

R. B. Desai and Another

Vs

S. K. Khanolker and Others

Civil Appeal No. 4587 of 1999

(CJI Dr. Anand, M Jagannadha Rao, N. Santosh Hegde JJ)

19.08.1999

JUDGMENT

SANTOSH HEGDE, J. –

1. Leave granted.

2. Heard learned counsel.

3. In this appeal the appellants are challenging the judgment of the High Court of Bombay at Goa dated 22-6-1998 in Writ Petition No. 223 of 1995. The appellants were Respondents 4 and 5 before, the High Court and Respondent 1 was the writ petitioner. The writ petition was filed contending, inter alia, that by virtue of the ranking assigned to Respondent 1 in the eligibility list of Range Forest Officers (RFOs), he was entitled to be promoted to the next promotional post i.e. of ACFs prior to the date the appellants came to be so promoted. The writ petition was opposed both by the State of Goa as also by the appellants contending that the ranking as found in the eligibility list has no bearing for the purpose of seniority in the cadre of RFOs, from which cadre the promotions are to be made, and that the eligibility list was maintained only for the purpose of reflecting whether the officers in the cadre of RFOs had acquired the requisite eligibility for promotion or not. It was further contended that once the eligibility is acquired, the promotions will have to be made on the basis of seniority-cum-merit of officers who are eligible to be promoted, without reference to the date of acquiring the eligibility.

4. The High Court of Bombay at Goa relying upon a note appended to the rule concerned came to the conclusion that the ranking assigned in the eligibility list should be given weightage over the ranking assigned in the seniority list, and in view of the fact that the ranking of the first respondent was higher in the eligibility list, he was entitled to be promoted as an ACF before the appellants were so promoted. Consequently, a writ to that effect was issued assigning a rank higher than the appellants' in the seniority list of Assistant Conservator of Forests.

5. There is no dispute in regard to the basic facts involved in this case. The appellants were appointed to the post of Forest Officer in the year 1964-65 and after the required training joined the Forest Department of the Government of Goa as Foresters w.e.f. 27-1-1965. They were promoted to the next higher cadre of RFO w.e.f. 8-3-1974. The first respondent directly joined as RFO on 1-11-1975 a date subsequent to the date of promotion of the appellants. In the various seniority lists including the final seniority list prepared and published on 30-7-1991 of the officers in the cadre of RFOs the appellants were shown at Sl. Nos. 5 and 8 whereas Respondent 1 was placed at Sl. No. 11. The ranking assigned in that seniority list has not been challenged at any point of time.

6. The amended rule of 1988 pertaining to the promotion to the cadre of ACFs provided that the said post is a selection post and the method of recruitment to the said post is in the ratio of 75% by promotion and 25% by direct recruitment. In the case of promotion the eligibility criteria are fixed as under :

"(i) Range Forest Officers with 5 years' regular service in the grade and possessing diploma of Forest Rangers' Training from Forest Rangers College in India or equivalent.

(ii) Unqualified Range Forest Officers trained in Forest School with 10 years' regular service in the grade.

Note 1. - The eligibility list for promotion shall be prepared with reference to the date of completion by the officers of the prescribed qualifying service in the respective grade/posts.

Note 2. - Unqualified Range Forest Officers shall after promotion as Assistant Conservator of Forests would be required to complete successfully refresher courses at FRI&C."

7. As per this rule, Respondent 1 required a qualifying service of only 5 years while the appellants required 10 years of service in the cadre of RFOs for qualifying for the next promotion. This difference in the duration of service between the two classes of Range Forest Officers is only for the purpose of acquiring the eligibility.

8. The first respondent had contended before the High Court that it is the ranking in this eligibility list which should be preferred as against the ranking in the seniority list of the RFOs, while considering the case for promotion to the post of ACFS. While the appellants contended that once they entered in the eligibility list the date of eligibility had no preferential benefit and it is only the seniority vis-a-vis the eligible candidates as shown in the seniority list of the RFOs that should be taken into consideration. They contended that on the date when the vacancy arose in the cadre of Assistant Conservator of Forests they had put in 17 years of service in the cadre of RFOs and were seniors to the first respondent. Therefore, they were entitled to be promoted, if found fit, earlier to the first respondent. However, the argument addressed on behalf of the first respondent found favour with the High Court. The High Court relying upon Note 1 to the rule, as stated above, came to the conclusion that the language of the said note mandated the eligibility list to be prepared with reference to the date of eligibility, hence, a person who acquired the eligibility earlier, was entitled to be promoted to the post of ACFs without reference to his ranking in the seniority list. Consequently, Respondent 1 having acquired the eligibility earlier, he should be considered first for promotion.

9. We are unable to agree with this reasoning of the High Court. As noticed above, promotion to the post of AFOs is made from the post of RFOs to the extent of 75% of the vacancies. There is no dispute that both the appellants and the first respondent belong to the cadre of RFOs. The only difference between them being that the appellants were promotees in the said cadre while the first respondent was a direct recruit. It is an accepted principle in service jurisprudence that once persons from different sources enter a common cadre, their seniority will have to be counted from the date of their continuous officiation in the cadre to which they are appointed. On facts, there is no dispute that the appellants entered the RFOs' cadre on a date anterior to that of the first respondent,

therefore, in the cadre of RFOs, the appellants are senior to the first respondent. However, to be considered for promotion, the rule required RFOs to acquire the eligibility as provided therein. Therefore, the question for consideration is : can the acquisition of an earlier eligibility give an advantage to the first respondent as against the appellants when an avenue for promotion opens in the cadre of ACFs even though at that point of time the appellants had also acquired the required eligibility ? We are of the opinion that if at the time of consideration for promotion the candidates concerned have acquired the eligibility, then unless the rule specifically gives an advantage to a candidate with earlier eligibility, the date of seniority should prevail over the date of eligibility. The rule under consideration does not give any such priority to the candidates acquiring earlier eligibility and, in our opinion, rightly so. In service law, seniority has its own weightage and unless and until the rules specifically exclude this weightage of seniority, it is not open to the authorities to ignore the same.

10. The High Court has relied upon the language of Note 1 to the rule to come to the conclusion that the persons with earlier date of eligibility have a weightage over others solely on the basis that the note required the list of eligibility to be maintained on the basis of the date of acquisition of such eligibility, hence eligibility has preference over seniority. Our reading of the said note does not persuade us to give any such preference. If the rule did contemplate such advantage, it would have stated so in specific terms. We also do not see any special objective in giving preference to the date of eligibility as against seniority. Eligibility, of course, has a relevant object but date of acquisition of eligibility, when both competing persons have the eligibility at the time of consideration cannot, in our opinion, make any difference.

11. If on the date of consideration, the appellants did not have the eligibility then certainly it is the first respondent who ought to have been considered for the said promotion and if he was so promoted earlier than the appellants he would have acquired a higher ranking in the seniority list of ACFs. That not being the case, we are unable to agree with the view taken by the High Court, as stated above, because on the date on which the avenue for promotion to the cadre of ACFs opened both the appellants as well as the first respondent had the necessary eligibility and their names figured in the eligibility list. That being so, as stated above, it is the appellants whose case ought to have been considered first and it was so done and they having been found otherwise suitable, they were rightly promoted earlier than the first respondent. Consequently, they are entitled to a higher ranking in the cadre of ACFs vis-a-vis the first respondent. The view taken by us also finds support from the judgment of this Court in *Union of India v. B. Jayaraman* (1994 Supp (1) SCC 95 : 1994 SCC (L&S) 420 : (1994) 26 ATC 746) wherein considering a similar argument this Court held : (SCC Headnote)

"The note in column 11 is only for purposes of giving eligibility to the erstwhile Assistants working as Superintendents Grade II for purposes, of being considered for promotion to the post of Superintendent Grade I and not for the purpose of seniority at all." with which view we respectfully agree.

12. For the reasons stated above, this appeal succeeds and is allowed. The judgment and order under appeal is set aside. The writ petition shall stand dismissed.