

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 573 OF 2007 (D.B.)

1. Smt. Yamutai wd/o Rameshkumar Kamble,
Aged : 40 years, Occ. Nil,
2. Ku.Astha Rameshkumar Kamble,
Aged : 12 years, Occ. Student, through her natural guardian
mother i.e. applicant no. 1.
3. Ku.Unnati Rameshkumar Kamble,
Aged 7 years, Occ. Student, through her natural guardian
mother i.e. applicant no. 1.
All R/o Kamble Lay out, Mankarna Nagar, Amravati.

Applicants.

Versus

- 1) The State of Maharashtra,
through Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.
- 2) The Chief Conservator of Forest,
Maharashtra State, Civil Lines,
Nagpur.
- 3) The Conservator of Forests,
Amravati Camp, Amravati.
- 4) The Divisional Forest Officer,
Amravati Division, Amravati.

Respondents

Shri R.V.Shiralkar, the Id. Adv. for the applicant.

Shri H.K.Pande, the Id. P.O. for the respondents.

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

JUDGMENT

(Delivered on this 27th day of April, 2018)

ORDER

PER:-VICE CHAIRMAN (J)

Heard Shri R.V.Shiralkar, the learned counsel for the applicants and Shri H.K.Pande, the learned P.O. for the respondents.

2. The Original Applicant in this O.A., Shri Rameshkumar Mahadeorao Kamble died during the pendency of the O.A. and his legal heirs have been brought on record by Smt. Yamutai Rameshkumar Kamble. According to Smt. Yamutai Rameshkumar Kamble, Ku.Astha Rameshkumar Kamble and Ku.Unnati Rameshkumar Kamble are her minor daughters. However, for the purposes of convenience, the original applicant Shri Rameshkumar Mahadeorao Kamble shall hereinafter refer to as applicant. The applicant has claimed following reliefs in this O.A.:-

- A. Quash and set aside the order, dated 09.01.1990 passed by respondent no. 3, same being without jurisdiction.
- B. Direct the respondents to reinstate the applicant on the post of Range Forest Officer with all consequential benefits like arrears of salary, increments etc., for which the applicant is entitled after reinstatement in service.
- C. Direct the respondent to treat the period of suspension as duty period from 14.03.1986 to 09.01.1990.
- D. Grant any other suitable relief to which the applicant may be found entitled in the facts and circumstances of the case.

3. The original applicant initially came to be appointed as a Range Forest Officer by Chief Conservator of Forests, Nagpur-2, Maharashtra (respondent no. 2) i.e. 25/11/1978. Under the orders of Chief Conservator of Forest, the applicant had undergone formal training and he had completed his probation period satisfactorily. He had worked to the satisfaction of his superior and there were no adverse remarks against the applicant till 1985.

4. While working as Range Forest Officer at Amravati (04/07/1985 to March, 1986), the applicant was kept under suspension by order passed by respondent no. 4 i.e. Divisional Forest Officer, Amravati Division, Amravati. The suspension continued from 14/06/1996 till 09/01/1990. It is stated that the respondent no. 4 was having no authority to keep the applicant under suspension or to take departmental action against the applicant. The respondent no. 4, however, served a chargesheet to the applicant in departmental enquiry on 14/03/1986. The District Enquiry Officer, Nagpur was appointed as enquiry officer. The enquiry officer's report was submitted on 21/06/1988 and the applicant was held guilty for four charges levelled against him. A show cause notice was issued to the applicant, as to why disciplinary action shall not be taken against him on the basis of enquiry report. Ultimately vide order dated 09/01/1990, the respondent no. 3, i.e., Conservator of Forests, Amravati Camp, Amravati, Inflicted the order

of dismissal on the applicant. A recovery of Rs. 59,014.65/- was also ordered against the applicant and his period of suspension was treated as "suspension period".

5. From the fact on records, it seems that being aggrieved by the order of dismissal and penalty as aforesaid, the applicant filed ULP complaint no. 153/1990 before the Industrial Court, Amravati and thereafter the Writ Petition no. 177/1993 was filed before the Hon'ble High Court and the Hon'ble High Court directed that the matter shall be disposed of by either Industrial Court or by Maharashtra Administrative Tribunal. The applicant, therefore, withdrew the complaint and filed this O.A.

6. The respondents tried to justify the order. According to the respondents, the appointing authority of the applicant at the relevant time was respondent no. 3, i.e., Conservator of Forests, Amravati Division, Amravati. It is however, admitted that the applicant was selected by the Chief Conservator of Forests and was also sent for training after selection.

7. The impugned order of dismissal of the applicant and the punishment is placed on record as "Annexure-D". The said order has been passed by the Conservator of Forests, Amravati Division, Amravati. The relevant order of punishment is as under :-

vknsA &

1- Jh vkj-, e-dkG] ou{As-i ky] g; kauh vQjkri Qj dsyjh 'Akl dh; jDde : - 59]014-65 R; kpsdMuu , djdeh ol gy dj.; kar ; koh-

2- Jh vkj-, e-dkG] ou{As-i ky] 'Akl dh; I or jkg.; kl v; kX; vl Y; keG] R; kulk I nj vkns Akpsfnuklki kl uu 'Akl dh; I oruu cMrQZdj.; kar ; srs

3- Jh vkj-, e-dkG] ou{As-i ky] g; kpk fuyacu dkGko/Ah gk ^fuyacu^ Eg.Auu /Aj.; kar ; bzy-

From the aforesaid order, it seems that the applicant was dismissed from service from the date of order. In view of this, it was directed that the amount of Rs. 59,014.65/- be recovered from him, since it was misappropriated by the applicant and this recovery shall be in lumpsum and the suspension period shall be treated as suspension.

8. The Id. counsel for the applicant submits that Conservator of Forests, Amravati Division, Amravati is not the appointing authority of the applicant nor it is the authority to initiate departmental enquiry against the applicant. It is also stated that the applicant has been kept under suspension by the respondent no. 4 i.e. Divisional Forest Officer and not only that, the Divisional Forest Officer, Amravati Division, Amravati has also initiated an enquiry against the applicant. Even the enquiry officer has been appointed by the respondent no. 4 and the respondent no. 4 is having absolutely no authority to keep the applicant under suspension or to initiate departmental enquiry against him.

9. The applicants themselves have placed on record the order of appointment of original applicant. The copy of the said order is at P.B.,

Pg. No. 114 from which it seems that vide order dated 25/11/1978, the applicant was selected for Ranger course and was directed to appear before Divisional Forest Officer, Akola. This order was passed by Chief Conservator of Forests (Maharashtra State), Pune. The another order is dated 18/12/1978 from which it seems that the Chief Conservator of Forests (Maharashtra State), Pune finally selected the applicant subject to undergoing training and vide order dated 12/02/1979, it was informed to the applicant by Chief Conservator of Forest (Maharashtra State), Pune that he was finally selected for Ranger training course.

10. The respondents themselves have placed on record, the copy of the order dated 23/01/1980 i.e. Annexure-I, P.B., Pg. No. 121 and 122 (both inclusive), from which it seems that the applicant had undergone training at Central Forest Ranger School, Chandrapur and the Conservator of Forests concerned was directed to issue appointment order. This order is also passed by Chief Conservator of Forests and in consequence of this order, the Conservator of Forests, Chanda Circle has issued appointment order to the applicant as a Range Forest Officer as per Annexure-II, copy of which is filed on record, P.B., Pg. No. 123 and 124.

11. The Id. P.O. submits that power to appoint an officer like applicant was assigned to respondent no. 3. He has also referred to one G.R. dated 12/06/1984, a copy of which is filed at Annexure-IV at P.B.,

Pg. No. 126 and 127. These G.Rs. state that like Chief Conservator of Forests has been declared as an authorised person of the department to appoint Class-III and Class-IV employees. However, these G.Rs. show that the said power were given with retrospective effect from November 1964. It is, therefore, stated in the said G.R. that after November 1964, the Conservator of Forests was authorised to inflict major punishment on such employees. However, the said G.R. is not absolute. The employees can be punished severally by those officers who were appointing authorities. The Id. P.O. has also placed on record one G.R. dated 30/09/1995, which shows that the power to take serious action i.e. departmental enquiry in case of Range Forest Officers, is the Chief Conservator of Forests. Thus *prima facie*, it seems that, even though the formal order of posting of the applicant has been issued by the respondent no. 3, he was selected for the post by Chief Conservator of Forests and was sent for training and after completion of the training the Chief Conservator of Forests directed the respondent no. 3 to issue appointment order in respect of the applicant. The appointing authority of the applicant is Chief Conservator of Forests (Maharashtra State), Pune and not respondent no. 3, since respondent no. 3 has issued the order as per the direction of respondent no. 2.

12. Perusal of the enquiry paper placed on record shows that the applicant was kept under suspension by Divisional Forest Officer,

Amravati Division, Amravati, i.e., respondent no. 4. The enquiry was initiated against the applicant by respondent no. 4 only. The enquiry officer was also appointed by respondent no. 4. There is nothing on record to show that the enquiry was initiated by the competent authority i.e. Conservator of Forests or even by respondent no. 3 i.e. Conservator of Forests, Amravati Circle. The respondents could not place on record any documentary evidence or circumstances to show that the respondent no. 4 was having any authority to initiate departmental enquiry against the applicant or to appoint an enquiry officer. The competent authority has neither initiated the enquiry nor appointed the enquiry officer.

13. The respondents have placed on record one letter dated 25/09/1989 (Annexure-III) at P.B., Pg. No. 125 to show that the Chief Conservator of Forests has declared that the appointing authority of the Range Forest Officer will be the Conservator of Forests and that the Conservator of Forests is competent to inflict any punishment. However, the said letter could not be sent to the authority. The respondents have also placed on record one letter dated 12/06/1984 issued by the Assistant Secretary, Government of Maharashtra, Revenue and Forest Department. The copy of the said letter is at P.B., Pg. No. 126 and 127 (both inclusive) (Annexure-IV). The said letter however, itself is self-contradictory to the letter issued by Chief Conservator of Forests

(Annexure-III). The para no. 3 of the said letter is relevant which reads as under Pg. No. 126 and 127:-

rFAkfi ; k l nHAKr egRokpk epak vl k dh HAKjrKp; k l fo/Akukrhy vuqNn dkaed 311 e/Any rjrnph i q; k gks; kpsn"VhusT; k l {Ae i kf/Adk&; kaus i R; {Akr 'AkI dh; depk&; kph fu; Qrh dsyh vl sy R; kp i krGHP; k i kf/Adk&; kl tcj f'A{Ak nsrk ; bly- R; keGs tjh oul j {Ad ou{As=i kykph ukefunZ Auk) kjs vFAok c<rh) kjs fu; Qrh dj.; kl l {Ae vl ys rjgh rs ukSgaj 1964 urj fu; Qr dsyY; k l op ou{As=i kykauk tcj f'A{Ak ns; kl l {Ae vl rhyv vl suOgs R; kl kBh i R; id idj .Akr dBY; k i kf/Adk&; kaus%ed; oul j {Ad fdok oul j {Ad 1/2 ou{As=i kykph fu; Qrh dsyh vkgs rs igk.As t: j vl u urj R; k idj .Akr f'ALrHAakph dk; bkgh djkoh ykxy- i R; {Akr ed; oul j {Adkauh dkgh idj.; kar ou{As=i kykph k fu; Qrh ukefunZ AkukOnkjs fdok c<rh) kjs dsyYh vl sy rj R; k idj.; kar ou l j {Ad ou{As=i kykauh fu; Qrh dj.; kl vl ys rjgh ed; oul j {Ad toj f'A{Ak ns; kl l {Ae vl rhy- ; kokp vFAZ vl k dh t f'As oul j {Adkus ou{As=i kykph fu; Qrh ukefunZ Akukus fdok c<rh) kjs dsyh vl sy R; kp ou{As=i kykps ckrhr tcj f'A{Ak ns; kl oul j {Ad l {Ae vl rhy-

14. The respondents have also placed on record one letter dated 30/09/1995 alongwith the chart, it is marked exhibit "X" for the purposes of identification and same is at P.B., Pg. No. 132 to 134 (both inclusive). Para no. 4 of the schedule states about the authority who inflict minor and major punishment on the Range Forest Officers and the said para 4 reads as under:-

ou{As=i kykpk ckr f'ALrHAakph dk; bkgh dksAh djkoh&
1/2 v 1/2 fdj dkG f'A{A ckr f'ALrHAak dk; bkgh ouj {Ad l {Ae vkgr-
1/2 c 1/2 toj f'A{A ckr f'ALrHAakph dk; bkgh 'AkI u l {Ae vkgs rFAkfi ouj {Ad ggh f'ALrHAakfo"A; d i kf/Adkj h vl Y; keGs rs toj f'A{A ckrph f'ALrHAakph dk; bkgh l q dj.; kr l {Ae vkgr- rFAki h ou{As=i kykfo: /n R; kauh l q dsyY; k foHAKxh; pksl 'Ahr toj f'A{Ak ctko.; kp; k varhe fu"d"AKr r vkY; koj rl k i Lrko R; kauh ed; ouj {Ad 1/4 l dAKj .A/2 ; kns kekQr varhe fu.AZ kl kBh-

From the aforesaid documents, it will be thus crystal clear that in case a major punishment should be inflicted on the Range Forest Officer, sanction of Chief Conservator of Forests is necessary.

15. The Id. counsel for the applicant also invited our attention to the order of punishment in the departmental enquiry (Annexure-D), P.B., Pg. No. 75 to 84 (both inclusive) and particularly the paragraph below the charges framed against the applicant which read as under :-

पक्षी'अ व/अक्षि ग; कूह पक्षी'अ द: उ] R; कपक पक्षी'अ वगोयि इज.अपस लो
 दखनि=क ग] मि औल ज {अ] वेजकोर ग; कपक्षि म् फुनक 21-06-1988 यक ल क्ज
 द्यक- ज् ह द्क ग; क्पु हे.अ ए; औल ज {अ] ग; कूह द्यह वल य; के.सो पक्षी'अ
 व/अक्षि; कुस्तज फ'अ {अक इ लरकोर द्यह वल य; के.सु इज.अ ए; औल ज {अ] ग; कपक्षि म्
 इ ष्य द्क; ब्कहल क्भ इ क्भो.; क्क व्क्यसुक्क इ ज्क औल ज {अ] ग्फु; क्क ड्क इ क्क/अक्षि व्क
 ओ औ {अ= इ क्क क्क द्क अरह्क फ'अ {अक न्क; क्क ल {अे व्क} वल क [अक्क क ए; औल ज {अ]
 ग; कूह द्यक ओ इज.अ इ ष्य द्क; ब्कहल क्भ; क द्क; क्क; क्क इ ज्क इ क्भोय

The plain reading of the aforesaid contains in the enquiry report thus clearly shows that the competent authority to appoint the applicant was Chief Conservator of Forests and, therefore, the matter was referred back to the Chief Conservator of Forests.

16. From the facts discussed in foregoing paras, it will be thus crystal clear that the Chief Conservator of Forests seems to be the appointing authority of the Range Forest Officer i.e. applicant, though the appointment/posting order has been issued by the Conservator of Forests, Amravati. It seems that he must have given posting to the

applicant and the entire selection process seems to have been carried out by Chief Conservator of Forests. The enquiry should have been initiated by the Chief Conservator of Forests only i.e. respondent no. 2. The enquiry therefore, seems to be without jurisdiction and the respondent no. 3 has no authority to inflict major punishment on the applicant.

17. Considering the fact that the order of dismissal passed on 09/01/1990 and the fact that during pendency of the O.A., the original applicant died and his L.Rs. are brought on record and, they are contesting the matter and it will not be in the interest of justice to again send the matter back or for retrial before the competent authority and, therefore, we pass following order:-

ORDER

1. The order dated 09/01/1990 passed by respondent no. 3 is quashed and set aside.
2. In view of the fact that the original applicant has died during pendency of the O.A. and did not work since the date of his dismissal, the respondents are directed to treat the original applicant as retired w.e.f. 09/11/2016 i.e. the date on which he retired. The respondents are further directed to treat the period of suspension of the original applicant from 14/01/1990 as duty period.

3. The L.Rs. of the original applicant will be entitled to claim arrears, salary and increment etc. for which the original applicant was entitled to.
4. No order as to costs.

(Shree Bhagwan)
Member (A)

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

Dated :- 27/04/2018
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