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21/5/15



GOVERNMENT OF KERALA
Abstract

Forest and Wildlife Department – Establishment – Appeal against the seniority list of Beat Forest Officers – Disposed of - Orders issued.

FOREST AND WILDLIFE (F) DEPARTMENT

G.O.(Rt)No. 178/2015/F&WLD Dated, Thiruvananthapuram, 27/04/2015

Read: 1.GO(Ms)68/2001/Forest dated 17/11/2001

- 2 . The Order No.E1.6232/11 dated 21/1/2012 of the Chief Conservator of Forests, Northern Circle, Kannur.
3. The Order dated 27/10/2014 of the Hon'ble Kerala Administrative Tribunal in OA No.654 of 2014.
4. Letters No.E1.9586/14 dated 08/01/2015 and 21/03/2015 of the Chief Forest Conservator, Northern Circle, Kannur
5. Letter No.E7-50276/2014 dated 16/02/2015 of the Additional Principal Chief Conservator of Forests (Adminsitration), Thiruvananthapuram.

ORDER

The Hon'ble Kerala Administrative Tribunal in the order read as 3rd paper above, pronounced that “the Annexure – MA1 to MA5 appeals are received and pending before the 3rd respondent (the Chief Forest Conservator, Kannur). The 3rd respondent shall forward them to the first respondent (state of Kerala represented by the Secretary, Forest & Wildlife Department) along with his comments, within one month from the date of receipt of a copy of this order and on receipt of them, the first respondent shall consider and dispose of them, after affording an opportunity of being heard to the applicants, and affected parties, if any, within four months from the date of receipt of the appeals from the third respondent.” As per the Annexure MA1 and MA5 appeals, the petitioner has requested to condone the delay in filing the appeals against the Annexure A3 seniority list .

2) As directed in the order read as 3rd paper above, the third respondent furnished his comments on Annexure MA1-MA5 vide his letter No.E1-9586/14 dated 8/01/2015. The applicants were heard in Government on 23/03/2015 in the presence of the concerned officers of the Department. During the hearing the applicants pointed out that they were appointed as Beat Forest Officers in the department through

Public Service Commission. In the mean time, Government took a decision to give appointment to 300 Persons as Forests Guards from the schedule tribes, in violation of all the rules and practices. In terms of Rule 14 Part II KS& SSRs 2% of the posts of forest guards are earmarked to the members of the Scheduled tribe community, 8% to the scheduled caste community, 40% to the other backward communities and 50% for open competition. But the 1st respondent took a decision to recruit 300 Forest guards from the scheduled tribe communities as per the Government Order read as 1st paper above. The persons who were appointed through supernumerary posts were also merged in the general category in all division of Northern Circle.

3) The 3rd respondent circulated a provisional seniority list of Forest Guards in the division and in the said list the applicants were placed below the special recruits though their appointments were against the posts which were beyond the sanctioned strength. The petitioners submitted their objection to the provisional list. The 3rd respondent did not take any action and without considering any of the objections the respondents proceed with the notion that the special recruits are senior to the applicants and such a list was prepared. They are also alleged that those adivasis, who were recruited through Special recruitment as supernumerary were also placed above to them in the seniority list. According to them those who were recruited as supernumerary should be considered for seniority only after regularising their service. They also alleged that those who joined for duty even a year later to them also placed above to them in the seniority list.

4) The Additional Principal Chief Conservator of Forest (Administration) and the Chief Forest Conservator, Northern Circle stated that in tune with the Government Order read as 1st paper above, 300 Forest Guards were recruited through the Kerala Public Service Commission from the adivasies with the object to make use of their knowledge in the Forest protection activities. As per the Order No.E1-6232/07 dated 28/01/2010 of the Chief Forest Conservator, Northern Circle, Seniority list of the Beat Forest Officers was published providing sufficient opportunity for making appeals. After considering the appeals, the seniority list was rearranged on 30/6/2011 with the opportunity for appeal. The final seniority list was published on 21/1/2012. In the seniority list, the Beat Forest Officers of normal recruitment had also been combined with the Beat Forest Officers of special recruitment, according to their seniority as specified in the Rule 27(C) of KS& SSR. Since there were some cases filed in the Hon'ble court in connection with the Special

recruitment of the adivasis, posting orders were issued by the appointing authorities after period of one year. At the same time, when these adivasis got appointment orders, they joined for duty without delay.

5) Rule 17A of KS&SSR contemplates, *Special Recruitment from among the Scheduled Castes and Schedules Tribes*. Accordingly the State Government may reserve a specified number of posts in any service, class, category or grade to be filled by direct recruitment exclusively from among the members of Schedules Castes and Scheduled Tribes.

6) Rule 27(c) of KS&SSR stipulates that *the seniority of a person appointed to a class, category or grade in a service on the advice of the Commission shall, unless he has been reduced to a lower rank as punishment, be determined by the date of first effective advice made for his appointment to such class, category or grade. Provided that the seniority of candidates who have been granted extension of time to join duty beyond three months from the date of the appointment order. As per the third proviso to Rule 27(c) (e) of Part II, KS&SSR, where the date of effective advice in respect of a person appointed otherwise than in pursuance of Rule 17A and a person appointed in pursuance of Rule 17A is the same.*

7) In the case of the Special recruitment all the appointments are made on the basis of the advice of the Commission (PSC) and their seniority is arranged on the basis of Kerala Public Service Commission advice date as in the same way of normal PSC recruitment . In some case, the appointing authority may delay in issuing posting orders due to the technical reasons such as of Court Case. Hence the delay on the part of the appointing authorities cannot be taken as a cause for reducing the seniority of the employees as they joined for duty as soon as they got appointment order.

8) The Rule 27B stipulates, *in case of disputes regarding seniority and matters connected with it by reason of any order of Government or any order of an authority subordinate to Government, representations for reconsideration of such order shall be submitted to Government by the aggrieved person within a period of six months from the date of receipt of the order, or the date of publication of the order in the Kerala Gazette, whichever is later.* Here the main prayer of the applicants is to set aside Annexure A3 seniority list. Annexur A3 is published on 21/01/2012 and the MAI to MA5 are dated on 28/03/2014.

9) In the above circumstances, it is clear that there is no merit in the arguments / claim of the petitioners on the legality of the Annxure A3 as the same is issued strictly in accordance with the rules in force

Therefore there is no benefit in granting condonation of delay in filing appeal against the Annexure A3. Hence, in compliance with the order read as second paper above, the MAI to MA5 are disposed of as declined and the Annexure A3 is upheld as the same is issued in accordance with Rule 27(c) of KS&SSR.

(By Order of the Governor)

**K.V.SUDHEER,
JOINT SECRETARY**

To

The Advocate General, Vanchiyoor, Thiruvananthapuram
(With Covering letter)
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The Principal chief Conservator of Forest (Wildlife) & Chief Wildlife
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The Chief Forests Conservator, O/o Chief Forest Conservator,
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The Principal Accountant General (Audit), Kerala, Thiruvananthapuram
The Accountant General (A&E), Kerala, Thiruvananthapuram
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Forwarded/ By Order


Section Officer