
(1996) 04 PAT CK 0030
In the Patna High Court
Case No : C.W.J.C. No. 8305 of 1989

Sanjay Kumar Sinha-II and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-04-1996

Acts Referred:

Bihar Forest Service Rules, 1953 — Rule 27, 29, 30, 35, 36

Citation : (1996) 1 PLJR 835

Hon'ble Judges : B.L. Yadav, J;A.K. Ganguly, J

Bench : Division Bench

Advocate : Basudeva Prasad and Sunil Kumar, for the Appellant; B.N. Singh, for State, S.N. Jha, R.N. Mukhopadhaya, Shivendra Kishore and Ambar Nath Banerji, for the Respondent

Judgement

A.K. Ganguly, J.—This writ petition has been filed by one Sanjay Kumar Sinha-II and 19 other direct recruits to the post of Assistant Conservator of Forests (hereinafter referred to as the A.C.F.) in the Bihar Forest Service under the Bihar Forests Act (hereinafter referred to as the said Service) with a prayer to quash that portion of gradation list of the Members of the said Service, whereby they have been shown junior to the Private. Respondents Nos. 4 to 46. The Petitioners have also prayed for a direction upon the Respondents to grant their due place in the gradation list in accordance with law.

2. The factual aspect of the case which is relevant for the purpose of deciding the aforesaid claim of the Petitioners are as follows:

On the basis of an advertisement dated 24th July, 1985 issued by the Bihar Public Service Commission (hereinafter referred to as the said Commission) for 40 permanent posts of A.C.F. which were to be filled up by direct recruitment, the Petitioners applied as they satisfied their eligibility criteria. Thereafter the Petitioners were called for written test on 19th December, 1985 and also on subsequent dates Their case is that as they qualified in the said written test, the Petitioners along with various other candidates i.e. 126 in numbers, were asked

to appear in Viva-Voce (sic) different dates between 13th April, 1987 and 15th April, 1987. Thereafter on 19th April 1987 a final list of the successful candidates was published in which the name of the Petitioners were also mentioned. Thereafter the Petitioners had to undergo medical tests and according to the assertion in the writ petition the medical report was received the Respondent State in the end of May 1987. The Petitioners' case is that in so far as their appointments are concerned, the entire process was completed in the month of May, 1987 but instead of actually issuing their orders of appointment, the State Authorities, according to the Petitioner under the influence of a section of the Range Officers, delayed the issuance of notification of appointment and on the other hand proceeded to consider the cases of Range Officers for promotion to the post of A.C.F. The Petitioners assert that for the said purpose a meeting of the Departments Promotion Committee (hereinafter refer to as the D.P.C.) was called on 20th June 1987 for consideration of the cases of the Range Officers (Respondent Nos. 4, 6, 10, 20, 35 to 37, 39 to 41 and 45) for promotional to the posts of A.C.F., and the D.P.C. recommended the case of those Respondents who were called for promotion and sent a report to the Commission who, in its turn, within in period of 12 days, on 2nd July, 1987 made its recommendation to the State Government for promotion of those Respondents and necessary notifications for promotion in respect to those Respondents were brought but(sic)on 6th October, 1987, and the said under of promotion in respect to the aforesaid Respondents were made effective from the date the D.P.C. had made its recommendation for promotion i.e. with effect from 20th June, 1987.

3. The further grievance of the Petitioners is that again on 17th October, 1987 the D.P.C. held another meeting recommending the promotion of Respondent Nos. 5, 21 to 34, 38, 42, 43, 44 and 46 to the post of A.C.F. in the said Service. The recommendation in their favour for promotion was sent to the Commission which in its turn made its recommendation on 27th October, 1987 and finally on 23rd November, 1987 necessary notifications promoting the aforesaid Respondents were made and the said promotions to the post of A.C.F. were made effective from 17th October, 1987.

4. On the basis of the aforesaid facts the Petitioners state that even though the process of direct recruitment was completed in the month of May, 1987 but actually the orders of appointments were not issued till 14th December, 1987 and in the meantime in the aforesaid manner the Private Respondents were hurriedly promoted to the posts of A.C.F.

5. The Petitioners state that the Respondents State authorities brought out a provisional gradation list of the Officers in the said Service on 7th March, 1989 and in the said list the Petitioners have been shown senior to Respondent Nos. 36 to 46 but illegally been shown junior to Respondent Nos. 4 to 31. Against the said gradation list objections were invited within a period of three weeks from the date of issuance of the same. The Petitioners made Representations against such provisional list and ultimately a final gradation list was prepared in which

the Petitioners have been shown as junior to Respondent Nos. 4 to 46.

6. The complaint of the Petitioners that Respondent Nos. 4 to 46 were given national seniority from the date of the recommendation of the D.P.C. but in the case of the Petitioners such national seniority was not given and they have been given seniority from the date of their actual appointment even though the procedure for the direct recruitment of the Petitioners was completed in May, 1987. The Petitioners have asserted that the exercise of power by the Respondents by which the Petitioners after completion of selection process were not given appointment whereas promotion has been given to the aforesaid Respondents from the date of recommendation by the D.P.C. is a malafide exercise of power.

It may be pointed out in this connection that the Petitioners did not challenge the legality of promotion of the private Respondents to the aforesaid posts of A.C.F. in the writ petition.

7. The case of the Petitioners here has been contested by both the private Respondents and also by the State Respondents. In the counter affidavit filed by the State Respondents it has been stated that in the year 1985 a decision was taken to recruit 40 candidates through direct recruitment and accordingly the said Commission published an advertisement on 24th July, 1985 for selection of candidates for 1986-88 Session and a list of 44 selected candidates for 1986-88 Session and a list of 44 selected candidates was handed over to the State of Bihar, Forest and Environment Department, Patna. Thereafter the State Government issued a notification for the appointment of the above mentioned selected candidates from the date of their joining in the office of the Principal Chief Conservator of Forest, Bihar by notification dated 14th December, 1987. Thereafter 38 candidates joined in the office of the Principal Chief Conservator of Forest, Bihar in between 16th December, 1987 and 30th December, 1987 and they were sent for training. The Respondents have also referred to Rule 35 of the Bihar Forest Service Rules (hereinafter referred to as the said Rules) and stated that seniority of Officers appointed to the Service is to be determined with reference to the date of their substantive appointment to the Service. In the counter affidavit reference has also been made to Rule 29 of the said Rules and it has been further stated that the selected candidates were to be appointed on probation for a period of two years in service on the post of A.C.F. It is further stated that before such appointment, the selected candidates were required under Rule 27(a) of the said Rules to be examined by a Medical Board convened by the Director of Health Services, Bihar and on consideration of the report of the Medical Board, those candidates who are found fit medically are to be appointed. Under Rule 30 of the said Rules, the finally selected candidates are required to execute a bond and enter an agreement and the police verification is to be made about the candidates concerned and clearance report is to be obtained from the Inspector General of Police, Intelligence, Bihar, Patna. It has been further stated that the list of successful candidates was received from the said Commission in

April, 1987 and the selection process was completed in May, 1987, thereafter the medical fitness certificate had to be obtained, clearance from the Inspector General of Police, Vigilance Department had to be obtained, Bond and agreement had to be executed and after going through all these processes the notification appointing the candidates were issued in December, 1987. As such there was no malafide on the part of the Respondents in issuing notification and in appointing the candidates in the month of December, 1987. The aforesaid time of about six to seven months was taken to complete the aforesaid procedural formalities.

8. In the counter affidavit filed by the private Respondents, it has been stated that the said post of A.C.F. is the initial post of appointment in the said Service. The said post of A.C.F. can be filled up by directed recruitment as well as by promotion of Range Officers of Forests. They have further stated that 50 per cent of posts of the said Service is to be filled up by promotion and 50 per cent by direct recruitment. All these private Respondents were initially appointed as the Range Officers of Forests under the State Respondents between the year 1968 and 1970. It is further stated that from the promotional quota in the year 1984 and 1985, no promotion was made to the said Service and ultimately the cases of the different Range Officers of the Forests including the private Respondents were placed before the D.P.C. in its meeting dated 22nd October, 1986. The case as made out by the private Respondents is that even though the decision was taken by the D.P.C. as far back as on 22nd October, 1988 no concrete step was taken to promote the Range officers of Forests to the next higher post in A.C.F. In this background the meeting of the D.P.C. was again held on 20th June, 1987 and the decision was taken and the Respondents were found fit by the D.P.C. for promotion to the higher post of A.C.F. They have further stated that their case of promotion to the post of A.C.F. was taken as far back as in August, 1984 which is much prior to the case of direct recruits which was taken up for appointment to the post on A.C.F. in the year 1985. It has been stated by the private Respondents that they have been rightly shown senior in the gradation list to the writ Petitioners who have been appointed much after them.

9. In this matter after the pleadings were completed, a supplementary affidavit has been affirmed on behalf of the Petitioners by Petitioner No. 1 without obtaining any leave from this Court. The said supplementary affidavit was filed after admission of the writ petition. The said supplementary affidavit was affirmed on 20th September, 1994 in which for the first time promotion granted to the private Respondents to the post of A.C.F. was challenged as being in breach of the provisions of the said Rules and the Rules of Executive Business. It has been stated in the said supplementary affidavit that the promotion of the Private Respondents to the post of A.C.F. has been made in violation of Rule 36(ka) inasmuch as under Rule 36(ka) of the said Rules, a Board was to be constituted comprising of the Forest Secretary, Chief Conservator of Forests, Deputy Chief Conservator of Forests and three Senior Conservators of Forests for considering and making recommendation for promotion from the Range Officers of Forests to the post of A.C.F., whereas in the case of the private Respondents

the D.P.C. was constituted which is not in accordance with Rule 36(ka) of the said Rules. It has been also alleged that the meeting of the D.P.C. was held in an irregular manner.

10. It has already been noted that in the writ petition no challenge has been thrown to the legality of the promotional procedure of the private Respondents. The only question was about the claim of seniority of the Petitioners over the private Respondents. The private Respondents have been promoted to the post of A.C.F. in the year 1987. In 1987 itself it was known to the writ Petitioners that the promotion of the private Respondents was made by the D.P.C. It was open to the Petitioners to contend in 1989 at the time of filing of this writ petition, what they are seeking to contend in this supplementary affidavit now filed in 1994, that promotion on the basis of consideration by the D.P.C. is not in accordance with Rule 36(ka) of the said Rules. So this Court is unable to accept that there is any new disclosure of fact in 1994 requiring the filing of the said supplementary affidavit by which a complete new case has been sought to be made out. Such supplementary affidavit has also not been filed with the leave of the Court. Thereafter, this Court will not permit the new points to be raised in 1994 purporting to challenge the promotion which have been made in favour of the private Respondents in the year 1987. Such a claim apart from making out a new case is wholly a belated one and there is no explanation for such delay. The Apex Court, in a series of judgments delivered recently, has refused to examine such belated claims. (Kindly see (I) S.A. Rasheed v. Director of Mines and Geology and Anr. reported in (1993) 4 S.C.C. 584 (para 12) and (II) State of Maharashtra Vs. Digambar, .

11. This Court has noted that a very un-healthy practice has developed in this High Court of filing supplementary affidavits one after the other and thereby going on changing the nature and character of the original case on the basis of which the Petitioners initially invoked the writ jurisdiction of this Court. The law in this regard is very clear that unless there are supervening circumstances or subsequent events which must be brought to the notice of the Court, a supplementary affidavit cannot be allowed to be filed and even if such supplementary affidavits are to be filed, leave of the Court must be obtained and it cannot be filed as a matter of course. But in this Court, this practice is honoured more in its breach than by its observance. This is condemned by this Court and this Court, therefore, does not take into account the contents of the said supplementary affidavit filed by the Petitioners in this proceeding.

12. The case made out in the writ petition is that the private Respondents have been shown senior to the Petitioners by giving them seniority from the date recommendation was made in favour of such private Respondents by the D.P.C. whereas (sic).