

(2014) 05 UK CK 0012

In the Uttarakhand High Court

Case No : Writ Petition Nos. 1242 and 1815 (SS) of 2012

Indra Lal Arya and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 28-05-2014

Acts Referred:

Constitution of India, 1950 — Article 309 — Uttar Pradesh Reorganisation Act, 2000 - Section 73, 74

Citation : (2015) 2 UC 820

Hon'ble Judges : Sudhanshu Dhulia, J.

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.?The aforesaid two writ petitions [Writ Petition No. 1242 (SS) of 2012 and Writ Petition No. 1815 (SS) of 2011] relate to the Forest Department in the State of Uttarakhand where promotions to the post of Foresters from the feeding cadre of Forest Guard is an issue for determination. Post of Forest Guard is the starting point in the State Forest Service. Prior to 28.11.2011, 50% of the posts of Foresters were filled by way of promotion from Forest Guards on the criteria of seniority subject to rejection of unfit. The remaining 50% of the posts were filled by way of a direct recruitment.

2. A Forest area is divided into various "Circles", a circle into "Division" and a division into "Range". The post of Forester is a Circle level post and prior to 28.11.2011 promotions to the aforesaid post were made on the determination of seniority of existing Forest Guard in that circle under the 50% quota as referred above.

3. Much prior to the determination in the present matter, some petitioners had filed writ petitions (WPSS No. 1081 of 2011) stating that they are Forest Guards in the Forest Department and they are eligible for promotion to the post of Forester. However, the Forest Department, instead of promoting them, by calculating their seniority at Circle level is going to do promotion on the basis of

State wise seniority, as per some Government Order issued by the State Government.

4. While disposing of the said writ petition (WPSS No. 1081 of 2011), this Court was of the view that since the Rules mandated Circle wise seniority, it was wrong on the part of State Authorities to calculate State level seniority while considering promotion from Forest Guard to that of Foresters and thereafter vide order dated 03.08.2011, passed following order:--

"Learned counsels appearing for the private respondents as well as the State have pointed out a provision in Government Order dated 10.9.2010 namely Rule 3(iv) which says that in case appropriate candidates are not available in a circle who can be appointed for the post of forester, such posts can be filled by Forest Guards from another circle. This provision being totally in violation of law is liable to be quashed and presently being quashed. It is though clarified that the right of the petitioners is not being prejudiced by the present recruitment drive if posts which are meant for them under the 50% circle wise quota need not be disturbed. Subject to the above, no interference is called for.

It is clarified that the respondents while making promotions from the post of Forest Guard to Forester which have to be filled only by way of promotion will make such promotion only circle wise. In case the vacancies are not filled from the circle they shall be carried forward to the next year. However, for the remaining 50% which is the quota of direct recruitment, the respondents are at liberty to carry on the said promotions in order of the seniority based on the State wise seniority list."

5. The Rules were subsequently amended and principally two amendments were made. Firstly, all posts of Foresters are to be now filled by way of promotion (earlier it was only 50% of the posts). Secondly, these promotions are to be made by calculating State level seniority and not circle level, as it was earlier.

6. The petitioners in Writ Petition No. 1242 (SS) of 2012 are ones who have challenged the vireos of the amended Rules of 2011 arguing, inter alia, that the change in the Rules is contrary to the mandate of proviso to Section 74 of the U.P. Reorganization Act, 2000, wherein any service conditions applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of U.P. or to the State of Uttaranchal under Section 73 shall not be varied to his disadvantage except with the previous approval of the Central Government. Section 74 along with the proviso reads as under:--

"74. Other provisions relating to services.--(1) Nothing in this section or in Section 73 shall be deemed to affect on or after the appointed day, the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:

Provided that the conditions of service applicable immediately before the

appointed day in the case of any person deemed to have been allocated to the State of Uttar Pradesh or to the State of Uttaranchal under Section 73 shall not be varied to his disadvantage except with the previous approval of the Central Government.

(2) All service prior to the appointed day rendered by a person,-

(a) if he is deemed to have been allocated to any State under Section 73, shall be deemed to have been rendered in connection with the affairs of that State;

(b) if he is deemed to have been allocated to the Union in connection with the administration of the Uttaranchal, shall be deemed to have been rendered in connection with the affairs of the Union, for the purposes of the rules regulating his conditions of service."

7. This contention of the petitioners has no merit for the simple reason that one of the basic principle in service jurisprudence is that though removing a channel of promotions or any chances of promotions would amount to adversely affecting the service conditions but where there is a mere reduction in the chance of promotion it would not amount to adversely affecting of the service conditions. That being the settled position of law, even if it is assumed for the sake of argument that by changing the seniority from circle level to state level, chances of promotion of some of the forest guards in a given circle had been reduced, it would not amount violation of any fundamental right or a change adversely affecting service conditions of the petitioners, which may violate the provision of Section 74 of the U.P. Reorganization Act, 2000.

8. To the contrary, however, what is now happened is that the entire posts of Foresters are now to be filled from amongst the existing Forest Guards, this in totality amounts to increase in the chances of promotion and not a decrease in the chance of promotion if one considers it at State level. Even assuming, for the sake of argument, as has already been referred above, that in a given circle this may reduce the chances of promotion of some of the can-dictates, it would not be any violation of the proviso to Section 74 of the U.P. Reorganization Act, 2000, much less any violation to any fundamental rights of the petitioners.

9. Another argument raised here is that under the existing Rules the appointing authority of foresters is a still a Circle level Officer i.e. a Conservator of Forest, therefore, there is a contradiction in the terms of Rules itself where the Appointing Authority is a Circle level Officer and on the other hand the seniority has to be calculated on the State level. This argument also is devoid of merit for the simple reason that there is absolutely no anomaly if a state level seniority list is prepared and yet the appointing authority remains the Circle level officer, ultimately, these rules are for the benefit of such employees who have been inducted at the initial level of the forest service. This Court, in this case, in order to go to the root of the matter had summoned the Principal Chief Conservator of Forest who had appeared before this Court on 10.09.2013, and had articulated the reasons behind such a move. His contention before the Court was that there

is a great disparity between one circle and another in terms of promotions, and whereas in a given circle promotions have been made early there are many circles where senior forest guards have been waiting for their promotion, which has not happened for lack of posts in that circle. This causes a lot of heart burning amongst the forest guards in general in the State and thereafter in order to bring a level playing field and in order to bring a uniformity not only has the seniority been made State-wise but in order to meet small discrepancies, the entire posts of foresters have now been made open for promotions, meaning thereby, effectively the chances of promotion of even some dissatisfied forest guards had not diminished but in a long run most of them will be promoted. This Court finds both logic and sense in this thought which lay behind these changes and amendments of the rules. This being the state of affairs, there is no anomaly in the Rules. The Writ Petition No. 1242 (SS) of 2012 fails and is hereby dismissed.

10. In writ petition (WPSS No. 1815 of 2011), the petitioners before this Court are the one who were promoted vide order dated 29.11.2011 to the post of Foresters but vide the impugned order in the said writ petition dated 03.12.2011 their promotion orders have been cancelled and they have effectively been reverted. This has been done as on 29th November, 2011. Now the Rules have been framed by His Excellency the Governor under Article 309 of the Constitution which are known as "Uttarakhand Subordinate (Rangers, Deputy Rangers and Foresters) Service (Amendment) Rules, 2011, have been amended and now for the promotion on the post of Forester from Forest Guards have been changed:--

(a) the entire posts of Foresters in the State have to be filled by way of promotion from amongst the Forest Guards, and

(b) while doing such promotions, it is not the circle-wise seniority which will be calculated but the seniority which will be calculated would be the State level seniority.

11. Since these Rules came into force on 28.11.2011 and the petitioners were promoted, a day after the amendment in the Rules i.e. 29.11.2011 and after the amendment in the Rules came into force, their promotion had been cancelled, which is presently under change in Writ Petition No. 1815 (SS) of 2011.

12. Having come to the above determination, the fact remains that in Writ Petition No. 1815 (SS) of 2011, though the promotions have been made on 29.11.2011 on the basis of circle level seniority which already stood changed a day earlier on 28.11.2011, yet it would be both inequitable and unjust to revert these petitioners for the following reasons:--

(a) Their promotions exercise, as already referred above, was being initiated on the terms of Court's order dated 03.08.2011, the process had begun much earlier in October, 2011 and by 18.11.2011, the Selection Committee itself was constituted which examined the documents of candidates and now they are being promoted to the post of forester under the existing Rules. It would not be proper

to revert them back to the post of forest guard.

(b) It has come on record that the Circle where such promotions were made was made aware of the Amended Rules dated 28.11.2011 only on 05.12.2011. In fact, the fact that the process of promotion had begun much earlier than 28.11.2011 is even accepted by the State Government in its counter affidavit.

13. In view thereof, the writ petition (WPSS No. 1815 of 2011) succeeds and is hereby allowed. The impugned order dated 03.12.2011, passed by respondent No. 2 directing the respondent No. 3 to cancel the order dated 29.11.2011, is hereby quashed.

14. Having made above determination, however, it is made clear that since the seniority has now to be calculated at State level, the Forest Department shall calculate the seniority of Forest Guards at the State level as it existed on 28.11.2011 and, thereafter, even if there are some remaining candidates (i.e. Forest Guard) who were senior to the petitioners in Writ Petition No. 1815 (SS) of 2011 and being in a different circle could not be promoted but as and when they will be promoted as per the amended rules, they will be regaining their seniority of the State level, so that, in future they may not suffer. Meaning thereby that as and when a forest guard is promoted under the new Rules of State level seniority, he as forester will regain his seniority vis-a-vis such candidates as forest guards who by virtue of the order in Writ Petition No. 1815 (SS) of 2011 have been given promotion as forester, even though they were junior to him in the State level seniority. No order as to costs.