

Sahdeo Jha and Others

Vs

Union of India and Others

Civil Appeal No. 4423 of 1990

P. K. Naberia

Vs

Union of India and Others

Writ Petition (Civil) No. 1338 of 1990

(L. M. Sharma, M. M. Punchhi, Yogeshwar Dayal JJ)

04.02.1992

JUDGMENT

SHARMA, J. -

1. This appeal is directed against the judgment of Central Administrative Tribunal, Patna Bench, rejecting the writ petition of the appellants filed before the Patna High Court and later transferred to the Tribunal. They claim seniority over the respondents 5 onwards in the following circumstances.
2. The appellants were appointed in the Bihar Superior Forest Service in the year 1964. Subsequently steps were taken for constituting the Indian Forest Service in accordance with the provisions of the Indian Forest Service (Initial Recruitment) Regulations, 1966, and according to the case of the appellants they were wrongly excluded from the All India Service. The selection board, which was examining the cases of those in the Bihar Superior Forest Service, did not adjudge them suitable on the basis of their service records. The appellants challenged the decision by a writ petition before the Patna High Court which, after some argument, was withdrawn.
3. The appellants were later promoted in 1972-73, but their year of allotment was not immediately determined. It is stated on their behalf that it was only in 1978 that they were assigned 1968 as the year of allotment and placed below their juniors respondents. The seniority list was accordingly prepared in 1979 and in 1980 they filed the second writ petition which had been dismissed on transfer by the Tribunal by the impugned judgment.
4. The respondents 5 to 7, who were also in the State Service, were appointed to the Indian Forest Service as direct recruits with effect from July 1, 1968 as a result of the competitive examination held in the year 1967 in accordance with the rules, and were assigned 1968 as the year of allotment. Relying upon a statement in the counter-affidavit of the State in C.W.J.C. No. 245 of 1968 it is contended on behalf of the appellants that they were entitled to be assigned four or five years before 1968 as their year of allotment and if that had been done, they would have been senior to the

respondents. The appellants have also contended that they were desirous of competing as direct recruits but they were wrongly not allowed to do so as a result of which they could not be included in the Indian Forest Service before 1972-73. This ground is directed against some of the other respondents also as detailed in the judgment under challenge.

5. Their claim for being included originally when the All India Service was constituted has been rejected by the Tribunal *inter alia* on the ground that the appellants were not entitled to press the same in view of their withdrawing the earlier writ case being C.W.J.C. No. 245 of 1968. So far the other question is concerned, the Tribunal pointed out that the appellants were guilty of gross delay of about a decade in approaching the court, during which period some of the selected officers had been promoted to higher grades and some of them had retired from service.

6. Mr. P. P. Rao, appearing in support of the appeal, has contended that the withdrawal of the earlier writ petition by the appellants should be ignored and the case should be decided on merits in view of the decision in *K. Prasad v. Union of India* (1988 Supp SCC 269 : 1988 SCC (L&S) 710 : (1988) 7 ATC 632 : (1988) 2 SCR 285). The learned counsel further submitted that in view of the assurance given by the Union of India in its affidavit in C.W.J.C. No. 245 of 1968, the appellants were entitled to the advantage of four and five years in the matter of assignment of year of allotment which has been wrongly denied to them. Reliance has been placed on the latter portion of paragraph 19, which is quoted below :

"I am (to) mention here that if and when any of the petitioners get appointed to the Indian Forest Service under the provisions of the Indian Forest Service (Promotion) Regulations, 1966, his seniority in terms of this year of allotment will be antedated by 4-5 years. Thus if any such officer is appointed by promotion in 1971, his seniority could conceivably be higher than of those appointed as a result of the first competitive examination held in 1967".

This writ case was allowed to be withdrawn on November 21, 1968 by the following order :

"After having argued the petition at some length, Mr. Balbhadra Prasad Singh, appearing for the petitioners, thought it proper to withdraw the petition in view of the statements in the counter-affidavit of the Union of India that there is chance for inclusion of their names as well in future. The application is accordingly allowed to be withdrawn."

The argument is that the Union of India is bound to make its promise good as included in its affidavit quoted above. We have examined the impugned judgment and the relevant documents and in our view the Tribunal was perfectly correct in rejecting the plea. It is wrong to suggest that any assurance had been given in the matter of assignment of the year of allotment beyond the rules. All that was done was to point out that if and when the appellants got promoted to the Indian Forest Service, they were likely to get the year of allotment four or five years before the year in which they are actually promoted. The illustration given in the affidavit that if the promotion took place in 1971 they could go back to 1967 in the matter of assignment of year of assignment of year of allotment does not leave any for doubt that the affidavit was merely explaining the effect of working out of the rules in the matter of assignment of year of allotment. Since the appellants were not promoted before 1972-73 they could not go back beyond 1968. While withdrawing the writ petition before the High Court, after arguing for some time, the learned counsel for the appellants had merely expressed a hope that there was a chance for the appellants of getting an earlier date for their year of

employment. If the appellants had been promoted to the Indian Forest Service in 1970 or 1971, the hope expressed by the counsel would have come true. Not having done so they cannot now ignore their earlier writ petition which had been withdrawn by them. The Tribunal is, therefore, right in not permitting them to re-agitate the same question again.

7. We also agree with the view of the Tribunal on the question of the undue delay in the appellants' filing the second writ petition. The argument based upon the judgment of this Court in K. Prasad case (1988 Supp SCC 269 : 1988 SCC (L&S) 710 : (1988) 7 ATC 632 : (1988) 2 SCR 285) has been correctly repelled in the impugned judgment. The appeal is, therefore, dismissed, but in the circumstances without costs.

8. So far Writ Petition (Civil) No. 1338 of 1990 is concerned, it was filed in December 1990, that is three years after December 10, 1987 when the judgment in K. Prasad case (1988 Supp SCC 269 : 1988 SCC (L&S) 710 : (1988) 7 ATC 632 : (1988) 2 SCR 285) was delivered. The cause of action to the petitioner had arisen in 1970 and the explanation offered by the petitioner for the delay is entirely unsatisfactory. When the case was placed on the cause list for preliminary hearing on January 9, 1991, the bench instead of issuing rule is directed it to be placed on board along with Civil Appeal No. 4423 of 1990 with a notice to the respondents. The question of delay apparently was not considered at that stage and the pendency of the case awaiting the listing of Civil Appeal No. 4423 of 1990 cannot be relied upon by the petitioner in this regard Accordingly the writ petition is also dismissed but without costs.

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