

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.576 OF 2015

DISTRICT : MUMBAI

1. Ashok s/o Ram Parhad,)
2. Makrand s/o Prakash Gujar,)
3. Prashant s/o Popatrao Warude,)
4. Ganesh s/o Ramhari Randive,)
5. Suhas s/o Genbhau Badhekar,)
6. Amol s/o Pandurang Thorat,)
7. Shrikant s/o Subhash Pawar,)
8. Rajan s/o Dadarao Talmale,)
9. Nitesh s/o Shankar Deogade,)
10. Pradip s/o Eknath Patil,)
11. Hemant s/o Yashwant Shewale,)
12. Viput s/o Amarsing Rathod,)
13. Rajendra s/o Pundalik Nale,)
14. Amitraj s/o Ramesh Jadhav,)
15. Bapu s/o Kerappa Kare,)
16. Pushpa Paarasharam Pawar,)
17. Ashwini Santosh Khopade,)
18. Trupti Anandrao Nikhate,)
19. Vidhya Prabhakar Vasav,)
20. Asha Gautam Bhong,)
21. Leena Rajeshwar Ade,)

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22. Geeta Vishal Pawar,)
23. Nitin s/o Chandrabhan Gondane,)
24. Pranita Naresh Pardhi,)
25. Amol s/o Babasaheb Garkal,)
26. Girija Narendra Desai,)
27. Vishal s/o Kisan Borhade,)
28. Kondiba s/o Baburao Shinde,)
29. Sonal Bhimrao Bhadke,)
- C/o Shri Sharad V. Natu, Advocate,)
- M.A.T. Aurangabad)..Applicant

Versus

1. The State of Maharashtra,)
Through its Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai 400032)
2. Maharashtra Public Service Commission,)
Through its Secretary,)
Bank of India Building, 3rd floor,)
M.G. Road, Hutatma Chowk, Mumbai)
3. Principal Chief Conservator of Forest,)
Van Bhavan, Ram Giri Road, Civil Lines,)
Nagpur 440001)..Respondents



Shri S.V. Natu – Advocate for the Applicants

Shri N.K. Rajpurohit – Presenting Officer for the Respondents

CORAM : Shri Rajiv Agarwal, Vice-Chairman

Shri R.B. Malik, Member (J)

DATE : 3rd February, 2016

PER : Shri Rajiv Agarwal, Vice-Chairman

J U D G M E N T

1. Heard Shri S.V. Natu, the learned Advocate for the Applicants and Shri N.K. Rajpurohit, the learned Presenting Officer for the Respondents.

2. This OA has been filed by the Applicants who were selected as Assistant Conservator of Forest (Group A) in Maharashtra Forest Service Examination 2012. The Applicants are claiming that they are entitled to be appointed as Assistant Conservator of Forest (ACF) from the date of commencement of their training on 1.2.2014 and not after completion of the training.

3. Learned counsel for the Applicants argued that the Respondent No.2 had issued an advertisement on 14.2.2012 to fill up a total of 33 posts of A.C.F. (and 82 posts of Range Forest

Officers) through Maharashtra Forest Service Examination 2012. The Applicants had applied for the post of ACF and were selected for the said post for which the select list was published on 13.6.2013. The respondent no.1 did not give appointment letters to the Applicants but issued letters informing them that they will be required to complete pre-appointment training before being appointed as ACF. During the 2 year training the Applicants were paid only stipend and not regular salary. Learned counsel for the Applicants contended that as per Rule 6 of the Assistant Conservator of Forests in Maharashtra Forest Service, Group A (Junior Scale) (Recruitment) Rules, 1998, a person appointed to the post of ACF by nomination shall be on probation for a period of three years including two years of Assistant Conservator of Forests training course and one year's field training as decided by Principal Chief Conservator of Forests, Maharashtra State, Nagpur. Even para 5 of the advertisement dated 14.2.2012 issued by the Respondent No.2 stated that the selected candidate will be appointed on probation of three years, including training for two years and one year field training as directed by the Respondent No.2. Learned counsel for the Applicants stated that as per Rule 9 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, a probationer is a Government servant employed on probation in or against a substantive or temporary vacancy in the cadre of the department. Note 3 to clause 43 of the aforesaid rules provides that a probationer is to be considered

as having the attributes of substantive status except where the rules prescribe otherwise. Learned Counsel for the Applicants stated further that Rule 10 of the Maharashtra Civil Services (Pay) Rules, 1981 provides that on first appointment, a person shall draw the minimum of the time scale attached to the post to which he is appointed. Learned counsel for the applicants argued that in violation of all the aforementioned provisions of the rules, the respondents by letter dated 19.6.2013 informed the Applicants that they will be sent for two years pre-appointment training. The Applicants were paid Rs.26,000/- p.m. consolidated Pay from February, 2014 to March, 2015, which was increased to Rs.33,800/- from April, 2015. The Applicants were made to sign agreement which stated that a candidate shall make his best endeavour to qualify for the State Forest Service of the Government of Maharashtra, while the Applicants were already qualified and in fact selected for Maharashtra Forest Service. Learned counsel for the Applicants stated that the Applicants had submitted a representation dated 10.6.2014 to the respondents, however, to no avail. Learned counsel for the Applicants argued that for Group 'A' Civil Services of the State Government, the training period is treated as part of probation period and not as pre-appointment training. He referred to G.Rs. dated 20.1.2014 and 3.5.2014 in this regard.

4. Learned Chief Presenting Officer (CPO) argued on behalf of the Respondents that the recruitment rules for the post of Assistant Conservator of Forests, were notified on 17.2.1965. As per Rule 2 of the aforesaid rules, a candidate who has successfully completed the prescribed course of training in Forestry at a recognized college or institution after selection, was eligible to be appointed as ACF. Learned CPO argued that clause 11 to annexure I to these gives details of this training. Learned CPO contended that Rules of 1965 were amended on 12.3.1998, but the aforesaid provisions continue to remain in force. Learned CPO stated that the post of ACF is a technical post, with requirement of degree in science etc. A separate examination is held for the post, unlike a common examination for the post of Deputy Collector, Deputy Superintendent of Police, Maharashtra Finance and Accounts Service, Class I and II etc. Minimum qualification for these posts is degree in Arts, Science, Commerce or equivalent. Learned CPO argued that the training requirements for the post of ACF are not comparable with other State Civil Services. Govt. is spending almost rupees two lakhs for training of each ACF, and they are provided free accommodation and food during training. Learned CPO argued that there is no merit in the claim of the Applicants.

5. We find that the Applicants are relying on the Recruitment Rules of 1998, while the Respondents are relying

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on the recruitment rules of 1965. It is seen that the Assistant Conservator of Forests in Maharashtra Forest Service, Group A (Junior Scale) (Recruitment) Rules, 1998 are framed under proviso to Article 309 of the Constitution of India and notified on 12.3.1998. The preamble to these rules reads:

“In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India and in supersession of all existing rules, orders or instruments made in this behalf” (emphasis supplied)

6. As compared to 1998 rules, the rules of 17.2.1965 were accompaniment to Government Resolution, Revenue and Forest Department dated 17.2.1965 and it states that the rules were ‘draft rules’. This fact that the rules of 1965 have been superseded by the rules of 1998 has been mentioned in the affidavit in rejoinder of the Applicant dated 19.12.2015. There is no effective rebuttal to this by the Respondents. In para 6-F of the OA, the Applicants claim that their appointment as ACF was as per Rule 6 of the recruitment rules of 1998. In para 6 of the affidavit in reply dated 16.11.2015, the respondents have admitted that.

Rule 6 ibid reads:

“6. A person appointed to the post by nomination shall be on probation for a period of three years including two years of Assistant Conservator of Forest training course and 1 year field training as decided by Principal Chief Conservator of Forests, Maharashtra State, Nagpur.”

7. The moot question is, whether a person appointed on probation can be denied regular salary and be paid only stipend. The Applicants claim that they are eligible to get pay at the minimum of pay scale, when appointed as ACF, and their appointment to the post is from the day they joined the training. The claim of the Respondents is that the Applicants are eligible to be selected as ACF only on successful completion of two years training and the rules do not entitle them to get full salary.

8. Rule 9(43) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 defines “Probationer”: It reads:

“(43) Probationer means a Government servant employed on probation in or against a substantive or temporary vacancy in the cadre of a department.”

Note 3 below the rule reads:

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“Note 3:- The status of a probationer is to be considered as having the attributes of a substantive status except where the rules prescribe otherwise.”

9. Rule 9(43) of the Maharashtra Civil Services (Pay) Rules, 1981 also “probationer” in identical terms. Rule 10 *ibid* reads:

“10. Pay on first appointment to Government service. On first appointment to Government service, a person shall draw the minimum of the time scale attached to the post to which he is appointed, unless a higher starting pay be sanctioned under the authority of Rule 40.”

10. This is not a case under rule 40. Obviously a person appointed on probation will be said to be given ‘first appointment’ if both the rules are read together. Note 3 below rule 9(43) of MCS (General Conditions of Services) Rules as well as Note 3 below Rule 9(43) of MCS (Pay) Rules, which are identically worded, makes it clear that the status of a probationer has attributes of a substantive status. We are of the opinion that a probationer is entitled to get pay as per Rule 10 of the MCS (Pay) Rules. This is claimed by the Applicants in para 6-E of the OA. In reply, the Respondents in para 8 of the affidavit in reply have stated as below:

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“8. With reference to para 6(E), I say that the demand for the full pay scale during the training period on the basis of definition of the permanent post cannot be made applicable to the trainees who are on probation for three years. After completion of probationary period successfully, such trainees are appointed against the regular permanent posts and then they are eligible for drawing regular pay scale as provided in the Recruitment Rules of the cadre of Assistant Conservator of Forests.”

11. The Respondents claim that after successful completion of probation of three years, a candidate will be eligible to be given regular pay scale. No reason as to why Rule 10 of the MCS (Pay) Rules, will not be applicable, has been given. It is stated that Recruitment Rules of ACF will apply. We have carefully scrutinized recruitment rules notified on 12.3.1998. Except in Rule 6, where it is provided that ‘a person appointed to the post by nomination shall be on probation for a period of three years’, there is no mention about pay scale or stipend in the rules. These rules make it clear that the Applicant could be appointed as ACF on probation for a period of three years, including two years of training in a forest college. The claim of the Respondents that the Applicants will be appointed as ACF only on successful completion of training of 2 years is quite clearly contrary to Rule 6. Only if the ‘draft rules’ of 17.2.1965 are treated as valid, can some case be made out

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that the Applicant could be appointed as ACF only after two years of training. Those rules were not framed under Article 309, they were never finalized, as these were draft rules, and these rules have superseded by rules of 1998, as the preamble of 1998 rules provides. The claim of the Respondents that Maharashtra Forest Service Probationer appointed as ACF on probation are not entitled to get pay as per Rule 10 of the MCS (Pay) Rules appears to be without any legal basis.

12. The Applicants have claimed that probationers of Maharashtra Civil Services, Maharashtra Police Service, Maharashtra Finance and Accounts Service, Class-I etc., when appointed on probation, are given pay as per Rule 10 of the Pay Rules after completion of the probation period. GR dated 9.5.2014 issued by the GAD of the State Government reads:

“2(iii) प्रशिक्षण कालावधीत गट अ संवर्गातील उमेदवारांना रु.३०,०००/- आणि गट ब संवर्गातील उमेदवारांना रु.२०,०००/- इतके ठोक वेतन अनुक्रमे यशदा, पुणे आणि वनामती, नागपूर यांचेमार्फत अदा करण्यात येईल. परिवीक्षाधीन कालावधी पूर्ण झाल्यानंतर संबंधित विभागाकडे हजर झाल्यावर या उमेदवारांच्या दोन वर्षांच्या परिवीक्षाधीन कालावधीत अदा करण्यात आलेली ठोक वेतनाची रक्कम आणि प्रत्यक्ष वेतन यामधील फरकाची रक्कम संबंधित विभागांकडून आवश्यक ते


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समायोजन केल्यानंतर (जसे भविष्य निर्वाह निधी अंशदान, व्यवसाय कर, आयकर इ.) एक रकमी अदा करण्यात येईल.”


13. It is clear that probationers are paid 'consolidated salary' (ढोक वेतन) during probation period. However, after successful completion of probation period, the difference in pay as per Rule 10 ibid and the amount of consolidated pay is paid to the candidate. We see no reasons, as to why probationer in Maharashtra Forest Service, Group 'A' should be treated any differently. The claim of the Respondents that for the post of ACF, educational qualification etc. is different, may be true. The criteria for selection for various posts would obviously depend on the requirement for those posts. However, if the Govt. wanted to treat ACF differently, clear provision should have been made in the rules, accordingly. The Respondents cannot rely on the rules, which were been superseded. The only other claim for denying regular pay to the Applicants, appear to be that they are getting free food and accommodation during training. What is the position of probationers of other Group 'A' posts of State Government is not very clear. Subject to following uniformly policy, the cost of food and accommodation can be recovered from the ACF probationers. It is done for the probationers of All India and Central Services. However, that cannot be a ground to deny the Applicants their legitimate dues.

14. The Applicants are entitled to get the pay as if they were appointed as ACF from the date they were sent for training in terms of recruitment rules, after successful completion of their probation, after deducting amounts of 'stipend' already paid to them as is being done for the probationers of other Maharashtra State Service Group 'A' probationers.

15. Having regard to the aforesaid facts and circumstances of the case, the Applicants are declared to be entitled for appointment as Assistant Conservator of Forests from the commencement of their training on 1.2.2014, and will be entitled to regular pay, after successful completion of probation, retrospectively from the date of appointment, after deducting emoluments already paid to them. It is made very clear that this judgment has no bearing on any other service condition especially, terms of their probation. This OA is allowed accordingly with no order as to costs.



(R.B. Malik)
Member (J)
3.2.2016



(Rajiv Agarwal)
Vice-Chairman
3.2.2016

Date : 3rd February, 2016

Dictation taken by: S.G. Jawalkar.