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MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 340/2014

1. Maharashtra State Forest Guards Union,
R/o C/o Sunil Fulzele,
Sumit Villa, Plot No.11, Godhani
Road, Zingabai Takli,
Nagpur.
2. Anil Gaurishankar Khadotkar,
F.G.R/o Ramtek, Distt. Nagpur.
3. Pradeepsingh D. Bais,
F.G, Ratan Nagar Colony,
Manewada Road, Nagpur.
4. Sunil F. Fulzele,
Sumit Villa, Plot No.11, Godhani
Road, Zingabai Takli,
Nagpur. ----------**Applicants.**

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4. Ghanshyam Harish Gokhale,)
R/o Kamtha, Tah. and Distt. Gondia.)
5. Suresh Laxmanrao Dabare,)
R/o Chikhaldara, Distt. Amravati.)
6. Arvind Bhimdas Badge,)
7. Ramesh L. Rangari,)
8. Syed Jushad Ali Mehmood Ali,)
All 7 to 9 R/o C/o R.F.O. Office,)
Yavatmal. ----------**Interveners/Applicants.**

Versus

1. The State of Maharashtra,
Through its Deptt. of Revenue and Forest,
Nagpur.

2. The Principal Chief Conservator of Forests,
Maharashtra State, Nagpur.

3. The Chief Conservator of Forests,
   Nagpur Circle, Nagpur.

4. Sunil Sudhakar Jog,
   R/o Gunj, Tq. Mahagaon, Distt. Yavatmal.

5. Gajanan Narayan Singankar,
   R/o Pofadi, Tq. Umarkhed, Distt. Yavatmal.

6. Santosh Hiralal Singahai,
   R/o Yavatmal, Tq. And Distt. Yavatmal.

7. Nilesh Vinayak Mote,
   R.o Yavatmal.

8. Barkat Amirulla Khan,
   R/o Shelona, Tq. Pusad, Distt. Yavatmal.

9. Gunvanta Mahadeo Gaikwad,
   R/o Isapur, Tq. Katol, Distt. Nagpur.

10. Jeevan Sainath Pawar,
    R/o Bhorgadm, Tq. Katol, Distt. Nagpur.

11. Anand Narhari Tidke,
    R/o Flat No. T-1, Rashtrasant Tukdoji Maharaj Appt.,
    Zingabai Takli, Nagpur.

12. Irfan Baig Qayyum Baig Mirza,
    R/o Patil Layout, Near Iqra School,
    Pa-ndharkawada Road, Yavatmal.

13. Sharad Kaluji Ghuge,
    R/o Kisan Nagar,
    Ghatpuri By-pass, Khamgaon,
    Tq. Khamgaon , Distt. Buldhana.

14. Ravindra Prabhakar Hedau,
R/o Shivaji Layout, Bhivapur, Tq. Bhivapur,
Distt. Nagpur.
15. Shri Vaibhav Shivaram Walimbe, Forester,
Kunda Round, Div. Thane.
16. Prashant Dinechandra Dasare, Forester,
Aargimiwad, Div. Thane Circle,
Thane , C/o S.S Bhondiwale, Plot No.15, Dhanvardhani Apartment, Tawade Nagpur , Shahpur, Tah. Shahpur, Thane. --------- **Respondents**.

1.Shri N.R. Saboo, Advocate for the applicants no. 1 to 4.
2.Shri G.G. Bade, Advocate for Interveners/Applicant Nos.5 to 9.
3. Shri D.M. Kakani, Special counsel for the Respondents 1 to 3.
4.Shri V. Bhise, Advocate for R/4 to 10.
5.Abhay Sambre, Advocate for R/11 to 14.
6. Sandeep Dere, Advocate for R/15 and 16.

CORAM : B. Majumdar : Vice Chairman
and
S.S. Hingne : Member (J)
DATE : 20th April, 2016

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ORDER **PER VICE-CHAIRMAN**

The OA is filed by the State Forest Guards' Union and a number of Forest Guards in their individual capacities. They are aggrieved with the rule providing for recruitment to the post of Foresters by promotion through a limited departmental examination. They have sought reliefs as follow:

i. to hold & declare that impugned notification dated 22.10.13 issued by Respondent No. 1 at Annexure- A-12 is

in violation of article 14,16 & 21 of Constitution of India & needs to be quashed & set aside as contrary to policy of Respondent No. 1 to fill post of Forester by promotion on the basis of seniority only.

Ia. To quash & set aside entire selection procedure of Forester & sub sequent order of promotion dated 05.07.14 based on Limited Deptt. Competitive Examination of Forest Guard on 01.06.14

ii. to hold & declare that while filling the post of Forester it is mandatory on the part of Respondent No. 1 to provide sports quota as prescribed by State of Maharashtra.

iii. to hold & declare that promotion on the post of Forester based on departmental Examination is illegal.

iv. to direct the Respondents to consider the claim of applicant No. 2 to 4 for promotion as Forester based on seniority as Forest Guard as well by providing quota for sports category.

2. The recruitment rules for Foresters were notified originally on 29.10.1987 under proviso to Article 309. Rule 3 provided for recruitment through both nomination and promotion of Forest Guards. The rules were then amended vide notification dated 30.6.2011. Rule 7 provided for appointment of Foresters through promotion only, on the basis of seniority

subject to fitness from amongst Forest Guards having not less than three years' regular service in the past.

3. The rules were further amended by notification dated 22.10.2013 entitled as Range Surveyor, Group B (Non-Gazetted), Chief Accountant, Accountant, Surveyor, Forester, Clerk-cum-Typist and Forest Guard, Group C (Recruitment) (Amendment) Rules, 2013.

Rule 3 of the Amendment Rules states as follows:

For rule 7 of the principal Rules, the following rule shall be substituted, namely:—

"7. (1) Appointment to the post of Forester in the Forest Department shall be made either,—

(a) by promotion of a suitable person from amongst the persons holding the post of Forest Guard on the basis of seniority as per the circle gradation list and subject to fitness, having not less than three years regular service in that post; or

(b) by selection of a suitable person from amongst the persons holding the post of Forest Guard, on the basis of common merit list prepared by the Additional Principal Chief Conservator of Forests (Administration Subordinate Cadre), Maharashtra State, Nagpur, on the basis of result of the "Limited Departmental Competitive Examination", conducted by the Chief Conservator of Forests (Education and

Training), Pune, on the basis of rules made for the Limited Departmental Competitive Examination by the Government, from time to time.

(2) For appearing to the examination the candidates shall,—

(a) have completed five years of regular service as Forest Guard in the Forest Department ;

(b) possess a degree of a statutory university or any other qualification declared by the Government to be equivalent thereto ;

(c) not have any adverse entry duly communicated and confirmed in annual confidential record or should not have recorded doubtful integrity throughout the service period;

(d) not facing any Departmental Enquiry or not undergoing any punishment as the outcome of the Departmental Enquiry ; and

(e) not facing any Anti-Corruption Bureau case or criminal case.

(3) Appointment to the post of the Forester shall be made by promotion and selection through Limited Departmental Competitive Examination in the ratio of 75:25:

Provided that, appointment made by promotion to the post prior to the publication of these rules shall not be affected:

Provided further that, in case the posts could not be filled in by selection due to non-availability of suitable and qualified candidates, the posts may be filled in by promotion by relaxing the prescribed ratio".

The above notification is challenged in the OA.

4. On 27.1.2014 the govt issued a GR for setting up of a committee under the Principal Chief Conservator of Forests (R/2) to frame procedures for implementing the provisions of the Amendment Rules. The limited departmental examination was held on 1.6.2014 and on 5.7.2014 the Chief Conservator of Forests, Nagpur (R/3) issued an order granting accelerated promotion to 12 Forest Guards as Foresters on the basis of the results of the above examination. The applicants have also challenged the limited departmental examination and the above promotion order. The Tribunal rejected the applicants' prayer for interim relief. The applicants then filed WP no. 4853 of 2015. Hon'ble the High Court on 25.8.2015 stayed the above order and on 7.10.2015 it directed the Tribunal to decide the present OA by 31.12.2005. In the meantime the principal Bench of the Tribunal at Mumbai disposed of a similar OA (No. 891 of 2014 by ***Sudhir Laxman Phadke and 19 other Forest Guards***) vide its order dated 4.8.2015. Para 6 of the order which is relevant in the context of the present OA reads as follows:

" We find that the Applicants are challenging the validity of Rules of 2013 notified on 20/10/2013. These Rules have been framed under Article 309 of the Constitution of India. To challenge the Constitutional ~~valaidity~~ validity of statutory rules, it has to be established that the rules are arbitrary or discriminatory. The Rules of 2013 cannot b e called discriminatory as all eligible Forest Guard can participate in the Limited Departmental Competitive Examination. The restriction on the basis of Educational Qualification or record of service cannot be called discriminatory. In the Recruitment Rules for numerous cadres, those with higher qualifications or better service records are preferred over less qualified or those having inferior service records. This is not discrimination as if it is based on intelligible differentia. The rules do not fail the test of arbitrariness also Provision of selection of 25% of the post pm the basis of Limited Examination cannot be called arbitrary when the objective is to encourage qualified and younger persons. This object is so obvious that it is not necessary to mention it in the Preamble of the Rules. In any case, there is no practice to have Aims and Objective clause while framing recruitment rules. We do not find that the Amendment Rules of 2013 can be challenged on the touchstone of arbitrariness or discrimination. The eligibility conditions also cannot be termed stringent, when

a large number of Forest Guards had obviously satisfied them."

5. The above order was upheld by Hon'ble the High Court vides its order dated 18.3.2016 in WP 8909 of 2015 (***Sandeep B Kedar vs the State of Maharashtra & Ors***).

6. The applicants submit that reservation of 25% of the posts for graduate Forest Guards is arbitrary and violative of Articles 14, 16 and 21. The educational qualification required for the post of Forest Guard is HSC pass and the same condition also existed for the post of Forester as per the 1987 recruitment rules. The 2013 Amendment Rules required the limited departmental examination to be held as per rules prescribed for this purpose. The respondents have however held the impugned examination without notifying such rules. In the process a large number of Forest Guards like the applicants have been adversely affected in terms of their promotion prospects. Their other grievance is that the rules do not provide any quota for sportspersons.

7. The respondent Government, Principal Chief Conservator of Forests and the Chief Conservator of Forests (R/1, R/2 & R/3) in their reply in affidavit submit that the 2013 Amendment Rules providing a 25% quota for graduate Forest Guards to be promoted through a limited departmental competitive examination were framed keeping in mind the need to induct young and higher educated Foresters within the framework of promotion through accelerated promotion. They

further submit that there is no policy for horizontal reservation for sportspersons from the promotion quota. As regard the rules for holding the departmental examination they submit that the Government vide Resolution dated 27/1/2014 has formed a committee to make the procedural rules for conducting the examination. The procedural rules were framed by the committee in its meeting held on 27th May 2014. As per these rules the limited departmental competitive examination was conducted on 1/6/2014.

8. The respondents R/4 to R/10 and R/15 in their reply have generally adopted the above reply of Respondents R/1, R/2 and R/3.

9. Shri N R Saboo, the ld Counsel for the applicants reiterated the averments made by the applicants in the OA. He further submitted that the decision of the Tribunal's Principal Bench in OA no. 891 of 2014 did not apply to the case of the applicants as the applicants therein were differently placed, that is, they had appeared in the limited departmental examination and had failed to qualify.

10. Shri D M Kakani, ld Special Counsel and Shri Rohit Deo, ld Advocate General for the respondents R1, R/2 and R/3, Shri A Sambre, ld Counsel for R/11 to R/15 and Shri S Dere, ld Counsel for R/15 and R/16 reiterated the submissions made by the respondents R/1, R/2 and R/3 in their reply. They further submitted that in view of the order of the Principal Bench of this Tribunal in OA no. 891 of 2014 no challenge can now lie to the 2013 Amendment Rules.

11. Having heard the arguments on both the sides and after going through the record placed before us, we find that the main issue raised in the OA is legality of the Amendment Rules of 2013, vide which a quota of 25% is provided for granting accelerated promotion to the graduate Forest Guards as Foresters by holding a limited departmental examination. The applicants have specifically challenged Rule 3 of the rules vide which Rule 7 of the 30.6.2011 Recruitment Rules stand amended. We have earlier reproduced the above Amended Rule 7 at para 3 above. The above rules, including the holding of the departmental examination on 1.6.2011 and the order of promotion dated 5.7.2014 were challenged by some Forest Guards in ***Sudhir Laxman Phadke and 19 other Forest Guards vs State.*** The Tribunal vide its order dated 4.8.2015 had rejected the OA. We have already reproduced para 6 of the Tribunal's order at para 4 ***supra***. The order has been upheld by the High Court and has thus become final. The applicants cannot now challenge the Amendment Rules as well as the consequent departmental examination and the order of promotion as the issues are no longer *res integra*.

12. As regards the applicants' grievance that the Amended Rules do not provide any quota for sportspersons, the respondents have clarified that there is no policy to provide any such horizontal reservation in respect of recruitment through promotion. The applicants could not produce any rule or GR in support of their averment. The GR dated 30.4.2005 issued by the Dept of School Education and Sports lays down the policy of reservation for sportspersons. It states that 5% reservation for sports persons is provided for recruitment through nomination.

13. In view of what we have discussed above we find that the OA is devoid of any merit and hence it stands rejected with no order as to costs.

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25/4/2016

Assistant Registrar
Maharashtra Administrative Tribunal
Nagpur