

(2010) 08 UK CK 0135
In the Uttarakhand High Court

State of Uttarakhand and Others

APPELLANT

Vs

Bhajan Lal and Another

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Citation : (2010) 08 UK CK 0135

Hon'ble Judges : Barin Ghosh, C.J.;V.K. Bist, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Barin Ghosh, C.J.—In the year 1983 a Selection Committee was constituted for selection of Foresters. After completion of the selection process, a merit list was prepared. The 7th man in the said list was Shri Chaman Das. The respondent was at the 12th position of the said list. In 1989, Chaman Das filed a claim petition before the Tribunal stating that in accordance with the Rules the said merit list ought to have had been kept alive for a period of fifteen months and if in those fifteen months, any vacancy in the post of Forester had occurred, such post ought to have had been supplied from the said list, but much prior to expiry of fifteen months from the date of making of the said list and, in fact, after six months from the date of the preparation of the said list, the same was cancelled. It was contended by Chaman Das that in such view of the matter, for no just reason, his chance of becoming a Forester had been frustrated. The said contention of Chaman Das was accepted by the Tribunal and it passed an order directing Chaman Das to be given the fruits of the said selection. Chaman Das was, accordingly, given appointment of Forester. The respondent, who was sitting on the fringe and was watching the outcome of the claim of Chaman Das, thereupon approached the Tribunal in the year 1995 on the basis of success of Chaman Das before the Tribunal and sought to contend that he be treated equally and unless he is so treated there would be discrimination. By the judgment and order of the Tribunal impugned in this writ petition, the said claim petition of the respondent has been allowed holding that the respondent was

equally placed as that of Chaman Das and, as such, he is entitled to similar benefits as was given to Chaman Das. While concluding thus, the Tribunal did not make any effort to ascertain whether within fifteen months from the date of making of the merit list, twelve posts of Foresters fell vacant or not. It appears to us that the Tribunal purported to equate non-equals. It appears to us that the Tribunal erroneously equated 12th man in the merit list with the 7th man in the merit list. Before the Tribunal, it was not urged by the respondent that, in fact, within fifteen months from the date of making of the said merit list, twelve posts of Foresters became available for being supplied. The Tribunal totally failed to discharge its obligation pertaining to equalisation of two persons while considering a complain of discrimination.

2. We think that the claim petition of the respondent ought to have had been rejected at the threshold by the Tribunal on the ground that the respondent was watching from the fringe the proceedings initiated by Chaman Das and after his success came to take advantage thereof. We further feel that when it was not averred in the body of the claim petition that within fifteen months from the date of making of the merit list, twelve vacancies, in fact, accrued for supplying from the said merit list, on that ground also, the Tribunal ought to have had rejected the claim petition of the respondent. As we have held above, while deciding the matter, only on the ground of discrimination, the Tribunal totally erred in comparing the 12th person in the merit list with the 7th person in the merit list, without ascertaining whether twelve vacancies became available within the period the merit list was to remain alive.

3. On facts, as it appears, the Government Order dated 27th January, 1977, as was noted by the Tribunal, made it clear that a wait list would be made for supplying 25 per cent of the existing vacancies and that such merit list would remain alive for one year, which may be extended by three more months, but only for supplying 25 per cent of those vacancies. It has been brought to our notice in this writ petition, which may not have had been contended before the Tribunal, that there were six vacancies, and accordingly, the said merit list could be used for supplying two more vacancies and that Chaman Das, being the 7th man in the merit list, after having had supplied the first six vacancies, could supply the next available vacancy and, accordingly, there was no justification to compare the respondent, who was at the 12th position in the merit list, with Chaman Das, who was 7th in the merit list.

4. We, accordingly, conclude the matter and allow the writ petition and set aside the judgment and order of the Tribunal impugned in the writ petition.