

(1981) 07 OHC CK 0008
In the Orissa High Court
Case No : O.J.C. No. 940 of 1977

Biswamitra Agasti

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 25-07-1981

Acts Referred:

Citation : (1981) 52 CLT 366

Hon'ble Judges : R.N. Misra, C.J.;J.K. Mohanty, J

Bench : Division Bench

Advocate : G.A.R. Dora, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, C.J.—The Petitioner, opposite party No. 4 and five others were selected for appointment as Forest Guards following a test and they joined as Forest Guards in the Affore-station Division of Bolangir as per order dated 5-2-1964. One R.N. Sahu, who had joined as a Forest. Guard almost at the same time in the Sambalpur Afforestation Division, came into the Bolangir Afforestation Division when that Range was amalgamated with Bolangir. The Petitioner, opposite party No. 4 and the said R.N. Sahu were called for written test and interview for filling up two promotional vacancies in the post of Forester. The Petitioner and Sri Sahu were selected as Fortsters by order dated 21-4-1970. Opposite party No. 4 came to be so promoted on 26-11-1972. The Petitioner worked as Forester from 4-5-1970 upto 31-12-1974 when he was reverted with effect from 1-1-1975 along with opposite party No. 4 and the said Sri R.N. Sahu. All the three preferred appeals before the Conservator of Forests challenging the reversion. By order dated 8-9-1975, the Conservator (opposite party No. 3) directed the Divisional Forest Officers of Sambalpur and Rayagada to absorb the three persons including the Petitioner. That order read thus:

The following reverted Foresters of Afforestation Division, Bolangir, are transferred in the interest of public, service to the Divisions noted against each

with immediate effect:

1. Sri R.N. Sahu Sambalpur Afforestation Division
2. Shri B. Agasty -do
3. Sri B.B. Bhanj Rayagada Afforestation Division

In the endorsement in the said order it was indicated:

They should not be relieved till posting orders are received.

Opposite party No. 4, a person junior to the Petitioner, was relieved forthwith while the Petitioner was adjusted against a leave vacancy. The Petitioner was relieved only on 30-10-1976. After relief, the Petitioner approached the Divisional Forest Officer, Sambalpur for posting orders in terms of Annexure 4, but the Petitioner was not absorbed until May, 1977. In the meantime opposite parties 5 and 6 who were recruits of the year 1973 to the rank of Forester continued in service while the Petitioner was not given posting. In this background the Petitioner has filed the writ application for a direction that the Petitioner should be taken as being absorbed in terms of Annexure 4 in preference to opposite parties 4, 5 and 6, and he should be retained in his original Division, namely, the Bolangir Afforestation Division and for the period he was not given any posting, the Petitioner should be permitted to have all the advantages of service.

2. A counter has been filed on behalf of opposite parties 1, 2, 3, 7 and 8 and the Petitioner's claim has been denied. There is, however, no dispute that the Petitioner is senior to opposite parties 4, 5 and 6.

3. Factually, there does not seem to be any dispute that when the three including the Petitioner were reverted from Forester as Forest Guards on account of closing down of some units, they were found to be surplus. Therefore, the position was one of retrenchment. The legal position is settled beyond dispute now that even in Government establishments when retrenchment has to be made, the practice of retrenching the junior officers first has to be done. In view of the admitted position of the Petitioner, he should not have been retrenched while opposite party No. 4, who was equally positioned with the Petitioner, and opposite parties 5 and 6, who were junior to the Petitioner, should have been given the benefit of continuous service.

4. We are inclined to think in the premises that while implementing the order under Annexure 4, the Petitioner's claim to continuous service in preference to that of opposite parties 4 to 6 was lost sight of and the Petitioner was denied service advantages while persons junior to him had been given the same. Since the Petitioner was not responsible for this unfortunate situation, there is no reason as to why he should not be entitled to the advantages, such as continuity of service and payment of salary: Ordinarily, when a Government servant does not render service he should not be entitled to salary, but this is a case where, while the Petitioner was anxious to be in service, in breach of rules applicable to

him, juniors were retained while he was kept out. In these circumstances, we think, the Petitioner should be treated as if he was in service and given all advantages including salary for the period he was out of employment.

5. The writ application is allowed and the opposite parties-State and its public officers-are directed to treat the Petitioner equally with opposite party No. 4 and give him the benefit of continuous service with other service advantages admissible under the rules.

There would be no order for costs.

J.K. Mohanty, J.

6. I agree.