

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION 241 OF 2016**

DISTRICT : NAVI MUMBAI

Shri Kishor Kashinath Patil,)
Working as Assistant [Personal Assistant])
To Estimate Committee Chairman,)
Vidhan Bhavan, Mumbai.)
R/o: C-102, Moreshwar Complex,)
Near Gokul Dairy, Sector-18,)
Kamothe, Navi Mumbai.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Secretary [Forest],)
Revenue & Forest Department,)
Having office at Mantralaya,)
Mumbai 400 032.)
2. The Chairman / Secretary,)
M.P.S.C, [M.S], Mumbai,)
Having office at Opp Cooperage)
Ground, Mumbai 400 032.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

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

DATE : 05.08.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicants and Shri K.B Bhise, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant seeking directions to the Respondent no. 2 to accept the application form for the post of Range Forest Officer, pursuant to advertisement dated 3.2.2016.

3. Learned Counsel for the Applicant argued that the Respondent no. 2 had issued advertisement dated 3.2.2016 to fill a total of 55 posts of Range Forest Officer through Maharashtra Forest Service (Preliminary) Examination, 2016. As per para 5.4, educational qualification for the post was degree in one of the subject mentioned that paragraph. Learned Counsel for the

Applicant argued that the Applicant had degree of Bachelor of Engineering in Information Technology. However, the Applicant was held ineligible for being considered for the post of Range Forest Officer and his on-line form was not accepted. The Applicant had earlier applied for the same post in response to the advertisement issued by the Respondent no. 2 on 12.2.2014 and his application form was accepted and he was allowed to participate in the selection process. Learned Counsel for the Applicant stated that the Respondent no. 2 has allowed B.E (Electronics & Telecommunications) and B.E (Computer Science & Technology) to participate in the selection process, but rejected the case of the Applicant who has a degree of B.E (Information Technology). Learned Counsel for the Applicant argued that this is a case of hostile discrimination against the Applicant. For the selection in the Indian Forest Service, degree in any branch of Engineering is acceptable. There is no reason as to why for Maharashtra Forest Service a degree in Information Technology is held to be not valid. This qualification is recognized by the All Indian Council for Technical Education (AICTE). All States follow guidelines of AICTE and modify recruitment rules for various posts accordingly. Learned Counsel for the Applicant argued that there is no rationale to exclude B.E (I.T) as eligibility criterion when there is need for persons from that field in Forest Department. There is a post of Additional Principal

Chief Conservator of Forest (Information Technology and Policy). Learned Counsel for the Applicant stated that those holding the degree of B.E (Computers) Bachelor in Computer Applications (B.C.A), and Bachelor in Computer Science (B.C.S) are held eligible though course content of B.E (Information Technology) is much superior as compared to course content of these degrees. Learned Counsel for the Applicant argued that all the posts advertised in 2016 are in respect of vacancies which occurred prior to new recruitment rules for the post of Range Forest Officer were notified on 5.2.2015. These vacancies are, therefore, required to be filled in accordance with old Recruitment Rules of 1997 as per the law laid down by Hon'ble Supreme Court and the Applicant has to be held as eligible to compete for the post in question.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Recruitment Rules for the post of Range Forest Officer, in Maharashtra Forest Service, Group 'B' have been notified on 5.2.2015, superseding earlier Recruitment Rules of 1997. The advertisement in question was issued by the Respondent no. 2 on 3.2.2016 and therefore, Recruitment Rules of 2014 (notified on 5.2.2015) are applicable. Earlier rules of 1997 (notified on 6.4.1998) are no longer applicable. The Applicant had earlier applied for the post of Range Forest Officer in 2014, when Rule 4(b) of 1997 rules

provided educational qualification, inter-alia of degree in Engineering. Accordingly, the Applicant with Bachelor's degree in Engineering (Information Technology) was held eligible. Rule 5(b) of the 2014 rules, has the following provision as regards degree in Engineering, viz.

“.....or degree in Engineering in the faculty of Agriculture, or Chemical or Civil or Computer or Electrical or Electronics or Mechanical or....”

From this, it is clear that B.E degree holders in only in these branches of Engineering are eligible to apply for the post of Range Forest Officer to be filled by nomination on the basis of Competitive Examination to be held by M.P.S.C. Learned Presenting Officer argued that no equivalence is provided in the rules. AICTE provides for programmes in various streams in Engineering and Technology and the Engineering colleges in the country can introduce those courses. This has no bearing on the Recruitment Rules, which provide for educational qualifications for various posts, keeping in view the job requirements of that post. Learned Presenting Officer argued that Recruitment Rules for Indian Forest Service and Maharashtra Forest Service, Group 'B' need not cannot be identical. It is not necessary to provide for B.E (I.T) qualification for filling a post at Group 'B' level to fill a top level post at the level of Additional Principal Chief Conservator of Forests. Learned Presenting Officer

argued that once the old Recruitment Rules superseded, there is no question of filling old vacancies as per those rules, as they are no longer in existence. Only in case of modification of rules, old provisions will apply for old vacancies. Learned Presenting Officer argued that Recruitment Rules for R.F.O framed in 2015 are in accordance with the Entrance and Training Rules (Revised) 2004 for Forest Range Officers framed by Central Government. All Range Forest Officers in various states are required to undergo training in a Forest Range Officers Training College / School / Institute run by Government of India or a State Government. Rule 8 provides for educational qualifications and the same qualifications have been incorporated in the Recruitment Rules of 2015.

5. We find that the Applicant has raised the following issues that the Degree of B.E (Information Technology) is superior to degree of B.C.A, B.C.S or B.E (Computers). It should, therefore, be accepted as educational qualification for Range Forest Officer. Reasons like AICTE recognizes this degree and U.P.S.C also recognizes this degree for the Indian Forest Service are advanced. It is also stated that at the highest level this specialization is needed at least for one post of Additional Principal Chief Conservator of Forests.

The Recruitment Rules of 2014 are arbitrary and discriminatory. There is no rationale for changing education. The Applicant is barred for competing for the post of Range Forest Officer permanently and the posts of R.F.Os now sought to be filled are in respect of vacancies which arose before Recruitment Rules of 2014 were notified on 5.2.2015 and as such, the same should be filled in accordance with old Recruitment Rules of 1997. The Respondent no. 1 has taken a stand that the Recruitment Rules for the post of Range Forest Officer were revised in 2015, to bring them in accordance with Rules notified by Government of India for Entrance and Training of Forest Range Officers. In the affidavit in reply filed by the Respondent no. 1 on 21.3.2016, it is stated that:-

“It is further submitted that the recruitment conditions and pre-appointment training of the directly recruited R.F.Os under Central Forest Institutions are normally governed by G.O.I. The G.O.I vide notification dated 22nd July, 2004 mentioned above has provided qualifications for the post of R.F.O by way of direct recruitment in Rule-8 of said rules of 22nd July 2004. As mentioned in the initial paragraph of this affidavit in reply, the State Government has adopted the qualifications for direct recruitment in the cadre of R.F.O as per the G.O.I notification dated 22nd July, 2004.

The said notification dated 22.7.2004 is appended as Exhibit R-1 (page 88 of the Paper Book). Rule 8 is regarding educational qualifications. For Engineering degree, only the Branches Agriculture, Chemical, Civil, Computer, Electrical / Electronics and Mechanical are mentioned. In the Recruitment Rules of 2014 notified on 5.2.2015, Rule 5(b)(i) for appointment by nomination, mention the very same seven branches. The claim of the Applicant that there is no rationale for this rule is negated by this fact. Other objections raised by the Applicant do not deserve any serious considerations, e.g. AICTE provides for course contents for various degrees in Engineering in various branches. That ipso-facto does not mean that all branches of Engineering should be considered as equivalent or be considered to determine eligibility for a particular post. The job requirement for a particular post will determine the educational requirement for that post. Similarly, there need not be identity in educational qualifications for the Indian Forest Service and the Maharashtra Forest Service, Group 'B'. There is no comparison between the two. The fact that one post of Additional Principal Chief Conservator of Forests is for Information Technology can be a ground to include degree of B.E (I.T) as qualification for the post of Range Forest Officer. There is remote liability of an Range Forest Officer being promoted as Additional Principal Chief Conservator of Forests.

6. The Applicant is seeking direction from this Tribunal to the Respondents to consider B.E (I.T) as equivalent to the B.E degree in the branches mentioned in the Recruitment Rules. We are afraid that this Tribunal cannot do so. The Applicant has stated that the Respondents have recognized B.E (Electronics and Tele-Communications) as B.E (Electronics) and B.E (Computer Science & Technology) as B.E (Computers). This has been done on the advice of the Additional Principal Chief Conservator of Forests (Administration Subordiante Cadre). How that officer is qualified to give such advice is not understood. However, on independent consideration, we find that treating B.E (Electronics & Telecommunication) as B.E (Electronics) and B.E (Computer Science & Technology) as B.E (Computers) appears to be reasonable. We are not inclined to interfere in this decision of the Respondent no. 1.

7. The Applicant has relied on the judgment of Hon'ble Supreme Court in the case of **KULWANT SINGH & ORS Vs. DAYA RAM & ORS : (2015) 3 SCC 117**. Hon'ble Supreme Court has held that unamended rules will apply to the vacancies which had arisen before the date on which the rules had been amended. Learned Counsel for the Applicant stated that this Tribunal in O.A no 933/2012 and O.A no 1140 of 2013 decided on 12.8.2015, has taken a similar view. Learned Presenting Officer, however, argued that the judgment of Hon'ble

Supreme Court has referred a large number of earlier judgments. However, all the judgments are in the context of original rules, which were amended. He argued that in case where earlier rules are superseded and new rules are notified, it will not be possible to apply ratio of the judgment of Hon'ble Supreme Court. The old rules no longer exist and it will not be tenable to apply them, once they have been superseded. We have carefully gone through the judgment of Hon'ble Supreme Court in the case of KULWANT SINGH (supra). This Tribunal in O.A nos 933/2012 and 1140/2013 has summarized the observation of Hon'ble Supreme Court in **KULWANT SINGH's** case (supra) in para 8 as follows:-

“ 8. The vacancies which occurred prior to the amendment of the Rules would be governed by the unamended Rules and vacancies occurring after the amendment would be governed by the amended Rules. The perusal of the observations of the Hon'ble Supreme Court generally and with particular emphasis on paras 32 to 44 would be apposite.”

It does appear that the judgments of Hon'ble Supreme Court are in the context of rules, which were later amended. In the present case, rules of 1997 have been expressly superseded by the Rules of 2014 as notified on 5.3.2015. It is stated that:

“In exercise of powers conferred by the proviso to Article 309 of the Constitution of India and in supersession of the Range Forest Officer in Maharashtra Forest Service, Group ‘B’ (Recruitment) Rules, 1997, the Governor of Maharashtra.....”

In our opinion, the vacancies existing as on the date on which old rules were superseded and new Rules were notified, will have to be filled in accordance with the new Rules. Any other interpretation will lead to difficulties, which will be hard to remove. The Applicant’s contention that he should be held eligible for the post of Range Forest Officer on the basis of old Rules is difficult to accept. Even if that is accepted, the whole selection process will be required to be scrapped and separate selection for vacancies which occurred before 5.2.2015 will have to be ordered. In our opinion, that is not necessary in the present case, as the old Rules have no existence after new Rules were notified on 5.2.2015.

8. There is some confusion regarding the exact wording of Rule 5 of the 2014 Rules, which states that “In case of appointment by nomination, in order to be eligible for admission to the Limited Competitive Examination held by the Commission, the candidate shall....”

Marathi version of this rule reads:-

“५. नामनिर्देशनाद्वारे निवडसाठी आयोगा मार्फत घेण्यात येणा-या मर्यादित स्थळा परीक्षेस बसण्यास पात्र होण्यासाठी उमेदवारांनी ...”

It appears that ‘Limited’ word in English and ‘मर्यादित’ in Marathi appears to be wrong. We are proceeding on the premise that M.P.S.C will hold open Competitive Examination and the word ‘Limited’ is not required.

9. We have examined all the issues raised by the Applicant and our conclusion is that there is no scope for our interference in this matter. The Applicant is not eligible to appear for the Maharashtra Forest Service (Preliminary) Examination, 2016 and the decision of the Respondent no. 2 not to accept his application is correct. As a result, this Original Application is dismissed with no order as to costs.

Sd/-
(R.B. Malik)
Member (J)

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 05.08.2016
Dictation taken by : A.K. Nair.