

(2023) 07 CAT CK 0054

In the Central Administrative Tribunal

Case No : Transfer Application No. 62, 1916 Of 2021 (SWP No. 435 Of 2011)

Ghulam Mohi Uddin Sheikh & Ors

APPELLANT

Vs

State Of Jammu And Kashmir Through Commissioner/
Secretary To Govt. Forests Department Civil Secretariat
Srinagar/ Jammu & Ors

RESPONDENT

Date of Decision : 27-07-2023

Acts Referred:

Citation : (2023) 07 CAT CK 0054

Hon'ble Judges : K. Haripal, Member (J); Dr. Chhabilendra Roul, Member (A)

Bench : Division Bench

Advocate : M.M. Amin, Masooda Jan, Bikram Deep Singh

Final Decision : Dismissed

Judgement

Dr. Chhabilendra Roul, Member (A)

1. The present Writ Petition (SWP No. 431), which has been transferred to the CAT, Srinagar Bench bearing TA No. 62/1916/21 has been filed by the present petitioners seeking the following relief:

"a) Writ of mandamus Commanding the respondents to consider the petitioner to next higher post which is

b) Writ of Mandamus commanding the respondents to give the petitioner retrospective effect to the promotion of which the petitioner was entitled to in the year 2000 as per the regularization/ appointment to the post of Mali.

Or

Any other writ or direction maybe passed as this Hon'ble Court may deem fit and proper in the circumstances of the case.

2. Brief facts of the case are that the present petitioners were initially appointed as daily rated workers in the Forest department of Jammu & Kashmir. Petitioner

No.1 was engaged on 14.8.1987 whereas petitioner no.2 on 15.4.1982. Both of them were regularized against substantive posts of Watcher with effect from 1.4.1995 vide SRO 64 of 1994. Petitioner No. 1 claims that he acquired the qualification of B.A. in the year 1996, in pursuance of the examination held in October, 1995.

2.1 The respondents issued tentative seniority list of watchers belong to the Graduate Class –IV officials on 20.10.-2005 circulated vide Chief conservator of Forests, Kashmir, Srinagar's endorsement no.CF4308 (K/Admn/2005/4279-4308 I dated 25.10.2005 in which petitioner no.1 is shown at S. No. 6. The respondents issued seniority list of Class-IV officials (Executive Category) on 30th September , 2009 vide CF Kashmir's endorsement no CF (K) / Admn/2009/3033-45 wherein respondent No. 2 is placed at Serial no 24.

2.2 The petitioners were promoted to the rank of Forest Guard in pursuance of Forest Order No. 500 of 2009 dated 31.12.2009.

3. In the instant case, the respondents have filed their counter affidavit and the petitioners have also filed their rejoinder to the counter affidavit filed by the respondents.

4. The petitioners have sought the aforementioned reliefs based on the sole ground that they were regularized with effect from 1.4.1995 and they completed 5 years service in April 2000. As per the Jammu Kashmir Forest Department Notification dated 19th March 2003 (SRO 84), the Jammu & Kashmir (Subordinate) Service Recruitment Rules, 1991 were amended which contained the following provisions for promotion of Deputy Foresters and Forest Guards in Schedule-II appended to the above Rules :

(VIII.) Deputy Foresters 100% by promotion from Class X Schedule-II in the following ratio:

- i). 100% from Graduate Forest Guards with three years experience;
- ii). 60% from Matriculate Forest Guards with seven years experience;
- iii). 25% from non- matriculation Forest Guards with ten years experience;
- iv). 5% from amongst meritorious Forest Guards having stood first in KFC course.

X. Forest Guards 50% by Direct recruitment & 50% by promotion in the following manner/ ratio:

- i) 20% from class XII category (A) of Schedule –II with five years of service in that category
- ii) 20% from class XII of Schedule –III with five years minimum service in this category.
- iii). 10% from Graduates from class-XII category

(A) of Schedule-II and class XII of schedule – III with five years service in the category.

By order of the Governor.”

4.1 The petitioners claim that they should have been considered to promotion to the rank of Forest Guards after the completion of five years as per these amended rules under the respective quota for the Graduate and matriculate categories. But despite the availability of vacancies, the petitioners were not considered for promotion to the rank of Forest guard after they completed 5 years. Subsequently, the respondents further promoted others to the rank of Deputy Foresters ignoring the petitioners.

5. The learned counsel for the petitioners reiterated the stand taken by the petitioners in the petition. He pleaded that the petitioners should have been promoted to the rank of Forest Guard with effect from 2000 instead of 2009 and they should have been further promoted to higher ranks based on such promotional seniority in the rank of Forest Guards with effect from 2000.

6. The learned counsel for the respondents stated the petitioners have been promoted with effect from 2009 when the vacancies arose and the promotions took place as per seniority list already circulated. The petitioners have not challenged the seniority list of Class –IV Officials belonging to the graduates and matriculates categories, which had already been circulated and finalized. At the time of being promoted to the rank of forest guard, the petitioners have not challenged the promotion order nor the date from which they were given promotion. Hence, at this stage, the petitioners have no cause of action. The subsequent promotions in the department are based on the seniority of the Forest Guards.

7. We have gone through the records of the case thoroughly and heard the arguments carefully. The petitioners have failed to substantiate with any records that the respondents have promoted any junior to them with effect from 2000, when they completed 5 years in the regular post of watchers. Their only claim is that as per SRO 84 of 2003, they were entitled to get promoted as per the amended rules. The amended rules came into effect in 2003. So claiming benefit retrospectively by the petitioners is not permissible by law. Moreover, these rules do not provide a vested right to be promoted to the next rank irrespective vacancies and seniority. The petitioners have failed to substantiate that there were vacancies and the seniority list of watchers were violated while giving promotion to the rank of Forest Guards. The amended Rules of 2003 are enabling provisions. The promotions take place as when vacancies occur and as per seniority. As the petitioners have failed to bring any documentary evidence that there was violation of these principles, the present petition lacks merit and hence is dismissed.

8. There is no order as to costs.

All pending MAs are also disposed of accordingly.