IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO 93 OF 2008

DISTRICT : NAGPUR

Shri Rajendra R. Mamulkar)
Occ : Nil, R/o: Geeta Nagar,)
Plot No. 7, Near Vitthal Rukhmini)
Mandir, Zingabi Takli, Nagpur.)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Secretary,)
Ministry of Forest, Mantralaya,)
Mumbai 400 032.)
2. The Chief Conservator of Forest)
Maharashtra State, Civil Lines,)
Nagpur.)
3. The Conservator of Forest,)
Chandrapur Division,)
Chandrapur Circle, Civil Lines,)
Chandrapur.)
4. Milind S/o Vitthalrao Ghormore)
Occ : Surveyor,)
C/o: Forest Guard,)
Work Performance Division)
No.1,)Mool Road, Chandrapur.)...**Respondents**

Shri S.N Gaikwad, learned advocate for the Applicant.

Shri P.N Warjurkar, learned Presenting Officer for the Respondents to 1 to 3.

None for Respondent no. 4.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)
Shri J.D Kulkarni (Member) (J)

DATE : 06.01.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

O R D E R

1. Heard Shri S.N Gaikwad, learned advocate for the Applicant and Shri P.N Warjurkar, learned Presenting Officer for the Respondents 1 to 3. None for Respondent no. 4.

2. This Original Application has been filed by the Applicant seeking declaration that the Applicant was eligible to be considered for appointment to the post of Forest Surveyor on the basis of his qualification of Diploma in Civil Engineering and he ought to have been selected for the aforesaid post. The Applicant has also challenged selection of Respondent no. 4 for the post of

Forest Surveyor as he scored less marks than the Applicant.

3. Learned Counsel for the Applicant argued that the Respondent no. 3 had issued an advertisement on 15.10.2007 for selection to various posts including that for the post of Forest Surveyor. The Applicant had applied for the said post and he was permitted to participate in the selection process. The Applicant scored 46.83 marks in the selection process and was placed third in the merit list of open candidates. The Respondent no. 3, however, selected the Respondent no. 4, who had scored 44 marks, and was less meritorious than the Applicant. Learned Counsel for the Applicant contended that the reason for non-selection of the Applicant is that he does not have the qualification for appointment to the post of Forest Surveyor as per Recruitment Rules. Learned Counsel for the Applicant argued that this ground is incorrect and in other Forest Circles, persons having the qualification of Diploma in Civil Engineering were selected for the post of Forest Surveyors. Even persons holding B.A degree have been appointed. The Applicant is put to hostile discrimination, and he is eligible to be declared selected for the post of Forest Surveyor on the basis of his performance in the selection process.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondent nos 1 to 3 that the Applicant does not hold qualification for the post of Forest Surveyor as per the Recruitment Rules notified on 29.10.1987. As per Rule 6, requisite qualification is S.S.C and Surveyor's Training Course of a recognized Institution. The Applicant had not produced the Surveyor's Training Course Certificate and is not eligible for appointment to the post of Forest Surveyor. Learned Presenting Officer admitted that in some Forest Circles, persons holding qualification of Diploma in Civil Engineering have been appointed as Forest Surveyor. However, that was not in accordance with the Recruitment Rules and remedial action is being taken. Learned Presenting Officer argued that Hon'ble Supreme Court in the case of **C.S.I.R & others Vs. Dr Ajay Kumar Jain, 2000 S.C.C (L & S) 456** has held that illegality committed in a case, should not be perpetuated in the name of equality, which is a positive concept. Learned Presenting Officer argued that the claim of the Applicant that he had qualification in Civil Engineering Drawing, which is a subject in second year course of Diploma in Civil Engineering cannot be accepted, as Rule 6 of the Recruitment Rules requires "intermediate grade drawing Certificate" as a preferential qualification. Passing the paper in Civil Engineering Drawing as part of course content of Diploma in Civil Engineering cannot be said to meet this requirement. Learned Presenting Officer argued that the Respondent

no. 3 has correctly held the Applicant ineligible for appointment to the post of Forest Surveyor.

5. We find that Rule 6 of the Forest, Forest Guard, Range Surveyor, Surveyor, Head Clerk, Accountant and Clerk-cum-typist (Recruitment Rules), 1987 reads as follows:-

> "6. Appointment to the post of Surveyor in the Forest Department shall be made by nomination from amongst candidates, who:-
>
> (i) Are not more than twenty eight years of age;
> (ii) Have passed secondary school certificate examination and Surveyor's Training Course of a recognized Institution;
>
> Provided that preference may be given to candidates possessing intermediate grade drawing certificate in addition to the qualification mentioned in clause (ii)."

It is an admitted fact that the Applicant does not have Certificate of Surveyor's Training Course. He also does not have Intermediate Grade Drawing Certificate. The claim of the Applicant is that he holds qualification of Diploma in Civil Engineering. He has placed mark list of second year of Diploma in which subjects of 'Surveying'

and 'Civil Engineering Drawing' are taught. However, it is difficult to accept the contention of the Applicant that these subjects are substitute or equivalent to Certificates required under the Recruitment Rules. It is not the work of the Courts/Tribunals to determine equivalence of various courses. On plain reading of the Recruitment Rules, which are framed under Art. 309 of the Constitution of India, the Applicant does not hold requisite qualification for the post of Surveyor in Forest Department.

6. The Applicant has claimed that in some other Forest Circles, persons holding the qualification of Diploma in Civil Engineering or holding even B.A degree have been appointed as Surveyors. This is not denied by the Respondents. However, it is stated that such appointments were contrary to the Recruitment Rules and remedial measures are being taken. We have concluded that the Applicant is not eligible for appointment as Surveyor on the basis of Recruitment Rules. If some other persons have been wrongly appointed, that will not help the Applicant. This Tribunal is unable to give direction to perpetuate the selections contrary to the Recruitment Rules, if that was done in some cases in the past. Hon'ble Supreme Court has held in the case of **C.S.I.R & others Vs. Dr Ajay Kumar Jain, 2000 S.C.C (L & S) 456** that the concept of equality cannot be applied to perpetuate a wrong committed

earlier. We are not inclined to accept the contention of the Applicant in his behalf.

7. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

sd/- sd/-

(J.D Kulkarni)
Member (J)

(Rajiv Agarwal)
Vice-Chairman

Place : Nagpur
Date : 06.01.2017
Dictation taken by : A.K. Nair.

D:\Documents and Settings\MAT\My Documents\O.A 93.2008 challenging appointment as Forest Surveyor. DB.02.1.17.doc