

**(2007) 06 MP CK 0038**

**In the Madhya Pradesh High Court**

**Case No :** Writ Petition (S) No's. 15405 of 2005 and 22593 of 2003

V.K. Jain and others

APPELLANT

Vs

Slkate of M.P. and others

RESPONDENT

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**Date of Decision :** 27-06-2007

**Acts Referred:**

Constitution of India, 1950 — Article 14

Madhya Pradesh Class-III (Non-Ministerial) Forest Services Recruitment Rules, 1967 — Rule 13(1)

**Citation :** (2007) 3 MPLJ 533

**Hon'ble Judges :** R.S. Jha, J

**Bench :** Single Bench

**Advocate :** R.K. Verma, for the Appellant; Ashok Agarwal, Government Advocate, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

R.S. Jha, J.

The petitioners who are at present working as Deputy Rangers, have filed this petition claiming notional seniority from 21-5-1987 on the post of Deputy Ranger along with Shri B. D. Baiswar and others appointed along with them as foresters and for quashing order dated 25-2-2003 changing their seniority. They have also prayed for a direction that they be considered for promotion on the post of Rangers by counting their seniority on the post of Deputy Rangers from 21-5-1987 in accordance with the previous order dated 1-6-2000.

The facts in brief which are necessary for the decision of the present petition are that the petitioners along with several other persons were appointed as Foresters vide order dated 4-11-1974, 5-11-1974 and 7-11-1974 and posted in Jabalpur Circle after having completed training in Foresters Training School. As some persons who had been appointed along with the petitioners were promoted as Deputy Rangers ignoring the claim of the petitioners and others in 1987, Shri B. D. Baiswar and others, who had been appointed along with the petitioners filed a

petition before the Tribunal which was registered as TA No. 843/88. This petition was allowed vide order dated 2-11-1998 and the claim for seniority and promotion was allowed with a direction to the respondents to constitute a review DPC and consider their cases. The petitioners being similarly situated filed a petition claiming similar relief before the Tribunal which was registered as OA No. 3275/99. On the abolition of the Tribunal, the petition was transferred to this Court and was registered as W.P. No. 14392/03. During the pendency of the petition, the respondents issued order dated 1-6-2000 allowing the petitioners claim by fixing their seniority on the post of Deputy Rangers with retrospective effect from 21-5-1987. However, this order was subsequently cancelled by the respondents vide the impugned order dated 25-2-2003 which has been assailed by the petitioners in the present petition. In view of the subsequent events, this Court vide order dated 15-3-2005 passed in W.P. No. 14392/03 dismissed the first petition filed by the petitioners as infructuous with the liberty to ventilate their grievance in the present petition which has been filed by the petitioners assailing the order dated 25-2-2003, in the following terms:

On the abolition of the M. P. State Administrative Tribunal, the said application has been transferred to this Court and renumbered as W.P. No. 14392 of 2003. During the pendency of this petition, the respondents passed an order dated 1-6-2000 granting the prayer by fixing seniority with effect from 1987. Therefore, the W.P. No. 14392 of 2003 virtually became infructuous. However, subsequently, the order dated 1-6-2000 granting relief to the petitioners was cancelled by order dated 25-2-2003. The petitioners along with others have challenged the said cancellation dated 25-2-2003 in OA No. 956 of 2003 on the file of the M. P. State Administrative Tribunal, Jabalpur, which on abolition of the Tribunal, has been transferred and re-numbered as W.P. No. 22593 of 2003, pending on the file of this Court.

As the entire issue is subject-matter of W.P. No. 22593 of 2003, this petition is dismissed as having become infructuous, reserving liberty to the petitioners to ventilate their grievance in W.P. No. 22593 of 2003. If any of the petitioners has not joined in the subsequent petition, he is at liberty to file a separate petition.

In view of the liberty granted by this Court in the above terms the petitioners along with some others have filed the other petition, W.P. No. 15405/05(s). Though the petitioners have impleaded some other persons already promoted on the post of Deputy Rangers in W.P. No. 15405/05 as respondents, it is submitted by the learned counsel for the petitioners that they are not claiming any relief against them but are simply praying for restoring their seniority as was done by order dated 1-6-2000. It is also evident from the record that though the private respondents in W.P. No. 15405/05(s) have been served they have chosen not to file any reply to the contentions raised by the petitioners. As both these petitions involve common issues and as most of the petitioners are also common, they are heard and decided analogously.

Before, I advert to the merit of the rival submissions made by the learned

counsels appearing for the parties, it is thought appropriate to chronologically analyse the sequence of events which have occurred during the pendency of the various cases so as to properly appreciate the rival submissions of the parties. As a first, it would be appropriate to consider the details relating to the appointment, confirmation and promotion in respect of the petitioners, the respondents in W.P. No. 15405/05 (s) and the persons who were appointed along with the petitioner and with whom they are claiming parity. The details are as under:

Petitioner in W.P. No. 22593/2003 (OA No. 956/03) and W.P. No. 15405/05(s) V. K. Jain and Ors. v. State of M. P.

Sl No. Name Date of appointment on the post of Forester Position as on 1-4-1986 (Gradation List) Date of confirmation on the post of Forester Date of promotion on the post of Deputy Rangers Reassigned Seniority by the impugned order dated 25-2-2003 Date of promotion on the post of Ranger

1 V. K. Jain 5-11-1974 178 5-5-1982 7-10-1996 7-10-1996 Not promoted

2 A. K. Bhadoriya 4-11-1974 148 5-5-1982 12-4-1993 12-4-1993

3 M. L. Soni 4-11-1974 169 5-5-1982 2-7-1994 7-10-1996

4 Shamanak Khan 4-11-1974 179 5-5-1982 7-10-1996 7-10-1996

5 V. K. Saxena 7-11-1974 185 5-5-1982 7-10-1996 7-10-1996

6 Y.S. Bhagel 4-11-1974 180 5-5-1982 7-10-1996 7-10-1996

7 J. S. Parihar 4-11-1974 186 5-5-1982 7-10-1996 7-10-1996

8 O. P Shrivastava 7-11-1974 160 5-5-1982 12-4-1993 12-4-1993

9 Prakash Mishra 4-11-1974 170 5-5-1982 7-10-1996 21-5-1987

Respondent in W.P. No. 15405/2005(s)

Sl No. Name Date of appointment on the post of Forester Date of confirmation on the post of Forester Position as on 1-4-1986 (Gradation List) Date of promotion on the post of Deputy Rangers Reassigned Seniority by the impugned order dated 25-2-2003 Date of promotion on the post of Ranger

1 H K. Shivani 6-11-1974 1-3-1977 48 17-8-1987 21-5-1987 6-1-2007 Vide order dt. 13-11-2001 w.e.f.

2 S. K. Gautam 4-11-1974 5-5-1982 172 7-10-1996 7-10-1996 28-3-1998

3 J.S. Chouhan 26-11-1974 1-3-1977 50 17-8-1987 21-5-1987 6-1-2007

4 S. S. Parmar 4-11-1974 1-3-1977 47 17-8-1987 21-5-1987 6-1-2007

5 S. M. IJJiyas 4-11-1974 5-5-1982 164 16-12-1992 16-12-1992 6-1-2007

Petitioners in TA No. 843/88, (B. D. Baiswar and ors. vs. State) appointed alone

with the petitioners and posted in Jabalpur Circle as Foresters

Sl No. Name Date of appointment on the post of Forester Date of confirmation on the post of Forester Position as on 1-4-1986 (Gradation List) Date of promotion on the post of Deputy Rangers Reassigned Seniority by the impugned order dated 25-2-2003 Date of promotion on the post of Ranger

1 A. K. Singh 4-11-1974 5-5-1982 162 1-7-1999 12-4-1993 Not promoted Expired

2 S. K. Goutam 4-11-1974 5-5-1982 172 7-10-1996 7-10-1996 Vide order dt. 13-11-2001 w.e.f. 28-3-1998

3 Vimalvans Mishra 4-11-1974 5-5-1982 7-10-1996 7-10-1996 Vide order dt. 13-11-2001 w.e.f. 28-3-1998

4 B. D. Baiswar 4-11-1974 5-5-1982 171 1-7-1999 7-10-1996 Not promoted

5 A. K. Shrivastava 4-11-1974 5-5-1982 174 1-7-1999 7-10-1996 Vide order dt. 13-11-2001 w.e.f. 28-3-1998

6 S. K. Shrivastava 1-11-1974 144 1-7-1999 12-4-1993 Not promoted

7 P. S. Bais 7-11-1974 5-5-1982 182 1-7-1999 7-10-1996 Not promoted Expired

8 Krishna Prakash Tiwari 4-11-1974 5-5-1982 155 1-7-1999 12-4-1993 Vide order dt. 13-11-2001 w.e.f. 28-3-1998

As is evident from the above, the petitioners though appointed as foresters vide orders dated 4-11-1974, 5-11-1974 and 7-11-1974, they were not confirmed along with some of the persons who were appointed with them in Jabalpur Circle but were confirmed later. As they were not confirmed along with those similarly placed as the petitioners they were not considered along with them for promotion on the post of Deputy Ranger as they were placed much below them in the seniority list and therefore, were beyond the zone of consideration. This is established on a perusal of the order passed by the Tribunal in B. D. Baiswar's case which has been filed as Annexure P-I in W.P. No. 15405/05 along with this petition wherein the respondents had taken this stand, Annexure P-9 filed by the petitioner along with W.P. No. 15405/05(s) which is the seniority list of foresters as on 1-4-1986 in which the name of Respondents No. 6 and 8 is shown at serial No. 48 and 50. Shri B. D. Baiswar has been shown at serial No. 171 and the petitioners are shown from Serial No. 178 onwards as well as one of the orders of confirmation dated 26-2-1990 filed by the petitioners along with a memo for taking documents on record. As is clear from the additional return filed by the respondents that 1043 posts of foresters were abolished and in their place equal number of posts of Deputy Rangers were created in the State vide order dated 21-5-1987 and these newly created posts were allotted to various circles. 80 posts were allotted to Jabalpur Circle and therefore, promotion on these posts along with seven other posts of Deputy Rangers which were lying vacant were

made by the respondents vide order dated 17-8-1987 and 4-9-1987 which have been filed by the respondents as Annexure R-13 and R-14. As the petitioners and B. D. Baiswar were placed lower in the seniority list as their seniority were reckoned from the date of confirmation, they were not promoted although, persons appointed along with them as foresters were promoted. Shri B. D. Baiswar, who was also similarly ignored as the petitioners had approached the Tribunal and his petition TA No. 843/88 was allowed vide order dated 2-11-1998 after holding that as the date of confirmation depends upon fortuitous circumstance therefore, it should be totally ignored and only the date of appointment as foresters should be considered while determining the seniority for making further promotions on the post of Deputy Rangers as is evident from the said order of the Tribunal which has been filed as Annexure P-I in W.P. No. 15405/05(s).

It is also an admitted fact that the order of the Tribunal passed in TA No. 843/88, Shri B. D. Baiswar v. Conservator of Forest has been duly implemented by the respondents and the petitioners therein have been given the benefit of proper placement as well as notional seniority on the post of Deputy Ranger w.e.f. 21-5-1987 as well as further promotions on the post of Ranger. The petitioners filed the first petition before the Tribunal claiming exactly the same relief as granted by the Tribunal to B. D. Baiswar and others. In the meanwhile, the Tribunal also allowed another petition filed by G. P. Dubey and others, OA No. 355/96, vide order dated 12-5-1999. However, while doing so, the Tribunal issued directions in addition to the relief claimed by the petitioners therein directing the respondents to henceforth make promotion on the post of Rangers only on the basis of a State-wise seniority list of foresters instead of a Circle-wise list and by observing that the rules to the contrary be ignored. As the validity of rules was not a subject-matter of the petition filed by G. P. Dubey before the Tribunal and as the general directions issued by the Tribunal were apparently contrary to the existing service rules, the State assailed the order dated 12-5-1999 passed by the Tribunal in the case of G. P. Dubey in OA No. 355/96 by filing a writ petition which was registered as W.P. No. 4717/01. In the meanwhile, the State realising that an anomalous situation had arisen as the 1043 posts of Deputy Rangers created vide order dated 21-5-1987 after abolishing the same number of posts of foresters, had been filled up on different dates by the concerned Conservators in the Circle thus leading to a situation where persons promoted against the posts created on the same date had been assigned different dates of promotion, issued an order dated 10-3-2000 which has been filed as Document No. 1 along with the application for taking additional documents on record by the respondents, to the effect that the seniority of all the persons promoted as Deputy Rangers on these 1043 posts as well as the other posts lying vacant as on 21-5-1987 shall be notionally reckoned w.e.f. 21-5-1987. Pursuant to this order, the respondents issued a revised seniority list on 1-6-2000 fixing the notional seniority of all these persons on the post of Deputy Rangers from 21-5-1987. The petitioners were also assigned the same

date of notional seniority, i.e. 21-5-1987 as assigned to all others appointed as foresters along with them in the year 1974 by this order dated 1-6-2000, thus, satisfying the relief sought and the claim made by them. Thereafter, the respondents issued order dated 23-1-2003 to the effect that the decision of the Government to award notional seniority w.e.f. 21-5-1987 was restricted only to those persons who were promoted as Deputy Rangers on 1043 posts of Deputy Rangers created vide order dated 21-5-1987 and to those persons who were promoted as Deputy Ranger on vacancies existing as on 21-5-1987 and it was clarified that persons promoted as Deputy Rangers apart from the above two categories were entitled to seniority only from the date of actual promotion. A copy of this order has been filed by the respondents as Annexure R-3 along with W.P. No. 15405/05 (s). Pursuant to this order dated 23-1-2003, the respondents issued the impugned order dated 25-2-2003 whereby the notional seniority given to the petitioners on the post of Deputy Rangers w.e.f 21-5-1987 vide order dated 1-6-2000 was withdrawn. Being aggrieved, the petitioners have filed the present petitions. Thereafter, the Writ Petition No. 4717/01 filed by the State against the order passed by the Tribunal in G. P. Dubey's case (supra) was finally decided vide order dated 7-11-2003. While the directions of the Tribunal to draw up a State-wise list of foresters for making promotions on the post of Rangers was set aside, the relief granted to G. P. Dubey and others was maintained. The relevant part of the order of this Court reads as under:

On a perusal of the order of the Tribunal we are of the considered opinion that the Tribunal should not have dwelled upon the issue as the Rules were not called in question and should not have disturbed the seniority list in the manner in which it has been done. Quite apart from the above, the Tribunal has taken a different view while appreciating the contentions of the State though the same could not be done in that manner.

In view of the aforesaid, while not disturbing the promotions that have already been given effect to, we set aside the order of the Tribunal. We may clarify that some persons had filed original applications before the Tribunal and the said applications have been transferred to this Court after abolition of the Tribunal. It needs no special emphasis to state here that the cases before this Court which have been renumbered shall be decided on their own merits inasmuch as the order of the Tribunal cannot be a precedent for this Court. We may further clarify that parties in all cases are at liberty to raise all contentions before the learned Single Judge to get the advantage. We have only set aside the order of the Tribunal and if any scenario has been left out it would be open for them to agitate their grievances.

It is apparent from the above that this Court only set aside the order of the Tribunal regarding the validity of the rules and the direction to draw up the seniority list and did not disturb the promotion and seniority already granted. This Court also did not dwell upon the merits of the individual cases pending before the Court and left them open to be decided on their own merits giving

liberty to the petitioners therein to raise all possible contentions.

From the above chronology of events, it is apparent that this Court did not set aside the relief granted to G. P. Dubey and others in OA No. 355/96 and in fact affirmed the same while setting aside the general directions issued by the Tribunal. It is also clear that the order passed by the Tribunal in B. D. Baiswar's case has been complied by the respondents granting relief to them and that the question as to whether the petitioners are entitled to the same relief as granted to B. D. Baiswar, G. P. Dubey and others and as to the validity of the action of the respondents in counting the seniority "of the petitioners from the date of confirmation and the validity of the order dated 25-2-2003 withdrawing the notional seniority fixed vide order dated 1-6-2000 has been left open. It is also not disputed that the petitioners are similarly placed as B. D. Baiswar and that they have also been denied seniority only in view of the fact that they were confirmed later than all the other persons appointed along with them as foresters in the year 1974. It is also pertinent to take note of the fact that the respondents have not stated any reason or given any explanation as to the reason if any for the delayed confirmation of the petitioners.

It is contended by the petitioners that after their appointment on 4-11- 1974, 5-11-1974 and 7-11-1974 as Foresters, they were not promoted as Deputy Rangers in the year 1987 only on the ground that they were not confirmed on the post of foresters along with those appointed with them and after them. It is submitted that ignoring the claim of persons for promotion on the post of Deputy Ranger only on the ground of non-confirmation was held to be contrary to law by the Tribunal in the case of Shri B. D. Baiswar in TA No. 843/88 and therefore, the petitioners are also entitled to the same relief. It is submitted that this incorrect assignment of seniority resulted in their non-promotion as Deputy Rangers with their batchmates and has adversely affected their chances of promotion on the post of Ranger. It is also submitted that there is no reason assigned by the respondents, for issuing the impugned order dated 25-2-2003, to indicate as to why persons appointed along with them as foresters on 4/5/7-11-1974 have been assigned seniority on the post of Deputy Ranger from 21-5-1987 while the petitioners have been assigned seniority from the actual date of promotion. The petitioners further submit that their services are governed by the M. P. Class-III (Non-ministerial) Forest Services Recruitment Rules, 1967 and Rules 13 and 19 therein specifically provide that foresters shall be appointed on successful completion of the foresters course and training from the date following the date of convocation and in accordance with the merit obtained in the final examination at the school. It is submitted that the petitioners who were appointed after successfully completing the training as foresters in Jabalpur Circle, were assigned different divisions within the circle under different Divisional Forest Officers who issued subsequent orders of confirmation on different dates for no apparent reasons. It is submitted that irrespective of different dates of confirmation, as promotions on the post of Deputy Rangers have to be made on the basis of seniority of the Foresters maintained at the Circle level and confirmation of

Foresters in various divisions simply depends upon the fortuitous circumstance of passing of orders of confirmation by the concerned D.F.O's, seniority of foresters for promotion on the post of Deputy Ranger should be considered on the basis of the date of appointment and cannot be co-related with the date of confirmation. It is submitted that as the petitioners were denied promotion on the post of Deputy Rangers with their batchmates in view of the incorrect computation of the seniority on the basis of their date of confirmation and those appointed with them and after them were given earlier promotions on the post of Deputy Rangers vide order dated 17-8-1987 and 4-9-1987 only on the ground of prior confirmation, the petitioners are also entitled to notional promotion and determination of seniority on the post of Deputy Rangers from 21-5-1987 as their batchmates and not from 1993-1994 or 1996 when the petitioners were actually promoted.

The respondents in the return have submitted that the petitioners were appointed as foresters and were posted in different divisions under the provisions of M. P. Forest Class-III (Non-Ministerial) Recruitment Rules, 1967. They have further stated that the appointing authority on the post of foresters is the Divisional Forest Officer and confirmation orders have been issued by them as per the availability of posts in the respective forest divisions within the circle. It is also stated that for the purpose of making promotion on the post of Deputy Ranger a combined seniority list of foresters is prepared at the level of the Conservancy i.e. at the forest Circle level. The respondents have stated that the petitioners did not assail their seniority or date of confirmation on the post of foresters nor did they assail their supersession when promotions on the post of Deputy Rangers were made in the year 1987 and it was only Shri B. D. Baiswar who did so and was granted relief vide order dated 2-11-1998 passed by the Tribunal in TA No. 843/88 which has been duly complied by them vide order dated 1-7-1999. It is further submitted by the respondents that the petitioners have approached the Tribunal only after the decision in the case of B. D. Baiswar claiming similar relief, but as the order of the Tribunal passed in the similar case of G. P. Dubey in OA No. 355/96 has been set aside by this Court in W.P. No. 4717/01, the petitioners are not entitled to the said relief. In the additional return, the respondents have tried to justify the non-consideration of the petitioners in the year 1987 on the ground that no posts were available for promoting the petitioners as they were lower down in the seniority list due to their later date of confirmation. They have also submitted that the order dated 1-6-2000 assigning notional seniority to the petitioner on the post of Deputy Ranger w.e.f. 21-5-1987 was issued in compliance of the order of the Tribunal passed in the case of G. P. Dubey, OA No. 355/96 however as this order was subsequently stayed and was ultimately set aside by this Court vide order dated 7-11-2003 passed in W. P. No. 4717/01, the respondents withdrew the order dated 1-6-2000 by issuing the impugned order dated 25-2-2003.

The petitioners in reply have submitted that in view of the recruitment rules governing the petitioners' services, they are entitled to seniority from the date of

initial appointment as foresters as their appointment was made in accordance with rules after duly completing the foresters training course prescribed by the rules. It is submitted that if the petitioners had been granted their rightful seniority ignoring the fortuitous circumstance of confirmation, the petitioners would have been promoted along with their batch-mates in the year 1987 itself and much before those who were appointed as foresters subsequent to 1974. It is submitted that if the petitioners had not been ignored due to their non-confirmation, the hurdle of non-availability of posts would not have come in their way in the year 1987. It is submitted that the respondents after due consideration had rightly assigned them seniority on the post of Deputy Rangers along with those appointed with them with retrospective effect from 21-5-1987 and that there is no justification or valid reason given by the respondents to substantiate their subsequent cancellation of the order dated 1-6-2000 by the impugned order dated 25-2-2003. It is also submitted that they are entitled to the same benefit, and relief as granted to Shri B. D. Baiswar, Shri G. P. Dubey and others in view of Article 14 of the Constitution of India and the principle of parity.

I shall first advert to the issue relating to the validity of the impugned order dated 25-2-2003 passed by the respondents withdrawing the fixation of notional seniority on the post of Deputy Rangers w.e.f.21-5-1987 which had been assigned vide order dated 1-6-2000. On a perusal of the M. P. Forest Class-III (Non-Ministerial) Recruitment Rules, 1967 it is clear that the channel of promotion of the Non-Ministerial staff in the Forest Department is from the post of Forest Guard to Foresters to Deputy Rangers to Rangers. Forest Guards are appointed at the Divisional level by the Divisional Forest Officers. The Foresters are also appointed at the Division level by the Divisional Forest Officers however, prior to their appointment they have to undergo the Foresters Training Course at the Forest Training School and after successful completion thereof are allotted to various divisions wherein they are appointed by the concerned Divisional Forest Officers. Deputy Rangers are promoted at the circle level by the Conservators on the basis of a combined seniority list of foresters maintained at the Circle level. Promotions on the post of Rangers are made at State level on the basis of a combined seniority list of Deputy Rangers maintained at the State level. Thus, as per the Scheme of the Rules, seniority of foresters is maintained at the Circle level for making promotion on the post of Deputy Rangers whereas the seniority on the post of Deputy Rangers is maintained at the State level for the purpose of making promotion on the post of Rangers. In normal circumstances, promotions on the post of foresters and Deputy Rangers are made by the concerned Divisional Forest Officers and Conservators as and when vacancies arise. In the year 1987, 1043 posts of Deputy Rangers were created by abolishing an equal number of posts of foresters vide order dated 21-5-1987 and were assigned by an order of the same date to various Circles in the State. Although, these posts were created and assigned on the same date they were filled up by Conservators in the various Circles on different dates due to various reasons which led to the

anomalous situation that Deputy Rangers who were promoted later due to laxity on the part of Conservators of the concerned Circle were assigned seniority below those persons who were promoted earlier, although, the posts fell vacant on the same date and were also allotted to the various Circles on the same date. To remove this anomaly, the respondents issued order dated 1-6-2000 assigning notional seniority w.e.f. 21-5-1987 to all those persons who were promoted as Deputy Rangers on these 1043 posts as well as on those posts which were lying vacant as on 21-5-1987. Subsequently, on receiving complaints and on closer scrutiny, the respondents found that persons who had in fact not been promoted against these 1043 newly created posts of Deputy Rangers or the posts which were filled up along with them had also been wrongly assigned seniority as Deputy Rangers w.e.f. 21-5-1987 therefore, the respondents issued order dated 23-1-2003 and the consequent impugned order dated 25-2-2003 withdrawing the said fixation of notional seniority and restricting it to only those persons who had been promoted on these 1043 posts.

As is apparent from an analysis of the legal and factual position as stated above, seniority of foresters has to be maintained at the Circle level and that of Deputy Rangers has to be maintained at the State level on the basis of the date of promotion which is subject to availability of posts at the Circle and State level respectively. However, the State as a one time measure and in view of the peculiar facts relating thereto regarding creation of 1043 posts of the Deputy Rangers on the same date assigned the same date of seniority to all the Deputy Rangers promoted against these 1043 posts and the posts lying vacant as on 21-5-1987. It is also clear that in the normal circumstances, Foresters and Deputy Rangers count their seniority from the date of promotion and therefore, those persons who are promoted as Deputy Rangers against vacancies which arose subsequent to 1987 are entitled to count their seniority on the post of Deputy Rangers only from the date of actual promotion as prescribed by the Rules. In the circumstances, I do not find any fault or legal infirmity in the impugned order dated 25-2-2003 modifying the order dated 1-6-2000. This impugned order dated 25-2-2003 is also in accordance with the order passed by this Court in W.P. No. 4717/01 dated 7-11-2003 wherein the Tribunal's directions for preparation of State-wise seniority list of foresters for the purposes of making promotion on the post of Rangers has been set aside. In the circumstances, I do not find any merit in the contentions of the learned counsel for the petitioners regarding the validity of the order dated 25-2-2003 and the same are rejected. However, the issues raised by the petitioners regarding the validity of the seniority assigned to them or granting notional seniority and promotion from a retrospective date are different issues which will have to be decided on the basis of the facts of each individual case which I propose to do hereinafter.

The main issue that arises for consideration and decision before this Court is as to whether the petitioners were entitled to be considered for promotion on the post of Deputy Rangers along with their batchmates irrespective of their non-confirmation. In other words, whether non-confirmation on the post of foresters

would in any way affect their seniority and chances of consideration for promotion on the post of Deputy Rangers though, they were appointed in accordance with the rules after having successfully cleared the training course prescribed thereunder, and were not required to pass any other examination subsequent to their appointment as foresters prior to their confirmation.

15, A perusal of Rule 13(1) of the M. P. Class-III (Non-Ministerial) Forest Services Recruitment Rules, 1967 makes it clear that directly recruited foresters have to undergo the prescribed course of training in the foresters course and can be appointed only on completion of training from the date following the date of convocation and in accordance with the merit obtained by them in the final examination at the school. It is pertinent to note that the only training or examination required to be passed by the foresters for the purpose of appointment is the foresters training course prescribed under Rule 19. No other test or departmental examination is required to be passed by the foresters prior to the confirmation and it is also not the case of the respondents that the petitioners failed to pass any departmental examination resulting in delayed confirmation. Rule 20 of the rules provides that a directly recruited person shall be appointed on probation of two years. A perusal of the rules of 1967 also establishes that there is no provision therein providing for determination of seniority and therefore, the only rule governing the petitioners' seniority on the post of forester is the M. P. Civil Services (General Conditions of Service) Rules, 1961 which prescribes as under:

12(a) Direct Recruits: - (i) The seniority of a directly recruited Government servant appointed on probation shall count during his probation from the date of appointment viz:

(ii) The same order of inter se seniority shall be maintained on the confirmation of such direct recruits if the confirmation is ordered at the end of the normal period of probation. If however, the period of probation of any direct recruits is extended, the appointing authority shall determine whether he should be assigned the same seniority as would have been assigned to him if he had confirmed on the expiry of the normal period of probation or whether he should be assigned a lower seniority.

A perusal of the abovementioned rule makes it clear that the same order of inter se seniority between the direct recruits has to be maintained on their confirmation if it is ordered at the end of normal period of probation. If however, the period is extended the appointing authority has been empowered to decide as to from what date he should be assigned seniority. In the present case, as is evident from the facts placed before this Court, the probation period of the petitioners was not extended. It is also an admitted fact that the petitioners' confirmation was delayed not on account of any deficiency or failure on their part to pass any requisite departmental examination but only because the concerned Divisional Forest Officer passed orders of confirmation in respect of the petitioners on a later date while other Divisional Forest Officers passed orders of

confirmation in respect of persons appointed along with petitioners and allotted to a different division, at an earlier date and this directly affected their seniority as the combined seniority of foresters is maintained at the Circle level which comprises of several divisions. It is therefore, apparent that in the present case the petitioners were adversely affected and superseded while making promotions on the post of Deputy Rangers as their seniority on the post of foresters, which is maintained at the Circle level, was made dependent upon the fortuitous circumstance of one Divisional Officer within the circle passing the orders of confirmation earlier than the other Divisional Officer within the same Circle, although they were appointed vide the same order and were not required to pass any departmental examination prior to confirmation. I may hasten to add that had the petitioner been claiming promotions on the post of Rangers on the basis of their seniority from the date of appointment as foresters and not on the basis of the date of promotion as Deputy Rangers the petitioners would have had no case as the Rules prescribe preparation of a State-wise seniority list of Deputy Rangers prepared on the basis of the date of promotion on the post of Deputy Ranger made at the Circle level by the Conservator as and when vacancies become available. In the present petition, the case of the petitioners is that had they been given seniority along with those appointed with them as foresters and not on the basis of the date of confirmation the petitioners would have been promoted in 1987 itself against the 1043 posts of Deputy Rangers created vide order dated 21-5-1987 along with their contemporaries and would have been assigned seniority as Deputy Rangers w.e.f. 21-5-1987. It is also their case that the petitioners are entitled to similar relief and benefits as accorded to Shri B. D. Baiswar and others by the Tribunal vide its order dated 2-11-1998 who were also appointed along with them as foresters, were also confirmed at a later date along with the petitioners in the year 1982 and were promoted as Deputy Rangers in the year 1996 along with the petitioners, but subsequently have been awarded notional seniority on the post of Deputy Rangers w.e.f. 21-5-1987 in view of the orders passed by the Tribunal. At this stage, it is reiterated that this Court is only concerned with and considering the issue of relevancy of the date of confirmation on the post of forester for the purpose of determining the seniority "within the Circle" as envisaged by the rules and whether the petitioners are entitled to the same relief as granted by the Tribunal to Shri B. D. Baiswar and others in TA No. 843/88.

The Supreme Court in the case of S.B. Patwardhan and Another Vs. State of Maharashtra and Others, has held that confirmation is one of the inglorious uncertainties of government service depending neither on efficient nor on availability of substantive vacancies and that all factors being equal length of service should receive due recognition in determining the seniority and therefore, the rule insofar as it makes seniority dependent on the fortuitous circumstance of confirmation is liable to be struck down. This judgment has been re-affirmed by a five Judge Bench of the Apex Court in the case of The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and

others, and while summing up the conclusions in Paragraph 47, it has been held as under:

47(A). Once an incumbent is appointed to a post according to rule, the seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

In D.K. Mitra and Others Vs. Union of India (UOI) and Others, , it has been held by the Supreme Court that the date of confirmation based on placement of an officer within a particular zone cannot serve as a legitimate base for drawing up a seniority list for promotion to the All India Cadre as that would amount to injecting an element of inequality into the very foundation of the promotion process and therefore, seniority should be determined on the basis of length of continuous service. This judgment of the Apex Court also applies to the present case, where the date of confirmation at the Division level and not the date of appointment has been treated to be the base for preparing a seniority list of directly recruited foresters at the Circle level which automatically introduces the inequitable element of fortuitous confirmation of one person at an earlier date in one Division as compared to another due to availability of vacant posts or alertness on the part of the DFO" although the date of initial appointment is the same. In the case of Pushpa Aggarwal Vs. U.P.S.C. and Others, , seniority of the petitioner was restored only as the case of the petitioner therein was not considered immediately on completion of the period of probation. Similar view has been taken in the case of O. P. Garg and Ors. v. State of U. P. and others, 1991 Suppl. (2) SCC 51, wherein it has been held that seniority in case of appointment made in accordance with rules against substantive vacancies on permanent or temporary posts has to be determined on the basis of continuous officiation and cannot be linked with the date of confirmation. In the case of Chief Commissioner of Income Tax and Ors. v. V. Suhra Rao and others, 2003(10) SCC 265, it has been held that if a person is appointed to the post in accordance with the rules and his confirmation is not subject to any further condition of passing a departmental examination or acquiring some additional qualifications then his seniority has to be counted from the date of his appointment and not from the date of his confirmation as several inglorious uncertainties and fortuitous circumstances are linked with the date of confirmation and therefore, the determination of seniority on the basis of date of confirmation is inequitable and violative of the equity clause enshrined in the Constitution. The judgment in the case of Shri L. Chandrakishore Singh Vs. State of Manipur and Others, is also to the same effect.

In the instant case, the petitioners were appointed as foresters after duly passing the foresters course prescribed by the rules and their confirmation was not dependent upon the passing of any further departmental examination as

admitted by the respondents. In the circumstances, they are entitled to count their seniority on the post of foresters along with the persons appointed with them and their seniority at the Circle level cannot be determined on the basis of different dates of confirmation assigned by the concerned Divisional Forest Officers within the Circle on the basis of lack of alertness or availability of posts in the Division. It would have been a different case if the seniority had been maintained Division-wise but the present situation has come up as seniority has to be maintained at the Circle level as per the rules whereas confirmation orders are passed at Division level by different DFO's within the Circle. In the circumstances, I am of the considered opinion that assigning of lower seniority to the petitioners on the post of foresters only on account of delayed confirmation is arbitrary and violative of the equity clause of the Constitution. I am also of the opinion that had the petitioners been assigned proper seniority they would have been promoted as Deputy Rangers, against the 1043 posts created on 21-5-1987 along with their batchmates and therefore, they are entitled to notional seniority on the post of Deputy Rangers with effect from 21-5-1987 along with their batchmates specifically as no reason has been brought on record to justify their delayed confirmation.

The next issue raised by the petitioners is whether they are entitled to the similar benefit and relief as granted to Shri B. D. Baiswar, Shri G. P. Dubey and others. From a perusal of paragraphs 6A to 9 of the order passed by the Tribunal in the case of Shri B. D. Baiswar which are reproduced below and has also been filed by the petitioners as Annexure P-I along with W.P. No. 15405/05(s), it is apparent that the issue decided therein is similar to the one raised by the petitioners:

6A. The petitioners submitted by way of filing rejoinder that they were appointed by the Conservator of Forests. Seniority of Foresters is maintained Circle-wise. They were appointed on clear vacant posts. There are 10 Forest Divisions in Jabalpur Circle and the candidates who were selected and appointed as Foresters in the years 1973-74 were given postings in different forest divisions in the circle. Therefore, it cannot be said that only because the Respondents No. 4 to 9 were confirmed on the post of foresters, earlier to petitioners, they would be senior than the petitioners. A common gradation list is prepared for the entire circle. It has also to be seen that number of foresters who were not confirmed were also promoted as Deputy Rangers and subsequently they were confirmed along with the petitioners vide order of confirmation (Annexure R-2).

From the above narration it is obvious that the contention made for the respondents is totally unacceptable. Merely because an employee was posted in such a division where allegedly there was no permanent vacant post and consequent to the said fortuitous circumstance he was not confirmed on the said post. Such a circumstance cannot be considered as a valid or relevant consideration for not considering the case of his promotion. There may be other contingencies also for employee not being confirmed. For example, one of the said contingencies may be that out of 10 forest divisions, one or more Divisional

Forest Officers may be vigilant enough to pass an order of confirmation of the employees serving in the division of which he is incharge, while other Divisional Forest Officers may not be so vigilant as to pass such an order of confirmation. Therefore, on account of lapse on the part of the officers concerned an employee does not become liable for not being considered for promotion only because he was not confirmed well in time when he ought to have had been confirmed.

Thus, until and unless it is pleaded and demonstrated that the order of confirmation confirming the employees concerned, was passed after considering each and every employee according to his seniority and merit then only such an order of confirmation has any relevance for considering the date of confirmation as the relevant date for considering the case of promotion of such employees. Such is not the case here. Even if the contention of the respondents is considered to be correct (in spite of the fact that the said contention has been disputed by the petitioner), such a date of confirmation of an employee has to be totally ignored and only the date of appointment of foresters or the date of absorption of Surveyors as foresters has to be taken into consideration for considering their promotion as far as criteria of seniority is concerned.

It is not disputed that the appointing authority of Deputy Rangers is Conservator of Forests, and, therefore, a Circle-wise gradation list of the Foresters has to be prepared. The petitioners are admittedly senior to the Respondents No. 4 to 9. Therefore, in view of the reasonings mentioned above, they obviously deserve to be considered for being promoted. Consequently, the petition is allowed and it is ordered that the petitioners for being promoted as Deputy Rangers be considered by the Review Departmental Promotion Committee within three months of communication of this order and if they are found fit to be promoted, they be promoted from one day earlier than the date on which their next juniors were promoted to the said post of Deputy Ranger. It is also being directed that if the petitioners are found fit to be promoted as Deputy Rangers, then all consequential benefits including monetary benefits be given to them from the abovereferred date of their promotion. If there be no posts of Deputy Rangers vacant in the Circle, then either supernumerary posts of Deputy Rangers be created within the said stipulated period of 3 months of communication of this order or else the Respondents No. 4 to 9 be reverted to the post of foresters.

It is also evident from the record that Shri B. D. Baiswar was appointed along with the petitioners as foresters in 1974, was confirmed along with the petitioners as foresters on 5-5-1982 and subsequently in view of the orders passed by the Tribunal in his case has been given notional seniority on the post of Deputy Ranger w.e.f. 21-5-1987 though, he was actually promoted as Deputy Ranger on 1-7-1999 as admitted by the respondents in their return. It is also apparent from a perusal of the record of the case that the private Respondent Nos. 6 to 8 were also appointed along with the petitioners in 1974 and 1975 and while the Respondent Nos. 6 and 8 were confirmed as foresters in the year 1977 and promoted as Deputy Rangers in the year 1987 and have now been granted

further promotion on the post of Rangers while Respondent No. 7 who was confirmed along with the petitioners on 5-5-1982 was accorded seniority on the post of Deputy Ranger w.e.f. 21-5-1987 though promoted along with the petitioners on 7-10-1996 and has subsequently also been promoted as Ranger vide order dt. 13-11-2001 w.e.f. 28-3-1998. The respondents have not brought any material on record to establish that there was material difference in the case of the petitioners and Shri B. D. Baiswar and others to justify the overlooking of the case of the petitioners for confirmation as well as promotion in the year 1987 and thereafter. On the contrary the facts indicate that the petitioners are similarly placed as Shri B. D. Baiswar, his co-petitioners and Respondent Nos. 6 to 8. It is therefore, manifestly clear that the petitioners are similarly placed as Shri B. D. Baiswar and others. The respondents have also admitted the fact that they have already complied with the orders passed by the Tribunal in the case of Shri B. D. Baiswar and others vide order dated 1-7-1999 which has been filed along with a memo by the petitioners. In the circumstances the petitioners' case being identical to that of Shri Sheokumar Gautam, Shri S. K. Shrivastava, Shri Ashok Kumar Singh, Shri B. B. Mishra, Shri Ashok Kumar Shrivastava, Shri Krishna Prakash and Shri P. S. Baid who all were petitioners in T. A. No. 843/88 along with Shri B. D. Baiswar and who have been granted relief by the respondents in compliance of the orders passed by the Tribunal in TA No. 843/88 and dated 2-11-1998, they are also entitled to similar relief on the touchstone of Article 14 and 16 of the Constitution of India and the principle of parity.

I am also of the opinion that the objection of the respondents regarding non-maintainability of the petition on the ground of delay deserves to be rejected in view of the fact that the issue of assigning seniority and grant of notional promotion to the petitioners and others has not attained finality even today as the issue was raked up and kept alive by Shri B. D. Baiswar, Shri G. P. Dubey and others and the petitioners' petitions claiming relief was admitted and entertained as far back as in 1998 and they have been permitted to raise all these issues in the present petitions vide order passed by this Court in W.P. No. 14392/03 decided on 15-3-2005 and in fact several individual petitions regarding the same issue are still pending before this Court.

At this stage, it is pertinent to note that the petitioners have already been promoted as Deputy Rangers in 1993 and 1996 and the only issue that remains is regarding counting of their seniority on the said post along with similarly placed persons who have been assigned notional seniority on the post of Deputy Rangers w.e.f. 21-5-1987. As I have held that the petitioners cannot be subjected to discrimination only on the ground of delayed confirmation and are also entitled to similar treatment as Shri B. D. Baiswar, Shri G. P. Dubey and others who have already been granted relief by the respondents, the present petition filed by the petitioners is allowed with a direction that their cases for assigning notional seniority on the post of Deputy Rangers with effect from 21-5-1987 along with the persons appointed as foresters with them by ignoring their date of confirmation be re-considered by the respondents and they be

granted similar relief as given to Shri B. D. Baiswar and others similar situated employees. The petitioners would also be entitled to further consequential benefits, excluding the monetary benefits which are specially given up and foregone by the petitioners, i.e. due consideration for further promotion on re-fixation of seniority etc.

In view of the above, the petition filed by the petitioners is allowed with the above observations. In the peculiar facts and circumstances of the case, there shall be no order as to costs.

Petition allowed.