

(2009) 08 J&K CK 0032

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No.114 Of 2009 & CMP No.177 Of 2009

Darbari Lal Sharma & Ors.

APPELLANT

Vs

J & K State Forest Corporation & Ors.

RESPONDENT

Date of Decision : 25-08-2009

Acts Referred:

Citation : (2009) JKJ 635 Supp

Hon'ble Judges : Barin Ghosh, J and Mohd.Yaqoob Mir, J

Bench : Division Bench

Advocate : A.M.Magray,Sr.AAG, M.Y.Bhat, Advocates appearing for the Parties

Judgement

1. Some of the writ petitioners, who were Divisional Managers GradeI of the respondent Statutory Corporation in 1993, were transferred and, while transferred, were asked to function as Regional Managers. The same thing happened to one of the writ petitioners in 1995. In the writ petition filed in 2006, the petitioners contended that they were, in fact, asked to discharge the duties of General Manager while they were assigned the duties of Regional Manager and, accordingly, they should be paid salaries of General Manager from the dates they were assigned the duties of Regional Manager. The fact remains that the cadre in question, where the petitioners were working prior to having been asked to discharge the duties of Regional Managers, is a statutory cadre and that cadre does not contemplate posts of Regional Managers. The statutory Rules make it abundantly clear that 50% of the 9 sanctioned posts of General Managers can be had by promotion from amongst Divisional Managers GradeI with 10 years' experience as Divisional Manager, having undergone SFS course or Rangers Training Course and having not less than 16 years'

total service in the managerial cadre of the Corporation (Dy. Manager GradeII). According to the writ petitioners, they became Divisional

Managers GradeI some time in 1989, and having worked as Divisional Managers for more than 10 years in the years 1993 and 1995, though may

not be as Divisional Managers GradeI, they were entitled to be promoted and, in the quota of promotees, they were asked to discharge the duties

and functions of General Managers when transferred as Regional Managers. The Rules make it amply clear that in order to be promoted as

Divisional Manager GradeI, promotee is required to have minimum 5 years' experience as Divisional Manager GradeII. In order to be promoted

to the post of General Manager, the Rules say that the candidate is required to be a Divisional Manager, but do not indicate which type of

Divisional Manager, whether Divisional Manager GradeI or Divisional Manager GradeII. There are two types of Divisional Managers GradeI: one

who have undergone SFS course and other having undergone Rangers Training Course. In the event a Divisional Manager GradeI has undergone

SFS course then ten years' experience as Divisional Manager would suffice, but, if the Divisional Manager GradeI has undergone Rangers Training

Course, he must have, in addition to 10 years' experience as Divisional Manager, not less than 16 years' total service in the Managerial cadre of

the Corporation (Deputy Manager GradeII). In such view of the matter, the one and the only conclusion would be that the Divisional Managers

GradeI, who have ten years of experience as such Divisional Managers GradeI, having further prescribed qualifications, i. e., either having

undergone SFS course or Rangers' Training Course with 16 years' additional experience as Deputy Managers GradeII, then and only then such

Divisional Managers GradeI will come within the zone of consideration for being promoted to the post of General Manager.

2. In the circumstances, of the own showing of the petitioners, they could not be promoted to the post of General Managers as on the date they

were asked to discharge the duties of Regional Managers. That, however, would not take away the contention of the petitioners that they are not

entitled to commensurate remuneration for the work done by them. It may be possible that the petitioners were asked to discharge the duties and

functions of General Managers when they were asked to discharge the duties and functions of Regional Managers, but the question is can the

petitioners contend that they are entitled to the remuneration of General Manager, for, they have discharged the duties of General Manager on the ground of equal pay for equal work? It is now well settled in law that, while ascertaining equality, not only the work done is to be taken note of but simultaneously it should be taken note of whether the person was competent to discharge such work or not. The statutory Rules prevented the petitioners of even being considered whether they may be asked to discharge the functions and duties of General Managers at the time they were asked to discharge the duties of Regional Managers. In such view of the matter, even if as Regional Managers, the petitioners had discharged the duties of General Managers, they are not entitled to claim equality of pay. It may be true that in 1999 the petitioners became eligible for being considered to be promoted to the post of General Managers, on which date, according to them they completed ten years of service as Divisional Managers Grade I. However, they have been accorded such promotion in 2007 by a duly constituted Departmental Promotion Committee followed by approval thereof by the Board of Directors of the Statutory Corporation. Merely because the petitioners became eligible for being considered for promotion to the post of General Manager in 1999, we cannot prepone such consideration by the Departmental Promotion Committee.

3. For the reasons as above, we find no justification for interfering with the judgment and order under appeal by which the writ petition seeking what has been stated above, has been dismissed.
4. The appeal, accordingly, stands concluded and is dismissed.