservator of Forest )  
Chandrapur Circle, Chandrapur. )

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4. The Chief Conservator of Forest )  
Gadchiroli Circle, Gadchiroli. )...**Respondents**

**2) ORIGINAL APPLICATION NO 761 OF 2015**

Shri Pundlik M. Khobragade, )  
Forester, R/o: Bramhapur Division, )  
Bhramhapuri Tal-Bhramhapuri )  
Dist-Chandrapur )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through its Principal Secretary )  
[Forest], Revenue & Forest )  
Department, Mantralaya, )  
Mumbai 400 032. )  
2. The Principal Chief Conservator )  
of Forest, Civil Lines, )  
NAGPUR-1. )  
3. The Chief Conservator of Forest )  
Chandrapur Circle, Chandrapur. )  
4. The Chief Conservator of Forest )  
Gadchiroli Circle, Gadchiroli. )...**Respondents**

**3) ORIGINAL APPLICATION NO 802 OF 2015**

Shri Manohar Lingayya Ghodselwar, )

R/o : Sai Nagar, Gadchiroli.

)...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through its Principal Secretary )  
[Forest], Revenue & Forest )  
Department, Mantralaya, )  
Mumbai 400 032. )
2. The Principal Chief Conservator )  
of Forest, Civil Lines, )  
NAGPUR-1. )
3. The Chief Conservator of Forest )  
Chandrapur Circle, Chandrapur. )
4. The Chief Conservator of Forest )  
Gadchiroli Circle, Gadchiroli. )...**Respondents**

**4) ORIGINAL APPLICATION NO 805 OF 2015**

Shri Baba Haribhau Deogade, )  
Occ : Service, )  
R/o: Vidya Nagar, Bramhapuri, )  
Dist-Chandrapur. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through its Secretary )



- [Forest], Revenue & Forest )  
 2. The Addl. Principal Chief )  
 Conservator of Forest, Civil Lines, )  
 NAGPUR-1. )  
 3. The Chief Conservator of Forest )  
 Chandrapur Circle, Chandrapur. )  
 4. The Chief Conservator of Forest )  
 Gadchiroli Circle, Gadchiroli. )...**Respondents**

**5) ORIGINAL APPLICATION NO 97 OF 2016**

- Shri Pitambar Gomaji Kumare, )  
 C/o: B.D Ugaonkar's House, )  
 Ram Nagar, GADCHIROLI. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
 Through its Principal Secretary )  
 [Forest], Revenue & Forest )  
 Department, Mantralaya, )  
 Mumbai 400 032. )  
 2. The Principal Chief Conservator )  
 of Forest, Civil Lines, )  
 NAGPUR-1. )  
 3. The Chief Conservator of Forest )  
 Chandrapur Circle, Chandrapur. )

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4. The Chief Conservator of Forest )  
Gadchiroli Circle, Gadchiroli. )...**Respondents**

Shri Bharat Kulkarni, learned advocate for the Applicant in O.A no 545/2015 & 97/2016

Shri G.G Bade, learned advocate for the Applicant in O.A nos 761, 802 & 805/2015

Shri V.A Kulkarni, learned Presenting Officer for the Respondents in O.A no 545/2015, Shri M.I Khan, learned Presenting Office for the Respondents in O.A nos 761 & 802/2015, Shri H.K Pande, learned Presenting Officer for the Respondents in O.A no 805/2015 and Shri P.N Warjurkar, learned Presenting Officer for the Respondents in O.A no 97/2016.

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**Shri J.D Kulkarni (Member) (J)**

**DATE : 06.01.2017**

**PER : Shri Rajiv Agarwal (Vice-Chairman)**

**ORDER**


1. Heard Shri Bharat Kulkarni, learned advocate for the Applicant in O.A no 545/2015 & 97/2016, Shri G.G Bade, learned advocate for the Applicant in O.A nos 761, 802 & 805/2015, Shri V.A Kulkarni, learned Presenting Officer for the Respondents in O.A no

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545/2015, Shri M.I Khan, learned Presenting Officer for the Respondents in O.A nos 761 & 802/2015, Shri H.K Pande, learned Presenting Officer for the Respondents in O.A no 805/2015 and Shri P.N Warjurkar, learned Presenting Officer for the Respondents in O.A no 97/2016.

2. These Original Applications were heard together and are being disposed of by a common order as the main issue to be decided is regarding seniority on transfer from one Forest Circle to another.

3. In O.A no 545/2015, learned Advocate Shri Bharat Kulkarni for the Applicant argued that the Applicant was appointed as Forest Guard in South Chandrapur Forest Circle on 20.7.1995. He sought mutual transfer with one Miss Baby Ashok Dhattrak, who was working in North Chandrapur Forest Circle. By order dated 26.5.2006 issued by the Respondent no. 2, the Applicant was transferred to North Chandrapur Forest Circle. Learned Counsel for the Applicant contended that this order nowhere mentioned that transfer from one Forest Circle to another will entail loss of seniority. The Applicant had filed O.A no 637/2013 challenging order promoting the Respondent no. 4 on 5.7.2013 as Forester, as the Applicant's service in South Chandrapur Forest Circle was not counted in the




seniority list of Forest Guards in North Chandrapur Forest Circle, published by the Respondent no. 3 on 19.3.2012, as on 1.1.2012. The Applicant's seniority was shown from 26.5.2006. This Tribunal by order dated 16.6.2015 disposed of this O.A along with other Original Applications by asking the Respondents to abide by the undertaking that they will correct the seniority list and will take necessary steps in accordance with law and will show the proper placement of 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. Learned Counsel for the Applicant contended that this Tribunal did not give any specific direction as regards the seniority list that request transfer will be on zero seniority basis. It was to be finalized in accordance with law. Learned Counsel for the Applicant argued that the Principal Bench of this Tribunal by judgment dated 22.12.2015 in O.A no 571/2015 has held that inter divisional transfer of Clerks in Cooperation Department will be governed by G.R dated 21.1.1983, which did not entail any loss of seniority on request transfers. In case of Naib Tahsildar, this Tribunal has held that in case of inter-division transfer a transferred Naib Tahsildar can be placed below all Naib-Tahsildars in that division recruited in the same year. He, however, does not lose any seniority to those recruited later. Learned Counsel for the Applicant argued that Forest Department has not issued any G.R



or Circular providing for loss of seniority on transfer of a Forest Guard from one circle to another. In absence of any such instruments, the decision of the Respondent no. 3 in not counting service of the Applicant as Forest Guard in South Chandrapur Circle for the purpose of seniority is bad in law.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Respondent no. 2 has issued instructions on 14.10.2013 that in case of inter-circle transfer, the date of joining on transfer will be counted for seniority in that circle. Learned Presenting Officer argued that Government has issued G.R dated 6.8.2015 which provides that a Forest Guard can be transferred from one Forest Circle to another Forest Circle on zero seniority only. Learned Presenting Officer argued that the Respondent no. 3 has finalized seniority list of Forest Guards in North Chandrapur Forest Circle based on the orders of this Tribunal dated 16.6.2015. He also cited various judgments of Hon'ble Supreme Court which are discussed subsequently.

5. Let us first consider the G.R dated 6.8.2015 issued by Respondent no. 1. It refers to an earlier Government circular dated 1.9.2014, which apparently prohibits inter-circle transfers of Forest Guards. The provisions of that circular has been relaxed by the G.R dated 6.8.2015 and in exceptional cases inter-circle





transfers have been permitted on zero seniority basis by this G.R. On carefully going through this G.R, it is clear that it is prospective in application. No reference to any earlier G.R/Circular (except Circular dated 1.9.2014) is made. Nor any such instrument is placed on record by the Respondents. It can safely be assumed that there were no policy instruments like G.R/Circular regulating inter-circle transfer of Forest Guard in the field before this G.R was issued. In the affidavit in reply dated 23.8.2016 filed on behalf of the Respondent nos 2 & 3 also, there is no mention of any earlier G.R/Circular in this regard. Only instructions issued by the Respondent no. 2 dated 14.10.2013 are mentioned. The same is at Annexure R-III (P. 69 of the Paper Book). This is a letter from the Respondent no. 2 to the Respondent no. 3. It states:

“आंतरवृत्तीय बदलीबाबत या कार्यालयाकडून जे आदेश निर्गमित केले जातात त्यात स्पष्टपणे निर्देश दिलेले असते की, संबंधित वनरक्षकाचे मुळ वृत्तावर असलेला धारणाधिकार संपुष्टात येईल. तसेच संबंधित वनरक्षक नविन वृत्तात ज्या दिवशी रुजू होईल, जेष्ठतेच्या संबंधात त्या दिवसापासून त्याची सेवा जेष्ठता ग्राह्य धरण्यात येईल. असे असतांना देखील आपले वनवृत्तात इतर वनवृत्तात न आंतरवृत्तीय बदलीने रुजू झालेल्या वनरक्षकांची सेवा जेष्ठता कायम ठेवण्यात आलेली नाही ही गंभीर बाब आहे.”

It is stated that inter-circle transfers of the Forest Guards are approved by the Respondent no. 2 and such approval



is subject to transferred Forest Guard losing his seniority, i.e. such transfer are on zero seniority basis. The transfer order of the Applicant dated 26.5.2006 is appended as Annexure R-I. This order nowhere mentions that the Applicant's transfer is at zero seniority. This belies the claim made by the Respondent no. 2 in letter dated 14.10.2013 that such transfers are approved on the basis of zero seniority. The Applicant has enclosed transfer orders dated 18.12.1999 of Shri M.L Godshelwar, order dated 21.6.1997 of Shri Y.V Hazare and order dated 24.8.1998 of Shri B.H Devgade. None of these order mentions anything about loss of seniority in the transferred circle. The Respondents have completely failed to point out any provision which will allow them to make the Applicant lose his seniority due to his inter-circle transfer.

6. Learned Presenting Officer has brought to our notice Rule 4(2)(c) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982. This rule reads:-

“(c) the seniority of a transferred Government servant vis-à-vis the Government servants in the posts, 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

circumstance leading to his transfer.” (emphasis supplied).

Plain reading of this rule will make it clear that the length of service in the post from which a Government servant is transferred is a relevant fact in deciding his seniority in the transferred post. We don't understand as to how this rule will enable the Respondents to transfer Forest Guard on zero seniority basis, which would mean that length of earlier service in the cadre or post from where he is transferred is to be completely disregarded. Such an act will be in violation of the above rule.

7. The Respondents have relied on the following judgments:-

(i) **SURENDRA SINGH BENIWAL Vs. HUKAM SINGH & ORS (2009) 6 SCC 469.**

This judgment has interpreted Rule 61(2) of the Regulations framed under the U.P Intermediate Education Act, 1921, which provides that a teacher transferred on his request shall be placed at the bottom of seniority list of the teachers service on the same cadre and category in the institution. This case is clearly distinguishable as in the present case, there are no rules/G.R/Circular which provide for loss of seniority on

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request transfer, except of G.R dated 6.8.2015, which will apply to transfers after that date.

**(ii) K.P SUDHAKARAN & ANR Vs. STATE OF KERALA & ORS: (2003) 5 SCC 386.**

It was held that seniority of Government servant transferred on own request has to be reckoned from the date of joining duties in the new department. In this case also, Rule 27 of the Kerala State Subordinate Service Rules 1958 provided for loss of seniority on request transfer. This case is also distinguishable as there are no such rules in the State of Maharashtra. ON the contrary Rule 4(2)(c) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 provides that earlier service before transfer is a relevant factor while deciding seniority in the transferred cadre.

**(iii) JOYACHAN M. SEBASTIAN Vs. DIRECTOR GENERAL & ORS : (1996) 10 SCC 291.**

In this case, the employees was rendered surplus as the post occupied by him was abolished. He could have been retrenched. Instead he was posted to another region on his request and the date of such appointment was treated as date of seniority. The concerned Government servant had given an undertaking that he would not claim seniority based on earlier service. The



facts are entirely different here and this case is clearly distinguishable.

The Respondents have claimed that revised final seniority list of Forest Guards as on 1.1.2015 published by the Respondent no. 3 on 7.11.2015 is as per order of this Tribunal dated 16.6.2015 in O.A no 637/2013 etc. The relevant extract of this order are reproduced below:-

*“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 undertakes that, they will correct the seniority list and will take necessary steps in accordance with laws 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 undertakes that they will not give any discriminatory treatment while preparing the fresh seniority list of the Forest Guard.*

*After the preparation of the fresh seniority list, the Respondents will take further necessary steps to rectify mistake occurred on earlier occasions and all these process will be carried out within a period of 6*




*months from the date of order of this Hon'ble Tribunal.*

*In view of the aforesaid undertaking this Hon'ble Tribunal will find that, the issue involved in the present original application has been resolved and therefore the Original Application filed by the applicant is liable to be disposed of."*

The 1d. 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."

It is clear that this Tribunal has not given any specific directions to the Respondents to fix the seniority of Forest Guards transferred on request on zero seniority basis. We have already observed that there was no provision in law to do so. At the most, on the principle of equity, such Forest Guards could be placed below those Forest Guards in the transferred circle, recruited in the same year as the Applicant. However, the Applicant cannot be said to have been transferred on zero seniority basis. The transfer order did not mention any such stipulation, there was no undertaking from the Applicant




in this regard, nor was there any Rule / G.R/ Circular permitting the Respondents to do so. We are not commenting on validity of G.R dated 6.8.2015, as it has been issued prospectively and has no application in the present case. In the circumstances, seniority list dated 7.11.2015 has to be quashed.

8. In O.A no 97/2016 also, seniority list dated 7.11.2015 is challenged. In this case the Applicant was transferred to North Chandrapur Circle on 1.6.2001, though he was appointed as Forest Guard in South Chandrapur Circle on 28.11.1990. In his case also, he cannot be made to lose seniority before 1.6.2001. At the most, he can be placed below those Forest Guards appointed in 1990 in North Chandrapur Circle.

9. In O.A no 761/2015, the Applicant has challenged his reversion by order dated 2.11.2015 from the post of Forester to that of Forest Guard by order of the Respondent no. 3. The impugned order is based on the same principle of zero seniority on request transfer, which has been held to be invalid by us. This order dated 2.11.2015 is quashed and set aside.

10. In O.A no 802/2015, the Applicant has challenged order dated 4.11.2015 by which the Applicant was reverted from the post of Forester to that of Forest



Guard. This order is also unsustainable and is quashed and set aside.

11. In O.A no 805/2015, the Applicant has challenged order dated 3.11.2015 reverting him from the post of Forester to that of Forest Guard. This order is unsustainable and is quashed and set aside.

12. The Respondent no. 3 shall prepare a fresh seniority list of Forest Guards in North Chandrapur Forest Circle as on 1.1.2015 within a period of 3 months from the date of this order in the light of observations in this order. These Original Applications are allowed as mentioned hereinabove with no order as to costs.

sd/-

**(J.D Kulkarni)**  
**Member (J)**

sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**

**Place : Nagpur**

**Date : 06.01.2017**

**Dictation taken by : A.K. Nair.**