

(2003) 02 JH CK 0027

Jharkhand High Court

Case No: CWJC No. 2960 of 1995 (R)

Ram Naresh Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision: Feb. 24, 2003

Citation: (2003) 2 JCR 195

Hon'ble Judges: Tapen Sen, J

Bench: Single Bench

Advocate: N.N. Tiwari, for the Appellant; R.K. Choudhary, for the respondent No. 8 and Aniket, JC to SC-1, for the State, for the Respondent

Judgement

Tapen Sen, J.

Heard Mr. N.N. Tiwari, learned Senior Advocate appearing for the Petitioner. Mr. R.K. Chbudhary, learned counsel appearing for the respondent No. 8 and Mr. Aniket, JC to SC I for the Respondent State.

2. The Petitioner has prayed for quashing the order dated 27.7.1995 (Annexure-10) passed by the respondent No. 3 (Additional Secretary, Forest and Environment) by reason whereof and in purported compliance of the order passed in an earlier Writ Application namely CWJC No. 4038/ 1993{R}, the representation of the Petitioner was disposed off without redressing his grievances in relation to promotion. The Petitioner seeks promotion on the post of Range Officer of Forest and submits that the respondents could not have promoted the respondent No. 8 who is junior to him by order as contained at Annexure-7 and therefore the petitioner prays for also quashing the said order as contained at Annexure-7 being the order dated 2.11.1993 whereby and whereunder the respondent No. 8 was; promoted on the post of Range Officer of Forest.

3. The Petitioner's case briefly stated is that he was appointed as a Forest Guard on 5.5.1973 after he had obtained Degree of B.Sc. Part-I. Subsequently and during the course of his service, he was sent for training in the Session 1984-85 in the

Departmental Guards" Training School at Mahilong, Ranchi and upon successful completion thereof, he duly appeared in the Departmental Examination (Guards" Training Examination). His results were published in the month of February, 1985 (Annexure- 1) on the basis whereof the Petitioner was declared to have secured first position with Honours marks. The petitioner"s position is at S.No.-1 of Annexure-1.

4. According to the Petitioner, a Forest Guard, who secures first position with Honours marks at Guards" Training Examination and who has also put in at least five years" of satisfactory service becomes entitled to be promoted on the post of a Forester.

5. Mr. N.N. Tiwary, learned counsel for the Petitioner relies upon Rule 3.21 of the Bihar Forest Rule and specifically refers to Clause 3.21(b)(ii). From a perusal of the aforementioned provision in the Bihar Forest Rule it is apparent that the contention of the learned counsel for the Petitioner is correct and that it is no doubt provided that a Forest Guard who stands first with Honours and who has put in at least five years" satisfactory service, will be considered for promotion to the post of Forester.

6. In view of the aforementioned provisions, the Petitioner was in fact given promotion to the post of a Forester by order dated 2.4.1985 (Annexure-2). The learned counsel for the petitioner has submitted that the subsequent line of promotion of a Forester is on the next higher post of a Forest Range Officer and the Government by a Circular/Policy Decision/Resolution (Annexure-3) took a decision that a Forester who continuously works for a period of eight years would be considered for the next higher promotion i.e., to the post of Range Officer of Forest. According to the petitioner, earlier the period was ten years of continuous service, which by Annexure-3 was reduced to eight years. According to the petitioner therefore, he became entitled to be promoted to the post of Range Officer of Forest in the year 1992 itself te., the date on which he completed eight years of continuous service on the post of a Forester. But however, Instead of promoting the petitioner with effect from 1992, the respondents on the other hand, issued an office order on 2.11.1993 as contained at Annexure-7 by which the respondent No. 8, who according to the petitioner was not only junior to him but who also was not qualified at all. was granted promotion to the post of Range Officer of Forest. According to the petitioner, the respondent No. 8 was a mere Forest Guard who had not secured first position with Honours as was necessarily required in terms of Rule 3.21(b)(ii) to the aforementioned Bihar Forest Rule quoted above.

7. According to Mr. N.N. Tiwari, the respondent No. 8 was not even competent to be promoted to the post of Forester in violation of Rule 3.21 because he had not secured first position with Honours. Consequently therefore according to him, promotion given to respondent No. 8 on 19.12.1986 was itself irregular and in support of the aforementioned contention, Mr. N.N. Tiwari relies upon Annexure-4 which appears to be a letter written by the Principal Chief Conservator of Forest (respondent No. 5) addressed to Conservator of Forest (South Division), Chaibasa.

The said letter discloses that the scribe thereof states that the matter relating to the respondent No. 8 was under consideration. He further states that he passed the Guards" Training between August 1978 to March 1979 and did pass the Honours Examination. The letter appears to have been written on the basis of a grievance raised by respondent No. 8 himself who had made a complaint that his marks had been reduced and his placement had been made third In the merit list. According to the Principal Chief Conservator of Forests, a full-fledged inquiry was made in the year 1981 itself and it was found that these complaints of the respondent No. 8 were absolutely baseless.

8. However, according to the letter dated 17.12.1986 it appears that a decision was taken that all Forest Guards who had passed the Guards" Training Examination should be promoted to the post of a Forester. Reference of this decision is recorded in Annexure-4 itself. Accordingly, the Principal Chief Conservator of Forest came to the conclusion that since the respondent No. 8 had passed the guard"s examination in the year 1981 therefore he should be promoted to the next higher post of a Forester. However, what is very significant to note from the contents of this letter itself is that the Principal Chief Conservator of Forest records that the respondent No. 8 will also be promoted along with those guards of the same session who had obtained Honours and had secured first position.

9. The petitioner states that after the aforementioned promotion had been given by Annexure-4, albeit Irregularly vide letter dated 19.12.1986, the respondents subsequently in the year 1993 i.e., 25.8.1993 issued an order of cancellation of the promotion of the respondent No. 8. This order is contained at Annexure-6.

10. According to the learned counsel for the petitioner, the promotion granted to the respondent No. 8 vide Annexure 4 is totally dehors the provision of Rule 3.21 of the Bihar Forest Rule and perhaps therefore a rectification was made vide Annexure-6 canceling the said promotion. It Is relevant to mention that the respondent No. 8 was actually promoted with effect from 31.12.1986 reference whereof is given in Annexure-6 itself. According to the learned counsel of the respondent No. 8, the aforementioned order of cancellation which was made by Annexure- 6 was withdrawn/cancelled by an office order dated 26.8.1993 as contained at Annexure-L to the counter-affidavit of the respondent No. 8. From a perusal of the aforementioned order as contained at Annexure-L it appears that It is a totally mechanical one line order and no reasons have been given as to how the State Respondents met the provisions as contained at Rule 3.21 of the Bihar Forest Rule.

11. According to the petitioner, he filed a Writ Application challenging the notification as contained at Annexure-11 by which the respondent No. 8 had been promoted by order dated 2.11.1993. The said Writ Application was registered before the then Ranchi Bench of the Patna High Court vide CWJC No. 4038 of 1993(R). It was disposed off at the admission stage itself and on 23.1.1995 with a direction upon the

respondents to consider the representation of the petitioner and pass an order In accordance with law within a period of four months from the date of receipt/production of a copy of the order (the said order is appended as Annexure-8 to the Writ Application). Thereafter, the matter appears to have been taken up by the concerned respondents and ultimately by order dated 27.7.1995 as contained at Annexure-10, the respondents disposed off the representation without actually deciding the matter in relation to promotion of the petitioner and merely proceeded to state that the respondent No. 8 was senior to the petitioner and that he had been given promotion as per Government Rules and Regulation. Nothing has been said as to why the petitioner's case was not considered notwithstanding his being eligible on all counts having completed 8 years of regular service in the year 1992 on the post of Forester.

12. Mr. N.N. Tiwari has further drawn attention of this Court to the affidavit filed by the petitioner in reply to the Counter Affidavit of the respondent No. 8 and he has submitted that the State respondents have all along acted in a very weird manner in so far as the petitioner is concerned. He draws attention to Annexure-14 appended thereto which contains the list of candidates securing first position in the State in the Combined Guards' Examination together with Honours and points out that at internal page 36 thereof (list 2) the name of petitioner is at S. No. 29. According to him, this is a document which was circulated on 29.1.1997 i.e., much after dealing of the representation of the respondent No. 8 and if the story of the respondent No. 8 was correct, then at least this was a document which should have included his name in the same list-2 along with one Balbhadra Sahu who is shown at S. No. 15 being an examinee/Trainee during the Session 1978-79. The reason why Mr. N.N. Tiwari draws attention of this Court to this Affidavit as an important document, is to demolish the case of the respondent No. 8 who claims to have obtained Honours marks in the Session 1979-80 and also to demolish the claims of respondent No. 8 to the effect that he was "bracketed" and said to have secured first position with Honours marks as stated in paragraph 13 of the Counter Affidavit. Paragraph 13 of the Counter Affidavit of the respondent No. 8 reads as follows :--

"13. That the statements made in paragraphs 12 and 13 are misleading. In this context it is stated that this respondent No. 8 after his result in which he was placed at third position with honours and had claimed for re-evaluation of his answer books by making representation before the Head of the Forest Department since very beginning. The matter was under consideration and finally the Department and the authority decided that all the three that is first, second and the third with Honours of the Sessions 1978-79 be prackated and treated as first with Honours and accordingly the petitioner was given promotion to the post of Forester with effect from 21.3.1979 which will be quite evident from the discussion made in Annexure E to G of this counter affidavit as also from letter No. 190(C) dated 19.12.1986 of the then Principal Chief Conservator of Forest to the Conservator of Forest, Southern Circle, Chaibasa (Annexure-4 to the writ petition) and letter No. 8856 dated

4.10.1986 of Principal Chief Conservator of Forest to/All Conservator of Forest/All DFO on the basis of which office order No. 8/C dated 31.12.1986 was issued by the Conservator of Forest, Southern Circle, Chaibasa giving promotion to the petitioner with effect from the date of his result of his training, that is to say 21.3.1979.

13. Thus from a perusal of the aforementioned document brought on record and taking into consideration the submissions of the learned counsel for the petitioner it appears that in so far as the case of promotion of the petitioner is concerned, the State respondents have acted in a very peculiar manner. They have also similarly acted in a very peculiar manner in so far as granting promotion to the respondent No. 8 on the post of a Range Officer of Forests contrary to the provisions of Rule 3.21 of the Bihar Forest Rules as also in the initial promotion on the post of a Forester.

14. It is further apparent, upon considerations of the relevant facts and materials and as argued and submitted, that the petitioner was in fact entitled to be promoted in the year 1992 itself but that was denied to him. However, taking into consideration that the respondent No. 8 was promoted such a long time ago, this Court, at this stage does not consider it appropriate to interfere with his promotion. This does not however mean that the petitioner shall be deprived of his legal right for all times to come. If he was in fact entitled to be considered for promotion in the year 1992 then the respondents were equally bound to have duly taken his case into consideration and that having not been done, the respondents must be said to have acted in a hostile manner in so far as the petitioner is concerned.

15. In that view of the matter, the writ Petition must succeed to the extent as indicated above as also to the extent being indicated here-in-after.

The writ petition stands disposed off. The promotion of the respondent No. 8 is not interfered with for the reasons stated above. Further, the State respondent are now directed to immediately and forthwith him promotion to the post to which he became entitled in the year 1992 and there after if there be any further promotion due, the same be also considered in accordance with law. As a consequence of this order, Annexure-10 shall be deemed to be non effective.