

LIBRARY

IN THE COURT OF CENTRAL ADMINISTRATIVE TRIBUNAL
AT PORT BLAIR

O.A. No. 185 /AN/2014

1. Shri Dhanaroopan,
Aged about 46 years,
S/o late K.R. Palaniappan,
R/o Mayabunder,
Working as Forest Guard,
Forest Department,
Presently posted at Mayabunder Range,
Mayabunder Division.
2. Shri Prashanta Das,
Aged about 44 years
S/o Shri Ravi Das.
R/o Betapur, Middle Andaman,
Working as Forest Guard,
Forest Department,
Presently posted at Tugapur Range,
Wildlife Division, Mayabunder.
3. Shri Jay Kumar
Aged about 43 years,
S/o late V. Raman.
R/o Wimberlygunj, Ferrargunj Tehsil,
Working as Forest Guard,
Forest Department,
Presently posted at Protection Range,
Wildlife Division, Haddo, Port Blair.
4. Shri Uttam Kumar Mistry,
Aged about 40 years,
S/o late Jiten Mistry
R/o V.K. Pur, Little Andaman,
Working as Forest Guard,
Forest Department,
Presently posted at Nilambur,
Baratang Division, Middle Andaman.
5. Shri Abdul Shamim,
Aged about 44 years,
S/o Abdul Karim,
R/o Calicut Port Blair,
Working as Forester,
Forest Department,
Presently posted at Mannarghat Range,
South Andaman Division.

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6. Shri Ahmed,
Aged about 51 years.
S/o late K. Moidu,
R/o Calicut, Port Blair,
Working as Forester,
Forest Department,
Presently posted at Nilambur,
Baratang Division, Middle Andaman.
7. Shri Partha Das,
Aged about 35 years,
S/o Shri K.G. Das,
R/o Delanipur,
Working as Forester,
Forest Department,
Presently posted at Mill Division,
Chatham, Port Blair.
8. Shri A. Xavier,
Aged about 41 years,
S/o T. Arogya Swamy,
R/o Bird Line, Port Blair,
Working as Forester,
Forest Department,
Presently posted at Mill Division,
Chatham, Port Blair.
9. Shri C. A. Mohammed,
Aged about 50 years,
S/o Shri Ahmed Kutty,
R/o Haddo, Port Blair,
Working as Deputy Ranger,
Forest Department,
Presently posted at Mannarghat Range,
South Andaman Division.
10. Shri Manjit Singh,
Aged about 46 years,
S/o late Dayal Singh,
R/o Haddo, Port Blair,
Working as Deputy Ranger,
Forest Department,
Presently posted at Nilambur,
Baratang Division, Middle Andaman.

..... Applicant

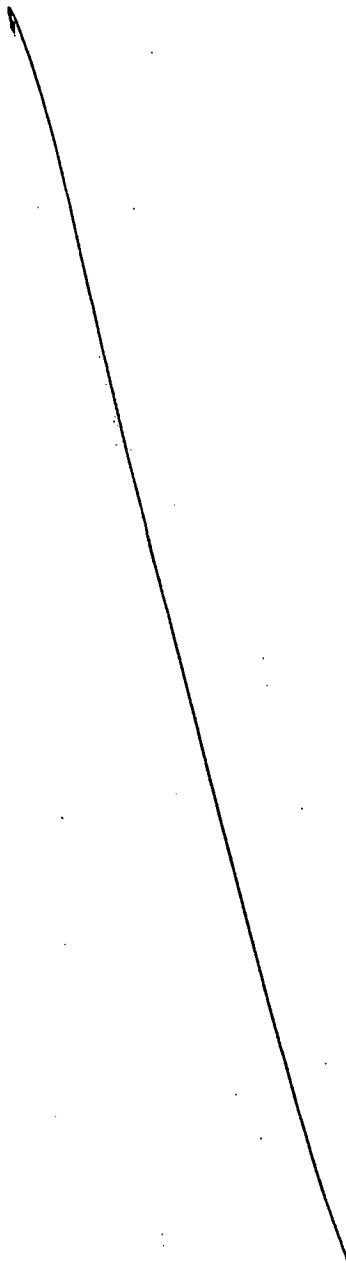
-Versus-

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1. The Union of India through the Secretary (Ministry of Forests and Environment), New Delhi.
2. The Lt. Governor, Andaman & Nicobar Islands, Raj Niwas, Port Blair.
3. The Andaman and Nicobar Administration, through the Chief Secretary, Andaman & Nicobar Administration, Secretariat, Port Blair.
4. The Principal Chief Conservator of Forest, A & N Islands, Van Sadan Bhavan, Port Blair.

..... Respondents

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No. O.A. 351/00185/2014

Date of order: 21-9-2017

Present: Hon'ble Mr. A.K. Patnaik, Judicial Member
Hon'ble Ms. Minnie Mathew, Administrative Member

For the Applicant : Ms. A. Nag, Counsel

For the Respondents : Mr. S.K. Mandal, Counsel
Mr. S.C. Misra, Counsel

ORDER

A.K. Patnaik, Judicial Member:

Out of 10 (ten) Applicants, Applicant Nos. 1 to 4 while working as Forest Guard, Applicant Nos. 5 to 8 are working as Forester whereas, the Applicant Nos. 9&10 are working as Deputy Ranger in the Forest Department of the Government of India. They have filed this Original Application jointly stating inter alia that the Forest Department is one of the departments under the A&N-administration which consists of two sets of employees namely Forest Non-Gazetted Executive Staff and State Forest Service. The posts under the Forest Executive Staff consisting of Forest Guard, Head Forest Guard, Forester, Deputy Ranger and Forest Ranger (RFO). The sanctioned strength of various posts are - Forest Guard 331, Head Forest Guard 47, Forester 227-113 (50% by promotion), Deputy Ranger-64 and Forest Ranger (RPF) -76-25 (33 1/3% by promotion). Although there are 227 posts of Forester, only 50% is reserved for promotion. The strength of the feeder post i.e. Forest Guard compared to other posts is excessive leading to stagnation. The Applicant No.1 is working as Forest Guard since 18 years and Applicants 2 to 4 are working as Forest Guard since 17, 11 and 10 years respectively without any promotion. Similar is the situation in so far as Deputy Ranger is concerned. In terms of the report of

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the Pandey Commission, the authorities have introduced the post of Head Forest Guard and also modified the recruitment rule by enhancing the quota for direct recruitment. The post of Forest Ranger was filled up 50% by promotion and 50% by direct recruitment before the acceptance of the report of the Commission. However, on acceptance of the report, the recruitment Rule were amended providing that $66\frac{2}{3}\%$ of the post of Forest Ranger shall be filled up by way of direct recruitment and $33\frac{1}{3}\%$ on promotion. The applicants have alleged that these changes brought out in the rules have adversely affected their promotional prospects. But no decision was taken in so far as the other recommendations are concerned. It has been stated that an anomaly committee was constituted to consider the issue relating to up gradation of pay structure of Assistant Conservator of Forests and Forest Rangers of A&N Islands. The Anomaly Committee while dealing with the issue relating to the pay structure of ACF and Forest Ranger also expressed their concern for the hardship faced by the applicants. The grievance of the applicants that till date no decision has been taken on the recommendation made by the Pandey Commission. They have also made representations on 18.3.2013 and 10.3.2014 which are still pending. Thus, in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985 the Applicants have prayed for the following reliefs:

- a) Leave be granted to move the application jointly under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987.
- b) An order/orders/direction/directions directing the respondent authorities to review the cadre strength of the Forest Executive Staffs, which comprises of Forest Guard, Head Forest Guard, Forester, Deputy Ranger and Forest Ranger by maintaining the ratio of 1:3

between each feeder post with that of promotional post:

- c) An order / orders/ direction / directions directing the respondent authorities to act in terms of the report of the Pandey Commission as modified by the Government of India by granting financial upgradation to the pay scale of next promotional post to the Forest Executive Staffs after completing the period mentioned in the order of the Government of India.
- d) An order / orders / direction / directions directing the respondent authorities to grant financial upgradation to the Forest Guards in the scale of Head Forest Guard after completion of 8 years of service in the post of Forest Guard.
- e) An order / orders / direction / directions directing the respondent authorities to grant financial upgradation to the Forester in the scale of Deputy Ranger after completion of 16 years of service in the post of Forester.
- f) An order directing the respondent authorities to grant all consequential and monetary benefits to the applicants.
- g) An order directing the respondent authorities to act in accordance with law.
- h) An Order to issue directing the respondents to produce the records of the case before this Hon'ble Tribunal so that conscionable justice may be done.
- i) Such other or further order direction or directions as Your Lordships deem fit and proper in the interest of justice."

2. The Respondents have filed their reply statement in which it has been stated that various posts such as Forest Guard, Forester and Deputy Ranger

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were created under various schemes depending upon the work load of the Department. The sanctioned strength of various posts of Forest Non Gazetted Executive Staffs are (i) Forest Guard -331, (ii) Head Forest Guard-47 (100% by promotion) (iii) Forester -227 (50% i.e. 114 by promotion) (iv) Deputy Ranger-64 and Forest Ranger (RFO) -76 (33 1/3% i.e. 25 by promotion). In order to ameliorate the service condition of Forest Rangers and frontline staff down below, a Committee was constituted by Government of India under the Chairmanship of the then Additional Inspector General of Forest, Shri S.K.Pande, during 1996. The Committee submitted its recommendations during 1998. The Committee drew parity between the police and Forest Department Personnel and accordingly recommended similar pay scales to all the Forest personnel with their counterparts in Police service and (a) to upgrade 12.5% of the total number of Forest Guard to Head Forest Guard like that of Head Constable in Police Department; (b) to provide promotional scales after 10 and 20 years of service that were modified by Ministry of Environment & Forests, Government of India to 8 to 16 years; (c) revision of percentage of direct recruitment and promotional post in the post of Forest Ranger. The 5th CPC also made similar recommendation. In term of the recommendation of Vth CPC, the Government of India issued an order for granting financial up gradation to an employee, after completion of 12 & 24 years of regular service, if no regular promotion is given to employee concerned, during the prescribed periods was implemented for all Government servants including the applicants. Also on acceptance of the recommendation of Vth CPC, vide Office order No. E/840 dated 30.10.2001, 47 posts of Forest Guard were upgraded to Head Forest Guard in the Department of Environment and Forest, A&N Administration. The ACP scheme was replaced and MACP was

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introduced by the Government on acceptance of the recommendation of Vth CPC in which it was provided that in place of two, there shall be three financial up gradation i.e. after completion of 10, 20 and 30 years of service which was also made applicable to the applicants. The applicant No.5 was promoted to the post of Deputy Ranger vide order dated 2.1.2005. Recruitment Rule for Forest Ranger were amended to change the method of recruitment to the post of Forest Ranger by 66 2/3% on direct recruitment and 33 1/3% on promotion to expand the promotional avenues. It has been stated that after mere completion of qualifying service, one cannot be given higher scale of pay without having vacancy in the post. Accordingly, the Respondents opposed the contentions advanced in the pleadings and have prayed that this OA being devoid of any merit is liable to be dismissed.

3. Heard the learned Counsel appearing for respective parties and perused the records.

4. The learned counsel appearing for the applicants submitted that due to inaction, the respondents have failed to manage the cadre strength properly which has resulted in stagnation in the forest executive staff cadre. The post of Forest Guard is 331 whereas there are only 47 posts of Head Forest Guard which is the promotional post of Forest Guard. The post of Forester is 227 whereas only 64 posts are sanctioned for Deputy Ranger which is the promotional post of Forester. It has been submitted that a few applicants are working as ~~Fours~~ ^{Forest} Guard and Forester for last more than 15-20 years without any promotion. Before recommendation of Vth CPC and report of the Pandey Commission there were no posts of Head Forest Guard and the Forest Guards used to get promotion to the post of Forester without any stagnation but after the creation of post of Head Forest Guard the promotional avenue of the Forest Guard has been hampered to a maximum

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extent. The Pandey Commission recommended enhancement of salary of the forest executive staffs of different level after serving the department for a particular period which was illegally modified by the Government. The Government ought to have accepted the report of the Pandey Commission with regard to the up gradation of pay and maintenance of ratio 1:3 to deal with the promotional aspects of the applicants. Accordingly, learned counsel for the applicants has sincerely prayed for allowing the reliefs sought in this OA.

On the other hand, the learned counsel appearing for the Respondents has submitted that creation of posts, up gradation and enhancement of scale of pay are all policy matters of the Government. No employee has any right to claim for such thing as a matter of right nor this Tribunal can adjudicate on such matters; especially the matter being a policy matter fall squarely within the domain of the Government to decide. Further it has been contended that report of the Commission, is advisory in nature and based on the report of the Commission an employee cannot claim the benefit unless the said recommendation is accepted by the Government. Accordingly, the learned Counsel for the Respondents has strongly opposed the prayer of the applicants and has prayed for dismissal of this OA.

5. We have considered the rival submissions of the parties with reference to the pleadings and materials placed in support thereof. Trite is the position of law that report of Commission is subject to acceptance by the Government and it can be accepted or rejected by Government. It has been held that providing a particular pay scale or replacement of scale of pay is a delicate mechanism which requires various considerations including financial capacity, responsibility, educational qualification, mode of appointment etc. and it has a cascading effect which is purely an executive

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function and hence the court should not interfere with the same. The Tribunal cannot arrogate to itself the powers of the executive or legislature and cannot direct the Government to accept the recommendations and implement the same. Further the Court/Tribunal has no power to interfere with the policy decision of the Government as mandated by the Hon'ble Apex Court (vide Union of India v Arun Jyoiti Kundu and others (2007) 2 SCC (L&S) 695 & State of Punjab & Ors. Vrs. Ram Lubhaya Bagga etc. (1998) 4 SCC 117). Further creation and sanction of posts is the prerogative of executive and courts cannot arrogate to themselves a purely executive power as settled by the Hon'ble Apex Court. (para 15)-State of Tamil Nadu and others v Amala Annai Higher Secondary School (2009) 2 SCC (L&S) 608 (para 15). In view of the above, we are not inclined to interfere in this matter.

6. At the same time, we may record that every Government servant has a right to make representation ventilating their grievance before the authorities concerned and the authorities concerned are under obligation to decide and intimate the result thereof to the applicant. It is the specific case of the applicants that they have submitted representation dated 18.3.2013 and 10.03.2014 but they have not received any reply. In view of the above, liberty is granted to the applicants to make another comprehensive representation in furtherance to the representations already made to the authorities concerned within a period of 15 days from the date of receipt of a copy of this order and in that event, the authorities concerned are directed to consider the same, without being influenced on any of the observations made above and communicate the decision in a well reasoned order to the Applicants within a period of 60 (sixty) days from the date of receipt of such representation.



7. With the aforesaid observation and direction this OA stands disposed of leaving the parties to bear their own costs.

(Minnie Mathew)
Administrative Member

(A.K. Patanaik)
Judicial Member