

(2001) 08 GUJ CK 0116
In the Gujarat High Court

Case No : Special Civil Application No's. 3205 of 2000 and 3206 of 2000

D.S. Narve, Dy. Conservator of Forests

APPELLANT

Vs

Jagdish Prasad, 3rd Special Land Acquisition

RESPONDENT

Date of Decision : 27-08-2001

Acts Referred:

Forest Service (Recruitment) Rules, 1966 — Rule 3, 4(1), 4(2), 4(4)(2), 8
Forest Service (Regulation Of Seniority) Rules, 1968 — Rule 7A(1)
Forest Service (Probation) Rules, 1968 — Rule 11
Forest Service (Appointment By promotion) Regulations Rules, 1966 — Rule 5

Citation : (2002) 22 GLH 316

Hon'ble Judges : N.G. Nandi, J;M.R. Calla, J

Bench : Division Bench

Advocate : Mukul Sinha, for the Appellant; B.P. Tanna and Akil Kureshi, L.R.
Pujari, A.G.P and U.I. Vyas, for the Respondent

Final Decision : Allowed

Judgement

M.R. Calla, J.—This group of six Special Civil Applications is directed against the judgment and order dated 5.1.2000 passed by the Central Administrative Tribunal, Ahmedabad Bench in Original Applications Nos.622/98, 623/98, 624/98, 230/99, 283/99 and 284/99 as M.A No.197/99, M.A. No.551/99, M.A. No.552/99 and M.A. No.581/99. Whereas a common grievance has been raised in all these Special Civil Applications based on identical facts involving a common question of law, we propose to decide all these Special Civil Applications through this common judgment and order as under :-

2. Before the Central Administrative Tribunal, the applicants in O.A. Nos.622/98, 623/98 and 624/98 are common and similarly there are common applicants in O.A. Nos.230/99, 283/99 and 284/99. The applicants in O.A. Nos.622/98, 623/98 and 624/98 are direct recruits to Indian Forest Service (which will be hereinafter referred to as the " I.F.S.") and they were allotted to Gujarat. However, Shri R.L. Meena, Applicant No.1 in each of these O.A.'s was working as Conservator of Forest. The applicants of O.A Nos.230/99, 283/99 and 284/99

were working as Deputy Conservator of Forest in different places in Gujarat and they all belong to different batches of the year 1985, 1986 and 1987. The respondent No.4 in each of these O.A.'s was promotee IFS officer initially recruited to Gujarat Forest Service and given promotion to IFS cadre by the impugned order/notification dated 10.8.98 w.e.f. 30.10.86.

3. Shri R.K.Sama, Shri S.D.Vora and Shri D.S. Narve, had moved O.A. Nos.469/94, 685/96 and 686/96 respectively seeking direction against the Government to consider them for promotion to IFS cadre. In these O.A.'s the controversy before the Court was as to whether the Gujarat Forest Service Officers could be considered to be the holders of a substantive post irrespective of the fact as to whether such officers were given a formal order of confirmation or not. These applicants in these O.A.'s were not considered for promotion only on the ground that they were not holding any substantive post in the State cadre. O.A. No.469/94 which had been moved by Shri R.K.Sama had been decided by the C.A.T. and the direction had been issued to the respondent to reconvene the DPC for the year 1985 including the names of these applicants. Shri R.K. Sama's name in the list of the names was proposed for consideration for promotion to the post of IFS. It was clarified that the same would consider the question for drawing of the select list only after the vacancy as notified at that point of time. After the orders were passed in this O.A. No.469/94 filed by Shri R.K. Sama, O.A. No.685/96 and O.A. No.686/96 were filed by Shri S.D. Vora and Shri D.S. Narve wherein similar orders had been passed by the C.A.T. directing the Government to consider the cases of the applicants, if they fall within the zone of consideration for promotion to the IFS for the year 1985. The operative part of the order as was passed by the C.A.T. in O.A. No.469/94 on 24th June, 1996 is reproduced as under :-

"In our considered view the State Government having taken a belated decision in regard to the fact of the officers holding a substantive post almost ten years later, the respondents cannot escape the responsibility to convene the selection committee to consider all the names of persons up to the required number who had been left out merely because of the fact that the State Forest Officer was not holding at that time substantive post. Now, that applicant is both substantive and is having the required years of service. Tribunal directs that the Respondents may reconvene the D.P.C. for the year 1985 including the names of the applicant in the list of names proposed for consideration for promotion to I.F.S. It is however, clarified that at this stage the meeting will have to consider drawing up a select list only for the vacancies as notified at that point of time. As regards consequential benefits, this will depend on the actual decision of the committee and the actual vacancy to which the applicant gets posted if at all, as per his rank in select list. The question of allocation of seniority will depend only on the date of officiating in the senior post by the applicant thereafter, as per the Rules".

4. The review D.P.C. met thereafter and selected all the three applicants namely Shri R.K. Sama, Shri S.D. Vora and Shri D.S. Narve and notification dated

10.8.98 was issued appointing all these three persons to the I.F.S. cadre w.e.f. 30.10.86. These orders of the Government appointing the three promotee Gujarat Forest Service Officers to the cadre of I.F.S. was challenged before the Central Administrative Tribunal, Ahmedabad Bench by filing the original applications as above. The main ground of challenge was that these applicants were not entitled to be appointed to I.F.S. w.e.f 30.10.86 and that while holding the review D.P.C. the direction given by the C.A.T. were misinterpreted by the State Government and the State Government while sending the proposal vide its letter dated 9.1.88 had considered the cases of the respondents only to the exclusion of the other eligible senior persons whereas the C.A.T. had directed the respondents to consider all the names of the eligible officers falling within the zone of consideration and they had been left out. On account of such course of action being adopted by the Government certain persons, who were senior to the applicants and eligible for being considered for promotion to I.F.S. who were also holding substantive post, were not considered for such nominations; whereas the persons senior to these three applicants had not been considered by the D.P.C., the selection was vitiated and considering the case of these applicants in isolation to the exclusion of other similarly situated officers who had been left out earlier was absolutely illegal.

5. The officers who filed Original Applications before the Central Administrative Tribunal, Ahmedabad Bench (which will be hereinafter referred to as C.A.T.) and challenged the notification dated 10.8.98 are all direct recruits to the Indian Forest Service and their grievance is that in case, these three persons are appointed to I.F.S. by promotion and are inducted in the I.F.S. cadre w.e.f 30.10.86 by promotion, they would steal a march over these applicants in the matter of seniority; whereas these three applicants were promotee officers from the Gujarat Forest Service. These applications were resisted and it was maintained that the order dated 10.8.98 issued after implementation of the Tribunal's order passed in O.A.469/94, O.A.685/96, O.A.686/96, the Government took the cases only of these officers by the selection committee as no other officers of State Forest Service had approached the C.A.T. for similar relief.

6. Thus we find that the officers who are recruited to the Indian Forest Service, by a separate source of recruitment under the I.F.S. (Recruitment) Rules, 1966, have no lis against the appointments made to the Indian Forest Service by promotion from amongst the officers of Gujarat State Forest Service in the promotion quota by nomination. In the present case we have to examine as to whether the implementation of the earlier decision of the C.A.T. as was carried out by the respondents in the matter of according promotion to the State Service Officers and consequentially inducting the State Service Officers by promotion to I.F.S. cadre could be made the subject matter of challenge, at the instance of the direct recruits to the I.F.S. cadre. We therefore first propose to examine the relevant rules in this regard. The first set of Rules is the Indian Forest Service (Recruitment) Rules, 1966 (which will be hereinafter referred to as "Recruitment

Rules, 1966"). Under Rule 3 the services consists of (a) Members of the State Forest Service recruited to the service at its initial constitution in accordance with the provision of sub-rule (1) of rule 4; and (b) persons recruited to the service in accordance with the provisions of sub-rules (2) to (4) of rule 4. After the commencement of these Rules the Central Government may recruit to the service any person from amongst the members of the State Forest Service adjudged suitable in accordance with such regulations as the Central Government may make in consultation with the State Government and the Commission. Subsequent recruitment to the services, shall be by the following methods, namely :-

(a) by a competitive examination;

"(aa) by selection of persons from amongst the Emergency Commissioned Officers and Short Service Commissioner Officers of the Armed Forces of the Union who were commissioned after the 1st November, 1962, but before the 10th January, 1968 and who are released in the manner specified in sub-rule (1) of rule 7A";

(b) by promotion of substantive members of the State Forest Service.

7. The second set of rules is Indian Forest Service (Regulation of Seniority) Rules, 1968, while Rule 3 provides for the assignment of year of allotment, where every officer is appointed to the Service on the result of the competitive examination, the year following the year in which such examination was held. The direct recruits have no grievance so far as such year of allotment is then concerned. Rule 4 provides that the seniority of the officers inter-se shall be determined in accordance with the provisions contained in this rule. Sub-rule 2 of Rule 4 provides that the officers appointed to the Service on the result of the same competitive examination shall be in accordance with Rule 11 of the I.F.S. (Probation) Rules, 1968. Under sub-rule 3, the Officers belonging to the State Forest Service who are appointed to the Service in accordance with sub-rule (1) of Rule 4 of the Recruitment Rules and allotted the same year shall be graded without disturbing their existing inter-se seniority in the State Forest Service. The seniority inter-se of officers appointed to the Service under sub-rule (2) of rule 4 of the Recruitment Rules, who are assigned the same year of allotment shall be in the order of the dates on which the date of officiation in the cases of Officers appointed to the Service in accordance with rule 8 of the Recruitment Rules being the same as the dates taken into account for the purpose of assignment of year of allotment under sub-rule 2 of Rule 4.

8. The third set of Rules is Indian Forest Service (Appointment by promotion) Regulations Rules, 1966. Rule 5 of this Regulation provides for the preparation of the list of the suitable officers.

9. The grievance, as has been raised in these petitions, is to be examined on the analysis of the aforesaid three sets of Rules. Before we proceed further to examine the case of the parties on merits it may be pertinent to point out that so

far as members of the State Forest Service about whom grievance is raised by members of the I.F.S. that they had not been considered by the review D.P.C., such State Service Officers have not challenged the orders by which the three persons namely Shri R.K. Sama, Shri S.D. Vora and Shri D.S. Narve were inducted in the cadre of I.F.S. from the year 1986. The challenge has been made by the direct recruits to the Indian Forest Service and these persons were already the members of the Indian Forest Service and hence had no question of raising grievance at that stage when the exercise of review D.P.C.. was taken and they have entered the lis against the promotee officers on the ground that on account of their appointment by promotion they are gaining seniority over the direct recruits.

10. Dr.Mukul Sinha, appearing on behalf of the petitioners has submitted that in case of direct recruits to the Indian Forest Service, their years of allotment are fixed under the I.F.S. (seniority) Rules and they were appointed in the year 1985 to 1987, while the petitioners herein are all Gujarat Forest Service promotee Officers promoted in the quota fixed for the State Service and therefore the respondents i.e. the direct recruits have no locus standi to challenge the promotion of the petitioners on the ground that some other G.F.S. Officers were not considered for promotion. It was next submitted that for the review D.P.C. it was not necessary to consider the case of the G.F.S. Officers who were falling within the zone of consideration unless and until they independently approached the Tribunal/Court. In the instant case, no other G.F.S. officers except Mr.Sama had approached the Court for claiming 1985 as the year on which their consideration had become due and therefore those officers who did not approach the Court automatically lose their promotion or they should be deemed to have waived their rights in this regard. It was also submitted with reference to letter sent to the Chief Secretary, Government of Gujarat, Gandhinagar by the Under Secretary to the Government of India, Ministry of Environment and Forest, in the matter of O.A.469/94. Thus in this letter the Government of India had held out that under the order dated 27.6.96 passed by the C.A.T. necessary steps for convening the Review Selection Committee were to be taken to consider the inclusions of the name of Shri Sama in the select list for the relevant year for which he was eligible to be considered for promotion to the I.F.S. and that the relief should be restricted to Shri Sama as the beneficiary of the Tribunal's order. Thereafter the other two officers namely Shri S.D. Vora and Shri D.S. Narve had also approached the C.A.T. and the C.A.T decided their original applications on 26.2.97 and on that basis the notification dated 10.8.98 was issued by the Under Secretary to the Government of India and all these three officers were appointed to the Indian Forest Service w.e.f.30.10.86 and the earlier two notifications had been modified to that extent. Dr. Sinha learned counsel for the petitioners has submitted that by considering the candidates who had approached the C.A.T. and by not considering the other candidates who had not approached C.A.T. the Government had followed right course of action and as a result of which the consequential orders were passed and such orders could not give rise to any

cause of action for the direct recruits of the I.F.S. He has further submitted that assuming that the review D.P.C. required the consideration of all officers who fall within the zone of consideration to be considered and the non-consideration of such officers leads to the breach of any Rule or procedure, even then the right to challenge such promotions cannot be claimed by the direct recruits of I.F.S., since no fundamental right of these respondents had been violated it is further submitted that seniority ranking or chances of future promotions do not constitute any fundamental right and even if such ranking or chances are affected, no fundamental rights are affected. Assuming that all these officers in the zone of consideration in the year 1985 were considered and assuming further that the petitioners were not promoted and some other G.S.F. officers had been promoted, and in that eventuality also the seniority ranking or future promotions of the direct recruits would have been affected. It was also pointed out that in fact Mr. Sama had already retired in the year 1997 and does not even affect any chance of promotion of any direct recruit and the challenge by the direct recruits is limited only against such Gujarat Forest Service officers who have not retired before the direct recruits become eligible to be promoted to the higher post of Conservator of Forest and therefore such challenge is not sustainable. Lastly, it was submitted that the promotion of the State Forest Officers cannot become invalid, at the instance of the direct recruits even if it is in breach of any rule of promotion exclusively framed for the promotee officers. In support of his submissions Dr. Sinha had relied upon;

- 1) Union of India and Others Vs. Dr. S. Krishna Murthy and Others, ,
- 2) Ashok alias Somanna Gowda and Another Vs. State of Karnataka by its Chief Secretary and Others, ,
- 3) Ashok V. David Vs. Union of India and others, ,
- 4) Gopabandhu Biswal Vs. Krishna Chandra Mohanty and Others, ,
- 5) Union of India and Others Vs. N.Y. Apte and Others, ,
- 6) S.P. Shivprasad Pipal Vs. Union of India and Others, .

11. On behalf of the respondents it was submitted that the C.A.T.'s earlier order had not been faithfully complied with merely because the Under Secretary to the Government has sent a letter to the Chief Secretary, State of Gujarat. The candidates who had approached the C.A.T. earlier had got the direction that the respondents have to reconvene the D.P.C. as it was considered that all eligible officers who fall within the zone of consideration had to be considered. The selection could not be confined to the three officers only. It has been further submitted that this exercise of consideration of the three applicants only to the exclusion of the other eligible officers renders the selection to be vitiated and on the basis of such exercise the orders could not be passed with regard to the induction of promotees in the cadre of I.F.S. Such orders can't confer any benefit upon these officers so as to claim higher seniority over the direct recruits.

Mr.Tanna and Mr.Kureshi have submitted that in such matters the question of appointment is directly linked with the right of seniority and therefore the orders by which three applicants have been inducted in the cadre of I.F.S. giving rise to claim of seniority in the I.F.S. cadre over the direct recruits was challengeable at their instance. In support of these submissions, reliance has been placed on the following decisions :-

- 1) Bal Kishan Vs. Delhi Administration and Another, .
- 2) Parasram Harnand Rao Vs. Shanti Parsad Narinder Kumar Jain and Another, .
- 3) Sunil Kumar and Others Vs. Oil and Natural Gas Commission and Others, .
- 4) State of Bihar and others Vs. Sri Akhourri Sachindra Nath and others,
- 5) S.K. Ghosh and Another Vs. Union of India (UOI) and Others, .
- 6) Ram Janam Singh Vs. State of Uttar Pradesh and another,
- 7) K. Ajit Babu and others Vs. Union of India and others,
- 8) 1995 (1) S.C. SLJ 27 Uday Pratap Singh and Ors. v. State of Bihar and Ors.
- 9) 2000 (2) S.C. SLJ 341 Badrinath v. Government of Tamil Nadu.

12. So far as the respondent State of Gujarat is concerned it has supported the case of the present petitioners. Similarly the Union of Indian has also supported the case of the petitioners. Having considered the submissions made by both the sides and the principles which have been laid down in the said cases as aforesaid, we find that in the facts of the case the right of the direct recruits to challenge the promotion accorded to the petitioners and in other words their locus standi to challenge their promotion has to be divided into two parts. (1) The right to challenge the promotion as it is. So far as this aspect is concerned we find that the direct recruits have entered the Indian Forest Service on the basis of entirely different source of recruitment and they got the appointment and seniority accordingly. Based on such direct recruitment, competitive exams are taken and such officers being already there as direct recruits as member of the service of I.F.S. they were not competitors of the State Forest Officers when the earlier judgment of the C.A.T. was implemented. Therefore even if it is held in their favour that the review D.P.C. should have been based on the consideration of all eligible State Service Officers and it should not have been confined to the three officers who had approached the C.A.T. only, we find that so far as the selection made by the review D.P.C. is concerned these direct recruits could not have had any lis and they could not have joined any issue for the purpose of promotion to I.F.S. and therefore so far as the actual promotion of these three officers is concerned there is no locus standi to challenge the selection on the basis of which these persons who were inducted in the I.F.S. cadre. Therefore promotion as such could not be questioned and so far as the promotion of the State Service Officers to the Indian Forest Service is concerned, it would not be open to challenge at the instance of the direct recruits. To be

more precise, these direct recruits had no locus standi to challenge the promotion of these officers.

13. The second question is of seniority and the grievance of the direct recruits is that these three officers promoted to I.F.S. as had been ordered by the Government on the basis of review D.P.C. seek to render these three persons to be senior in the cadre of I.F.S. and that may affect their future chance of promotion and therefore they had right to challenge the same. We may observe that seniority in the service jurisprudence is nothing but a consequence of something which has already happened in the past. Seniority may be assigned and determined at any point of time but it has to be assigned or determined on the basis of the basic order of appointment. If the basic order of appointment can't be challenged, the consequential seniority as such can't be challenged. When the basic order itself is beyond the challenge there is no question of challenge to seniority and automatically the case goes beyond challenge. Even if we assume that in the facts of the present case, the direct recruits are aggrieved by the promotion of the promotee officers because on the basis of the promotion their future chances of promotion are adversely affected and as such promotees stand to gain seniority over them and therefore they are "persons aggrieved" or "party aggrieved", it is clear that once we hold as a matter of principle that the seniority is only consequential to appointment and when the basic appointment itself can't be challenged the consequences thereafter automatically are beyond the challenge. We have to see as to whether in the facts of the present case the direct recruits can still challenge the appointment given to the promotee officers because it is going to adversely affect their future chances of promotion? The grievance of any adverse effect on future chances of promotion does not confer any enforceable right and in such cases party aggrieved for future promotion can't be considered as the party aggrieved by the impugned order as held in the case of *Gopabandhu Biswal Vs. Krishna Chandra Mohanty and Others*, . It has been laid down that however, leniently the term "party aggrieved" is construed, a person not directly affected can't be so considered. Therefore howsoever wider meaning may be given to the term "aggrieved person" or "party aggrieved", if it can't challenge the basic order, it can't be considered to have locus standi to challenge the consequential orders. We have divided the question of locus standi in the present case in two parts - first was the question of locus standi to basic order and second is the question of locus standi with regard to challenge on the question of seniority. If it is assumed that they have right to challenge the seniority and if such challenge is based on the challenge to the basic order of appointment for which there is no locus standi, it will be begging the question and would amount to self contradiction. If the right to challenge the consequence is upheld more particularly when the question is only about future chance of promotion, it may also be noted that so far as the first promotion in the I.F.S. from the cadre of Dy. Conservator Forest Officer is concerned the selections are based on merit and not on seniority. Therefore for the purpose of determining future chances of promotion, the seniority is not a decisive factor. When the

seniority is not decisive for the purpose of future chances of promotion and such future promotion is based on merit, the assumption of higher seniority on the basis of an appointment which is the basic order which is beyond challenge can't be challenged. In para 14 of Gopa Bandhu Biswal v. K.C. Mohanty, the Supreme court has held that quota of direct recruits is different and these applicants are not concerned with the appointment made within the quota of promotees from the State Forest Service and therefore it is difficult to look upon them as persons aggrieved. If at all they would be affected by the promotion to the original applicants that would be in respect of promotion to the next higher post. This does not confer any legal right on these applicants.

14. The upshot of the discussion as aforesaid is that, this group of six Special Civil Applications succeed. All these six Special Civil Applications are hereby allowed. The judgment and order dated 5.1.2000 passed by the C.A.T. Ahmedabad bench is hereby quashed and set-aside. Rule is made absolute in all these six Special Civil Applications.

(M.R. Calla, J.) (N.G. Nandi, J.)

CIVIL APPLICATION No.4158 OF 2001

Whereas the main Special Civil Application have been allowed and the ad-interim orders have already been vacated, Civil Application No.4158 of 2001 for vacating ad-interim order has become infructuous. The same stands rejected accordingly.