
(1985) 01 RAJ CK 0080
In the Rajasthan High Court
Case No : Civil Writ Petition No. 135 of 1975

Sarwan Singh Mann

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-01-1985

Acts Referred:

Citation : (1986) 1 WLN 145

Hon'ble Judges : D.P. Gupta, Acting C.J.

Bench : Single Bench

Final Decision : Allowed

Judgement

Dwarka Prasad Gupta, Acting C.J.

1. The petitioner has challenged, by means of this writ petition, the final seniority list issued by the Government of Rajasthan on December, 26, 1976 of substantive Assistant Conservators Forests, appointed to the Rajasthan Forest Service.

2. Initially, the petitioner submitted that the respondents No. 3 to 8 were junior to him in the cadre of substantive Assistant Conservators of Forests, but as it transpires now, the respondents No. 3 to 7 have retired since the writ petition was filed in this court. The writ petition is, therefore, not pressed as against respondents No. 3 to 7. Thus the case of the petitioner now is that he was senior to respondent No. 8, while in the seniority list dated December 26, 1974, the petitioner's name has been shown at No. 5 and that of respondent No. 8 Shri B.S. Syal has been shown at No. 4, while it should be vice-versa.

3. The facts, which have given rise to this controversy are that the petitioner was selected for appointments Assistant Conservator of Forest in the Rajasthan Forest Service by the Rajasthan Public Service Commission in the year 1961. After successfully undergoing training, the petitioner was appointed as officiating Assistant Conservator of Forest on probation for two years, with effect from 1st April, 1964 by an order of the State Government dated September 30, 1964.

Subsequently, the petitioner was confirmed on the post of Assistant Conservator of Forest by order dated May 25, 1967 with, effect from June 9, 1966. The petitioner was appointed as Deputy Conservator of Forest in an ad hoc capacity. On June 9, 1971 and he was promoted as Deputy Conservator of Forest in officiating capacity on April 16, 1974. A seniority list was issued on January 2, 1974 of the officers of the Rajasthan Forests Service, in the cadre of Assistant Conservator of Forest and although the name of the petitioner was shown at No 18, the name of respondent No. 8 was mentioned in that seniority list at No. 21. Thus in the seniority list of January 2, 1974 the petitioner was shown as senior to respondent No. 8. However by a subsequent Notification dated December 2, 1974, the final seniority list dated January 2, 1974 was directed to be treated as provisional and the Officers whose names were included therein were allowed to submit representations in respect of that seniority list. Thereafter the impugned list dated December 26, 1977 was issued. The respondent No. 8 Shri B.S. Syal was appointed as Assistant Conservator of Forest in ad hoc capacity with effect from July 11, 1963 by promotion. He was appointed to that post in an officiating capacity on May 25, 1967 and subsequently by an order dated January 2, 1974 he was confirmed on the post of Assistant Conservator of Forest with effect from June 9, 1963.

4. The submission of the learned counsel for the petitioner is that as the petitioner was subsequently appointed earlier on the post of Assistant Conservator of Forest than respondent No. 8 Shri B.S. Syal so the petitioner was senior to the said respondent in the cadre of the Assistant Conservator of Forests.

5. On the other hand the submission of learned counsel for respondent No. 8 is that both the petitioner as well as respondent No. 8 were confirmed on the post of Assistant Conservator of Forest with effect from June 9, 1966 and as such the respondent No. 8, who was appointed as Assistant Conservator of Forest by promotion, was senior to the petitioner, who was appointed on such post by direct recruitment.

6. Rule 35 of the Rajasthan Forest Service Rules, 1962 (here in after called "the Rules") which relates to seniority, provides that the seniority in the service shall be determined by the date of the order of appointment to the service. If two or more persons are appointed to the service in the same year, a person appointed by promotion shall be senior to the person appointed by direct recruitment.

7. Learned counsel for respondent No. 8 submitted that the substantive appointment of the petitioner on the post of Assistant Conservator of Forest should be considered from the date on which he was confirmed on that post, namely, June 9, 1966. I am unable to agree with this contention. The petitioner was appointed as Assistant Conservator of Forest on probation with effect from April 1, 1964 and subsequently he was confirmed on that post with effect from June 9, 1966 by order dated May 25, 1967 referred to above, No definition of substantive appointment" was contained in the Rules at the time when the petitioner was appointed to the service but a definition was subsequently added

in Clause (a) of Rule 3 of the Rules, by the Notification dated February 16, 1974, which reads as under:

Substantive Appointment" means an appointment made under the provisions of these Rules to a substantive vacancy after due selection by any of the method of recruitment prescribed under these Rules and includes an appointment on probation or as a probationer followed by confirmation on the completion of the probationary period.

8. Although, the definition of "substantive appointment" now contained in Rule 3(a) has not been made retrospective yet even in its absence a person appointed on probation and subsequently confirmed on the completion of his period of probation should be considered to have been appointed in a substantive capacity, particularly when the person was appointed by direct recruitment after due selection by the Public Service Commission. It may also be noticed that the appointment of the petitioner as an Assistant Conservator of Forest on probation, with effect from April 1, 1964, was made against a post lying vacant in that cadre. Thus if the appointment of the petitioner was made on probation against a vacant post, there is no reason for holding that the initial appointment of the petitioner as Assistant Conservator of Forest was not a substantive appointment. Rule 32 relates to appointments on the Rajasthan Forest Service and it envisages only two types of appointment; one is substantive and another is temporary appointment. It cannot be held and it has not been argued that the appointment of the petitioner was a temporary appointment, as his appointment was made against a clear vacancy and was not made against a temporary post or a temporary vacancy. As such, the appointment of the petitioner must be considered to have been made under sub-rule (2) of Rule 32, on a substantive basis. In this view of the matter the petitioner was appointed substantively in the cadre of Assistant Conservator of Forest with effect from April 1, 1961, while the respondent No. 8 was appointed to that cadre substantively on June 9, 1966. The petitioner, was therefore, apparently senior to the respondent No. 8, in accordance with the provisions of Rule 35. The seniority list dated December 26, 1974 does not correctly represent the respective positions of the petitioner and respondent No. 8 as regards their seniority, in as much as the petitioner should have been shown at No. 4 while the respondent No. 8 should have been shown at No. 5 in the said seniority list.

9. It has been brought to my notice that both the petitioner as well as the respondent No. 8 have been selected to the Indian Forest Service by the same order and they have also been confirmed in the Indian Forest Service with effect from the same date. As such, their inter-se seniority in the cadre of Rajasthan Forest Service shall be adhered to in the cadre of Indian Forest Service as well.

10. In the result, the writ petition is allowed. The State Government is directed to redecide the inter se seniority between the petitioner and the respondent No. 8 in the light of the observations made above and is further directed to modify the seniority list dated December 26, 1974 so as to depict the correct inter-se-

seniority between the petitioner and the respondent No. 8. in as much as the petitioner should be shown as senior in the said seniority list vis-a-vis respondent No. 8. The State Government is also directed to issue a modified seniority list of the Assistant Conservators of Forest in the Rajasthan Forest Service.

11. There will be no order as to costs.