

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.57 OF 2020
WITH
MISC. APPLICATION NO.210 OF 2020**

(Subject:- Seniority)

DISTRICT:-JALNA

Vrushali Balkrishna Tambe)
Age:- 30 years, Occ. Service, Range Forest Officer)
R/o. flat no 10, Gopal residency,)
Income Tax Colony, Tq. & Dist.)
Jalna.)....**Applicant**

V E R S U S

1. **The State of Maharashtra,**)
Through Principal Secretary,)
Department of Forest,)
Government of Maharashtra,)
Mantralaya, Mumbai.)
2. **Additional Principal Chief Conservator,**)
of Forest (Administration Subordinate Cadre),)
Vanbhavan, Nagpur.)
3. **Chief Conservator of Forest,**)
Aurangabad Division,)
Station Road,)
Aurangabad.)...**Respondents**

APPEARANCE : Shri M.B. Bharaswadkar, learned Advocate for
the Applicant.

: Smt. Deepali S. Deshpande, learned
Presenting Officer for the Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**
AND
SHRI BIJAY KUMAR, MEMBER (A)

DATE : **17.11.2021.**

ORDER

1. The Original Application No.57 of 2020 is filed invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:-

(B) By appropriate order or directions the respondents be directed to place the applicants in the seniority list for the post of Range Forest Officer in accordance Rule 9 of the Range Forest Officer in the Maharashtra Forest Services Group-B (Gazetted) (Recruitment) Rules, 2014, which were notified on 05.02.2015.

(B-1) By appropriate order or directions the respondents be directed to prepare the seniority list of Range Forest Officers as per the communication dated 2/1/2020 issued by respondent no.1 and promotions be effected on the basis of the fresh seniority list as per communication dated 2/1/2020.

2. During pendency of this Original Application, the applicant filed Misc. Application No.210/2020 seeking following interim relief:-

(B) By appropriate order or directions the respondents be directed to consider the Range Forest Officers for promotion on the basis of the seniority in accordance with Range Forest Officer in accordance Rule 9 of the Range Forest Officer in the Maharashtra Forest Services Group – B (Gazetted) (Recruitment) Rules 2015 and communication dated 2/1/2020 which is at page 13 of O.A. and not to issue the promotion orders till such seniority list is prepared.

(C) By appropriate order or directions the respondents be restrained from issuing promotion orders on the basis of

the decision of D.P.C. dated 25.02.2020 and communication dated 24/8/2020 till further order.

3. The respondents have filed the affidavit-in-reply in Misc. Application No.210/2020 and they have adopted the said affidavit-in-reply in the Original Application. In view of same, by this common order, both these matters can be disposed of.

The facts in brief of the case can be summarized as follows:-

4. The M.P.S.C. held examination in the year 2012 for filling the post of Range Forest Officer. In the said recruitment process, the M.P.S.C. recommended 82 candidates for that post. About 60 candidates joined out of them. The said recommendation list dated 14.06.2013 is at Annexure 'A-1' of paper book of O.A. The applicant herein is in the said merit list at Sr.No.50. After their appointments to the post of Range Forest Officer, they were to undergo two years requisite training.

5. After joining, 29 candidates were sent in first batch for requisite training in Central Academy for Service, Koimbtore. Their training started on 10.09.2013. The list of said candidates is at Annexure 'A-2' of paper book of O.A. Thereafter, 28 candidates were sent for training in second batch started on 17.02.2014 at Kundal Vikas Prabodhani, Maharashtra. The applicant was sent for training in the second batch.

6. The grievance made by the applicant in this Original Application is about the final seniority list dated 21.12.2019 as of 01.01.2019 which is produced at page nos.29 to 36 of the paper book. The said final seniority list is prepared after taking into consideration various objections including objection raised by the applicant vide her letter dated 01.02.2019 (Annex. 'A-5') to the provisional seniority list dated 16.01.2019 as of 01.01.2018 (Annex. 'A-3').

7. It is contended that the interse-seniority of the post of Range Forest Officer in the Maharashtra Forest Services Group -B (Gazetted) appointed by nomination is governed by the Rule 9 of the Range Forest Officer in the Maharashtra Forest Services Group -B (Gazetted) (Recruitment) Rules, 2014 (Annex. 'A-4') notified on 05.02.2015 (for brevity sake referred to as Recruitment Rules, 2014) and Rule 7 of Recruitment Rules for the post of Range Forest Officer, Revenue and Forest Department, Mantralaya, Mumbai dated 06.04.1998 (for brevity sake referred to as Recruitment Rules, 1998). The said Rule 9 and Rule 7 are identical as follows:-

“9. The interse-seniority of the Range Forest Officer appointed by nomination shall be determined by adding the marks obtained by the candidate on the basis of merit in the Limited Competitive Examination held by the commission and the marks obtained by the candidates in the final examination held at the training course.”

(quoted from page no.22 of paper book)

“7. The interse seniority of the Range Forest Officer, appointed by nomination shall be determined by adding the marks obtained by the candidate on the basis of merit in the Examination held by the commission and the marks obtained by the candidates in the final examination at the training course.”

(quoted from page no.25 of paper book)

8. It is contended that recruitment Rules for the said post are framed by invoking powers under Article 309 of the Constitution of India. The Respondent No.1, however, prepared the seniority list on the basis of the Government decision dated 14.08.2018 and more particularly as provided under clause 3 as follows:-

“(३) सरळ सेवेने नियुक्त सहाय्यक वनसंरक्षक व वनक्षेत्रपाल यांच्याबाबतीत, केंद्र शासनाने मान्यता दिलेल्या प्रशिक्षण संस्थेत अथवा विविध प्रशिक्षक संस्थेत एकाच दिनांकाला प्रशिक्षण सुरू झाल्यास प्रशिक्षणाला गेलेल्या अधिकाऱ्यांची परस्पर ज्येष्ठता आयोगाने घेतलेल्या परिक्षेत उमेदवाराने मिळविलेले गुण व अंतिम परिक्षेत उमेदवाराने मिळविलेले गुण एकत्रीत करून त्यांची प्रशिक्षण संस्थेतील प्रशिक्षण सुरू झाल्याचे दिनांकापासून निश्चित करावी.”

9. It is stated that abovesaid clause 3 runs contrary to Rule 7 of Recruitment Rules, 1998 and Rule 9 of Recruitment Rules, 2014. The recruitment Rules in fact have the force of statute as these recruitment Rules are framed exercising powers conferred under Article 309 of Constitution of India.

10. In view of above, it is submitted that though the applicant has been given deemed date of appointment as of first batch dated 10.09.2013, the seniority is not decided on the basis of marks obtained by her in the examination conducted by the M.P.S.C. together with marks obtained by her during the training. In view of this, it is the case of the applicant that she has been wrongly shown at Sr.No.388 in final seniority list. According to her, her seniority would

be at Sr.No.360. It would be above Shri Bhimsing Nagnathsing Thakur who is at Sr.No.361 in the final seniority list. Similarly, in provisional seniority list which is at Annexure 'A-3', she ought to have been at Sr.No.312 i.e. above Bhimsing Nagnathsing Thakur who is at Sr.No.313. That is so because she has obtained more marks than the said Bhimsing Nagnathsing Thakur taking into consideration the marks obtained in M.P.S.C. examination plus marks obtained in training.

11. It is further contended that in fact, the State of Maharashtra through Revenue and Forest department has issued letter dated 02.01.2020 (Annex. 'A-7') addressed to the Respondent No.2 i.e. Additional Principal Chief Conservator of Forest, Nagpur whereby in para no.3 of the said letter it is sated as follows:-

“(३) सामान्य प्रशासन विभागाचे वरील अभिप्राय विचारात घेऊन, महाराष्ट्र वनसेवा परीक्षा—२००८ अन्वये महाराष्ट्र लोकसेवा आयोगाकडून एकाच तुकडीत निवड झालेल्या परंतु दोन वेगवेगळ्या दिनांकास वेगवेगळ्या प्रशिक्षण केंद्रात प्रशिक्षणास गेलेल्या वनक्षेत्रपाल संवर्गातील अधिकाऱ्यांची सेवा जेष्ठता निश्चित करण्यात यावी. तसेच सहाय्यक वनसंरक्षक व वनक्षेत्रपाल या पदांच्या सेवा प्रवेश नियमामध्ये सुधारणा करण्यासाठी प्रस्ताव सादर करावा, ही विनंती.”

12. In view of above, it is contended that this direction of preparing seniority list as per Rule 9 of Recruitment Rules, 2014 should be made applicable for fixing interse-seniority of the batch of 2012. Directions issued in G.R. dated 14.08.2018 are contrary to Rules and cannot be acted upon.

13. The affidavit-in-reply is filed on behalf of the respondent nos.1 to 3 by Dhananjay Motiram Dange, the Chief Conservator of Forest (T) Office, Aurangabad. It is not disputed that the applicant has been selected in the batch of 2012. It is also not disputed that the Applicant was sent for training in second batch started on 17.2.2014 and the applicant completed the requisite training and worked as Range Forest Officer.

14. During the course of hearing of the matter, learned P.O. has placed on record G.R. dated 06.08.2021 issued by Department of Revenue and Forest, State of Maharashtra whereby the Applicant along with 25 others have been promoted to the post of Assistant Conservator of Forest purely on temporary basis. However, the controversy about the placement of the applicant in the seniority list is required to be decided. In the said affidavit-in-reply adverse contentions raised by the applicant are denied.

15. It is specifically stated in the affidavit-in-reply that Ajit Mahavir Sajane and others who were selected on the post of Range Forest Officer filed Original Application No.54/2015 before the Principal Bench of this Tribunal at Mumbai about fixing of seniority from the date of joining at Training Institute which was decided on 16.09.2016 and following order was passed:-

“The Applicants are entitled for treatment of period of training undergone by the Applicants at Central Academy for State Forest Service (Coimbatore/Tamil Nadu) which is included as probation period for all purposes, including seniority and they are entitled to get salary and allowances, after deducting salary/stipend already paid to them, in the pay scale attached to the post of RFO, after successful completion of probation period as per relevant rules. This judgement has no bearing on any other services condition, especially terms of their probation.”

16. Moreover, Shri Pradeep D. Budhanwar & Others also filed Original Application No.195/2016 before the Principal Bench of this Tribunal at Mumbai which has decided on 12.07.2017 by passing following order:-

“The Applicants are granted liberty to move the Government with representation with regard to prayer clause (C) of this OA and if they did that within a period of eight weeks from today, the same be decide of receipt thereof and the outcome be communicate to the Applicant within one week thereafter. If the Applicants were to fail to do so within the time stipulated hereby, this direction stands vacated. It is held and declared that the Applicants are entitled for pay scale in the post of Range Forest Officer from the date of joining of their training as mentioned in prayer clause (d) and the Respondents 1 to 4 are directed to pay to the Applicants the difference of salary, if any, within a period of eight weeks from today. The Original Application is allowed in these terms with no order as to costs.”

17. It is further contended that in view of abovesaid decisions of the Principal Bench of this Tribunal at Mumbai, the Government in Revenue and Forest Department issued resolution bearing No.MFS-2018/CR-45/F-8, dated 14.08.2018 regarding training period will be

counted as Duty period and will be applicable for all purposes. Para no.3 of the said resolution is as under:-

“3. The interse-seniority of the Assitant Conservator of Forests/Range Forest Officer, appointed by nomination shall be determined by adding marks obtained by the candidate on the basis of merit in the examination held by the Commission and marks obtained by the candidates in the final examination at the Training Course and their seniority will be counted from the date of joining the Training Institute.”

18. It is admitted that for fixing interse-seniority of candidates of batch of 2008, letter dated 02.01.2020 is issued by the Government. However, the directions in the said letter cannot be made applicable to subsequent batches and the same is explained by the Government in it's letter dated 14.1.2020 thereby it is stated that there are so many complications in subsequent batches.

19. The selected candidates are sent to different training institutes spread over India and therefore, they are required to be sent on different dates and therefore, it is feasible to fix seniority based on deemed date of appointment but only batch wise and therefore, the request of the applicant cannot be considered. As regards the actual promotion, it is stated that there is pending litigation as regards the promotion to reserve category candidates and therefore, no final decision can be taken as regards the promotion. But the promotions

are effected purely on temporary basis and the applicant has been promoted as stated earlier.

20. In view of same and in the circumstances, it is also submitted that proposal to finalize seniority list of all batch as per direction issued vide letter dated 02.01.2020 has been submitted to the Government which is still under consideration of the Government.

21. In view of above, the respondent No.2 is of considered opinion that the seniority of all the bathes should be fixed in accordance with recruitment Rules 7 & 9 as stated above and instructions issued by the Government vide letter dated 02.01.2020.

22. We have heard the arguments at length advanced by the learned Advocate for the applicant on one hand and learned P.O. for the respondents on other hand. The arguments advanced on behalf of learned Advocate for the applicant mainly revolves around Rule 7 of recruitment Rules, 1998, Rule 9 of Recruitment Rules, 2014 and the letter dated 02.01.2020 issued by the Government. Even the contentions raised on behalf of the Respondents would show that the Respondent No.2 in principle agrees to adhere to the instructions given by the Respondent No.1 –Government vide letter dated 02.01.2020 to be made applicable to all the batches and not only to the batch of 2008.

23. However, while opposing the Original Application, in affidavit-in-reply, the respondents have referred to the Government in Revenue and Forest Department Resolution No. MFS-2018/CR-45/F-8, dated 14.08.2018 which is again reproduced hereinbelow for the sake of convenience:-

“3. The interse-seniority of the Assitant Conservator of Forests/Range Forest Officer, appointed by nomination shall be determined by adding marks obtained by the candidate on the basis of merit in the examination held by the Commission and marks obtained by the candidates in the final examination at the Training Course and their seniority will be counted from the date of joining the Training Institute.”

24. Perusal of this resolution would shows that the last portion of it that “their seniority will be counted from the date of joining the Training Institute”, patently deviates from the provision of Rule 7 of Recruitment Rules, 1998 and Rule 9 of Recruitment Rules, 2014. The abovesaid Recruitment Rules being framed invoking powers under article 309 of Constitution of India have the force of statute. The resolution stated hereinabove dated 14.08.2018 has however no sanctity of law. It is definitely arbitrary, capricious and totally unjustifiable and hence unsustainable in the eyes of law.

25. In view of above, in our considered opinion, the placement of the applicant in the final seniority list dated 21.12.2019 as of 01.01.2019 at Sr.No.388 is not in accordance with law and it is required to be

rectified. Not only that but the respondents Nos.1 & 2 are necessarily required to act upon the letter dated 02.01.2020 (Annex. 'A-7') by making it applicable not only for Batch of 2008 Batch, but to subsequent recruitment out of which selected candidates are sent for requisite training in different batches purely for administrative reasons and constraints.

26. In view of discussion as above, we find merit in the Original Application. In view of the same, the Original Application can be disposed off by giving appropriate directions to the Respondents to prepare final seniority list of the Range Forest Officer in the State by adhering to the provisions of Rules 9 of the Recruitment Rules and to effect promotions in accordance with communication dated 02.01.2020 (Annex. 'A-7') accordingly by making it applicable to subsequent batches. Hence following order:-

ORDER

The Original Application as well as the Misc. Application are allowed in following terms:-

- (A) The Respondents are directed to place the applicant in seniority list for the post of Range Forest Officer in accordance with Rule 9 of the Range Forest Officer in the Maharashtra Forest Services Group –B (Gazetted) (Recruitment) Rules, 2014, which were notified on 05.02.2015.
- (B) The respondents are further directed to prepare the seniority list of Range Forest Officer as per the communication dated 02.01.2020 (Annex. 'A-7') issued by Respondent No.1 and to effect promotions

on the basis of the fresh seniority list as per the said communication dated 02.01.2020.

(C) No order as to costs.

(BIJAY KUMAR)
(MEMBER (A))

(V.D. DONGRE)
MEMBER (J)

Place:- Aurangabad

Date :- 17.11.2021

SAS. O.A.No.57/2020 with M.A.210/2020.seniority.