

PETITIONER:
BINDESHWARI RAM

Vs.

RESPONDENT:
STATE OF BIHAR & ORS.

DATE OF JUDGMENT 19/09/1989

BENCH:
OJHA, N.D. (J)
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OJHA, N.D. (J)
VENKATACHALLIAH, M.N. (J)
VERMA, JAGDISH SARAN (J)

CITATION:
1989 SCR Supl. (1) 201 1989 SCC (4) 465
JT 1989 (3) 712 1989 SCALE (2) 655

ACT:

Bihar Forest Service Rules, 1953: Rule 35(iii)--Seniority--Fixation of inter-se seniority among Assistant Conservators of Forest--Determining Factor--Inter-se seniority held as Ranger.

Administrative Law: Statutory rule--Cannot be modified or altered by executive instructions.

HEADNOTE:

The appellant and respondents 7 to 13 are Assistant Conservators of Forest and are governed by the Bihar Forest Service Rules, 1953. As per Rule 3 thereof appointment to the said post is made either by direct recruitment or by promotion of selected Rangers.

The appellant and respondents 7 to 12 were promoters and respondent 13 was a direct recruit. Though the appellant was promoted subsequent to the promotion of respondents 7 to 12, his appointment was made retrospective. The appellant was the last to be confirmed as Assistant Conservator of Forest. As a Ranger also the appellant was appointed much later to respondents 7 to 12. On the basis of confirmation seniority has been determined. The appellant challenged the seniority of respondents 7 to 13 over him, by way of a Writ Petition in the High Court. He relied on a memorandum to the Cabinet which contained a note that if the appellant was found fit for promotion his place would be above 10 general category officers and since the memorandum was approved by the Cabinet his name in the seniority list should have been placed above those officers. The respondents resisted the claim stating that the Cabinet had not approved the memorandum in its entirety. The High Court dismissed the Writ Petition and this appeal, by special leave, is against the said judgment. The contentions raised before the High Court were reiterated in this appeal,
this appeal.

Dismissing the appeal,
202

HELD: 1.1. Rule 35 of the Bihar Forest Service Rules, 1953 specifically deals with seniority. In the instant case, Clause (i) of the proviso is not attracted. Even Clause (ii) is not attracted inasmuch as respondent No. 13 even though

was appointed by direct recruitment, was not appointed "at the same time" as the appellant and respondents 7 to 12. It is Clause (iii) which is relevant for the determination of the seniority inter-se of the appellant and respondents 7 to 12. On a plain reading of this Clause it is apparent that on substantive appointment of Rangers to the service by promotion, their seniority inter-se in the service is to be governed by "their seniority inter-se held as Rangers". The appellant as well as respondents 7 to 12 have already been confirmed as Assistant Conservator of Forest and meet the requirement of "substantive appointment to the service by promotion". In order to determine their inter-se seniority as Assistant Conservator of Forest, therefore, their seniority inter-se as Rangers shall be the determining factor. Respondents 7 to 12 had been appointed as Rangers much before the date on which the appellant was appointed as a Ranger. Hence the claim of seniority as made by the appellant has no substance. [204D; 205B-E]

1.2. It is settled law that the provisions of statutory rules cannot be modified or altered by executive instructions, and it is only in the absence of statutory rules that executive instructions have relevance. As such even if for the sake of argument it may be accepted that on account of the memorandum to the Cabinet or any other executive instruction the appellant was to be given seniority as claimed by him, it could not be done, as in case of a conflict, the statutory provisions contained in proviso (iii) of Rule 35 of the Rules shall prevail. [205E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3982 of 1989.

From the Judgment and Order dated 20.4.1988 of the Bihar High Court in C.W.J.C. No. 1749 of 1988.

B.R.L. Iyengar, Govind Mukhoty, K.K. Gupta and Hari Narain Ojha for the Appellant.

Anil Dev Singh, A.K. Sen, D. Goburdhan, T.C. Sharma, Mrs. Sushma Suri and D .P. Mukherjee for the Respondents. The Judgment of the Court was delivered by OJHA, J. Special leave granted.

203

This appeal has been preferred against the judgment dated 20th April 1988 of the Patna High Court dismissing a writ petition filed by the appellant challenging a seniority list. Necessary facts in brief are these:

The appellant and respondents 7 to 13 are Assistant Conservators of Forest in Bihar Forest Service. Their service conditions are governed by the Bihar Forest Service Rules, 1953 (hereinafter referred to as the Rules) made by the Government of Bihar in exercise of the powers conferred on it by the proviso to Article 309 of the Constitution of India. According to Rule 2(vii) of the Rules "the service" means the Bihar Forest Service. Rule 3 provides that the appointments of the service shall ordinarily be made by (a) direct recruitment in accordance with the Rules in Part II of these Rules by competitive examination to be held by the Commission; and (b) by promotion in accordance with the Rules contained in Part V of selected rangers specified therein. The appellant and respondents 7 to 12 were selected rangers and were appointed as Assistant Conservator of Forest by promotion under Rule 3(b). As is apparent from the counter affidavit on behalf of respondents 8 to 10, respondent No. 11 was promoted as Assistant Conservator of Forest

on 21st December 1976, respondent Nos. 7, 8, 9 & 12 on 29th November 1977 and respondent No. 10 on 15th December 1978. In so far as the appellant is concerned, even though, he was appointed subsequently, his appointment was made effective retrospective from 29th November 1977. Respondent No. 13, on the other hand, as is apparent from the seniority list which was challenged by the appellant, was appointed under Rule 3(a) of the Rule by direct recruitment on 3rd May 1978. The counter affidavit further indicates that respondent No. 13 was confirmed as Assistant Conservator of Forest on 30th June 1983. Respondents 7 to 11 were confirmed on 30th August 1983 and respondent No. 12 was confirmed on 5th August 1983 whereas the appellant was confirmed on 31st December 1986. In the said counter affidavit, the dates of appointment as rangers of respondents 11, 7, 8, 9, 10, 12 and the appellant respectively are stated as 3rd April 1958, 4th April 1958, 5th April 1958, 9th April 1958, 7th April 1959, 1st April 1966 and 2nd April 1967. Even though a rejoinder has been filed by the appellant, the correctness of the aforesaid facts has not been denied therein nor has it been urged by the learned counsel for the appellant before us that these facts are inaccurate. It is on the basis of these facts, therefore, that the respective submissions made by learned counsel for the parties have to be considered.

204

It has been urged by learned counsel for the appellant mainly relying on a memorandum to the Cabinet dated 24th November 1977 which contains a note that if the appellant was found fit for promotion by the selection committee, his place will be above 10 general category rank officers mentioned therein, that in the seniority list the name of the appellant should have been placed above those officers. According to the learned counsel for the appellant the memorandum was approved by the Cabinet on the same date and yet in the impugned seniority list the aforesaid direction was not carried out. For the respondents, it was urged that the Cabinet had not approved the memorandum in its entirety. In our opinion, however, it is not necessary to go into this controversy. It was on the above premise that the writ petition challenging the seniority list was filed by the appellant in the High Court and according to his learned counsel, the High Court committed an error in dismissing the same.

Having heard learned counsel for the parties, we find it difficult to agree with the submission made by the learned counsel for the appellant. As seen above, the service conditions of Assistant Conservators of Forest who are members of the Bihar Forest Service, are governed by the Rules. Rule 35 which specifically deals with the matter of seniority reads as hereunder:

"35. Seniority of officers appointed to the Service shall be determined with reference to the date of their substantive appointment to the Service.

Provided that--

(i) in the case of members of the Service appointed by direct recruitment at the same time, their seniority inter-se shall be in the order of merit in which their names are placed in the list of successful candidates at the Final Examination of the Indian Forest College, Dehra Dun;

(ii) in case where appointments are made to the Service both by direct recruitment and promotion of selected Rangers at the same

time, the promoted members of the service shall be senior to the members directly recruited; and

(iii) the seniority inter-se of Rangers on substantive appointment to the Service by promotion at the same time

205

shall be their seniority inter-se held as Rangers."

In the instant case we are not concerned with Clause (i) of the proviso. Even Clause (ii) is not attracted inasmuch as respondent No. 13 even though was appointed by direct recruitment, was not appointed "at the same time" as the appellant and respondents 7 to 12, as already indicated above. That is clause (iii) of the proviso, therefore, which is relevant for the determination of the seniority inter-se of the appellant and respondents 7 to 12. On a plain reading of this Clause it is apparent that on substantive appointment of rangers to the service by promotion, their seniority inter-se in the service is to be governed by "their seniority" inter-se held as rangers". As seen above, the appellant as well as respondents 7 to 12 have already been confirmed as Assistant Conservator of Forest and meet the requirement of "substantive appointment to the service by promotion". In order to determine their inter-se seniority as Assistant Conservator of Forest, therefore, their seniority inter-se held as rangers shall be the determining factor. The respective dates of appointment as rangers of the appellant and respondents 7 to 12 have already been given above. Its perusal indicates that respondents 7 to 12 had been appointed as rangers much before 2nd April 1967 which was the date on which the appellant was appointed as a ranger. The dates of appointment and confirmation of respondent No. 13 who is a direct recruit, have been noted earlier. In this view of the matter the claim of seniority as made by the appellant has no substance.

It is settled law that the provisions of statutory rules cannot be modified or altered by executive instructions and it is only in the absence of statutory rules that executive instructions have relevance. As such even if for the sake of argument it may be accepted that on account of the memorandum to the Cabinet or any other executive instruction the appellant was to be given seniority as claimed by him, it could not be done as in case of a conflict the statutory provisions contained in this behalf in proviso (iii) of Rule 35 of the Rules shall prevail. In the result this appeal fails and is dismissed but in the circumstances of the case there shall be no order as to costs.

G .N.
dismissed.
206

Appeal