

## Baliram Ojha Vs State of Bihar and Others

**Court:** Jharkhand High Court

**Date of Decision:** March 28, 2003

**Acts Referred:** Constitution of India, 1950 " Article 226

**Citation:** (2003) 4 JCR 344

**Hon'ble Judges:** Tapen Sen, J

**Bench:** Single Bench

**Advocate:** V. Shivnath, A. Sinha, R. Shankar, B. Kumar and S. Topno, for the Appellant; R.R. Mishra, G.P. II and S.N.P. Roy, JC to G.P. II, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

Tapen Sen, J.

Heard Mr. V. Shiv-nath, learned counsel for the petitioner and Mr. R R. Mishra, G.P. II for the respondents.

2. Mr. V. Shivnath, learned counsel for the Petitioner has frankly submitted that he is praying for quashing of Annexures 13, 15 and 18 appended

to the Writ Application. By Annexure-13, the Principal Chief Conservator of Forests reverted the Petitioner from the post of Forester to his

original post, i.e. to the post of Forest Guard by his office order No 256 dated 03.12.1996 on the ground that he did not possess the necessary

qualification that were necessary for such promotion. By Annexure-15, the Principal Chief Conservator of Forests did not decide the matter in

relation to seniority/promotion and instead, directed that the matter should await the decision of the State Government. By Annexure-18, the New

Principal Chief Conservator of Forests, made non effective the order passed by his predecessor in office i.e. Annexure-16 (Memo No. 1911

dated 30.04.1997).

3. The short facts which are necessary to be taken note of is that in May, 1973, the Petitioner was appointed as a Forest Guard. Thereafter he

was sent for training at the Forest Guard Training School at Kodarma by the department itself and in the year 1980, the Petitioner completed his

training whereafter he was issued with a certificate (Annexure-1) certifying that the Petitioner had attended the training during the period April 1980

to September 1980 and has secured first position in the examinations held in September, 1980.

4. Thereafter, the Petitioner was promoted/appointed as a Forester with effect from 11.02.1982 by reason of Annexure-2 which is a letter issued

on behalf of the Principal Chief Conservator of Forests, Bihar directing all Forest Conservators that the promotions to the post of Foresters should

be given to all Forest Guards who had secured first position in the aforementioned examinations and against whom no departmental proceedings

were pending. It would be relevant to mention that in the aforementioned letter dated 11.02.1982 it has not been mentioned that first position with

honours would also be a requisite criteria for purposes of such promotions.

5. Before proceeding with the facts of this case, it would be relevant to take note of (as stated at paragraph 5 of the Rejoinder filed by the

Petitioner to the Counter Affidavit of the Respondents) another fact which evidently and admittedly took place on and from the same day i.e.

11.02.1982 and i.e. the coming into force of Clause 3.21 of the Bihar Forest Rules laying down, inter alia, that permanent and temporary

appointments of Foresters may be made by the Conservator of Forests either by direct recruitment or by promotion of Forest Guards and other

subordinates, provided these Forest Guards stood first with honours at the Guards Training School and had put in at least five years of satisfactory

service.

6. Be that as it may, it is an admitted fact that the Petitioner, at the time when he was promoted i.e. on 11.02.1982, the same was pursuant to

Annexure-2 which did not contain the aforementioned criteria i.e. Forest Guards must have stood first with honours. The Petitioner, however,

asserts that he had in fact, secured first position with honours as has been admitted by the department itself inasmuch as upon perusal of Annexure-

8 which is office order No. 54 issued on 01.03.1995 and the letter dated 27.09.1993 It is evident that both go to show that the Principal Chief

Conservator of Forests had at two places one at running page 85 and the other at 90, accepted the fact that the Petitioner had passed the Forest

Guards Training in October, 1980 and has stood first with honours. It appears therefore, that the promotion granted to the Petitioner was in order

inasmuch as he fulfilled all the necessary eligibility criteria. Yet, for some reason or the other, some other persons namely Ram Naresh Dubey and

Naru Prasad felt aggrieved by the promotion granted to various persons without considering their cases. Accordingly they filed CWJC No: 505 of

1989.(R) and by judgment passed in December, 1990 a Single Judge directed to refer the entire matter to the State Govt. in the Forest

Department with a direction to consider the whole aspect and take a final decision with regard to the proposed amendment that was being sought

to be enforced amending the matter relating to promotion/appointment to the post of Foresters. This was in relation to Clause 3.21 of the Bihar

Forest Rules which had already come into effect on 11.02.1982. Upon receiving the aforementioned judgment, the Principal Chief Conservator of

Forests issued a Memo wherein he interpreted the order/judgment passed in CWJC No. 505 of 1989 (R) to mean that only those cases of

promotions granted after 11.02.1982 be reviewed and reconsidered who had been secured first position with honours.

7. Thereafter, it appears that yet another Writ Petition was filed by one Ram Naresh Singh but in the absence of total facts in relation to that case,

this Court refrains from making any statement in relation thereto save and except to record that perhaps, that case related to a claim of seniority

over and above the petitioner and two other persons. Mr. V. Shivnath has stated that in this case, i.e. CWJC No. 1748 of 1990(R), the petitioner

was arrayed as respondent No. 12 and from perusal of the counter affidavit filed by the State, it would be evident from paragraph 24 therein that

the State respondents disputed the contention in relation to the claim of seniority over the petitioner. However, in the counter affidavit, nothing was

said in relation to the aforementioned criteria, i.e. securing first position with honours.

8. The aforementioned case, i.e. CWJC No. 1748 of 1990 (R) was finally disposed off on 12.12.1991 by Annexure-7 and in the relevant portion

of the judgment, i.e. at running page 82 (paragraph 57 of the judgment) the State Respondents were directed to reconsider the case of the

Respondent No. 11 to 13 so far as seniority granted to them from the date of passing of the examination and in particular, the case of the

Respondent Nos. 11 to 12 as they were given such seniority only in 1989 over the head of the Petitioner, keeping in view the provisions of the

statutory rules and in accordance with law.

9. It appears that the aforementioned judgment was challenged in L.P.A. No. 3 of 1992 (R) whereafter the matter was taken up for consideration

by the Principal Chief Conservator of Forests and by Annexure-8 (running page 85) he showed the Petitioner to have secured first position with

honours and accordingly to have been promoted to the post of Forester on 06.10.1980. At running page 86, the Principal Chief Conservator of

Forests also gave a finding that the Petitioner had secured first position with honours in 1980 while one Akhileshwar Pandey had secured the same

in the year 1981 and Ram Naresh Singh had obtained the same position in the year 1985. Consequently at running page 88 of the Writ

Application, the Principal Chief Conservator of Forests placed the seniority of these three persons and it will be evident that the name of the

Petitioner was placed at serial No. 1.

10. Subsequently the Principal Chief Conservator of Forests wrote a letter to the Regional Chief Conservator of Forests, Ranchi by his letter dated

27.09.1993 as contained at Annexure 8/1 and in the said letter, he also clearly stated that the petitioner Baliram Ojha who was Respondent No.

12 in CWJC No. 1748/1990 (R) had passed the examination in 1980 and has stood first with honours and accordingly, was promoted as

Forester with effect from 06.10.1980. He further stated that this was in order. At running page 91 which is a part of that letter, while placing the

Petitioner at serial No. 1 he clearly stated that Ram Naresh Singh cannot get his seniority over the Petitioner (Baliram Ojha) and one (Akhileshwar

Pandey),

11. It appears that four other Writ Applications were filed before the then Ranchi Bench of the Patna High Court wherein a grievance was made

against an order dated 19.12.1991 by which promotion to the post of Foresters in their cases had been cancelled in the light of the direction given

in CWJC No. 505 of 1989 (R) (Annexure-4), It appears that Clause 3.21 of the Bihar Forest Rules was the subject matter of consideration in

these cases and considering the cases in their entirety, a Division Bench by its judgment (as contained at Annexure-9 of this Writ Application)

observed/directed that the State Government should consider as to whether the petitioner of those cases and other similarly situated persons would

be deemed to be directly recruited against the post of Foresters. In the mean time the order of reversion which was Annexure-5 and subject matter

of challenge in those Writ Application was kept in abeyance and the State Government was directed to take a decision within four months from the

date of production of a copy of that order.

12. The aforementioned judgment of the Division Bench became a subject matter of challenge before the Hon"ble Supreme Court of India but the

SLP was dismissed on 11.11.1994 as evidenced by Annexure-11 appended to this Writ Application. In other words Annexure-9, (i.e. a judgment

of the Division Bench directing the State Government to consider the effect of Clause 3.21 in , the matter relating to promotion/appointment to the

post of Foresters) became final.

13. Thereafter all of a sudden on 16.03.1996, the matter was taken up for consideration under the Chairmanship of the Principal Chief

Conservator of Forests, Bihar as is evidenced by Annexure-12. At paragraph 7 of the minutes of the meeting held on 18/19 December, 1995

(running page 106 and 108). It would be apparent that the minutes took a peculiar stand to the effect that since the mode of recruitment/promotion

to the post of Foresters had been made only with effect from 11.02.1982 therefore, promotions granted earlier on that post should not be allowed.

In other words they took a decision that those persons who had secured first position with honours prior to 1982, they would be given the benefit

of promotion either with effect from 11.02.1982 or with effect from the date they completed five years of service which ever was later. The

learned counsel for the Petitioner has correctly therefore stated that this decision was totally unreasonable inasmuch as it had the effect of setting at

naught the promotion given to the Petitioner on 06.10.1980.

14. According to Mr. V. Shivnath, learned counsel for the Petitioner, prior to 1982, the provisions of Clause 3.21 could not have been made

applicable upon the Petitioner, inasmuch as prior to the date of enforcement of Clause 3.21 of the Bihar Forest Rules, the relevant criteria for

promotion was guided by the resolutions issued by the department of Forests at the Bihar and Orissa Forest Conference held in the year 1926, a

copy whereof has been marked as Annexure 20 appended to the Rejoinder filed by the Petitioner to the Counter Affidavit. The relevant clause for

promotion, as resolved thereunder, requires that a Forest Guard who tops the list in the final examination at the training school for forest guards

should be appointed a forester if he fulfils other necessary conditions and knows English. This has not been controverted by the Respondents and

in any event there is much force and substance in what Mr. V. Shivnath has argued. The Petitioner having been promoted in the year 1982 on the

basis of Annexure-2, his promotion could not have been made a subject matter of reversion 16 years thereafter without any notice and that too

when the Respondents themselves had admitted that the Petitioner had secured first position with honours. In other words, even on the date when

he was given promotion, i.e. on 11.02.1982 the Petitioner did have the requisite qualification as has been admitted by the Principal Chief

Conservator of Forests himself at Annexure-8/1. That being the position, there was no justification whatsoever in issuing Annexure-13 reverting the

Petitioner on 03.12.1996 to the post of a Forest Guard. It appears that subsequently certain other developments have taken place but the ultimate

outcome is that the Petitioner, by reason of order of interim stay granted by this Court on 24.09.1997 has continued to hold the post of Forester.

The other developments are that initially the effect of Annexure-13 was kept in abeyance by the Principal Chief Conservator of Forests himself by

Annexure-14 whereafter by a subsequent order dated 17.03.1997 he directed that the matter should await the decision of the State Government

but the State Government on their part, by Annexure-17, stated that the matter relating to promotions of Forest Guards to Foresters fall within the

exclusive domain of the Principal Chief Conservator of Forests.

15. That apart, by office order dated 04.03.1997 (running page 117 to 118 of the Writ Application), the Principal Chief Conservator of Forests

once again cancelled the orders of promotion given to 19 persons and the name of the Petitioner is included at serial No. 7. This order was taken

into consideration subsequently by Annexure-16, (letter dated 30.04.1997) but surprisingly at running page 120 the Principal Chief Conservator of

Forests revoked all other orders but did not say anything in relation to letter No. 8/C dated 04.03.1997 (i.e. the letter which appears at running

pages 117 to 118) of this Writ Petition through which the Petitioner's promotion had been cancelled. At running page 121, the Principal Chief

Conservator of Forests at the last paragraph says that since that date, i.e. the date when he issued that letter, was the date on which he was going

to superannuate and since the reversion of Foresters was totally his decision therefore, he was cancelling all those orders of reversion so that his

successor in office would reconsider the matter but surprisingly, he does not say anything in relation to letter No. 8/C dated 04.03.1997 in these

paragraphs.

16. A Counter Affidavit has been filed in the instant case wherein the Respondents have stated that a policy decision of the Forest Department

should not be quashed. They have further stated that the date on which the Petitioner passed the examination, i.e. on 06.10.1980 he got the effect

of the promotion from the date of joining, i.e. 13.07.1982 and that Annexure-2 was not the letter of appointment. Instead, it was a letter in relation

to reviewing pending cases. The aforementioned argument does not appeal to this Court inasmuch as the promotion of the Petitioner having been

given way back in the year 1982 cannot be allowed to be upset at such a belated stage and that too when he possessed all necessary eligibility

criteria. The statement made by the deponent to the effect that the Petitioner did not secure with honours, cannot be believed in the face of clear

admissions made by the Principal Chief Conservator of Forests himself at the pages referred to above. In that view of the matter the decision to

revert the Petitioner was wholly illegal.

17. For the reasons stated above, therefore, it appears that the impugned order reverting the Petitioner and that too after 16 years from the date he

was promoted, notwithstanding the fact that the Petitioner possessed all the necessary, qualifications, the same was wholly arbitrary, illegal and

totally without jurisdiction. The Petitioner has suffered at the hands of these Respondents and had it not been for the order of interim stay, the

Petitioner would have been reverted to the post of a Forest Guard. In that view of the matter the impugned orders are hereby quashed and the

matter is remanded to the Principal Chief Conservator of Forests for passing a fresh order in accordance with law after taking into consideration

the observations made herein. The Respondents shall also take into consideration the direction of the Government as contained in Annexure-23

which has been brought on record by the learned counsel for the Petitioner by way of Supplementary Affidavit filed on 21.03.2003. This

instruction lays down inter alia that the criteria for promotion would be either securing first position or first position with honours. Mr. Rajeev

Ranjan Mishra, learned G.P. II has clearly submitted that the Government will definitely look into the matter after taking into consideration not only

the aforesaid document, (i.e. Annexure-23) but will also do the needful as per the observations made herein.

With the aforesaid observations and directions this Writ Petition is allowed. No Order as to costs.