

M. Mazharuddin Ali and Others

v.

Government of A.P. and Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE SUJATA V. MANOHAR HON'BLE MR. JUSTICE
A.P. MISRA

C. A. No. 1866-82 of 1994 with No. 613 of 1995, 4427, 4428, 4429, 4430 of
1999 | 27-07-1999

CAs No. 1866-82 of 1994

1. The appellants in these appeals were promoted from the post of Deputy Forest Range Officers to the post of Forest Range Officers in the State of Andhra Pradesh under the order of 15-6-1991. The appellants had not passed the departmental test required for promotion to the post of Forest Range Officers. They, however, contended that by a memo dated 26-3-1991 issued by the Principal Secretary to the Government, the condition requiring them to pass the departmental examination was relaxed in terms of that order and hence they were legitimately promoted. It should be noted that the promotion was temporary since the vacancies were only available to direct recruits while the appellants were promotees.

2. Their promotion was challenged before the Andhra Pradesh Administrative Tribunal by the Deputy Forest Range Officers who had already qualified in the departmental tests. By the impugned judgment and order dated 26-3-1993, the Andhra Pradesh Administrative Tribunal has set aside the order of promotion and has further given a direction that if any of the present appellants has become qualified subsequently, he may be considered for the subsequent panels after he became qualified.

3. We are not concerned in these appeals with the subsequent circulars or orders issued in connection with passing or not passing the departmental examination. Hence, we have not considered the same.

4. The terms and conditions of service of the appellants are governed by the Andhra Pradesh State and Subordinate Services Rules, 1962. R.37 and 47 of the said rules are as follows:

"37. Temporary promotion.-- (a)(i) Where it is necessary in the public interest to fill emergently a vacancy in a post borne on the cadre of a higher category in a service or class by promotion from a lower category and if the filling of such vacancy in accordance with the rules is likely to result in undue delay, the appointing authority may promote a person temporarily otherwise than in accordance with the said rules.

(ii) No person who does not possess the qualifications, if any, prescribed for the said service, class or category, shall ordinarily be promoted under clause (i). Every person who does not possess such qualifications and who has been or is promoted under clause (i) shall be replaced as soon as possible by promoting a person possessing such qualifications.

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(dd) The appointing authority shall have the right to revert to a lower category or grade any person promoted under sub-r.(a) or sub-r.(b) at any time without assigning any reason and without notice.

(e) If such person is subsequently promoted to the higher category in accordance with the rules he shall commence his probation if any, in such category from the date of such subsequent promotion or from such earlier date as the appointing authority may determine.

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47. Relaxation of rules by the Governor.-- No rule made under the proviso to Art.309 of the Constitution of India or continued under Art.313 of the

Constitution shall be construed to limit or abridge the power of the Governor to deal with the case of any class or category of persons for being appointed to any civil post, or of any person who is serving or has served in a civil capacity under the Government of Andhra Pradesh in such manner as may appear to him to be just and equitable:

Provided that where any such rule is applicable to the case of any person or a class of persons, the cases shall not be dealt with in any manner less favourable to the person or class of persons than that provided by that rule."

5. Apart from the above rules, in respect of the Forest Subordinate Service, the State of Andhra Pradesh has also framed specific rules known as "the Andhra Pradesh Forest Subordinate Services Rules". The rules which are relevant for our present purpose are the Andhra Pradesh Forest Subordinate Services Rules of 1986. These rules are in addition to the general rules, namely, the Andhra Pradesh State and Subordinate Services Rules of 1962.

6. Under the Andhra Pradesh Forest Subordinate Services Rules, 1986, the qualifications which are prescribed for the post of Forest Range Officers by promotion, inter alia, include Condition 3, which requires that the candidate must have passed the departmental tests, namely, Office Procedure, Accounts and Forest Law, as prescribed in GOMs No. 1318, Food & Agriculture (Forest II) Department dated 1-5-1965. The reference to GOMs No. 1318 dated 1-5-1965 is for the purpose of describing in detail the departmental tests in the three subjects of Office Procedure, Accounts and Forest Law which are dealt with in detail in the said GOMs. Under R.5 of the Andhra Pradesh Forest Subordinate Services Rules, 1986, it is expressly provided that no person shall be eligible for appointment to the post (inter alia) of Forest Range Officer unless he possesses the qualifications specified in the corresponding column (3) of that post, which includes the condition of passing the departmental tests.

7. Undoubtedly, under the general service rules, namely, the Andhra Pradesh State and Subordinate Services Rules, 1962 under R.47 the Governor has the power to relax the rules relating to any class or category of persons for being appointed to any civil post. The rule of relaxation is very wide. It would also govern any relaxation of rules relating to passing of a departmental test or even

temporary promotions made in relaxation of any rule. In the present case, however, the Tribunal has rightly observed that no order granting relaxation from the rule requiring the passing of a departmental test before promotion has been actually passed. The appellants drew our attention to two documents. The first document is GOMs No. 80 dated 26-3-1991 which deals with the panel of Deputy Forest Range Officers prepared for promotion to the post of Forest Range Officers for the year 1990. Under clause 4 of that GOMs No. 80, it is provided as follows:

"4. Under GR 47 in Part II of the A.P. SSC Rules, the Governor of A.P. hereby relaxes the provisions contained in R.5 of the A.P. FSS Rules relating to Forest Range Officers, for passing of the departmental tests, in favour of the following Deputy Range Officers in Zones VI and IV in respect of the test/tests mentioned against each for purpose of their promotion as Range Officers from the 1990 panel."

8. Clause 6 of the said GOMs provides that the relaxation of rules ordered above shall be given effect retrospectively from the dates from which orders were issued by the Principal Chief Conservator of Forests promoting the persons named in the GOMs as Range Officers. Clause 7 thereof ratifies the action of the Principal Chief Conservator of Forests in having promoted the said individuals as Range Officers on 21-7-1990 and 31-8-1990, pending relaxation of rules by the Government. The entire GOMs is by order and in the name of the Governor of Andhra Pradesh. Clearly, therefore, in respect of those Deputy Forest Range Officers who were promoted in 1990 there is an order under R.47 relaxing the requirement of their having to pass the departmental test, subject to the conditions which are laid down in that GOMs.

9. In respect, however, of the panel prepared for the year 1991 in which the names of the appellants are included, the only document which is on record is Memo No. 30676-For.IV/90-2 dated 26-3-1991. In this memo, it is undoubtedly stated that the Government has examined the request to relax the conditions relating to passing of a departmental test in consultation with the Principal Chief Conservator of Forests. The memo thereafter goes on to state that the Government has, therefore, decided that relaxation from the rule relating to the passing of a departmental test may be given to the Deputy Range Officers in the

1991 panel for promotion as Range Officers for the last time and no further relaxation will be given in future. Thereafter, under clause 6 it is stated:

"6. The Principal Chief Conservator of Forests is requested to take further action accordingly and submit specific proposals to Government for relaxation of rules in favour of those Deputy Range Officers who are included in the panel of 1991 for promotion as Range Officers."

10. The memo is signed by the Principal Secretary to the Government. The memo is therefore not an order of relaxation under R.47. It requires the Principal Chief Conservator of Forests to submit a specific proposal. Thereafter an order of relaxation is to be issued. The material on record does not show any specific proposals being submitted by the Principal Chief Conservator of Forests to the Government for relaxation of rules as required under clause 6 of the memo. We also do not find any order of the Governor issued under R.47 granting such relaxation in respect of the panel for the year 1991 as was done in the case of the 1990 panel.

11. In these circumstances, it is difficult to accept the contention raised by the appellants that they were promoted after relaxation of rules in their favour. They appear to have been promoted in anticipation of such relaxation being given. But actual relaxation does not seem to have been given. The appellants contend that immediately after their orders of promotion, applications were filed before the Andhra Pradesh Administrative Tribunal by the qualified Deputy Forest Range Officers and hence no further steps were taken to obtain an order of relaxation as in the case of the 1990 panel. That may be an explanation, but that will not come to the aid of the appellants when, as a matter of fact, there is no specific order of relaxation of a rule requiring them to pass the departmental test for promotion.

12. We, therefore, uphold the finding of the Tribunal to the effect that without passing the departmental examination, the appellants could not have been promoted in the year 1991 even temporarily. R.37(a)(ii) of the general rules prohibits temporary promotion of an employee without qualifications. If promoted, he is required to be reverted as set out in R.37(a)(ii). The promotion of the appellants in 1991 is therefore set aside. The Tribunal, however, has

rightly held that if any of the appellants has in the meanwhile qualified, he must be considered for promotion after he became qualified. The appeals are, therefore, dismissed.

Civil Appeal No. 4427 of 1999 [@ SLP (C) No. 16092 of 1994]

13. Leave granted.

14. Appellants 1, 2, 3 and 5, namely, P. Mogileshwara Rao, G. A. Majeed, M. Narasimhulu and B. Rama Chandra Reddy have been promoted under GOMs No. 80 dated 26-3-1991 after relaxation of rules since their names were in the panel prepared for the year 1990 and their names are expressly set out in clause 4 of the said GOMs as persons in whose favour the relaxation was granted. However, in the case of these appellants, it is stated in clause 4 of the said GOMs that they have not passed tests in (1) Office Procedure, (2) Accounts, and (3) Forest Law. Under clause 5, the relaxation in their favour is subject to the condition that the individuals shall pass the tests which have not been passed within a period of three years from the date of promotion failing which they will be reverted.

15. In case Appellants 1, 2, 3 and 5 have not passed the said two tests within three years of their promotion as set out in clause 5, they will have to be reverted as set out in GOMs No. 80. If, however, they have passed the said two tests within the stipulated period, they are entitled to the promotion which was granted to them in 1990 by relaxing the rules under GOMs No. 80 dated 26-3-1991.

16. The rest of the appellants are governed by our judgment in CAs No. 1866-82 of 1994. The appeal is disposed of accordingly.

Civil Appeals No. 4428-30 of 1999 [@ SLPs (C) No. 16089-91 of 1994]

17. Leave granted.

18. The appellants in these appeals will be governed by the ratio of our judgment in Civil Appeals No. 1866-82 of 1994.

Civil Appeal No. 613 of 1995

19. The appellants in this appeal are Deputy Forest Range Officers who have already qualified by passing the departmental tests. Their promotion will, therefore, be governed by the rules in question. No further directions are required to be given.

The appeal stands disposed of accordingly.