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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.965 OF 2016

Govind R. Mashelkar,
Major of age, Indian National,
Resident of H. no. 1169,
Ward no. 2,
Near Government Primary School,
Pontemol, Curchorem – Goa.

... Petitioner

Versus

1) The State of Goa,
Through the Chief Secretary,
Having Office at
Secretariat, Porvorim,
Bardez, Goa.

2) The Department of Forest,
Through the Principal Chief Conservator,
Government of Goa,
Panaji, Goa.

... Respondents

Mr H.D. Naik with Mr A.D. Naik, Advocates *for the Petitioner.*

Ms Amira Razaq, Government Advocate *for Respondent No.1.*

**CORAM: M.S. SONAK &
BHARAT P. DESHPANDE, JJ.**

DATED: 14th June 2023

ORAL JUDGEMENT: (Per Bharat P. Deshpande, J.)

1. By this petition, refusal to grant 3rd Financial Upgradation under the Modified Assured Career Progression Scheme (MACPS), is challenged.

2. Heard learned Counsel Mr H.D. Naik appearing with Mr A.D. Naik for the Petitioner and Ms Amira Razaq, Government Advocate for Respondent No.1.

3. It is the main contention of the Petitioner that inspite of completion of 30 years of service, he was granted only one promotion and that Respondent denied his legitimate right for grant of 3rd Financial Upgradation as per MACPS, which is completely illegal, arbitrary, and therefore, needs to be rectified.

4. The Petitioner was initially appointed in the post of Round Forester on 02.12.1974 in the Forest Department of Government of Goa. He was promoted to the post of Range Forest Officer on ad-hoc basis on 22.05.1985, which was the next promotional post at the relevant time. Vide order dated 14.12.1994, ad-hoc promotion of the Petitioner was regularized with retrospective effect from the date of his ad-hoc promotion.

5. In the meantime, somewhere in the year 1998, the Government of Goa through Personnel Department issued an Office Memorandum dated 05.07.1989 thereby introducing Time Bound Promotional Scheme (TBPS) with effect from 01.06.1989 for the State Government Employees and more specifically who have stagnated in the same post for more than 12 years. As per the said scheme (TBPS), Petitioner having been found eligible upon completion of the required period of 12 years in the post of Range Forest Officer, was granted benefit vide order dated 24.04.1998 in the scale of Rs.6500-200-10500 that is the next higher post scale of Assistant Conservator of Forest, with effect from 29.05.1997.

6. The Central Government, somewhere in the year 2009, recommended in its 6th Central Pay Commission Modified Assured Career Progression Scheme (MACPS) with further modification to grant three Financial Upgradations at the interval of 10, 20 and 30 years of continuous regular service.

7. The Petitioner contends that on 13.05.2013, he was promoted to the post of Assistant Conservator of Forest in the Pay Band of Rs.9300-34800 + Grade Pay of Rs.4600. As on 20.06.2014, the Petitioner had put in required number of years in service for grant of 3rd Financial Upgradation as per MACPS. He submitted a detailed representation dated 23.06.2014 and it was forwarded to the office of Deputy Conservator of Forest. The representation of the Petitioner was then forwarded to Department of Forest thereby recommending the case of the Petitioner for 3rd Financial Upgradation. However, there was no response from the higher authorities.

8. Accordingly, the Petitioner had to approach this Court by filing Writ Petition No.18/2016 seeking direction to the Respondents to consider his case for grant of 3rd Financial Upgradation. On issuing notice in the said Writ Petition No.18/2016, the Respondents vide their letter dated 24.05.2016, informed the Petitioner that Government has rejected his representation. Since the said petition was only for direction to consider his representation and later on it was informed that such representation was rejected, the Petitioner sought leave to withdraw the Writ Petition No.18/2016 with liberty to file fresh petition challenging the rejection.

9. Accordingly, the present petition was filed wherein it has been

categorically claimed by the Petitioner that the contention raised by the Respondents of granting two promotions to the Petitioner or double promotion to the Petitioner, is incorrect, and therefore, he is entitled for the 3rd Financial Upgradation after completion of 30 years of regular service.

10. In support of the contention raised by the Petitioner, he has placed on record his order of appointment dated 22.05.1985 at Annexure 'A' wherein his name appears at Sr. No.3 for the post of Round Forester. Similarly, vide order dated 17.11.1994 (Annexure 'B'), Petitioner has placed on record the order recommending the Petitioner to promote on regular basis to the post of Range Forest Officer with effect from 29.05.1985. Vide Exhibit 'C', Petitioner has placed on record the order dated 27.04.1998 by which he was considered for the time-bound promotional scale with effect from 29.05.1997. Finally, vide Exhibit 'D', vide order dated 13.05.2013, the Petitioner was promoted to the post of Assistant Conservator of Forest, Group 'B' Gazetted on ad-hoc basis in the Pay Scale of ₹9300-34800 + Grade Pay ₹4600.

11. Vide communication dated 24.05.2016, the Deputy Conservator of Forest informed the Petitioner that his representation dated 03.03.2015 is rejected by the Government since the Petitioner has already availed three Financial Upgradations (2 promotions and 1 time-bound promotional scale). On this ground, the Respondents rejected contention of Petitioner of further Financial Upgradation under MACPS.

12. Reply affidavit has been filed on behalf of Respondents wherein apart from admitting the posts held by the Petitioner from time to time, it

has been specifically claimed in para 12 that the Petitioner got double promotion from the post of Range Forester to directly Range Forest Officer, as in between, the post of Deputy Range Forester exists. Thus, according to the Respondents, in view of double promotion granted to the Petitioner and thereafter grant of time-bound promotional scale, he is not entitled for any further Financial Upgradation.

13. We have heard the learned Counsel Mr Hanumant Naik appearing for the Petitioner and learned Counsel Ms Amira Razaq for the Respondents at length.

14. Mr Naik appearing for the Petitioner forcefully submitted that when the Petitioner was promoted to the post of Range Forester, in the year 1985, there was no post of the Deputy Range Forester existing. In this respect, he placed reliance on the Notification dated 02.06.1966 issued by the Government of Goa in exercise of the powers conferred by proviso to Article 309 of the Constitution by which the Rules relating to recruitment to non-gazetted, non-ministerial post in the office of Conservator of Forest under the Government of Goa were enacted and called as Recruitment Rules 1966. The Schedule appended to the said Rules reads thus:-

Name of Post	No. of posts	Classification	Scale of Pay	Whether Selection Post or non-Selection Post	Age limit for direct recruits	Educational and other qualifications required for direct recruits	Whether age and educational qualifications prescribed for the direct recruits will apply in the case of promotees	Period of probation, if any	Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods	In case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation/transfer to be made	If a DPC exists, what is its composition	Circumstances in which U.P.S.C. is to be consulted in making recruitment
1	2	3	4	5	6	7	8	9	10	11	12	13
1. Forest Guards	160	Class IV Non-ministerial	Rs.70-1-80--EB-1-85.	N.A.	16-23 years.	Should have passed III class from a recognised school	N.A.	Two years	Direct recruitment	-	-	As required under the rules.

2. Round Foresters	23	Class III Non-ministerial	Rs.110-131-4-143-EIB-4-155.	Non-Selection.	18-25 years	1) Matriculate or equivalent. 2) Successful completion of training as Forester from a recognised Institute. 3) Physical standard Chest: 31"-33" Height-5"-4"	Age-No Qls-Yes	Two years	By promotion, failing which by direct recruitment.	Promotion- Forest guards with one year standing in the grade.	Class III D.P.C.	Do
3. Forest Surveyors	2	Do	Rs.170-10-290-15-380.	N.A.	Do	1) Matriculate or equivalent. 2) Training in Surveying from any recognised Polytechnic, or other Institute of standing.	N.A.	Two years	Direct recruitment	-	-	Do
4. Range Forest Officers	33	Do	Do	Selection	Do	1) Intermediate or equivalent. 2) Diploma of Forest Ranger from a recognised Forest Training College or 5 years experience as Round Foresters.	Age-No Qls-Yes	Two years	Promotion-50% Direct recruitment-50%	Promotion – Round Foresters with five years standing in the grade.	Do	Do
5. Sub-divisional Forest Officer	20	Do	Rs.250-20-350-25-500	Do	Do	1) Graduate with Science Subjects. 2) Associateship in the Indian Forest College, Forest Research Institute, Dehradun or equivalent. or Degree or diploma in Forestry from any recognised University/Institute. 3) Physical standard Chest: 31"-33" Height-5"-4"	Age-No Qls-Yes	Two years	Promotion-33-1/3% Direct recruitment-66-2/3%	Promotion – Range Forest Officers with 3 years standing in the grade.	Do	Do

15. Perusal of above Rules and the Schedule clearly show that the post of Range Forester was considered as class 3, non-ministerial, non-gazetted and non-selection basis. At Serial No.3, the post of Forest Supervisor is shown as non-ministerial, non-gazetted with a higher scale than that of Round Forester, but the method of recruitment in Column No.10 is shown as by direct recruitment. Thus, the post of Round Forester was not coming within the feeder cadre for the post of Forest Supervisor.

16. Serial No.4 of the Schedule refers to Range Forest Officer which is again having the same Pay Scale as that of Forest Supervisor but the mode of recruitment in Column No.10 is shown as Promotion-50% and Direct Recruitment-50%. The feeder cadre in Column No.11 is shown as promotion from Round Forester with 5 years standing in the grade. Thus, the post of Forest Supervisor at Serial No.3 and the post of Range Forest Officer were of the same level, having different educational qualifications

and also different mode of recruitment. Therefore, at the time of promotion of the Petitioner, in the year 1985, he was not eligible to be promoted to the post of Forest Supervisor, which post was only to be recruited through direct employment. However, he was clearly entitled/eligible for the post of Range Forest Officer, which was having equal pay as that of Forest Supervisor, and 50% of such posts could be filled in by promotion from Round Foresters with 5 years standing in the grade.

17. It is not the case of the Respondents that since Petitioner was directly promoted to Range Forest Officer instead of promoting him to Forest Supervisor, though having same Pay Scale, the Petitioner got double promotion. At this stage, it is necessary to note that in the Rules of 1966 or in any other document, the post of Deputy Range Forester was not created. Therefore, the Petitioner's promotion as a Range forest officer, which was the only promotional post then available to the Petitioner, can hardly be styled as some double promotion to deny the 3rd financial upgradation to the Petitioner.

18. Learned Counsel Mr Naik then pointed out the Notification dated 04.12.1985 issued by Department of Personnel and Administrative Reforms (Exhibit R-6) by which the Government of Goa notified the Rules relating to recruitment to Group 'C' non-gazetted, non-ministerial post in the office of Conservator of Forest and were called as Recruitment Rules 1985. Rule 2 of these Rules 1985 specify that the number of posts, classification of the said post and the scales of pay attached thereto shall be as specified in Column Nos.2 and 4 of the Schedule.

19. The schedule appended to the Rules 1985 reads thus:-

Name of Post	No. of posts	Classification	Scale of Pay	Whether Selection Post or non-Selection Post	Age limit for direct recruits	Educational and other qualifications required for direct recruits	Whether age and educational qualifications prescribed for the direct recruits will apply in the case of promotees	Period of probation, if any	Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer and percentage of the vacancies to be filled by various methods	In case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation/transfer to be made	If a DPC exists, what is its composition	Circumstances in which U.P.S.C. is to be consulted in making recruitment
1	2	3	4	5	6	7	8	9	10	11	12	13
1. Range Forest Officer	37 (1985) Subject to variation dependent on work-load	Rs.425-15-500-EB-15-560-20-700	Group 'C' Non-Ministerial, Non-Gazetted.	Selection	18-24 years (Relaxable for Govt. servants).	Essential: i) Std. XII with the subjects Mathematics, Physics, Chemistry, Botany, Zoology. ii) Good physique with sound hearing and fitness for rough outdoor work, Minimum height 163 cms. And chest 79 cms. With minimum expansion of at least 5 cms. iii) Candidate must pass a physical test consisting of a walk of 25 kms. To be completed in 4 hours. Note: Selected candidates will be sent for training in the Forest Training College/Institute for Diploma of Ranger immediately after selection. Failure in the aforesaid training will debar them to claim retention in service as Range Forest Officer. Desireable: Knowledge of Konkani and/or Marathi/Gujarathi.	Age: No. Qls: Yes	Two years	50% by promotion failing which by direct recruitment and 50% by direct recruitment	Promotion: Dy. Range Forest Officer with 5 years of service in the grade failing which with 8 years in the grade of Dy. Range Forest Officer and Round Forester combined together, failing both with 8 years in the grade of Round Forester.	Group 'C' D.P.C.	N.A.
2. Dy. Range Forest Officer	10 (1985) Subject to variation dependent on work-load	--do--	Rs.330-10-380-EB-12-500-EB-15-560	--do--	N.A.	N.A.	N.A.	--do--	By promotion	Promotion: Round Foresters with 3 years regular service in the grade.	--do--	--do--

20. According to Mr Naik, the post of Deputy Range Forester was first time introduced in the Department of Forest in December 1985, whereas by that time Petitioner was already promoted though on ad-hoc basis to the post of Range Forest Officer. Thus, according to Mr Naik, there was no post of Deputy Range Forest Officer and hence, contention of the Respondents in their reply that the Petitioner got double promotion is incorrect.

21. At this stage, it is necessary to note the contentions raised in the

affidavit filed by Respondent and more specifically para 12 which reads thus:-

*“12. With reference to Paragraph 9 of the Petition, contents are denied. I further say that the next promotion for Round Forester is the post of Deputy Range Forest Officer and further promotional post is Range Forest Officer. The petitioner has in fact got the promotion from Round Forester to Range Forest Officer directly which clearly indicates that there is a double promotion. The petitioner subsequently in the year 1998 received the benefits of Time Bound Promotional Scale vide order No. 1-V-C-51-98/359 dated 27/04/1998. I say that this clearly indicates that the petitioner has already gained/earned an upgradation of 3 scales of 4000-100-6000(5200-20200+2400 of Deputy Range Forest Officer) and promotion scale of 4500-125-7000(5200-20200+2800 of Range Forest Officer) and on the grant of Time Bound Promotional Scale 6500-175-10000(9300-34800+4600 of Assistant Conservator of Forests), therefore submit that the petition deserves no consideration. **Exhibit R-5**”*

22. It is the contention of Respondent that the post of Deputy Range Forest Officer was created in the year 1980 and notified in the year 1985. In this respect, Respondent has placed on record order dated 02.08.1980 (Exhibit R3) which shows the sanction accorded for creation of the post in the Forest Department for the period ending upto 28.02.1981 in the first instance. At Sr. No.2, the post of Deputy Range Forest Officer is shown. However, Respondent clearly admitted that though the post of Deputy Range Forest Officer was sanctioned in the year 1980, it was notified in the year 1985. Thus, from the reply, it is clear that till the year 1985, no effect was given to the creation of such post since such order was not notified in the Government Gazette.

23. Precisely for this reason, when the Petitioner was considered

eligible for the promotion to the next grade, the Department as well as the Government considered promoting the Petitioner on ad-hoc basis to the post of Range Forest Officer. The order dated 22.05.1985 clearly shows that other officers were also considered for different post. Thereafter, vide order dated 14.12.1994 (Exhibit B), the DPC recommended to regularize the Petitioner in the post of Range Forest Officer and that too with effect from 29.05.1985. Thus, even on 29.05.1985, the post of Deputy Range Forest Officer was not notified though sanction to create such post was granted in the year 1980.

24. The Respondents in their reply are clearly silent as to whether after sanctioning of the post of Deputy Range Forest Officer on 02.08.1980 (Exhibit R3), such post was filled in either by promotion or otherwise. The entire affidavit is silent on this aspect and rightly so as these posts were not notified in the Government Gazette till December 1985. Thus, contention of the Respondent that Petitioner got double promotion in the year 1985 itself, is factually incorrect for the simple reason that when the Petitioner was promoted vide order dated 22.05.1985 to the post of Range Forest Officer, there was no post in existence as that of Deputy Range Forest Officer in the Department.

25. The contention raised by the Respondents in para 33 of their reply affidavit claiming that Petitioner enjoyed three Financial Upgradations in 30 years is factually incorrect as he was never appointed as Deputy Range Forest Officer as tried to be claimed in the chart in para 33 of the reply. The record clearly goes to show that Petitioner was working as Range Forester and was promoted to the post of Range Forest Officer on

22.05.1985. This was the first promotion of the Petitioner and first Financial Upgradation. Only because by that time the post of Deputy Range Forest Officer was sanctioned but not notified, the Department cannot take advantage of such sanctioning of post claiming thereby double promotion to the Petitioner. When the post of Deputy Range Forest Officer was not in existence in the Department being not notified and that Respondents are totally silent about carrying out any such promotions to the post of Deputy Range Forest Officer from the year 1980 till granting promotion to the Petitioner on 22.05.1985, the Respondents cannot claim that it was a double promotion.

26. Thus, it is clear that the first promotion which the Petitioner got is in the post of Range Forest Officer and thereafter, he was promoted to the post of Assistant Conservator of Forest with effect from 13.05.2013. Accordingly, the Petitioner got two Financial Upgradations.

27. Vide Annexure 'E', the Petitioner has placed on record Office Memorandum issued by the Government of India, Ministry of Personnel dated 19.05.2009 which deals with Modified Assured Career Progression Scheme (MACPS) for the Central Government civilian employees. Admittedly, this scheme was adopted by the State Government. This scheme was applicable to all regularly appointed Group A, B and C Government employees. Annexure I (page 31) of the said scheme gives the details as to how the scheme operates. It specifically mentions in para 1 that there shall be three Financial Upgradations under MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years service respectively. Financial Upgradation under the scheme will be admissible

whenever a person has spent 10 years continuously in the same grade pay. It envisaged placement in the immediate next higher grade pay in the hierarchy in the recommended revised pay bands and grade pay as given in Section 1, para 'A' of the first scheme of CCS (Revised Pay) Rules 2008. The grade pay at the time of Financial Upgradation under MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, higher grade pay attached to the next promotional post in the hierarchy of the concerned cadre/organization, will be given only at the time of regular promotion. Illustrations were given in the scheme which clearly depicts as to how the scheme should operate and the DPC has to consider upgradation at the regular intervals of 10, 20 and 30 years of service respectively.

28. By way of illustration in para 28, the scheme provides as under:-

“(i) If a Government Servant (LDC) in PB-I in the Grade Pay of Rs.1900 gets his first regular promotion (UDC) in the PB-I in the Grade Pay of Rs.2400 on completion of 8 years of service and then continues in the same Grade Pay for further 10 years without any promotion then he would be eligible for 2nd financial upgradation under the MACPS in the PB-I in the Grade Pay of Rs.2800 after completion of 18 years (8+10 years).

(ii) In case he does not get any promotion thereafter, then he would get 3rd financial upgradation in the PB-II in Grade Pay of Rs.4200 on completion of further 10 years of service i.e. after 28 years (8+10+10).”

29. There is no dispute with regard to the above scheme (MACPS) and the fact that the Petitioner got one promotion to the post of Range Forest Officer on 22.05.1985. However, he continued in the said post till

12.05.2013 when he was promoted to the post of Assistant Conservator of Forest. Considering the above example, the Petitioner was appointed on 02.12.1974 and was promoted to the post of Range Forest Officer on 22.05.1985, that is within a period of nine and a half years. Thereafter, the Petitioner continued in the post of Range Forest Officer till 12.05.2013 which means for a period of around 28 years without any Financial Upgradation. Thus, the contention raised by the Respondents in their reply affidavit that the Petitioner received three Financial Upgradations, is factually incorrect. The claim of the Respondents that Petitioner got double promotion is also factually incorrect as by that time, the post of Deputy Range Forest Officer was not notified and thus, the next post available for the Petitioner was that of Range Forest Officer. There is no explanation coming forward in the reply as to how and on what basis, Petitioner was directly promoted to the post of Range Forest Officer without considering his case for the post of Deputy Range Forest Officer. The only answer to it is obvious that at the relevant time, the post of Deputy Range Forest Officer was not notified though sanctioned and therefore, the Department was unable to fill up such post.

30. Having said so, contention of the Petitioner regarding his entitlement for the 3rd Financial Upgradation needs to be accepted. Accordingly, the decision of the Respondent dated 24.05.2016 (Exhibit K, page 49) needs to be quashed and set aside.

31. The petition therefore needs to be allowed as per prayer clauses (A) and (B). Accordingly, the Rule is made absolute in terms of prayer clauses (A) and (B), which read as follows:

“A. That this Hon’ble Court be pleased to issue a Writ in the nature of Certiorari or Writ of Certiorari or any other appropriate Writ calling for the records from the Respondents in respect of decision taken by the Respondents to reject the claim of the Petitioner for grant of 3rd Financial Upgradation and upon examining the legality, reasonability and propriety of the same be pleased to quash and set aside the decision of the Respondents as conveyed to the Petitioner vide letter dated 24/05/2016.

B. That this Hon’ble Court be please to issue a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate Writ, order or direction commanding the Respondents to grant 3rd financial upgradation to the Petitioner with all benefits.”

32. The financial benefits in terms of this judgement and order must be paid to the Petitioner within a maximum of two months from today with interest @six per cent per annum. No costs.

BHARAT P. DESHPANDE, J.

M.S. SONAK, J.

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