

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT SITTING AT PANAJI, GOA.

Tr.A.No. 85/87

(Arising out of Writ Petition No. 158/85)

Tr.A.No. 86/87

(Arising out of Writ Petition No. 159/85)

Shri Mohan Gaonkar
Dy. Range Forester,
Pissonem, Canacona,
Goa.

... Applicant
in Tr.A.No.
85/87.

Shri V.D.Kunkoliekar
Dy. Range Forester,
Pissonem, Canacona,
Goa.

... Applicant
in Tr.A.No.
86/87

v/s.

Shri Jeao Jose Fernandes,
Range Forest Officer,
Mollem, Sanguem, Goa.

... Respondents

AND NINE OTHERS.

K.
CORAM: Hon'ble Chairman Shri ^{Madhava} Reddy
Hon'ble Member (A) Shri S.D.Prasad

Appearances :

Mr. F. Rebello
Advocate
for the Applicants

Mr.M.I.Sethna
Advocate
for the Respondents

JUDGMENT

(PER: S.D.Prasad, Member (A))

Dated: 28 Sep. 1988

The two Writ Applications listed above have come to this Tribunal on transfer under Section 29 of the Administrative Tribunals Act, 1985. They are both based on almost identical facts and are, therefore, being covered by this common judgment.

2. It will suffice to ~~deal~~ in the first instance ~~with~~ ^{Q.B.} the facts and pleadings relating to the first case, viz., Writ Petition No. 158/85 which, on transfer, was ~~initially~~ ^{Q.B.} registered as Tr. 85/87. The Petitioner in this case, Shri Mohan Gaonkar, was appointed Round Forester on 2.12.1974 as a direct recruit and confirmed as such in the year 1978. In terms of Rules 3 & 4 of the Goa Government Department of Forests' (Non-gazetted, non-ministerial posts') Recruitment Rules, 1966 - hereinafter referred to as the Recruitment Rules - the promotion post for Round Forester was shown as Range Forest Officer (RFO, for short), 50% of which was to be filled by promotion of "Round Foresters with five years standing in the grade" and the remaining 50% by direct recruitment. It appears that in August, 1980, another ~~intermediate~~ ^{Q.B.} ~~intermediate rank of~~ post known as Deputy Range Forest Officer - Dy.RFO, for short - was created in the pay-scale of Rs.330-560 (the corresponding pay-scales for Round Foresters and RFOs being Rs.260-350 and Rs.425-700 respectively). Admittedly, these posts of Dy.RFOs, ~~they were~~ not included in the Schedule to the Recruitment Rules. None-the-less the petitioner along with six others (including the petitioner in Tr. 86/87) got promoted "on ad-hoc basis" as Dy.RFO, vide Order dated 30.7.1982 (Ex.'B'). Eight others were similarly promoted on 22.5.1985 (Ex.'C'). A separate seniority list of Dy.RFOs was also circulated on 18.9.1984 (Ex.'D').

3. The grievance in this case arises from the fact that in making promotion to the next higher rank of RFO, vide Order dated 22.5.1985 (Ex.'E'), the petitioner was left out while two of the seven promotees were Round Foresters who had not earlier got promoted ^{even} as Dy.RFO. These promotions have been assailed mainly on the following two grounds :-

(i) Round Foresters, who were subordinate to Dy.RFOs and belonged to a lower rank and pay-scale#, could not be considered for promotion to the post of RFO along with their superiors, i.e., Dy.RFOs; failure of the respondents 8-10 to carry out suitable amendments in the Recruitment Rules for this purpose was "arbitrary being violative of Articles 14 & 16 of the Constitution of India; and

(ii) the case of the petitioner had not been considered properly and "on merit-cum-seniority" basis by the Departmental Promotion Committee (DPC, for short).

4. The official respondents (Nos. 8-10) have filed a written statement in which the impugned promotions have been defended by the following assertions;

(a) The regular post held by the applicant was that of Round Forester to which he was appointed on 1.12.1974 ("but he has not been confirmed in that post");

(b) The promotions to RFOs, a selection post, were made in accordance with the applicable Recruitment Rules and the recommendations of the DPC; and

(c) In December 1985, New Recruitment Rules have been published which deal with the post of Dy.RFO.

5. The main point for adjudication is whether there was any illegality or infirmity in the consideration of Round Foresters along with Dy.RFOs in regard to promotion, for the post of RFO. It is common ground that at the point of time when these promotions were considered, the posts of Dy.RFOs were not included in the Schedule to the Recruitment Rules. Therefore, the posts of Dy.RFOs were ex-cadre posts from which the holders of those posts could not lay any claim for promotion to the next higher post of RFO. In fact, if the petitioners, or other Dy.RFOs for that matter, were considered for promotion to the post of RFO at the time, it was not because they were Dy.RFOs but because they held on a substantive, or atleast regular, basis the post of Round Foresters and also fulfilled the requisite qualification of "five years' standing in the grade". It has been contended on behalf of the petitioners that the Recruitment Rules should have been amended so as to encadre the posts of Dy.RFO and to bring them within the purview of the Recruitment Rules. We find no legal basis to uphold such contention. The question whether certain posts should be brought within a cadre or left hanging outside is essentially a matter for administrative decision. No one can claim a legal or justifiable right to press for inclusion or exclusion of certain posts in a cadre. It may be that certain posts are created for trial on a short-term basis or the requirement itself may be of temporary nature. Therefore, it is not for us to delve into that aspect of the matter.

6. Shri F.Rebello, learned counsel for the petitioner also advanced the argument that a certain weightage should be given to the petitioners for the services rendered by them in the higher posts of Dy.RFO. Viewed purely from a legal

angle, we see no reason to uphold this contention either. In absence of any provision to this effect in the recruitment rules, the DPC could not be expected to bring in any such consideration in a relative assessment of merit of eligible candidates. However, ^{it was} asserted by Shri M.I.Sethna, learned counsel for the official respondents that the DPC had considered the records of all eligible candidates from 1977 to 1985. The relevant file relating to the proceedings of the DPC ~~was~~ also produced before us in support of this contention. More importantly, it was asserted by Shri Sethna that all the persons promoted to the rank of RFO vide impugned order dated 22.5.1985, were senior to the petitioners. In view of this, the petitioners can have no legitimate grievance against the promotion of persons who were their seniors in the substantive cadre to which they belonged.

7. Lastly, it may be pointed out that in the Order dated 30.7.1982 (Ex. 'B') promoting the petitioner to ^{ficitant} Dy.RFO, a signi~~ficant~~ foot-note was made and it reads as under :

"The above promotions will not bestow ^{on} them any claim for regular appointment and the service rendered on ad-hoc basis in the grade will not count for the purpose of seniority in that grade for eligibility for promotion in the next higher grade."

What the petitioner is claiming now runs counter to the stipulation made in the foot-note quoted above.

8. In view of the foregoing discussion, the two petitions must fail and are hereby rejected accordingly. There shall, however, no orders^g as to costs.