
(2008) 12 AHC CK 0395

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 35533 of 1996

Mahanand Singh

APPELLANT

Vs

Principal Conservator of Forest, U.P. Lucknow and Others

RESPONDENT

Date of Decision : 17-12-2008

Acts Referred:

Lower Subordinate Forests Service Rules, 1980 — Rule 10, 15, 16, 28, 5(c)

Citation : (2008) 12 AHC CK 0395

Hon'ble Judges : S.U.Khan, J

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard learned counsel for the parties.

2. In spite of sufficient service, newly impleaded respondents have not appeared. The grievance of the petitioner is that even though in the seniority list prepared and circulated through order dated 17.3.1990 (Annexure 1 to the writ petition), his name is at Serial No. 15 still the persons at Serial Nos. 16 and 17 etc. have been promoted to the post of Forester in 1991 but he has been bypassed. Learned Standing Counsel has firstly argued that petitioner was transferred from another circle in 1984, hence by virtue of note to Rule 28 of Lower Subordinate Forest Service Rules, 1980, he was to be placed at bottom in the circle, where he was transferred on his own request, i.e. Varanasi. However, the correctness of seniority list, true copy of which is Annexure 1 to the writ petition, has not been doubted by the learned counsel appearing for the respondents. Neither it has been stated that it is not correct copy nor it has been stated that at the time of preparation of the said seniority list any error crept therein. Accordingly, that question need not be decided.

3. The other argument of learned counsel for the respondents is that Selection Committee found others, who were junior to the petitioner, more suitable, hence they were promoted and not the petitioner. This argument is not tenable. Either the matter of promotion is governed by Subordinate Forest (Rangers, Deputy Rangers and Foresters) Service Rules published through notification dated

17.4.1951 or aforesaid Lower Subordinate Forest Service Rules, 1980. In the Rules of 1951, under Rule 5(c), it is provided that 50% posts of foresters are to be filled up by promotion and 50% by direct recruitment and it is further provided under Rule 10 that appointment by promotion under the aforesaid provisions shall be by seniority subject to the rejection of the unfit. Similarly, in the Rules of 1980, it is provided under Rule 16 that recruitment by promotion shall be made on the basis of seniority subject to the rejection of the unfit through the Selection Committee constituted under Rule 15. It has not been pointed out by learned Standing Counsel appearing for the respondents that Selection Committee found anything against the petitioner. Accordingly, there was no reason for not promoting the petitioner. Under interim order passed by this Court on 8.11.1996, petitioner's representation was decided through order dated 15.2.1997 by Forest Conservator, Varanasi and 18.3.1997 by Regional Director (Prabhagi Nideshak), Varanasi. In the order dated 15.2.1997, it is mentioned that as petitioner had sought transfer on 19.6.1984, hence by virtue of aforesaid Rule 28, he was placed at the bottom, i.e. after the Forest Guards working in Varanasi region at that time. Thereafter, it is mentioned that Selection Committee met on 1.5.1991 and order of promotion was passed on 12.5.1991. Through the said order, SriThakur Prasad Mishra was promoted. It is mentioned that he was promoted on the ground that in the seniority list he was above the petitioner. However, in the seniority list annexed as Annexure 1 to the writ petition, petitioner's name is at Serial No. 15 and Thakur Prasad is at Serial No. 17. As stated earlier, correctness of the said list has not been doubted in the counter affidavit. Accordingly, contrary observations in the impugned order dated 15.2.1997 is not correct. Moreover, in the impugned order, it is mentioned that even though U.P. Government Employees Seniority Rules, 1991 had been promulgated on 20.3.1991, however, office of the Forest Conservator got knowledge about the said Rules on 10.3.1992, but decision had already been taken on 1.5.1991/12.5.1991. In this manner, it is admitted by Forest Conservator that placing Thakur Prasad Mishra above the petitioner in the seniority list was not in accordance with Rules of 1991, however, as at that time he was not aware of the Rules, hence, promotion was correct. This contention cannot be accepted. Every one is supposed to know the law. Even if conservator was not aware of the Rules which fact itself is quite strange still any decision taken contrary to the Rules has to be set aside. Ignorance of law is no defence or excuse.

4. Accordingly, impugned order dated 15.2.1997 is set aside.

5. On the suggestion of the Court, learned counsel for the petitioner has agreed that before 12.5.1997, he would not claim any arrears of salary. Petitioner shall be promoted w.e.f. 12.5.1991, however arrears of salary from 12.5.1991 till 15.2.1997 should not be paid to him. If any post of Forester is vacant, then Sri Thakur Prasad Mishra shall not be reverted back but adjusted in the said post.

6. Writ petition is accordingly allowed.