

(2019) 06 BOM CK 0113
In the Bombay High Court
Case No : Writ Petition No. 992 Of 2018

Satyavan B. Gavas And Ors		APPELLANT
	Vs	
State Of Goa And Ors		RESPONDENT

Date of Decision : 21-06-2019

Acts Referred:

Goa Government (Seniority) Rules, 1967 — Rule 1, 1(3), 4, 5
Constitution Of India, 1950 — Article 162, 309

Citation : (2019) 06 BOM CK 0113

Hon'ble Judges : S.C. Gupte, J;Nutan D. Sardessai, J

Bench : Division Bench

Advocate : Shivan Desai, Pravin N. Faldessai

Final Decision : Disposed Off

Judgement

S.C. Gupte, J

1. Heard learned counsel for the Petitioners and learned Additional Government Advocate for the Respondents.

2. Rule. Taken up for hearing forthwith by consent of learned counsel.

3. This writ petition challenges a seniority list prepared by the Respondent State of Forest Guards recruited by Respondent No.2. It is the grievance of

the Petitioners that the inter se seniority amongst the appointees determined by Respondent No.2 is contrary to law and the authority of this Court in

the case of Vishwanath Shiva Bugde Vs State of Goa (Writ Petition No.104 of 2002 decided on 26th March, 2010).

4. We are concerned with about 90 Forest Guards in this petition. These were recruited by Respondent No.2 by issuing advertisement and calling for

applications. The Forest Guards appointees, who met with eligibility criteria and were selected for the post, were duly appointed by Respondent No.2.

The appointees had to undergo a six months' rigorous training course prescribed for Forest Guards at the Forest Training School at Valpoi. It is not in dispute that all 22 Petitioners successfully completed the training programme along with the others. The training for the 90 appointees was held in three batches (Batch Nos. 27, 28 and 29). The Petitioners were in batch No.27. They were confirmed as Forest Guards w.e.f. 30.03.2009. The grievance of the Petitioners is that the seniority of the Petitioners was determined by Respondent No.2 on the basis of their relative merit in the training programme organized by the Forest Training School at Valpoi and appointees who cleared the training programme in later batches and who were, accordingly confirmed later were given seniority over them. The Petitioners object to the relative merit in the training being considered as a criteria for determining seniority. It is submitted that the merit in this case was determined and seniority assigned on the basis of what are known as Forest Training Rules, which are framed by the Forest Training School at Valpoi. It is submitted that determination of seniority on the basis of such Rules has been held to be illegal by a Division Bench of our Court in the case of Vishwanath Bugde (supra). It is submitted that the Goa Government (Seniority) Rules, 1967, which are framed in pursuance of powers conferred by Article 309 of the Constitution of India on the State and which have statutory force, require that relative seniority of all direct recruits shall be determined by the order of merit in which they were selected for appointment. Forest Training Rules, which were held to have no statutory force, could not override or obliterate the effect of statutory rules of seniority framed under Article 309 as held by our Division Bench in the case of Vishwanath Bugde (supra).

5. The other grievance of the Petitioners is that the appointees were trained in batches and cleared the training batch-wise. It is submitted that seniority must be determined on the basis of batch-wise completion of training. It is submitted that the confirmation of the appointees was on that basis. It is submitted that the Petitioners having completed training in the first batch (Batch No.27), must be placed higher in the seniority list than those who completed the training in the later batches, namely, batch nos.28 and 29.

6. It is the case of the Respondent State that the seniority was fixed as per merit obtained by the Forest Guards in their compulsory induction training

conducted by the Department at Forest Training School at Valpoi under regulations which had the approval of the State Government and that these criteria have been uniformly applied by the State for determining the seniority of Forest Guards.

7. It is not disputed that Forest Guards appointed by Respondent No.2 are officers of the Government of Goa of class IV. All officers of Government of Goa of Class I, II, III and IV are covered by rules of seniority contained in the Goa Government (Seniority) Rules, 1967. Rules 1 and 5 thereof provide as follows :

1. Short title, commencement and application.-

(1) These Rules may be called the Goa Government (Seniority) Rules, 1967.

(2) They will come into effect from the date of the Notification.

(3) They shall apply to all Class I, Class II, Class III and Class IV Officers of the Government of Goa, Daman and Diu, except -

(a) Officers in respect of whom special provision is made by or under any law for the time being in force, in regard to the matters covered by these

rules; and

(b) Officers who are on deputation from the Central Government or from any State Government/Union Territory.

5. Direct recruits.- Notwithstanding the provisions of rule 4, the relative seniority of all direct recruits shall be determined by the order of merit in

which they are selected for such appointment, on the recommendation of the Union Public Service Commission or other selection authority, persons

appointed as a result of earlier selection being senior to those appointed as a result of a subsequent selection.

Provided that where persons recruited initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated

at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit.

These rules make it very clear that seniority of all direct recruits ought to be determined by the order of merit in which they were selected for such

appointment, so that the persons appointed as a result of earlier selection shall be senior to those appointed in a subsequent selection. The proviso to

Rule 5 requires that this rule can be altered only when persons recruited initially on a temporary basis are confirmed subsequently in a different order.

In that case, seniority shall follow the order of confirmation and not the original order of appointment. This applies across the board to all officers of

the Government of Goa unless any special provision is made on any matter covered under these rules in case of particular type of officers by or under

any law for the time being in force.

8. The relative merit of recruits found in their initial training has no role to play in this scheme of things. Seniority has to be assessed always by the

order of merit in which the candidates were selected. This order of merit cannot be altered or tampered with on the basis of the merit of candidates

displayed during their initial induction training.

9. A similar contention was taken up before the Division Bench of this Court in the case of Vishwanath Bugde (*supra*). It was submitted that ranks

obtained in the final results of Forest Training School at Valpoi should be considered for the purposes of determining inter se seniority between

recruits. It was submitted that the Government had issued instructions making the relative merit in training obtained in Forest Training School under the

Forest Training Rules as the basis of seniority and this being a special provision made in respect of the particular officers, namely, Forest guards, has

precedence over Rule 5 by virtue of Rule 1(3) of Goa Government (Seniority) Rules, 1967. This argument was, in terms, rejected by the Division

Bench of our Court. The Court held that any such instructions, even if they could validly be made under Article 162 of the Constitution of India, would

be of no assistance to the Petitioners before the Court. It was observed that such instructions under Article 162 could not be a matter of conjecture;

their existence must be clearly established. The Court was of the view that there was nothing on record which could even remotely establish the

existence of such instructions and that, accordingly, seniority could not be determined on the basis of relative merit in the training programme of Forest

Training School at Valpoi. The Petitioners' reliance on the so called constitution of the forest training school, which was said to have an approval of

the Government of India, was not countenanced by our Court. The Court held that it did not have any statutory force.

10. On the basis of the Rules noted above and the law stated by our Division Bench in the case of Vishwanath Bugade (*supra*), it is not possible to

accept the Respondents' case that inter se seniority of new recruits could be

determined as per ranks obtained by them in the final results of induction training held at Forest Training School.

11. So far as the second grievance of the Petitioners is concerned, no doubt it is true that the induction programme was completed by the recruits

batch-wise and that the Petitioners completed the training before the others. Even if the Petitioners' confirmations were on the basis of this batch-wise

training and preceded those of the others, that was merely coincidental. As the learned Government Advocate points out, this was due to a fortuitous

circumstance that there being about 90 recruits and the Government not having adequate machinery to complete their induction training in one batch,

the training was organized in batches. It was given in three different batches. Successful completion of such batch-wise training is not, accordingly,

determinative of seniority based on completion of induction programme and confirmation in service. There is merit in the contention of the State that it

ought to be permitted to treat the seniority of the appointees on the basis that they were all appointed on one day and confirmed by the same process.

The second grievance of the Petitioners, accordingly, has no merit.

12. Rule is accordingly made absolute and the petition is disposed of by quashing and setting aside the impugned seniority list issued by Respondent

No.2. Respondent Nos.1 and 2 are directed to finalize the seniority list in respect of Forest Guards appointed in 2007 on the basis of the order of merit

in which the candidates were originally appointed and without reference to batch-wise completion of training.