

Ratnesh Kumar Verma Vs. State of Bihar and ors.

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Court : Jharkhand

Decided On : Apr-01-2003

Reported in : [2004(1)JCR48(Jhr)]

Judge : Tapen Sen, J.

Acts : Service Law; [Constitution of India](#) - Article 226; Bihar Forest Rules

Appeal No. : CWJC No. 2148 of 1997(R)

Appellant : Ratnesh Kumar Verma

Respondent : State of Bihar and ors.

Advocate for Def. : A.K. Mehta, SC-1,; Rajiv Anand and; Rupesh Singh, Ad

Advocate for Pet/Ap. : Saurav Arun, Adv.

Judgement :

Tapen Sen, J.

1. Heard Mr. Saurav Arun, learned counsel for the petitioner and Mr. Rupesh Kumar Singh, learned JC to Mr. A.K. Mehta, SC-I for the State of Jharkhand.

2. The petitioner in the instant case has prayed for fixation of his seniority with effect from 3.4.1988 and not with effect from 1993. He has also prayed for consequential benefits with effect from that day.

3. According to the petitioner, he is entitled to be given seniority and promotion with effect from 3.4.1988 but due to mistake committed by the respondents, the same has not been given to him. According to the petitioner, he was appointed as a draftsman on 28.10.1964 but subsequently, on 12.9.1975 his cadre changed and he was posted as a Forester in the same scale.

4. On 23.1.1978, the Principal Chief Conservator of Forest. Government of Bihar issued a letter to all Forest Conservators, Regional Directors etc. (Annexure 6/A appended to reply to the Counter Affidavit filed by the petitioner). In the said letter it was inter alia stated that those Foresters who were matriculates and who had completed 40 years of age were exempted from undergoing Foresters Examination. The aforementioned statements of the Principal Chief Conservator of Forests was made apparently on the basis of a decision of the Government.

5. The petitioner states that a seniority list of Foresters as on 31.12.1981 was published and the petitioner was placed at serial number 398 and his period of experience as a Forester was reckoned with effect from 12.9.1975. Thereafter, on 30.4.1988, an order of promotion was passed from the office of the Principal Chief Conservator of Forests promoting 36 Foresters to the post of Range Officers of Forests but for some reason or the other, the name of the petitioner was not included in the said order which is contained at Annexure-2. According to the petitioner, the aforementioned non-inclusion of the petitioner was perhaps by mistake.

6. Being aggrieved, the petitioner filed representations. In the mean time on 18.5.1993 by Annexure-6 appended to the reply to the Counter Affidavit, the Principal Chief Conservator of Forests, Bihar sent a letter to the Secretary, Department of Forests and Environment, Government of Bihar, Patna wherein while referring to the case of the petitioner and recommending his case, he did refer to the earlier criterion to the effect that a Forester who had completed 40 years should be exempted from having to appear in the concerned examinations. Mr. Saurav Arun very frankly concedes that save and except being a matriculate, the petitioner does not have the necessary qualification of having passed Foresters examination but nevertheless he is a matriculate and has completed 40

years of age and therefore he is entitled to the benefits of the Circular dated 23.1.1978 as contained Annexure-6/A and is also entitled to the benefits as per recommendations made by the Principal Chief Conservator of Forests by his letter dated 18.5.1993 which is Annexure-6 referred to above.

7. The petitioner states that after the aforementioned letter dated 18.5.1993 (Annexure-6) was issued, the respondents promoted him by Notification dated 9.11.1993 as contained at Annexure-3 where his name was included at serial No. 6. In that Notification again, the period of experience in the capacity of a Forester has been mentioned as 12.9.1975. The petitioner contends that by reason of the aforementioned Notification, the Petitioner should get his seniority with effect from 30.4.1988 because it was that day that 36 other Foresters had been promoted to the post of Range Officer of Forests leaving out the petitioner. According to Mr. Saurav Arun, out of the persons promoted on 30.4 1988, 17 were junior to him.

8. Mr. A.K. Mehta, learned SC-I assisted by Mr. Rupesh Kumar Singh has opposed the Writ Application. According to him Clause 3.20 of the Bihar Forest Rule came into existence on and from 11.2.1982. As per Clause 3.20 appointment of Range Officer of Forest are from two sources namely-(i) by direct recruitment of candidates who have obtained honours certificate or higher standard certificate after passing a two years 'Rangers' Course at Northern Forester Rangers' College, Dehradun or Southern Forest Rangers College, Coimbatore and (ii) by promotion in accordance with Rules for promotion contained in Appendix VIII etc. Clause 3.20 is quoted below :--

'3.20. Appointment of Forest Rangers.--The Chief Conservator of Forests, Bihar will make the appointment of Forest Rangers by,--

(a) direct recruitment of the candidates who have obtained the Honours certificate or the Higher standard certificate after passing through the two years 'Rangers' Course at Northern Forest Rangers College, Dehradun or Southern Forest Rangers College, Coimbatore.

The Rules regarding the selection and deputation of students for Rangers course at Dehradun and Coimbatore will be found in Appendix VIII,--

(b) by promotion in accordance with the rules for promotion contained in Appendix VII of Foresters;

(i) Who have long service, tried ability and probity irrespective of their educational qualifications;

(ii) Who have obtained the Lower standard certificate after passing through the Forest Rangers Course at Dehradun or Coimbatore and have rendered thereafter not less than two years satisfactory service in the class of Foresters.

(iii) Who have passed through the Bihar Forester Training School or in any other State and have rendered not less than five years satisfactory service in the class of Foresters.

Provided that approximately twenty five percent of the total number of posts in cadre of Forest Rangers at any time shall be held by persons appointed to the cadre by promotion.'

9. Unfortunately, Appendix VIII referred to above could not be produced by any of the learned counsels nor could they point out the inclusion of the aforementioned Appendix in the Text Book that was produced for perusal of this Court. However, Mr. A.K. Mehta, learned SC-I submitted, on instructions, that Appendix VIII is equivalent to Appendix IV of the Rules for deputation and selection of students for the Rangers' Course at Coimbatore. According to him, the aforementioned Appendix IV is contained in the Bihar and Orissa Forest Manual, 1935.

10. From a perusal of Clause 3.20(b)(iii), it is evident that one of the criterion for promotion is passing out from Bihar Forest Training School or from any other State or from a similar School from any other State and of having not less than five years of satisfactory services in the class of Foresters.

11. In the Counter Affidavit at paragraph 7 and 9 it has inter alia been stated that by letter dated 16.3.1996, the Principal Chief Conservator of Forests, Bihar has circulated a procedure for selection of Foresters for promotion. That letter is Annexure-A of the Counter Affidavit and it inter alia requests the concerned officers of the Department of Forests to identify such Foresters for promotion who

are otherwise entitled and whose matters are pending since long. At paragraph 8, the respondents have stated that for purposes of promotion, a Forester must necessarily have passed the matriculation or equivalent examination and must also have passed the Foresters Training Examination or Forest Guards* Training Examination and should also have put in a minimum of at least 8 years' of service as a Forester. According to these Respondents, the petitioner having not undergone any of these trainings nor having passed the aforementioned examination save and except being a matriculate, does not qualify.

12. However, the dispute now is refixation of seniority. The petitioner has already been promoted to the post of Range Officer of Forests by Notification dated 9.11.1993 as contained at Annexure-3. According to Mr. Saurav Arun, learned counsel for the petitioner, his seniority has been conferred only with effect from 1993 and not from 30.4.1988 although the promotion should have come on 30.4.1988 and not from 9.11.1993 in as much as even on 30.4.1988 when his juniors had been promoted, the petitioner did qualify as per letter dated 23.1.1978 (Annexure-6/A) having completed 40 years of age. A fortiori, Mr. Saurav Arun submits, that even as late as on 18.5.1993, the respondent authority i.e., Principal Chief Conservator of Forests had made recommendation in favour of the petitioner. However, this Court does not make the aforementioned letter dated 18.5.1993 as an additional ground because it was on the basis of that letter that the petitioner was granted promotion subsequently on 9.11.1993. The only dispute therefore is as to whether the petitioner is entitled to be promoted with effect from 30.4.1988 or not? However, the fact remains that on 30.4.1988, a large number of persons were promoted, 17 of whom, were according to the learned counsel for the petitioner, junior to the petitioner.

13. There is nothing on record to suggest as to whether the aforementioned persons were better qualified or not or whether they fulfilled the requisite qualification. Moreover, to what extent a letter of 1978 could be allowed to enure to the benefit of the petitioner when in the year 1982 Clause 3.20 came into existence is a matter that has to be explained and/or determined by the respondents themselves because in the year 1993, the petitioner has been granted promotion notwithstanding his not having passed the examinations

referred to in Clause 3.20. In that view of the matter it will be in the fitness of thing to give liberty to the petitioner to approach the concerned authority with a fresh representation. If such a representation is filed within a period of 4 weeks, the authority shall look into the matter and pass an order strictly in accordance with law taking into consideration the observations made above and also the effect of the letter of year 1978 and 1993 and the provisions of the Bihar Forest Rule. According to Mr. Saurav Arun as per Clause 3.20(b)(i), the petitioner becomes entitled on account of his having put in a long period of uninterrupted service, ability and educational qualification. This Court does not make any comments with regard to last submission of Mr. Saurav Arun and leaves the same entirely to the respondents to deal in accordance with law. With the aforementioned observations and directions, this writ petition stands disposed off. No order as to costs.