

**(2000) 10 KAR CK 0013**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 36510 of 1999 (S)**

H.P. Lakshminarayana

APPELLANT

Vs

Karnataka Forest Development Corporation and others

RESPONDENT

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**Date of Decision :** 16-10-2000

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16

**Citation :** (2000) ILR (Kar) 5089 : (2001) 2 KarLJ 623

**Hon'ble Judges :** A.V. Srinivasa Reddy, J

**Bench :** Single Bench

**Advocate :** Sri M.S. Bhagawat, for the Appellant; Sri M. Kumar and Sri V. Prakash, Additional Government Advocate, for the Respondent

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## Judgement

1. The petitioner has filed this writ petition praying for quashing of the recruitment rules of the first respondent prescribing a period of 7 years as the minimum service for promotion to the cadre of Assistant Divisional Manager.

2. The petitioner is working as Assistant Divisional Manager of the first respondent. His grievance is that a distinction has been made in the matter of recruitment of Divisional Managers. It is his case that the rules provide for recruitment of the Divisional Manager by deputation from the cadre of Deputy Conservator of Forests or by promotion from the Cadre of Assistant Divisional Manager. The Recruitment Rules of the Forest Department provide for promotion of Assistant Conservator of Forests who have put in five years of service to the post of Deputy Conservator of Forests, whereas, the Recruitment Rules of the first respondent-Corporation provides for promotion of only the Assistant Divisional Managers who have put in seven years of service to the post of Divisional Manager. It is the contention of the petitioner that because of this discrimination made in the respective Recruitment Rules the Assistant Conservators of Forests who have put in merely five years of service Assistant Conservator of Forests in the Forest Department get promoted as Deputy Conservator of Forests and in turn are deputed to the first respondent-

Corporation as Divisional Managers. At the same time as Assistant Divisional Manager who has put in five years of service in the Corporation cannot be promoted as Divisional Manager as the minimum service prescribed is seven years. It is stated that because of this discrimination all the seven posts of Divisional Managers in the Corporation are filled by deputationist from the Forest Department thereby denying promotional opportunity to persons working in the cadre of Assistant Divisional Manager. Hence, the petitioner has filed the present writ petition.

3. I have heard Mr. Bhagawat, the learned Counsel for the petitioner and Mr. Kumar for respondent 1 as also learned Additional Government Advocate Sri V. Prakash.

4. The point that arises for my consideration is:

Whether the Recruitment Rules prescribing seven years service as Assistant Divisional Manager for promotion to the cadre of Divisional Manager is unconstitutional and, therefore, liable to be quashed?

5. The Schedule to the Recruitment Rules of first respondent has been produced as Annexure-A to the writ petition. The mode of recruitment to the post of Divisional Manager finds mention at Sl. No. 9 in the Schedule and it is either by deputation from the cadre of Deputy Conservator of Forest Department or by promotion from the cadre of Assistant Divisional Manager. Annexure-B is an Official Memorandum dated 12-3-1997 issued by the first respondent-Corporation which specifies the designation of the officers in the Forest Department as also the equivalent designation in the Corporation. In Annexure-B, as against the designation of Deputy Conservator of Forests the equivalent is shown as Divisional Manager. As against the designation of Assistant Conservator of Forests the equivalent designation in the Corporation is shown as Assistant Divisional Manager. From Annexure-B it is, therefore, clear that the post of Assistant Divisional Manager in the Corporation is equivalent to the post to the Assistant Conservator of Forests in the Forest Department. The contention of the petitioner that the minimum experience required for promotion from the post of Assistant Conservator of Forests to Deputy Conservator of Forests is five years is not disputed either by the first respondent or by the Forest Department. The Assistant Conservator of Forests and the Assistant Divisional Manager being the two feeder cadres to the post of Divisional Manager, it can be safely presumed that the two classes of posts perform identical duties and functions in discharge of their responsibilities. Nor is it the case of the respondent that the Assistant Conservator of Forests is in any way superior to the post of Assistant Divisional Manager or that it calls for higher qualification.

6. The grievance of the petitioner is that the Corporation Rules prescribing seven years experience as the minimum required period for promotion to the post of Divisional Manager operates unfairly against the officers of the Corporation, when the minimum period prescribed for promotion from the cadre of Assistant

Conservator of Forests to the post of Conservator of Forests is only five years. It is his stand that since an Assistant Conservator of Forests is promoted as Deputy Conservator of Forests after a period of only five years as Assistant Conservator of Forests gets precedence over the Assistant Divisional Manager in the matter of promotion to Divisional Manager of the Corporation. To substantiate this contention the petitioner relies on the undisputed fact that all the eight posts of Divisional Managers in the Corporation are manned by Deputy Conservator of Forests deputed from the Forest Department.

7. The promotion policy adopted by the Corporation in the matter of recruitment to the post of Divisional Manager amounts to integration of persons drawn from two different sources for the common purpose of considering them for promotion to the next higher cadre and both these sources, as illustrated above, are equivalent cadres. The Corporation having taken a policy decision equating the post of Assistant Divisional Manager with Assistant Conservator of Forests and providing for filling up the post of Divisional Manager in the Corporation by deputation of Deputy Conservator of Forests ought to have ensured that the tests adopted by the Forest Department for promotion to the next higher cadre is adopted fully and without any change by the Corporation in the matter of promotion from the cadre of Assistant Divisional Manager to the cadre of Divisional Manager. Adoption of a different test in the matter of prescribing the requirement for promotion to two equivalent feeder cadres would be arbitrary and unreasonable. So long as Deputy Conservator of Forests are permitted under the Rules of the Corporation to be deputed as Divisional Managers, it would be always open for the Assistant Divisional Managers to claim and demand for the same minimum requirement of service as prescribed for the Assistant Conservator of Forests which is the sole feeder cadre for the post of Deputy Conservator of Forests. The impugned prescription of seven years minimum experience in the cadre of Assistant Divisional Manager juxtaposed against the minimum experience of five years prescribed for promotion to the cadre of Deputy Conservator of Forests from the post of Assistant Conservator of Forests, amounts to subjecting two equivalent class of employees to unequal treatment. This results in subjecting one class of employees from one source to more onerous terms while prescribing requirements which are less onerous to the same class of employees from another source. This is bad in law as it amounts to treating equals unequally for the common purpose of considering their cases for promotion to the next higher cadre. It is especially so, when these two feeder cadres serve as the only two. sources of recruitment to the next higher cadre of Divisional Manager.

8. In *S.L. Sachdev and Another Vs. Union of India (UOI) and Others*, , a similar matter where different promotional tests were adopted, purely with reference to the respective sources, after integration of two sources into a common cadre came up for consideration before the Apex Court. The Apex Court while striking down the differential tests adopted, held:

"Once a cadre is formed by recruiting persons drawn from different departments of the Government, there would normally be no justification for discriminating between them, subjecting one class to more onerous terms in the matter of promotional chances. Different tests should not be prescribed for determining their respective promotional opportunities, and that too solely in reference to the source from which they are drawn. In the present case the duties, functions and responsibilities of all the UDCs in the new organisation are identical. They are all in the same cadre and they draw the same pay in the same grade. Therefore, different tests should be not laid for their promotion".

In the present case also there is discrimination between the two different equivalent cadres in the impugned prescription of the minimum service for promotion to the next higher cadre. This would result in a situation wherein a person appointed in the Corporation as Assistant Divisional Manager on the same day as another person who is appointed as Assistant Conservator of Forests in the Forest Department would find himself languishing in the same post after a period of five years, whereas the Assistant Conservator of Forests who merely by virtue of the fortuitous circumstance of having joined the Forest Department, would find himself elevated on expiry of a period of five years as Deputy Conservator of Forests and in turn could be deputed to work as Divisional Manager, thus stealing a march over the person appointed as Assistant Divisional Manager in the Corporation on the same day when he was appointed as Assistant Conservator of Forests in the Forest Department. The person appointed as Assistant Conservator of Forests would thus be sitting over the head of the Assistant Divisional Manager in the Corporation, in his capacity as Divisional Manager of the Corporation, not by virtue of his being better qualified for the post, nor by virtue of any better experience gained in the Forest Department but, purely on the basis of a fluky circumstance, that he joined the Forest Department instead of the Corporation. This is impermissible in law as it is arbitrary and unreasonable.

9. Article 16 of the Constitution which is an extension of the concept of equality as enshrined in Article 14 thereof, clearly spells out that there shall always be equality of opportunity in the matter relating to employment or appointment to any office under the State, Any preferential treatment to one source in relation to the other should be based on the intelligible differentia that exist in the two category of posts, the differentia may be anything from qualification to the nature of duties or experience acquired in one source which is either absent or may or may not be possible to be acquired in the other source. In the absence of such difference, as is the case herein, where there is very little to choose between the two sources, any differentiation which is not based on the differences in the two sources and which has no nexus at all to the post of Divisional Manager to which promotion is made, is unjust on the face of it and is violative of Article 16 of the Constitution, It is this unjust differential treatment meted out to the Assistant Divisional Managers, solely with reference to the source from which they are drawn, in the matter of their promotion to the next

higher cadre that has resulted in all the seven posts of Divisional Managers being occupied by the deputationist from the Forest Department.

10. The Apex Court has occasion in *State of Mysore Vs. M.H. Krishna Murthy and Others*, , to deal with the validity of a division into two classes of members of the same service, belonging to the same cadres, for purposes of a difference to be made in their promotional chances. While quashing the amendment which sought to bring about the division, the Apex Court held:

"Inequality of opportunity of promotion, though not unconstitutional per se, must be justified on the strength of rational criteria co-related to the object of such a difference must be presumed to be selection of the most competent amongst those possessing qualifications and background entitling them to be considered as members of one class".

In arriving at the above conclusion the Apex Court noted with approval the observations made by the High Court of Mysore that neither a fortuitous artificial division in the past nor the unconstitutional practice of making an unjustifiable discrimination in promotional chances of Government servant belonging to what was really a single category, without any reference either to merit or seniority, or educational qualifications, could justify the differences in promotional chances. Though in the present case the incumbents were drawn from two different sources, the fact remains that they were from equivalent cadre and so no distinction could have been made in the matter of providing promotional chances to them.

11. It is now well-settled law that a regular candidate is entitled to be considered in preference to an employee on deputation as held in *Jai Ram Sharma Vs. Jammu Development Authority*, . The Apex Court while deciding the question as to who should be given precedence in the matter of promotion, held thus:

"Counter-affidavit has been filed by the respondent contending that appellant's seniority was considered with effect from the date when the vacancy had arisen after the retirement of the 5th respondent. The above action is obviously illegal and an arm twist to nepotism. When the appellant was a regular candidate as Office Superintendent, he was entitled to be considered in preference to the deputationist".

Thus, the prescription of minimum experience of seven years for promotion from the cadre of Assistant Divisional Manager to the cadre of Divisional Manager is bad in law and is violative of Article 16 of the Constitution.

12. In the result, for the reasons stated above, the impugned rules prescribing seven years service as Assistant Divisional Manager for purpose of promotion to the post of Divisional Manager is quashed and the first respondent-Corporation is directed to prescribe the period of five years as the minimum service required, for promotion from the cadre of Assistant Divisional Manager to the cadre of Divisional Manager.

No order as to costs.