

**(2010) 06 UK CK 0001**

**In the Uttarakhand High Court**

**Case No : Writ Petition (S/S) No. 1145 of 2004**

Anand Kumar

APPELLANT

Vs

Managing Director, Forest Development Corporation

RESPONDENT

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**Date of Decision : 11-06-2010**

**Acts Referred:**

Uttar Pradesh Forest Corporation Act, 1974 — Section 34

Uttar Pradesh Forest Corporation Service Regulations, 1985 — Regulation 6

**Citation : (2010) 06 UK CK 0001**

**Hon'ble Judges : Sudhanshu Dhulia, J**

**Bench : Single Bench**

**Advocate : Ravi Babulkar, for the Appellant; Seema Sirohi, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Sudhanshu Dhulia, J.—In the erstwhile State of Uttar Pradesh, the U.P. Forests Corporation Act was enacted in the year 1974 (from hereinafter referred to as the "Act"). Inter alia, the Act provided for the establishment of a Forest Corporation for better observation, supervision and development of forest and better exploitation of forest produce within the State and for other allied matters. After the creation of the new State of Uttarakhand by an Act of Parliament known as the U.P. Reorganisation Act, 2000, the new State of Uttarakhand came into existence on 9.11.2000 called the "appointed day". It was then found necessary that the new State should have its own Forest Corporation and consequently in the year 2001, Uttarakhand formed its own Forest Corporation known as Uttarakhand Forest Development Corporation. By a mutual agreement between the new Corporation in Uttarakhand and erstwhile Forest Corporation of Uttar Pradesh with the respective interference and control of the respective State Governments, there was a division of assets and liabilities between the two Corporations. In this division of assets, the existing posts were also divided between the two Corporations. Amongst other there were 18 posts of "Sales Officer" in the undivided Corporation which were to be equally divided between

the two Corporations. In the erstwhile Forest Corporation in the State of Uttar Pradesh, promotions were to be made to the post of Sales Officer from Assistant Logging Officer and Deputy Logging Officer, as the case might be. There were certain special qualifications one must have in order to be qualified for promoted to the post of Sales Officer. The qualification was Diploma in Business or Marketing Management from I.I.M. Ahmadabad, Calcutta, or Bangalore or degree of Business or Marketing Management from recognized institutions/universities. The dispute raised by the Petitioner in the present writ petition is that in the undivided State of Uttar Pradesh in the U.P. forest Corporation, there were 18 posts of Sales Officer and since there has been an equal division of assets and equal division of posts after the creation of Uttarakhand in the new Forest Corporation, 9 posts of Sales Officer should have come in the share of Uttarakhand Forest Corporation and since 1/3rd posts have to be filled by way of promotion from Assistant Logging Officer, he was liable to be promoted to this post. On his repeated representation to this effect vide order dated 19.8.2004 the Managing Director of the Forest Development Corporation Uttarakhand gave an order stating that the Petitioner cannot be promoted to the post of Sales Officer, as there was only one post of Sales Officer, which is presently filled. Aggrieved the Petitioner has filed the present writ petition.

2. The Forest Corporation in its counter affidavit has denied the averments of the petition and has stated that there is only one post in the Uttarakhand Forest Corporation of Sales Officer as a conscious decision has been taken by the new Forest Corporation of Uttarakhand and in its wisdom they have realized that in the new structure which has been framed only one post of Sales Officer is required in the new Forest [development Corporation in Uttarakhand. This post is already filled by the present incumbent Sri Umesh Kumar Tripathi and there is no vacancy on which the Petitioner can be promoted. The Petitioner, on the other hand, refuted the contention of the Forest Corporation and stated that the posts were created vide regulations framed u/s 34 of the Act and it is not given to the Corporation to decrease the number of posts. According to the Petitioner the net result of formation of the new Forest Corporation would be that the posts of Sales Officer have decreased which consequently means that the chances for promotion of Petitioner have also diminished. This argument of the Petitioner is totally misconceived. A chance for promotion is not a condition of service, this is a legal position repeatedly reiterated by the Apex Court, more particularly in State of Orissa Vs. Durga Charan Das, and Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, .

3. It is a settled position of law that although a right to be considered for promotion is a condition of service, a mere chance of promotion is not. In the present case, the chances of promotion of the Petitioner may have been reduced inasmuch as the posts of Sales Officer Ijave been reduced. Moreover, the other avenues of promotion of the Petitioner from the post of Assistant Logging Officer have not been reduced. Be that as it may, Petitioner still has chances to be promoted from Assistant Logging Officer to the post of Logging Officer. Merely

because the Petitioner's chance for promotion has decreased it does not give any right to the Petitioner to raise any claim against the Forest Corporation. Respondent Corporation is fully at liberty to increase or decrease the size of the Corporation, as long as the avenues of promotion are still available to the Petitioner. Another objection of the Petitioner that nine posts have been created vide regulation and therefore these posts can be increased or decreased only by a regulation and not by a mere executive feate, is also misconceived.

4. The service regulations which are being relied upon are the Uttar Pradesh Forest Corporation General Service Regulations, which have been framed u/s 34 of the Uttar Pradesh Forests Corporation Act, 1974 where the powers had been given to the Forest Corporation to frame regulations, inter alia, regarding salaries, allowances and conditions of service of employees of a Forest Corporation. It has been stated at the bar that the same regulations have been adopted in the State of Uttarakhand by the Uttarakhand Forest Development Corporation. Section 34 of the U.P. Forest Corporation Act reads as follows:

34. Regulations.-(1) The Corporation may, with the previous approval of the State Government make regulations not in consistent with this Act and the rules made there under for the administration of the Corporation.

(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for or any of the following matters, namely:

(a) salaries and allowances and conditions of service of the Managing Director and employees of the Corporation and travelling and daily allowances to be paid to the Chairman and non-official members.

(b) times and places of, and the procedure in regard to the transaction of business in the meetings of the Corporation;

(c) any other matter for which provision is to be or may be made in the regulations.

(3) Until any regulations are made by the Corporation under Sub-section (1) any regulations which may be so made by it, may be made by the State Government, and any regulations so made may be altered or rescinded by the Corporation in exercise of its power under Sub-section (1).

5. As referred above, in the erstwhile State of Uttar Pradesh service regulations were framed for the Forest Corporation. Regulation 6 of the said regulations reads as follows:

6. (1 )The classification of the posts under the Corporation for purposes of appointment, control and discipline shall broadly be as in Schedule "A.

(2) The Corporation may, however, change the classification in respect of any particular class or classes of posts.

(3) The Corporation shall also fix and review annually the number of posts in all

categories and their pay scales. The number of posts in each category and their scales at present are as given in Schedule "C.

(4)... (5)...

6. It is undoubtedly true that Schedule "C appended to the aforesaid regulations states that the post of Sales Officer with the prescribed salary will, inter alia, have 18 posts. The relevant provision reads as follows:

1 Sales Officer 18 as above Diploma in Business or Marketing 5 years experience (1020-40-1100- Management from I.I.M. Ahmadabad, of Sales Work 50-1250-EB-50- or Bangalore or degree of Business or (Timber Trade).

1350-60-EB-1530- Marie1ingMarBgementfromtecognized EB-60-1770 institutions/Universities.

7. As has already been referred above, learned Counsel for the Petitioner has argued that once the regulation itself prescribes 18 posts, the same can only be increased or decreased byway of regulation and not by executive feate by the Forest Corporation. While making this argument, learned Counsel for the Petitioner has clearly lost sight of Sub-section (3) to Regulation 6 which has already been referred above. The said regulation empowers the Forest Corporation to annually review and fix the number of posts. Under these powers the Corporation in its wisdom has decided to reduce the post of Sales Officer to one. This Court, therefore, finds no anomaly in this action of the Uttarakhand Forest Development Corporation whereby the posts of Sales Officer have been decreased from nine to one.

8. In view of the aforesaid, this Court finds no merit in the present writ petition and the same is liable to be dismissed and is hereby dismissed. No order as to costs.