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Court : Allahabad

Decided On : Nov-26-2001

Reported in : (2002)1UPLBEC18

Judge : M. Katju and ;Kamal Kishore, JJ.

Acts : Uttar Pradesh Subordinate Forest Service Rules, 1970 - Rule 11; Public Service Commission (Procedure) Rules, 1970 - Rules 13 and 21

Appeal No. : Civil Misc. Writ Petition No. 610 (S/B) of 1996

Appellant : Suresh Chandra Sharma and anr.

Respondent : State of U.P. and ors.

Advocate for Def. : P.K. Srivastava and ;Sanjai Bhasin, Advs. and ;C.S.C.

Advocate for Pet/Ap. : Rakesh Sharma, Adv.

Disposition : Petition allowed

Judgement :

M. Katju, J.

1. Heard learned Counsel for the parties.

2. This writ petition has been filed for a mandamus directing the respondents to declare the petitioners as having been promoted as substantively appointed Forest Rangers with effect from 1987-88 and allow consequential benefits to them with effect from 1987-88 as Forest Rangers in pursuance of the recommendations made by the U.P. Public Service Commission by the order dated 6-7-91 and in view of Rule 11 of the Subordinate Forest Service Rules. It has also been prayed that a mandamus be issued to place the petitioner in the seniority list of 30-5-98 at a place where substantively appointed Rangers of 1987 are placed in view of the decision of the Commission dated 6-7-91 and as reiterated by the Commission in the latter dated 30-10-95 (Annexure-5 to the petition). It has also been prayed (by an amendment) that the seniority list dated 1-7-99 be corrected accordingly.

3. The petitioner No. 1 Suresh Chandra Sharma was initially appointed as Range Clerk/Forester on 11-1-65 and was promoted as Deputy Ranger on 4-6-1983 and it is alleged that his work was excellent. The petitioner No. 2 Vijay Kumar Misra was appointed as Forester on 30-10-54 in the Subordinate Forest Service and was promoted as Deputy Forest Ranger on 1-9-81.

4. It is alleged in paragraph 4 of the petition that petitioners should have been promoted Forest Ranger in the year 1985. For the reasons best known to the respondents they were not given promotion. In paragraph 5, 6 and 7 of the petition the relevant Rules for promotion as Forest Ranger have been given. In paragraph 8 of the petition it is alleged that a Departmental Promotion Committee held its formal selection proceedings in the year 1991 and it submitted its recommendations on 6-7-91 vide Annexure-1 to the petition. The Public Service Commission by its letter dated 6-7-91 intimated the respondent No. 1 the approved list of Deputy Ranger for promotion as Forest Ranger. The criteria for promotion were seniority subject to rejection of unfit.

5. In paragraph 10 of the petition it is alleged that in the year 1987-88 there were 87 vacancies of Forest Rangers for the general category. Petitioners have also been recommended for promotion as Forest Ranger against the vacancies of the year 1987-88 vide Annuxure-1 to the petition. On the basis of this recommendation petitioners were promoted vide order dated 17-7-91 (Annexure-2 to the petition). In

paragraph 12 of the petition it is alleged that the petitioners ought to have been given seniority as Forest Ranger against the vacancies of the year 1987-88 but instead petitioners have been placed in the Seniority List of Forest Rangers placing them below the direct recruits of the year 1992 batch. Had the petitioners been given their correct seniority they would have been promoted as Assistant Conservator of Forest.

6. A fresh Seniority List was circulated on 30-5-96 as Stated in paragraph 21 of the petition. It is alleged that this was illegal and invalid as it was in violation of the relevant Service Rules and the directions of the U.P. Public Service Commission. A true copy of the Seniority List issued on 30-5-96 is annexed as Annexure-4 to the petition. It is alleged in paragraph 23 of the petition that since petitioners were issued the orders of promotion on 17-7-1991 appointing them against 87 clear vacancies relating to the year 1987-88 they should have been placed alongwith the directly appointed or promoted persons on the post of Ranger in the year 1987 or at the most 1988. In paragraph 33 of the petition it is alleged that the Commission wrote a letter dated 30-10-91 directing the respondent No. 2 to place the Rangers at their due place in the Seniority List. Hence in accordance with this directives the petitioners should have been placed at serial Nos. 377 and 388 of the Seniority List issued on 30-5-96.

7. A counter affidavit has been filed on behalf of the Department. In paragraoh 4 of the said counter affidavit it is Stated that when the Seniority List dated 8-6-1995 was under preparation a mistake was discovered that there was no vacancy of Ranger in promotion quota. It was further Stated that there was no direct recruitment of Forest Ranger from the years 1967-70 to 1976-77 and these vacancies were utilized in favour of promotees. While preparing the final list the promotees getting excess of quota have been pushed down and the yearwise vacancies of direct recruits have been carried forward. These allegations have been reiterated in paragraph 6, 10, 12, 19, 21 and 34 of the counter affidavit. Annexure-CA-5 is a chart on the basis of which respondents have sought to prove that there was no vacancy in 1981-82. This allegation in the counter affidavit has been denied in the rejoinder affidavit where it has been alleged that there were vacancies for promotees and there was no mistake. Hence this Court passed

orders on three occasions directing the respondents to file an affidavit showing each years break up of the vacancies and also place the chart of each years vacancy in promotion quota vide order dated 10-2-99. In the interim order of the Court dated 18-10-2000 the Court had noted the stand in the counter affidavit that in the year 1987-88 the total strength of the cadre of Forest Ranger was 1023, and hence according to 50% quota half of these posts i.e., 512 goes to fill up from direct quota and the remaining 511 from promotion quota. Further in that year the working strength of direct Forest Rangers was 440 whereas the working strength of promotees was 502. Thus, there was a short fall of nine in the promotion quota. Hence in our opinion the stand in the counter affidavit that there were no vacancy in the promotion quota in the year 1987-88 is not correct. In our opinion there was a short fall of nine posts of Forest Ranger in the promotees quota of 1987-88. Hence the petitioners should have been promoted against these nine vacancies.

8. Under the UP. Promotion by Selection in Consolidation with Public Service Commission (Procedure) Rules 1970 it is mentioned in Rule 13 that the Government has to send requisition indicating yearwise vacancy. In Rule 21 it is mentioned that the Public Service Commission will allot the vacancy yearwise. On 30-1-91 the Chief Conservator of Forest sent requisition indicating the yearwise vacancies and the Eligibility List. On the basis of this requisition the Public Service Commission sent recommendation on 8-7-91 mentioning the persons found fit for promotion and allotting them yearwise allocation against vacancies. Accordingly promotion orders were issued to the selected candidates including petitioners but unfortunately the year of vacancy was not communicated therein. The petitioners made representations in this connection and the State Government sought clarification from the Public Service Commission and the Commission replied on 30-10-95 that seniority should be assigned according to yearwise allocation vide (Annexure-5 to the petition). This position remained unchallenged. Had the petitioners been given seniority from 1987 or 1988 then after ten years he would have become eligible for promotion as Assistant Conservator of Forest in U.P. Forest Service and would have got consequential benefits of Senior Scale Selection Grade etc. However, unfortunately this was not done. The first seniority list of Forest Ranger was issued in the year 1995 and was circulated on 8-6-95 vide Anneuxre-1 to connected Writ Petition No. 2628 (S/S) of 1995, Ram Drill Pant

and Ors. v. State of U.P. This list of 1995 was challenged in the aforesaid writ petition. Another seniority list was issued on 30-5-96 which is impugned in the present writ petition and by an amendment the list of 1-7-99 has also been challenged.

9. Under U.P. Subordinate Forest Service Rules of 1970 the promotion to the post of Forest Ranger has to be done through the Public Service Commission on the basis of seniority subject to the rejection of unfit. According to us seniority is to be reckoned from the year of allocation which in this case was 1987-88 for which purpose the Chief Conservator has send the requisition to the Commission and the Commission after following the procedure of promotion sent its recommendation. The petitioners have been assigned vacancies of 1987-88 in the recommendation letter dated 6-7-91 sent by the Commission.

10. In respect to the State Governments further clarification regarding placement of seniority of the Forest Ranger, the Commission reiterated its earlier stand. Hence in our opinion the stand of the petitioners appears to be correct, that they should be given seniority from 1987 of at least 1988. It may also be noted that petitioner had been recommended for the vacancies against 1987 and 1988 by the letter dated 6-7-91 of the Commission and the Government accepted this and appointment orders were issued. The Commission on 30-10-95 also reiterated this. For the first time on 30-5-96 a seniority list was issued and the petitioner was placed below the direct recruits of 1992 which in our opinion was arbitrary and illegal. Even, if it was sought to disturb the petitioners' allocation against 1987-88 vacancies they should have been given an opportunity of hearing, which was not done.

11. For the aforesaid reasons this petition is allowed. No orders as to costs.

12. The respondents are directed to treat the petitioners as having been promoted substantively as Forest Rangers, with effect from 1987-88 and to give all consequential benefits and they should be given seniority accordingly. The impugned seniority lists should be corrected accordingly.

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