

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 1228/2023****with CIVIL APPLICATION No. 61/2024****with CIVIL APPLICATION No. 629/2023 (D.B.)**

- 1) Nilay S/o Suresh Bhoge,
Aged about 47 years,
Occupation : Service (Range Forest Officer),
R/o 69, Gajanan Housing Society,
Behind Veterinary College,
Seminary Hills, Nagpur.
- 2) Nielsh S/o Ramesh Rao Gawande,
Aged about 40 years,
Occupation : Service (Range Forest Officer),
R/o Near P.W.D. Rest House,
Samudrapur, Tah. Samudrapur, Dist. Wardha.
- 3) Pravin S/o Nihalsingh Naik,
Aged about 49 years,
Occ. Service (Range Forest Officer),
R/o C/o G.R. Khobragade, Plot No. 1381,
Vidya Nagar, Ganeshpur, Bhandara.

Applicants.**Versus**

- 1) The State of Maharashtra,
Through it's Principal Secretary,
Revenue and Forest Department, Mantralaya, Mumbai-32.
- 2) The Principal Chief Conservator of Forest,
Van Bhavan, Civil Lines, Nagpur.
- 3) The Additional Chief Conservator of Forest,
Vanbhavan, Civil Lines, Nagpur.
- 4) Mangesh Madhukar Tate,
Aged about Adult,
Occ. Service, R/o O/o Dy. Director,
Pench Tiger Reserve, Vanbhavan, Nagpur.

Respondents.

S/Shri S.N. Gaikwad, Ajinkya Joshi, Amol B. Patil, Abhay Sambre, Id. Advocates for the applicants.

Shri S.A.Deo, Id. C.P.O. for the respondents 1 to 3.

Shri R.S. Kalangiwale, Id. Advocate for the respondent no. 4.

Coram :- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.

Dated :- 04.04.2024.

JUDGMENT

Heard Shri Abhay Sambre, learned counsel for the applicants, Shri S.A.Deo, Id. C.P.O. for the respondent nos. 1 to 3 and Shri R.S. Kalangiwale, learned counsel for the respondent no. 4.

2. As per the M.A.T., Principal Bench, Mumbai office order / letter No.MAT/MUM/JUD/1350/2023, dated 21/11/2023, the Hon'ble Chairperson, M.A.T., Principal Bench, Mumbai has given direction to this Tribunal to decide the Division Bench matters if the matter is covered by the Judgments of Hon'ble Supreme Court, Hon'ble High Court and the Benches of the M.A.T. etc. Hence, the matter is heard and decided finally with the consent of learned counsel for both the parties.

3. The case of the applicants in short is as under -

The applicants were initially appointed as a Forester which is a feeder cadre for the post of Range Forest Officer. The applicants

were promoted as ad-hoc Range Forest Officer way back in the year 2014 vide order dated 01/03/2014. The applicants are working as Range Forest Officer since then. The recruitment and appointment rules were issued under Article 309 of the Constitution of India and notified in the year 1998 which is called as "Range Forest Officer in Maharashtra Forest Services Group-B (Recruitment) Rules,1997 (hereinafter called as "Rules of 1998"). The Rules of 1998, specifically provide under Rule 3 for the appointment of Range Forest Officers by two methods. Under Rule 3 (a), it provides for appointment by promotion from the post of Forester and under Rule 3 (b), the appointment of nominated / directly appointed Range Forest Officer is provided. The Rule 3 of Rules of 1998 reads as under –

“(3) Appointment to the post of Range Forest Officers in the Maharashtra Forest Service, Group B shall be made either -

“Rule 3 (a)- by promotion of a suitable person on the basis of seniority cum merit from amongst the person holding the post of Forester having not less than three years regular service as Forester and possessing qualification as to have passed Secondary School Certificate Examination; or

Rule 3 (b)- by nomination from amongst candidates who are selected for the Range Forest Officers' training course, on the basis of result of the competitive examination held by the commission in accordance with the rules made in this behalf from time to time and have successfully completed the training course”

4. It is submitted that as per Rule 3 (b) that the nominated / directly appointed Range Forest Officers has to undergo training in the Central Government recognized Institution and has to pass the examination. His appointment is subject to passing of examination of training.

5. It is submitted that the Department of Revenue and Forests has published a seniority list on 23/10/2023 wherein the date of appointed of nominated / directly appointed Range Forest Officer is shown from their date of joining training, which is contrary to Rule 3 (b) of the Recruitment Rules for Range Forest Officer.

6. It is pertinent to note that without calling any objection as required by the Seniority Rules of 1982, the seniority list is finalized by the department. However, the applicants have submitted a detailed objection to the seniority list which is not considered by the department. The objections / representations dated 03/11/2023, 26/10/2023 and 06/11/2023 are filed on record.

7. It is submitted that the nominated / directly recruited Assistant Conservator of Forest filed O.A.No.576/2015 before the M.A.T., Principal Bench Mumbai seeking direction to grant the date of joining training as a date of appointment. The same was decided on 03/02/2016. This Tribunal was pleased to direct the respondents / State to consider the date of joining training as a date of appointment

for the purpose of pay. It is made clear that this Judgment will not have any effect on other service conditions. The State Government has filed Review Application. It was dismissed. It is submitted that on the basis of the Judgment of M.A.T., the Government has issued Notification dated 14/08/2018 granting date of joining training as a date of appointment for all purposes including seniority. It is submitted that the decision in O.A.No.576/2015 was challenged in Writ Petition No.2026/2019. It is held by the Hon'ble Bombay High Court, Bench at Aurangabad that the Assistant Conservator of Forest are entitled for pay / salary of the training period and not granted the relief that appointment order is to be issued from the date of joining. The said order was challenged in SLP. It was maintained by the Hon'ble Supreme Court.

8. The applicants had filed objections to the seniority list dated 23/10/2023. The respondent authorities without communicating the decision about the objection of applicants, directly published the final seniority list of Range Forest Officer dated 04/12/2023. The decision on the objection of the applicants was thereafter communicated by the respondents as per letter dated 06/12/2023. On 07/12/2023 the meeting of the D.P.C. was held hastily and based on seniority list dated 04/12/2023, promotions of 147 Range Forest Officers to the posts of Assistant Conservator of Forest were proposed

in the said meeting. It is the contention of the applicants that as per the Recruitment Rules of 1998, they are senior as compared to the directly recruited Range Forest Officers as per the advertisement dated 14/02/2014 and therefore they are not entitled for promotion.

Hence, the present O.A. for the following reliefs –

“(K) RELIEF (S) TO BE SOUGHT :

(i) be pleased to allow the Original Application;

i (a) be pleased to quash and set aside the communication dated 06/12/2023 rejecting the objections of the applicants, annexed hereto at Annex-A-16;

i (b) be pleased to quash and set aside the final seniority list dated 04/12/2023 of Range Forest Officers, annexed hereto at Annex-A-15;

i (c) be pleased to hold and declare that all the directly appointed / nominated Range Forest Officer’s seniority will be fixed from the date of successful completion of their training and direct the respondent authorities to prepare fresh seniority list of Range Forest Officers accordingly.

(ii) be pleased to restrain the Respondent Authorities from conducting further procedure for grant of promotion to the post of Assistant Conservator of Forest, relying on the seniority list published on 23/10/2023 (Annexure-A3);

(iii) be pleased to direct the respondents authorities to prepare the seniority list of Range Forest Officers in accordance with Rule 3 (b) of Range Forest Officers Recruitment Rules 1998, which provides that, the nominated/ directly recruited Range Forest Officer’s appointment will be after successful completion of the training.

(L) (i) be pleased to direct the respondents authorities restrained from conducting further procedure for grant of promotion on the basis of communication dated 26/10/2023 (Annex-A-10).

(ii) be pleased to restrain the respondent authorities from conducting further procedure for grant of promotion to the post of Assistant Conservator of Forest, relying on the seniority list dated 04/12/2023, hereto annexed Annex-A-15 till the final disposal of the present original application.”

9. The O.A. is strongly opposed by the respondent 1 to 3. Respondents have raised objections that if the cases of the applicants are granted, then directly recruited candidates would be uprooted from their original seniority list would be affected parties and therefore those affected persons are necessary parties. They are not made parties. Therefore, the O.A. is liable to be dismissed.

10. It is submitted that the applicants have not approached to this Tribunal with clean hands. The applicants have suppressed the material facts from this Tribunal. Perusal of the entire O.A. would reveal that the applicants are placing reliance only on the Recruitment Rules of 1998, specifically Rule 3 (a) as well as Rule 3 (b) of the said Recruitment Rules. However, the fact remains that the Recruitment Rules of 1998 no longer hold the field and new Recruitment Rules for the post of Range Forest Officers have been published by the Notification dated 05/02/2015 and direct recruits who have found their places in the impugned seniority list, are governed by the Recruitment

Rules of 2015. As such by no stretch of imagination, the applicants can say that the seniority is to be fixed as per the Recruitment Rules of 1998. The applicants have consciously and conspicuously not disclosed these facts before this Tribunal. On the contrary, the applicants have concealed this material fact which goes to the root of the matter.

11. It is submitted that the basic reliance of the applicants on the Recruitment Rules of 1998 is of no use because of the said Recruitment Rules does not hold field and the appointment of direct recruits against whom the applicants are making hue and cry are governed by new Recruitment Rules of 2015. As such for this reason alone, the O.A. is liable to be dismissed.

12. It is not in dispute that earlier Recruitment Rules for the post of Range Forest Officer was published on 06/04/1998. It is also not in disputed that as per provisions of Rule 3 (b) of the said rules, the appointment of the direct recruits on the said post has to be made after the successful completion of the training course, meaning thereby that training period has to be excluded from the seniority list of the said employees. It is submitted that as per Recruitment Rules of 1998, the seniority has to be reckoned after completion of the training therefore the applicants are harping on the said rules, as if the said rule is made applicable, then automatically the applicants who are

appointed on the said post of Range Forest Officer from the promotion cadre would become senior to employees who have been directly recruited. It can be found that the applicants have proceeded their claims only on the basis of Recruitment Rules of 1998. However, the applicants have categorically failed to utter a single word in respect of new Recruitment Rules which have come into force on 05/02/2015. At last it is submitted that the applicants and direct recruits are governed by new Rules of 2015 (2014) and therefore the objections raised by the applicants that the seniority of direct recruits are to be counted from the date of completion of their training cannot be accepted. As per new Recruitment Rules, the seniority of the direct recruits are to be counted from the date of initial appointment. Hence, the objections raised by the applicants were rightly rejected by the respondents. Hence, the O.A. is liable to be dismissed.

13. This Tribunal directed the applicants to make party to the affected persons / direct recruited Range Forest Officers. The applicants have made only respondent no.4 in a representative capacity.

14. Respondent no.4 has filed reply. It is submitted that all the newly recruited candidates are not made party, therefore, the O.A. is liable to be dismissed. It is submitted that the seniority of the applicants and respondent no.4 and others, who are directly recruited

are governed by the new Rules. The applicants were promoted to the post of the Range Forest Officer on 01/03/2014. The Said promotions were made on the posts which were to be filled by way of direct recruitment. Therefore, their promotions were not legal and correct. The notification of the "Range Forest Officer in Maharashtra Forest Services, Group-B (Recruitment) Rules, 1997 is a matter of record. The reliance placed by the applicants on the provisions under Rule 3 (a) and 3 (b) of the Rules of 1998 is disputed. It is submitted that the said Recruitment Rules of 1998 are not applicable to the answering respondent.

15. It is submitted that in the provisional seniority list dated 23/10/2023, the date of appointment of nominated / directly recruited Range Forest Officers is shown from their date of training. The objections raised by the applicants to the seniority list were considered and those were decided. It is submitted that the O.A. was filed by the Assistant Conservator of Forest before the M.A.T. and not by the Range Forest Officer. Therefore, the Judgment of the M.A.T., Principal Bench, Mumbai thereafter the Judgment of the Hon'ble High Court and the Judgment of the Hon'ble Supreme Court are in respect of Assistant Conservator of Forest and those are not applicable to the Range Forest Officer. Hence, the O.A. is liable to be dismissed.

16. It is submitted that the selection process of Range Forest Officers had commenced vide advertisement dated 14/02/2014 and therefore for the purpose of determination of seniority, the rules of 2014 is applicable. At last submitted that as per the new Recruitment Rules of (2014) 2015, the applicants and respondent no.4 and others are governed by the said rules and therefore as per the new Recruitment Rules, the seniority is to be counted from the date of training and not from the date of after completion of training. Hence, the objection raised by the applicants to the seniority list is not legal and correct and accordingly it is correctly decided by R-1 to 3. Hence, the O.A. is liable to be dismissed.

17. During the course of submission, the learned counsel for applicants has pointed out the Recruitment Rules of 1998 and submits that as per Rule 3 (b) of the Recruitment Rules of 1998, the appointment order to the nominated / directly recruited Range Forest Officers shall be issued after completion of the training and therefore their seniority is to be counted from the date of appointment order and that was to be given after completion of the training. The Recruitment Rules of 1998 is applicable to applicants and respondent no.4 and others. The Rules of 2015 cannot be applicable retrospectively. Hence, the seniority of respondent no.4 and others are wrongly shown in the list dated 04/12/2023. Therefore, learned counsel for applicants.

has pointed out the Judgment of M.A.T., Principal Bench, Mumbai in O.A.No.576/2015 and submitted that the Assistant Conservator of Forest who approached for the relief to grant their seniority from the date of their training was refused and only direction was given to pay the full salary of the training period after deducting the Stipend etc. and appointment order should be issued after completion of training. The Review Application No.06/2016 was decided on 16/09/2016 along with O.A.No.54/2015. It was held that “applicants are entitled for treatment of period of training undergone by the applicants at Central Academy for State Forest Services (Combatore / Tamil Nadu) which is included as probation period for all purposes including seniority and they are entitled to get salary and allowance, after deducting salary / stipend already paid to them, in the pay scale attached to the post of Range Forest Officer, after successful completion of probation period as per relevant rules.”

18. The learned counsel for applicants has pointed out the Judgment of the Hon’ble Bombay High Court, Bench at Aurangabad in Writ Petition No.2026/2019. He has also pointed out the Judgment of the Hon’ble Supreme Court in Civil Appeal No.822/2023, At last submitted that all the posts who have held by way of directly recruited Assistant Conservator of Forest / Range Forest Officer are entitled to get appointment order after successful completion of the training and

not from the date of training. Hence, objection raised by the applicants was illegally not considered by the respondents.

19. The learned counsel for the applicants has pointed out the Judgments of the Hon'ble Supreme Court as under –

(i) A. Janardhana Vs. Union of India and others (1983) 3 SCC, 601.

(ii) N.T. Devin Katti and Others Vs. Karnataka Public Service Commission and others (1990) 3 SCC,157.

(iii) Madan Mohan Sharma and Ano. Vs. State of Rajasthan and Others (2008) 3 SCC, 724.

(iv) Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others (1983) 3 SCC,284.

20. At last submitted that in view of the Judgments of the Hon'ble Supreme Court, the applicants, respondent no.4 and others are governed by the Rules of 1998 and not the subsequent rules and therefore prayed to allow the O.A.

21. Heard learned CPO Shri S.A. Deo. He has submitted that after the Cases / Judgments of the M.A.T., Hon'ble High Court and Hon'ble Supreme Court filed by some of the Assistant Conservator of Forests, the opinion was called from the Law and Judiciary Department. As per the opinion, the Range Forest Officers not challenged the Judgment of the M.A.T. before the Hon'ble Supreme Court. Therefore, those are not applicable. It was directed that the Petition is pending before the Hon'ble High Court and therefore

permission of the Hon'ble High Court is needed. The learned CPO has also pointed out the order passed by the Hon'ble High Court in Writ Petition No. 331/2024, dated 09/01/2024. As per this order, the respondents were directed to seek permission of the Court for effecting any promotion. Thereafter, that Writ Petition was finally decided on 27/02/2024. The Writ Petition was dismissed / disposed of in view of the order passed by the Tribunal dated 17/11/2021. The learned CPO has submitted that the said order is not challenged and said order dated 27/02/2024 is final. Hence, respondent nos.1 to 3 have rightly decided the objection. The services of applicants and respondent no.4 & ors are governed by the new recruitment Rules of 2015 and therefore the O.A. is liable to be dismissed.

22. Heard Shri R.S. Kalangiwale, learned counsel for respondent no.4. He has submitted that the Rules of 2015 is applicable. The Rules of 1998 is repealed by the Rules of 2015. As per Rules of 2015, the seniority is to be counted from the date of training itself and therefore the contention of applicants that they are senior because they are promotees and they need not to go to training etc. cannot be accepted. Respondent no.4 and others are recruited as per the Rules of 2014 / 2015. The seniority is to be counted as per the Rules of 2015 and not as per the Rules of 1998. The learned counsel for respondent no.4 has pointed out the decision of the

Hon'ble Supreme Court in the case of ***State of Himachal Pradesh and others Vs. Rajkumar and others (2023) 3 SCC,773***. The learned counsel for respondent no.4 has submitted that as per the recent Judgment of the Hon'ble Supreme Court, employee has no vested right to be considered for promotion in accordance with the repealed rules in view of policy decision of the Government. Moreover, no obligation on Government to make appointments as per old Rules in the event of restructuring of cadre intended for efficient working of the unit, which however, must be justified on touchstone of Article 14 of the Constitution. The learned counsel for respondent no.4 has submitted that the Judgment of the Hon'ble Supreme Court in the case of ***Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others (1983) 3 SCC,284*** is specifically overruled by the Hon'ble Supreme Court in the recent Judgment. At last submitted that in view of the recent Judgment, the Rules of 2015 are applicable to the applicants and respondent no.4 and others. Therefore, the O.A. is liable to be dismissed.

23. The dispute of applicants and respondent no.4 and others are based on the Rules of 1998 and Rules of 2015. The applicants are promotees from the posts of Forester to the posts of Range Forest Officer. The material part of the Rule 3 of the Rules of 1998 is reproduced below -

“(3) Appointment to the post of Assistant Conservator of Forests in the Maharashtra Forest Service, Group-A (Junior Scale) shall be made either:-

a) by promotion of a suitable person on the basis of seniority subject to fitness from amongst the persons holding the post of Range Forest Officer in the Maharashtra Forest Service, Group-B having not less than three years regular service in that post; or

b) by nominating from amongst candidates who are selected for the Assistant Conservator of Forests training course, on the basis of result of the competitive examination held by the Commission in accordance with the rules made in this behalf from time to time and have successfully completed the training course.”

24. As per the Rule 3 (a) the person who is promoted from the post of Forester to the post of Range Forest Officer need not to go for training and they are entitled to get seniority from the date of their promotion, whereas, as per Rule 3 (b) directly recruited candidates on the posts of Range Forest Officer / Assistant Conservator of Forests have to undergo training and the appointment orders are to be issued after successful completion of the training period. The Rule was interpreted upto the Hon'ble Supreme Court. Some of the Assistant Conservator of Forests filed the O.A.No.576/2015 before the M.A.T., Principal Bench, Mumbai. The Tribunal has held that directly recruited Assistant Conservator of Forests are entitled to get regular pay during the training period, but they are entitled to get appointment order after

successful completion of probation. Para-15 of the order is reproduced below –

“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 O.A. is allowed accordingly with no order as to costs.”

25. The Review Application along with one O.A.No.54/2015 was decided by the Tribunal on 16/09/2016. The material part of the order in para-15 is reproduced below -

“15. Having regard to the aforesaid facts and circumstances of the case, the applicants are entitled for treatment of period of training undergone by the applicants at Central Academy for State Forest Services (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 service condition, especially terms of their probation. This Original Application is allowed accordingly with no order as to costs.”

26. Thereafter, the said Judgment was challenged in Writ Petition No. 2026/2019. The Hon'ble Bombay High Court, Bench at Aurangabad in para nos. 37 to 39 and 40 has held as under—

“37. Reading Rule 3(b), Rule 6 and Rule 7 of the 1998 Rules along with Rules of 2004 irresistible conclusion is that, the seniority of the persons selected for the post of A.C.F. by nomination shall be counted from the date of issuance of appointment order after successful completion of training qua a person appointed as A.C.F. by promotion.

38. In the light of the above, the impugned Government Resolution for the purpose of seniority amongst the A.C.F. appointed by nomination and promotion shall be read down in a manner that the period of training undergone by A.C.F. appointed after completion of training shall be computed from the date of issuance of appointment order after successful completion of training qua A.C.F. appointed by promotion.

39. It is held that, the service of Assistant Conservator of Forest appointed by nomination for the purpose of seniority shall be counted from the date of issuance of appointment order after successful completion of training course vis-a-vis the persons appointed to the post of Assistant Conservator of Forest by promotion.

40. Rule accordingly is made absolute in above terms. No costs.”

27. The said Judgment was challenged by the Assistant Conservator of Forests before the Hon'ble Supreme Court in Civil Appeal No.822/2023. In para-28 and para-30 the Hon'ble Supreme Court has held as under –

“28. It appears to us that the High Court's view is the correct view. The resolutions have been passed in the context that the person who successfully completes the training effectively gets the monetary compensation for his training period and is not deprived of the same. This cannot amount to giving seniority from the date of initial recruitment process to determine inter se seniority, when the Proviso to Rule 2 of the 1984 Rules makes the date of appointment for direct recruits clear. This is also in the background that while the direct appointees have no experience in the field having been freshly recruited, the promotees have been doing the task.

30. We also find that Rules 3B and 6 of the 1998 Rules also leave no ambiguity in this behalf and in fact read in consonance and the period of probation has to be necessarily excluded from period of service. As already stated, the grant of monetary benefit is a different aspect.”

28. There is no dispute that all the Judgments from M.A.T. to the Hon'ble Supreme Court were based on the Rules of 1998. It was held that directly recruited Range Forest Officers / Assistant Conservator of Forests are eligible to get appointment order after successful completion of training period and not from the date of training itself. New Rules of 1998 is repealed and the new Rules of 2014 come into force. The said Rules were notified on 05/02/2015.

29. The learned counsel for applicants has submitted that the said Rules cannot be given retrospective effect. But in view of the recent Judgment of the Hon'ble Supreme Court in the case of ***State of Himachal Pradesh and others Vs. Rajkumar and others (2023) 3***

SCC,773 new rules are applicable. It is held that “right of promotion occurs on date of consideration of eligible candidates and applicable rules, would be the rules existing then i.e. the rule in force.” It is further held by the Hon’ble Supreme Court that “the Government is entitled to take conscious policy decision not to fill vacancies arising prior to amendment of the Rules”. The Hon’ble Supreme Court has overruled the decision in the case of **Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others (1983) 3 SCC,284**. It is held by the Hon’ble Supreme Court as under –

“ The real question is whether the vacancies which arose prior to the promulgation of the new Rules are to be filled as per the old Rules or the amended Rules. It was argued that this principle is no more res integra as the Supreme Court has recognised such right in Rangaiah, (1983) 3 SCC 284, which has been followed in subsequent decisions. However, it needs to be noted that there are large number of decisions that have either followed the principle in Rangaiah case or have distinguished it. The principle in Rangaiah case has given rise to a number of decisions, most of them have disappplied Rangaiah case and in fact, watered down the principle while distinguishing it. Hence, for clarity and certainty, it is necessary to review the subject and restate the principle in simple and clear terms.”

30. In para-69, the Hon’ble Supreme Court has held as under –

“69. This is a very important case which recognises many points of distinction:

(a) The Court found that there is no statutory duty cast on the Government to prepare panels as in Rangaiah,

(b) a candidate has a right to be considered only as per the existing rules i.e. "the rule in force",

(c) the rule applicable is the rule in force as on the date of consideration,

(d) the principle in Rangaiah has no universal application,

(e) for reasons germane to its decision, the Government is entitled to take a conscious decision about the filling of the vacancies and the rules applicable.

This decision made deep inroads into the principle laid down in Rangaiah case²."

31. In para-85.1 the Hon'ble Supreme Court has held as under –

"85.1. The statement in Y.V. Rangaiah v. J. Sreenivasa Rao² that, "the vacancies which occurred prior to the amended Rules would be governed by the old Rules and not by the amended Rules", does not reflect the correct proposition of law governing services under the Union and the States under Part XIV of the Constitution. It is hereby overruled."

32. The learned counsel for respondent no.4 Shri R.S. Kalangiwale has pointed out the Judgment in the case of ***Union of India Vs. S.S. Uppal and Ano. (1996) 2 SCC 168***. It is held by the Hon'ble Supreme Court has held as under –

"The seniority of the respondent has to be determined by the rules in force on the date of his appointment to IAS. The fixation of seniority in the IAS follows appointment to the service. The year of allotment in the IAS will have to be determined according to the provisions of seniority rules which are in force at the time of his appointment. The date of occurrence of vacancy has really no relevance for the purpose

of fixation of seniority in the IAS. The fixation of seniority is done only after an officer is appointed to IAS. The Central Government is competent to amend the seniority rules from time to time keeping in view the exigencies of administration.”

33. The main controversy of the applicants and respondent no.4 and others are based on the Rules of 1998 and Rules of 2014/2015. As per rule 3 (a) and (b) of Rules of 1998, the appointment order to the newly recruited Range Forest Officer / Assistant Conservator of Forests shall be issued after successful completion of training period and the seniority starts from the date of appointment order and not from the date of training, whereas, as per the new rules of 2014/2015, the appointment order is to be issued from the date of training. The Rules 7 and 8 are reproduced below –

“7. A person appointed to the post mentioned in rule 3 by nomination shall be on probation for a period of three years. Person appointed shall be required to complete successfully the prescribed training for a period of one and half year at Forest Science Training College recognized by the Government of India for this purpose and the field training prescribed by the Principal Chief Conservator of Forest or Chief Conservator of Forest for a period of one and half year. The person appointed to the said post by nomination shall also be required to pass the prescribed Departmental Examination within the probation period so also to complete the probation period satisfactorily. If he/she does not complete successfully the prescribed training within the probation period or does not pass the prescribed Departmental Examination or does not complete the probation period satisfactorily or is not found suitable for the post

during probation period, he/she shall be liable to be terminated from the service.

8. After completing the prescribed training and probation period successfully, the training period shall be treated as service period.”

34. In view of the recent Judgment of the Hon'ble Supreme Court in the case of ***State of Himachal Pradesh and others Vs. Rajkumar and others (2023) 3 SCC,773***, the new Recruitment Rules of 2014 which was notified on 05/02/2015 governed the service conditions, seniority etc. of the directly recruited Range Forest Officers. Respondent no.4 and others are appointed as per the advertisement dated 14/02/2014. They are appointed prior to the promotion of applicants. As per the new rules, their seniority is to be counted as per the Rule 8 after completion of prescribed training period and probation period successfully. The training period shall be treated as a service period. This itself shows that from the date of training, they are entitled to get seniority. Hence, the rejection of objection raised by the applicants, by respondents State are perfectly legal and correct. Moreover, the decision of the Hon'ble Bombay High Court which was disposed of by the Hon'ble High Court in Writ Petition No. 331/2024 is not challenged. The material portion of the order / Judgment from para nos.4 to 8 are reproduced below –

“4. It is in this backdrop that the Original Application No. 57 of 2020, Vrushali Balkrishna Tambe Versus The State of Maharashtra and

Others, was filed before the learned Tribunal. By its order dated 17th November, 2021, the learned Tribunal directed as under:

“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.”

5. The leaned Advocate for the Petitioner submits that the Petitioner desires that the seniority list for the post of Range Forest Officer should be 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. He submits that if this rule is followed, the Petitioner has no reason to pursue this Petition as his grievance is redressed.

6. *The learned AGP submits on instructions from Smt. Asha Eknath Chavan, Assistant Conservator of Forest, Chhatrapati Sambhajnagar, present in the Court, that the Department is strictly following Rules 8 and 9 of the said Rules.*

7. *The learned Advocate for the Petitioner submits on instructions that since clause 'A' of the order (reproduced above) of the Tribunal vide judgment dated 17th November, 2021 in Vrushali Balkrishna Tambe Versus The State of Maharashtra and Others (supra) is being followed, the Petitioner does not desire to prosecute this Writ Petition and seeks liberty to withdraw.*

8. *In view of the above, this Writ Petition is disposed off as withdrawn."*

35. As per the new Recruitment Rules, the seniority is to be counted of the newly recruited candidates from the date of their training as per Rules 3,7 and 8. The Rules 3,7 and 8 of the Rules of 2015 (2014) are reproduced below –

"3. Appointment to the post of Range Forest Officer shall be made either,-

(a) by promotion of a suitable person on the basis of seniority subject to fitness from amongst the persons holding the post of Forester, having minimum 3 years regular service in that post and have passed Secondary School Certificate Examination;

OR

(b) by selection of a suitable person holding the post of Forester, on the basis of common merit list prepared by the Commission on the basis of Limited Competitive Examination held by the Commission in accordance with the orders issued by Government in consultation with the Commission in that behalf, from time to time;

OR

(c) by nomination on the basis of Limited Competitive Examination to be held by the Commission.”

“7. A person appointed to the post mentioned in rule 3 by nomination shall be on probation for a period of three years. Person appointed shall be required to complete successfully the prescribed training for a period of one and half year at Forest Science Training College recognized by the Government of India for this purpose and the field training prescribed by the Principal Chief Conservator of Forest or Chief Conservator of Forest for a period of one and half year. The person appointed to the said post by nomination shall also be required to pass the prescribed Departmental Examination within the probation period so also to complete the probation period satisfactorily. If he/she does not complete successfully the prescribed training within the probation period or does not pass the prescribed Departmental Examination or does not complete the probation period satisfactorily or is not found suitable for the post during probation period, he/she shall be liable to be terminated from the service.

8. After completing the prescribed training and probation period successfully, the training period shall be treated as service period.”

36. The Rule 3 (b) of the Rules of 2015 (2014) is completely different of the Rule 3 (b) of Rules of 1998. The Rule 8 of Rules 2014 (2015) is very specific. As per this Rule, after completing the prescribed training and probation period successfully, the training period shall be treated as service period. Therefore, it is clear that seniority is to be counted from the date of training. Therefore, the argument advanced by the side of applicants that as per the Rules of

1998, the respondent no.4 and others are not entitled to get seniority from the date of training as per new Rules, has no force.

37. The learned counsel for applicants has submitted that the Rules of 2015 (2014) has no retrospective effect cannot be accepted. The Judgments cited by the side of applicants are not applicable in view of the recent Judgment of the Hon'ble Supreme Court in the case of ***State of Himachal Pradesh and others Vs. Rajkumar and others (2023) 3 SCC,773***. Hence, the following order -

ORDER

- (i) The O.A. is dismissed.
- (ii) The C.As. are also disposed of.
- (iii) No order as to costs.

**(Shri Justice M.G.Giratkar)
Vice Chairman.**

Dated :- 04/04/2024.

*dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 04/04/2024.
and pronounced on