

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No(s). 2678/2007

GHULAM NABI & ORS.

Appellant(s)

VERSUS

MD,J&K FOREST CORPORATION SRINAGAR &ORS.  
(With appln(s) for directions and early  
permission to raise additional grounds)

Respondent(s)  
hearing and seeking

Date : 13/08/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA  
HON'BLE MR. JUSTICE PRAFULLA CHANDRA PANT

For Appellant(s)

Mr. Bharat Sangal ,Adv.  
Ms. I. Abenla Aier, Adv.

For Respondent(s)

Mr. G.M. Kawoosa, Adv.  
Ms. Manjula Gupta, Adv.

Mr. Ashok Mathur ,Adv.  
Ms. Binu Tamta ,Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is allowed in terms of signed order.

(Neeta)  
Sr. P.A.  
(Signed order is placed on the file)

(Usha Sharma)  
COURT MASTER

Signature Not Verified

Digitally signed by  
Neeta Sapra  
Date: 2014.08.19  
17:11:26 IST  
Reason:

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2678 OF 2007

GHULAM NABI & ORS.

Appellant(s)

VERSUS

Managing Director,  
J&K State FOREST CORPORATION SRINAGAR & ORS.

Respondent(s)

O R D E R

This appeal has been preferred by appellants against the judgment dated 18th November, 2005 passed by Division Bench of High Court of Jammu & Kashmir at Jammu in LPA (SW) Nos. 350 of 1998, 351 of 1998, 352 of 1998, 130 of 2000, 424 of 2001, 241 of 1998, 242 of 1998, 243 of 1998, 339 of 1999, 380 of 1998 and 442 of 2001.

By the impugned judgment, the High Court set aside the seniority list dated 11th July, 1992 with following observation:

"Having said all this, we feel convinced that the only right and correct basis for determination of inter se seniority in the category of the post of Deputy Manager (Divisional) was the merit secured by the contenders at the interview and the list prepared in order of this merit by the selection committee pursuant to advertisement notice dated 8th April, 1985, and not the merit obtained by them a DDR (Rangers Training Course) or, for that matter, the seniority of the contenders in the lower grade."

The respondents - J & K State Forest Corporation (in short "Forest Corporation") and its competent authorities have been directed to undertake a fresh seniority list in the category of

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Deputy Manager (Divisional) on the basis of merit obtained by candidates at the interview conducted by Selection Committee pursuant to advertisement notice dated 8th April, 1985.

The factual matrix of the case is as follows:

The Forest Corporation issued an advertised notice on 8th April, 1985 calling for applications for appointment against 22 posts of Deputy Manager (Divisional) from amongst the persons who had completed DDR (Rangers Training Course), having five years experience in the Government Department or Government Company. The appellants and the contesting respondents applied pursuant to the said advertisement. They were selected and appointed by letter No. S.F.C. Order No. 507 of 1985 dated 11 th December, 1985, relevant portion of which reads as follows:

"The J&K State Forest Corporation Srinagar  
S.F.C. ORDER NO.507 OF 1985  
DATED : 11.12.1985

As approved by the Establishment Committee its

meeting held on 04.12.1985, the following officials who have qualified their Rangers Course from various Colleges are hereby adjusted as Deputy Managers against the available vacancies in the pay scale of (835-1510) with effect from 01.04.1985 under Forest Corporation Service Rules and Regulations.

S.No.	Name
1.	Ashok Kumar Sharma
2.	Shokat Hussain Mintoo
3.	Abdul Gani Wahi
4.	Mohd Aslam Khataib
5.	Tariq Ahmed
6.	Abdul Kabir Naik
7.	Om Prakash
8.	Surinder Singh

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9.	Zahoor Ahmed Beig
10.	Amarjeet Daman
11.	Sat Paul Sharma
12.	Abdul Latif Seikh
13.	Mohd Shafi Shiekh
14.	Abdul Rashid Mir
15.	Sukesh Kumar Gupta
16.	Liaquat Ali Dar
17.	Ghulam Mohi-ud-sofi
18.	Ghulam Nabi Hajam
19.	Ashok Kumar Koul
20.	Parveez Hussain Khan
21.	Ishtiaq Ahmad Bhat
22.	Changer Razdan
23.	S. Satinder Singh
24.	Wajahat Javeed Koul

Sd/-Managing Director  
J&K State Forest Corporation Srinagar  
Dated: 11.12.1985."

It was a chance that those who were appointed including the appellants and the contesting respondents, majority of them were already working in the same department against lower post. No outsider was appointed as except one Mr.Wajahat Javeed Koul (Serial No. 24 of the appointment letter), who in fact was working on ad hoc basis in the same department. A seniority list was published by S.F.C. order No. 553 of 1986, dated 20th January, 1986 by the Managing Director, J & K State Forest Corporation, Camp-Jammu in order of their merit in DDR (Rangers Training Course) examination. This, however, resulted in representations made by all those officers who were holding lower post of Assistant Divisional Manager, in which they pleaded that fixation of seniority on the basis of any merit in DDR (Rangers Training Course) was in violation of Rule 15 of Corporation Rules. These representations were considered, and finding some weight in them,

the Corporation revised the tentative seniority on 15th December, 1989 to which objections were invited and which were filled by all the Deputy Manager (Divisional) who were promoted to these posts earlier. The legal opinion was also sought from the Law Department of the Government and it was decided to finally determine the inter se seniority of all the Deputy Manager (Divisional) on the basis of their seniority in the lower grade by order dated 11 th July, 1992.

This final seniority list dated 11th July, 1992 was challenged by the writ petitioners on several grounds, including it had altered their seniority list on malafide considerations and that their higher placement in the tentative seniority lists of 1985 and 1989 was totally ignored and overlooked and this could not be altered by the impugned seniority list to their detriment.

By impugned judgment and order dated 11th August, 1998, the Single Judge of the High Court allowed the writ petitions and set aside the seniority list. The decision was challenged by Managing Director of the Forest Corporation by filling different Letter Patent Appeals. Some of the appellants and contesting respondents also preferred Letter Patent Appeals against the said judgment before the Division Bench.

All the appeals were heard together and by impugned judgment dated 18th November, 2005 the Division Bench directed the respondents authorities to prepare a seniority list on the basis of marks obtained in the interview with observations as made and  
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quoted above.

Learned counsel appearing for the appellants referring to the facts and circumstances of the case and Regulation 15 contended that the appointment for all purpose should be treated as promotion and for that seniority as reflected in the lower post should be adhere to for determination of seniority against the higher post of Deputy Manager (Divisional).

On the other hand, according to learned counsel for the

Corporation and the contesting respondents, as per Regulation 15, in the matter of direct recruitment, the seniority is to be determined on the basis of merit list prepared by the Select Committee.

Learned counsel for the appellants contended that there was no seniority list prepared. After the interview certain marks might have been given for the interview but none of the members of Select Committee signed the document nor any merit list was prepared. This was denied by learned counsel appearing for the Forest Corporation. In view of such submission, this Court called for original record, which has been produced.

On perusal of the original record we find that there is no merit list prepared and signed by members of Select Committee. From the records, it is indicated that some marks were allotted against one or other name but not signed by any member, except one chart which was prepared by some person, whose signature is on the back side of the list without disclosing the exact name. In absence of such list, we are of the view that the seniority list cannot be drawn on the basis of so called merit list.

It is informed that interview was conducted simultaneously at two different places, one at Kashmir and another at Jammu. Though the record contains certain marks given on an unsigned chart prepared at Jammu, the marks allocated to the candidates who are interviewed at Kashmir are not on the record.

In exercise of powers conferred by Section 34 of the J & K State Forest Corporation Act, 1978, J & K State Forest Corporation enacted "The Jammu and Kashmir State Forest Corporation Service Regulations, 1981" (hereinafter referred to as the Regulations"). Regulation 15 relates to "Seniority" which reads as follows:

"15. SENIORITY

I. Seniority shall be determined by order in which appointments are made to any category of posts. Provided that, where more than one person is selected simulataneously for the same category of posts by a Selection Committee, the interse seniority of such persons, shall be as recommended by the Selection Committee either specifically or in

the order in which the names appear in the panel recommended by the Selection Committee.

II. In case of Departmental promotions, seniority of an employee in a grade shall be from the date of his promotion to that grade. When more than one employee is promoted on the same date, their inter se seniority shall be determined on the basis of their seniority in the lower grade.

III. In case/s of appointments made both by promotions and direct recruitment the order of seniority will follow the proportion in which vacancies are allocated as between direct and departmental hands.

IV. In case of change of appointment from one class or category of posts to another, on an employee's own request, provided the time-scale attached to both the posts is identical, the seniority in the new post

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shall be reckoned from the date the employee actually joins the new post after such changeover is ordered by the competent authority; and employee's claims to seniority and future promotions in the old post or cadre shall cease to exist. In case, however, such changeover is ordered by the competent authority in the interests of the Corporation, the seniority and promotion prospects of the employee in his own class/category shall not be affected adversely."

The employees having experience of five years working under the State Government or Companies owned by the State pursuant to an advertisement issued by the J & K State Forest Corporation were called for. Therefore, it is clear that the appellants and others were appointed by direct recruitment.

In case of direct recruitment Clause I of Regulation 15 shall apply for determination of seniority. Where more than one person is selected simultaneously for the same category of posts by a Selection Committee, the inter se seniority of such persons, shall be as recommended by the Selection Committee either specifically or in the order in which the names appear in the panel recommended by the Selection Committee. In the present case, there is no panel prepared by the Selection Committee but in order in which they have been recommended is reflected in their order of appointment dated 11th December, 1985. In that view of the matter, we hold that the seniority of the Deputy Manager (Divisional) appointed on 11th December, 1985 is required to be determined as per the order in

which the names appear in the order of appointment dated 11 th  
December, 1985.

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In view of the finding as recorded above, we have no option  
but to set aside the order dated 11th August, 1998 passed by the  
Single Judge in SWP Nos.742, 790 and 718 of 1992 and judgment  
dated 18th November, 2005 passed by Division Bench of High Court of  
Jammu & Kashmir at Jammu in LPA (SW) Nos. 350 of 1998, 351 of  
1998, 352 of 1998, 130 of 2000, 424 of 2001, 241 of 1998, 242 of  
1998, 243 of 1998, 339 of 1999, 380 of 1998 and 442 of 2001. The  
respondents are directed to publish a seniority list within two  
months.

The appeal is allowed with the aforesaid observations and  
directions.

.....  
.....J.  
(SUDHANSU JYOTI MUKHOPADHAYA )

.....  
.....J.  
(PRAFULLA CHANDRA PANT )

New Delhi,  
August 13, 2014.