

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.06.2018

Coram

The Honourable Mr. Justice M.M.SUNDRESH

and

The Honourable Mr. Justice N.ANAND VENKATESH

Writ Appeal No.1879 of 2010

Kannan

... Appellant

..Vs..

- 1.The State of Tamil Nadu,
rep.by its Secretary to Government,
Forests and Fisheries Department,
Fort. St.George,
Chennai 600 009.
- 2.The Principal Chief Conservator of Forests,
Panagal Buildings, Saidapet,
Chennai-15. Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act
Appeal against the order dated 09.03.2010 made in W.P.No.33489
of 2007.

Prayer in WP.No.33489/2007:Petition filed under Article 226 of
the Constitution of India for the issue of a writ of
certiorarified mandamus, to call for the records of the 2nd
respondent made in ref.No.B1/8749/2000 dt 28.8.2007 and
quash the same and consequently direct the respondents to
promote the petitioner to the post of Ranger by applying the
provisions especially rule 11 of special rules on the date on
which his juniors were promoted by applying rule 11 of special
rules and with all monetary and service benefits.

For Appellant : Mrs. Selvi George

For Respondents: Mr.S.Vijaya Prasad
Additional Government Pleader
(Forest)

JUDGMENT

(Judgment of the Court was delivered by N.ANAND VENKATESH.,
J.)

This writ appeal has been filed aggrieved by the order
passed in W.P.No.33489 of 2007, dated 09.03.2010.

2.The appellant who filed the writ petition was appointed
as a forester in the year 1981. His next avenue of promotion

from the post of Forester is to the post of Forest Ranger. There were different sources through which a person can be promoted to the post of Forest Ranger. One of the source was by way of writing the qualifying exams and undergoing training. According to the appellant, he opted for this source and wrote the qualifying examinations in the year 1988 and 56 persons who were working as Forester passed the qualifying examination including the appellant. It is the case of the appellant that only 30 Foresters were sent for training and the appellant was not sent for training. The appellant sent representations to the 2nd respondent to permit him to go for training. Since he was not sent for training, application was filed in O.A.No.730 of 1992 before the Tamil Nadu Administrative Tribunal and tribunal by an order dated 18.06.1992 gave certain directions to the respondents. The appellant was claiming his right under Rule 11 of the Special Rules which deals with 'deputation of Foresters to Rangers Course of Training' in Ranger's College. This rule ultimately came to be amended by virtue of a statutory amendment under Article 306 of the Constitution of India. By virtue of this amendment, this category of promotion came to an end. The appellant by virtue of his seniority from the category of Foresters' was promoted as Forest Ranger on 11.07.2008 and he retired on 31.01.2011. The appellant made a representation to the 2nd respondent to fix his seniority from the date of promotion of his junior with effect from 05.03.1989. This representation came to be rejected by the 2nd respondent by an order dated 28.08.2007. Aggrieved by the same, the appellant has filed the above writ petition seeking to quash the order passed by the 2nd respondent and also for a mandamus to direct the respondents to promote him to the post of Forest Ranger by applying Special Rule 11 from the date on which the other Foresters' were promoted.

3.The learned Single Judge considering of the facts and also the materials placed before the Court came to the conclusion that the Rule under which the appellant is seeking for promotion was no more available by virtue of the statutory amendment that took place on 10.05.1995 and the appellant not having challenged this amendment is not entitled for any relief.

4.The learned counsel for the appellant would submit that it was not the mistake of the appellant for not under going the training more particularly when he had passed the qualifying examination. It is the further contention of the learned counsel for the appellant that the juniors who were sent for training became Forest Rangers and thereby his seniority got affected when the appellant ultimately got the promotion to the post of Forest Ranger. The learned counsel for the appellant would further submit that at the time when the appellant took the examination and was waiting to go for training, Special Rule 11 was available and the subsequent amendment by which this Rule was removed cannot be put against

the appellant. The learned counsel for the appellant finally submitted that the appellant was fully eligible and qualified to hold the post of Forest Ranger as on 05.03.1989 and his seniority should be fixed from that date onwards.

5.The learned Additional Government Pleader (Forest) for the respondents reiterated the stand taken before the learned Single Judge and would submit that no interference is warranted against the order of the learned Single Judge.

6.This Court has considered the rival submissions and also the pleadings and materials placed before us.

7.From the records, this Court finds that by virtue of G.O.M.S.No.1054, dated 03.09.1983, a Board was constituted for recruitment of departmental candidates (from the trained foresters) for deputation to Rangers' course. After the written examinations were conducted during December 1988, 56 foresters were found eligible and they were tabulated in the order of merit based on the total marks obtained by each individual. Out of the 56 persons in the list, the 30 candidates were deputed for the Rangers' course training at various colleges. The remaining 26 foresters including the appellant who was placed in Sl.No.45, could not be deputed for the Ranger training as the quota of the seats for the Tamilnadu candidates allotted by the Government of India was only 30. In the meantime, this Rule was amended on 10.05.1995, and this source of promotion came to an end. Subsequently, the appellant came to be promoted as a Ranger by virtue of his seniority from the Foresters' category on 11.07.2008 and he has retired from service on 31.01.2011.

8.This Court has gone through the orders passed by the Tamilnadu Administrative Tribunal on the applications filed by the appellant and others and we do not find any specific directions given by the tribunal to send the appellant for training. Due to efflux of time, the Special Rule itself came to be amended and the appellant was no more eligible to claim promotion by virtue of this Rule.

9.The learned Single Judge has considered the entire issue in detail and has given a finding that by virtue of the statutory amendment under Article 306 of the Constitution of India, Special Rule 11 came to be abolished and as a result of which the appellant has lost his right even to be considered under the said Rule. The learned Single Judge has given a further finding that the appellant has not chosen to assail the validity of the statutory amendment.

10.There is no statutory compulsion on the part of the respondent to consider the case of the appellant in the absence of any Rule. Nobody has a fundamental right for promotion. At the best an employee only has a right to be considered for promotion and nothing more than that. In the

present case the Rule under which the appellant is claiming for promotion is no more in force from the year 1995 onwards. A right to be considered for promotion is not a right to get promoted. The chance of promotion is not a condition of service and where there is no vacancy, the employee cannot seek for a promotion. Useful reference can be made to the judgment of the Hon'ble Supreme Court made in State of Jharkhand .V. Bhadey Munda and Another reported in [2014 10 SCC 398]. That apart, promotion of an employee can be considered on the basis of the amended Rule and it is not necessary that promotion must be considered only based on the Rule as it existed on the date of vacancy. Useful reference can be made to the judgment of the Hon'ble Supreme Court made in Deepak Agarwal and Another .v. State of Uttar Pradesh and Another reported in [2011 6 SCC 725].

11.In the present case on the date when the Rule was in force, the respondents were not able to send the appellant for training since in the order of merit, the appellant was in Sl.No.45. The respondents were able to send only 30 candidates for the Rangers' Course Training since the Government of India had allotted a quota of only 30 candidates. Subsequently, the Rule itself came to be amended and the appellant by virtue of the amendment was promoted from the Forester's category based on seniority since that was the Rule that was in force on the date when the appellant was considered for promotion.

12.This Court is satisfied with the reasons given by the learned Single Judge while dismissing the writ petition and this Court does not find any ground to interfere with the order passed in the writ petition.

13.Accordingly, the Writ Appeal stands dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar(Cs V)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Secretary to Government,
Forests and Fisheries Department,
Fort. St.George,
Chennai 600 009.

2.The Principal Chief Conservator of Forests,
Panagal Buildings, Saidapet,
Chennai-15.

+1cc to Special Government Pleader Sr.No.38826

SS(CO)
sm:4.7.2018

W.A.No1879 of 2010



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