

(2016) 01 AHC CK 0272
In the Allahabad High Court
Case No : Writ Petition No. 1594 of 2003

R.U. Khan and 3 Others

APPELLANT

Vs

U.P. Forest Corp. Thorough Its M.D. and 2 Others

RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Uttar Pradesh Forest Corporation Act, 1974 — Section 33(1)

Citation : (2016) 34 LCD 460

Hon'ble Judges : Narayan Shukla and Ashok Pal Singh, JJ.

Bench : Division Bench

Advocate : P.N. Dwivedi and R. Singh, Advocates, for the Appellant; L.P. Shukla, C.S.C. and Kapil Deo, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Narayan Shukla, J.— Heard Mr. P.N. Dwivedi, learned counsel for the petitioner as well as Mr. L.P. Shukla, learned counsel for the U.P. Forest Corporation.

2. The petitioners have assailed the order dated 6 May 2000 passed by the Managing Director U.P. Forest Corporation, Lucknow (in short corporation) whereby the respondent No. 3 has been promoted to the post of Sales Officer from the post of Assistant Logging Officer.

3. Learned counsel for the petitioner has submitted that the petitioners while working as Logging Officer retired from service. Being promoted to the said post vide order dated 18.09.1993, their next promotion to the post of Divisional Logging Manager/Divisional Sales Manager had become due so many years ago of his retirement. They fulfilled the requisite qualification. They were within the zone of consideration, but they had been ignored. While opposite party No.3 who had completed only three years of service as Sales Officer was promoted. Their service conditions were governed under the U.P. Forest Corporation General Service Regulations (in short Regulation) framed under the U.P. Corporation

Act, 1974 (in short Act).

4. Section 33(1) of the U.P. Forest Corporation Act, 1974 provides that the State Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act. Sub-Rule 3 provides that all rules made in this Act shall as soon as may be after they are made be laid before each House of the State Legislature while it is in session for a total period of not less than thirty days.

5. It further provides that all rules made in this Act shall be subject to modification or arrangement of the State legislature.

6. Section 34(1) provides that the Corporation may, with the prior approval of the State Government make regulations not inconsistent with this Act and the rules made there under for the administration of the corporation. The regulations were framed with the prior approval of the State Government. The post of Divisional Logging Manager/Divisional Sale Manager belongs to group A post. The criteria for promotion to the post of Divisional Logging Manager/Divisional Sale Manager is 33.33% by absorption or by deputation of Forest Officers and 66.67% by promotion from amongst Logging Offices/Sales amongst officers of a minimum of five years service on that post. Prior to third amendment 2000 the ratio of each wing was 50% each. The requisition of five years service in the feeding cadre is still intact in the regulation, but the governing body has reduced it to three years in case respondent No.3 is making promotions without making any amendment in the Rules or taking approval of the State Government. In identical issue this Court in writ petition No. 30785 (SS) of 2003 Umesh Kumar and Virendra Kumar Arya v. the Chairman U.P. Forest Corporation and others quashed the order of promotion of the respondents and directed the departmental promotional committee to take up issue of promotion afresh. The order of the learned Single Judge was affirmed by the Division Bench in Special No. 4 of 2004.

7. The learned counsel for the petitioner has submitted that Supreme Court in Senior Superintendent Post Offices v. Izahar Husain 1989 SCC (4) 318 observed that "the executive instruction has to operate subservient to the statutory provisions and it can only supplement and not supplant the statutory rules."

8. He further cited a decision of Dr. Rajinder Singh v. State of Punjab and others (2001)(5) SCC 482 in which the Hon"ble Supreme Court held that no Government Order, notification or rule can be a substitute of the statutory rules framed with authority of law. Following any other course will be disastrous inasmuch as it would deprive the security of tenure and right of equality conferred upon the civil servants under the Constitutional scheme. It has further been submitted that no change in the Rules was warranted except for accommodating the opposite party no.3 who even did not fulfil the requisite eligibility criteria. Respondent No.3 has been junior to the petitioner. In one identical matter which has been dealt with the U.P. State Public Service Tribunal in Claim Petition No. 255 of 2004, the learned Tribunal has held as under:-

"The Boards Meeting was held on 26.06.2003 in which resolution no.22 was passed by the Governing body reducing the length of minimum required service of 5 years to 3 years, but the Government has not accorded its approval of the aforesaid Resolution of the Governing Body. The contention of the opposite parties is not borne-out from any record that the feeding cadre for promotion to the post of Divisional Logging Manager and Divisional Sales Manager is different. It is no where mentioned that the feeding cadre for promotion to the post of Divisional Sales Manager is from the post of Sales Manager. Perusal of Agenda item No.19 passed in 183 Governing Body meeting dated 17.03.2004 clearly shows that the cadre of Logging Manager and Sales Manager in the Forests Corporation are not separate, it is also evident from the perusal of source of recruitment of Divisional Logging Manager/Divisional Sales Manager. As amended in 21.06.2002 that 33.33% posts are to be filled up by absorption or by deputation of forest officers and the remaining 66.67% posts are to be filled in by promotion from amongst Logging Officers/ Sales Officers having a minimum experience of five years on the post of Logging/Sales Officer. Thus, it is abundantly clear that the promotion to the post of Divisional Logging Manager/ Divisional Sales Manager are made from amongst the candidates holding the post of sales officer/ Logging Officer having five years experience on the said post. The petitioner has also moved his representation for promotion on 18.10.2003, which has not yet been decided by the opposite parties."

9. Similarly in the case on hand also the governing body had reduced the requisite period of service from five years to three years. The decision of the Executive Body is purely executive decision which cannot be precedence over statutory provisions. The regulations framed under the Act had statutory force which required five years experience in feeding cadre for promotion to the post of Divisional Logging Manager/ Divisional Sale Manager.

10. Therefor, in view of the law laid down by the Supreme Court we hereby quash the order of promotion dated 22.08.2003 issued in favour of the respondent No. 3 and direct the respondents to consider the promotion of the petitioner as well as respondent No. 3 afresh in accordance with the regulations from the date of vacancy of Divisional Logging Manager/Divisional Sale Manager occurred in the department subject to their fulfilment of eligibility criteria. The respondent shall take up the issue and complete the exercise of consideration of their promotion afresh within three months from the date of communication of this order.

11. With the aforesaid observations the writ petition stands allowed.