

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

Hon'ble Justice Ranjit Kumar Bag,
Chairman In-charge.

-AND-

Hon'ble Dr. Subesh Kumar Das,
Administrative Member.

J U D G M E N T

-of-

Case No. : MA-137 of 2018 & O.A. 1052 of 2016

: Samir Majumdar & Others

..... Applicants.

-Versus-

State of West Bengal & Others.

..... Respondents.

For the Applicants :-

Mr. A.K. Das Sinha,
Learned Advocate.

For the State Respondent No.1 :-

Mr. M.N. Roy,
Learned Advocate.

For the State Respondent No.2 :-

Mr. G.P. Banerjee,
Learned Advocate.

For the State Respondent Nos.3&4 :-

Mr. B.P. Roy,
Learned Advocate.

For the State Respondent Nos. 5-20 :-

Mr. D.N. Ray,
Mr. B. Nandy,
Learned Advocates.

Judgment delivered on : February 15, 2019.

The Judgment delivered by Dr. Subesh Kumar Das,
Administrative Member.

JUDGEMENT

In this application, the four applicants who are the promotee West Bengal Forest Service (hereinafter referred to as WBFS) Officers under the Forest Department, West Bengal have prayed for a direction upon the state respondents to promote the applicants to the West Bengal Forest Service w.e.f. 2010 and to re-determine their seniority in accordance with seniority rules by placing them above the direct recruit officers who joined in the West Bengal Forest Service in the year 2010 and to consider the case of the applicants for promotion to the senior duty posts of Divisional Forest Officer.

2 The applicants initially joined the post of Forest Ranger in the year 1987. The next avenue for promotion from the post of Forest Ranger is Assistant Divisional Forest Officer in the West Bengal Forest Service. In terms of the Recruitment Rules of the WBFS Officers, 50% of the posts are to be filled up by direct recruitment on the basis of recommendation by Public Service Commission (hereinafter referred to as PSC), West Bengal and 50% of the posts are to be filled up by promotion from the feeder posts of Forest Ranger after recommendation of the PSC, WB. In the year 2010, four posts of Assistant Divisional Forest Officers in the promotion quota fell vacant and the state respondents initiated steps to recommend the names of the applicants to the PSC, WB for promotion in the departmental promotion quota on the basis of vacancies in the posts of Assistant Divisional Forest Officers on 01.01.2010. The list of Officers who were eligible for promotion to the West Bengal Forest Service was prepared on the basis of seniority of Forest Rangers as on 01.01.2010. It appears that even though the names of the applicants were forwarded for promotion in the four vacant posts in the promotion quota of West Bengal Forest Service as on 01.01.2010, there was long delay in recommendation of their names by the PSC, WB. Finally, the PSC, WB by their Memo dated 10.05.2013 recommended the names of 22 (twenty two) Forest Rangers for promotion in the cadre of West Bengal Forest Service to fill up vacancies in the promotion quota where the names of the applicants appeared at the top of the list. Although the process of appointment of the applicants to the WBFS cadre by promotion started in the year 2010 the applicants were promoted only in 2013. It will appear that the promotion was not given on time due to non-submission of Annual Confidential Reports and other related documents by the offices of the Forest Directorate, West Bengal. The twenty two vacancies in the promotion quota were filled up in the year

2013 by taking into the account the vacancies as on 01.01.2013, which included vacancies in the promotion quota created on 01.01.2010, 01.01.2011, 01.01.2012 and 01.01.2013. The applicants joined in the promoted posts of the WBFS Cadre in the year 2013. The twelve direct recruit WBFS Officers of 2010 batch and eight direct recruit WBFS Officers of 2012 batch joined before the applicants. The delay in appointment of the applicants in the WBFS cadre was primarily because of some administrative problems. As the direct recruit officers of 2010 batch joined prior to the applicants in the WBFS cadre, they were placed above the applicants in seniority in the gradation list of WBFS officers.

3. In the original application, the applicants prayed for an interim order restraining the state respondents from filling up the post of Division Forest Officers. On the basis of materials on record, this Tribunal on 16.02.2017 directed that promotion given during the pendency of the original application to the post of Divisional Forest Officers will abide by the decision of this Tribunal. On 08.11.2017, the interim order was modified with the direction that status quo as on date to be maintained.

4 After admission of the present application and issue of interim order, a Miscellaneous Application being MA-136 of 2018 was filed by Shri Kamal Sarkar and 8 others for being impleaded as respondents in the the original application no. 1052 of 2016 as their interest might be adversely effected if the application of the applicants succeed. On 17.08.2018, this Tribunal directed to implead the nine applicants of MA-136 of 2018 as respondents of OA-1052 of 2016. Subsequently, another Miscellaneous Application being MA-161 of 2018 was filed by Shri Sanjit Kumar Saha and 6 others for being added as respondent to the original application on the ground that if the applicants in the original application are successful, then the seniority of the applicants in the Miscellaneous Application will be affected. After hearing of all the parties, on 4th December, 2018, the Tribunal allowed their prayer and the seven applicants were added as respondents to the original application.

5 We have heard at great length Mr. A.K. Das Sinha, Learned Counsel appearing for the applicants, Mr. M.N. Roy, Learned Counsel for the State Respondent No. 1, Mr. G.P. Banerjee, Learned Counsel for the State Respondent No. 2, Mr. B.P. Roy, Learned Counsel for the State Respondent Nos. 3&4 and Mr. D.N. Ray, Learned Counsel appearing for the private Respondent Nos. 5 to 20 along with Mr. B. Nandy.

6 Learned Counsel for the applicants submitted that the applicants were not responsible for the delayed promotion and therefore, they should be promoted from 01.01.2010 when the four vacancies in the promotion quota arose in the WBFS cadre. As the four vacancies in the promotion quota were available on 01.01.2010, the applicants were eligible for promotion in the year 2010, their names were recommended in the year 2010, and the PSC, WB found them suitable for promotion, the state respondents have no authority to deny promotion to the applicants from 01.01.2010. To support his argument, Learned Counsel has cited judgments of "Arun Kumar Chatterjee vs. South Eastern Railway and others" reported in SLR 1985 in Civil Appeal No. 387 (N) of 1981, "Gopi Chand Vishnoi vs. State of UP and others" reported in (2006) 9 SCC 694 and "State of UP and another vs. Vinod Kumar Srivastava" reported in (2006) 9 SCC 621. In "Arun Kumar Chatterjee" (supra), a Government employee was not promoted on time due to some mistake in the seniority list and the Apex Court observed that the employee should be assigned correct seniority vis-à-vis his juniors and directed the state government to give him promotion from the date on which he would have got promotion at the proper time had there been no mistake in the seniority list. In "Gopi Chand Vishnoi" (supra), a Government employee was refused promotion in the year 1985 on the ground that there were certain adverse entries in his service records which were subsequently expunged in the year 1989 and subsequently he was found fit and granted promotion. Hon'ble Apex Court observed that the Government employee should be granted promotion with effect from the date when his juniors were granted promotion. In "State of UP and another" (supra), the Hon'ble Apex Court confirmed the order of the Hon'ble High Court in respect of promotion of a Government employee, who was denied promotion because of some disputes in the seniority list and directed the state government to give him promotion with retrospective effect from the date on which his juniors were promoted. In all the above three referred cases, the issues are about giving promotion with retrospective effect from the dates on which their juniors were promoted. The facts of the cited cases are not similar to the present case as the issue involved in the present case is relating to seniority between direct recruit officers and promotee officers in the same cadre, while in the referred cases the issues were about denial of promotion to the junior employees by way of supersession of the senior.

7 Learned Counsel for the private respondents submitted that the direct recruit officers of the 2010 batch should be considered higher in seniority compared to the applicants who were promoted only in the year 2013 long after the private

respondents joined in the WBFS cadre in 2010. Learned Counsel argued that the applicants were not born in the WBFS cadre in the year 2010, when the directly recruited officers of the 2010 batch were appointed and assumed charges. He also submitted that similar is the case of direct recruits officers of 2012 batch. Learned Counsel for the private respondents argued that the applicants of the original application should be considered as promote officers of 2013 batch. To support this point, the Learned Counsel for the private respondents cited the judgment of the Hon'ble High Court at Calcutta in the case of "Sandip Halder v State of West Bengal & Others" reported in 2011 (4) CHN (CAL) 397. Learned Counsel for the private respondents submitted that in this referred case, the direct recruit officers were placed higher in seniority than the promoted officers as the direct recruit officers joined before the promoted officers in the post of Sub-Officers in the State Fire Service. In this referred case, the conflict was between two groups being the direct recruit sub-officers and the promoted sub-officers who were promoted from feeder post to the post of Sub-Officers. The direct recruit sub-officers joined the post of sub-officers in the 1980s while the promotee sub-officers joined the post of sub-officers in the 1990s. The next promotional post was the post of Station Officer. The selection to the post of station officer was through a departmental examination followed by interview which was conducted in the year 2000 and officers from both the groups were promoted to the posts of station officers. The dispute arose after about six years when a gradation list was published placing the direct recruits officers much above the promoted officers although the promoted officers secured better merit in the said examination. Being aggrieved, the direct recruit officers filed an application before the Tribunal in 2007 and the Tribunal directed the authority to prepare the final gradation list in terms of Rule 5(2) of the West Bengal Determination and Seniority Rules, 1981. In terms of Rule 5(2) of the said Rules in case of single process of selection the relative seniority would be determined in order of merit. The Tribunal held that the merit would prevail since both the groups were selected through a single selection process in the posts of station officer. Being aggrieved, the direct recruit officers filed an application before the Hon'ble Division Bench on the ground that the direct recruit officers were born in the cadre of sub officers long before the promoted sub officers. Hon'ble Division Bench observed that the state did not conduct the process of promotion on year to year basis and instead gave adhoc promotion to the officers. There was long delay in conducting the selection process for promotion to the posts of station officers and in the event the state conducted the process on year to year basis, the direct recruit officers

would have got opportunity to compete for the post and such competition would have been restricted to themselves as the promoted officers joined them only in later part of the 1990s. The Hon'ble Division Bench also observed that the process of selection cannot be described as a single recruitment process and hence Rule 5(2) cannot be applied to determine inter-se seniority and the order of the Tribunal was set aside. The facts and circumstances of the present application is not the same as that of the referred case. In the referred case the parties in dispute were selected through a single process of selection, the benefits were extended to the direct recruit officers as there were long delay in conducting the selection process for promotion to higher posts, while the present case relates to the relative seniority between the direct recruit and the promoted officers who have been selected through different selection process. In the present case the promoted officers suffered due to delay in their promotion and the ratio of the cited case has no application in the present case.

8 Learned Counsel for the state respondents relied on their reply and submitted that the vacancies created on 01.01.2010 were not filled up in time owing to non submission of ACRs and other relevant documents. Learned Counsel also submitted that as per Finance Department observation dated 31.08.2016, promotion cannot be allowed retrospectively as assumption of charge is necessary as per Rule 26 of WBSR, Part-I. Therefore, the seniority of the WBFS Officers would be counted on the basis of the dates of joining of the officers in the WBFS cadre.

9 The first issue we take up for determination is whether the applicants are to be considered as promoted in the promotion quota of the 2010 or in the promotion quota of 2013. It appears from the materials on record that the process of recruitment to the WBFS cadre in case of the applicants was started in the year 2010, but for some administrative problems, the process was not completed in the year 2010. Finally, the applicants were promoted to the WBFS cadre by the Forest Department, Government of West Bengal on 11 September 2013. This delay in promotion to WBFS cadre was because of some administrative lapses and the applicants were not responsible for such delay. In view of our above observation, we would like to observe that the applicants should be considered as promoted in the promotion quota of 2010 and the applicants should be considered as WBFS promoted officers of 2010 batch.

10 The next issue we take up for consideration is whether the applicants are to be considered as senior to the direct recruits of 2010 batch. It appears from the

materials on record that the directly recruited officers of 2010 batch were given appointment in the year 2010 and accordingly the direct recruit officers of WBFS cadre of the 2010 batch joined their posts in the year 2010, but as explained above there was delay in the promotion of the applicants in the promotion quota of 2010. It appears that the applicants have been given belated appointment vis-à-vis direct recruit of 2010 batch. The issue before us is the relative seniority of the applicants who are promoted officers of 2010 batch, vis-à-vis the direct recruit officers of 2010 batch in WBFS cadre. The Rule 6 of the West Bengal Services (Determination of Seniority) Rules, 1981 provides how the seniority of direct recruit and promote officers are to be determined. The relevant provision is reproduced below :

“6. Relative seniority of direct recruits and promotees – (1) The relative seniority between a promotee and a direct recruit shall be determined by the year of appointment or promotion of each in the post, cadre or grade irrespective of the date of joining. (2) The promotees shall be enblock senior to the direct recruits of the same year.”

In view of such provision in the West Bengal Services (Determination of Seniority) Rules, 1981, we would like to observe that the applicants are to be considered as en-block senior to the direct recruit officers of 2010 batch in the WBFS cadre.

11 The next issue we take up for determination is whether the applicants are to be allowed promotion with retrospective effect from 2010. On scrutiny of materials on record it appears that the issue of retrospective promotion of the applicants was referred to the Finance Department, Government of West Bengal by the Forest Department, Government of West Bengal. The Finance Department has observed that the promotion cannot be allowed retrospectively as assumption of charge is necessary as per Rule 26 of WBSR, Part-I. It is noted that the applicants who were members of West Bengal Junior Forest Service were promoted to West Bengal Forest Service, which is a different service, on 11 September 2013. The applicants had no scope to assume charge in the post of West Bengal Forest Service and therefore, they cannot get retrospective effect of promotion. The promotion is to be given to the applicants with effect from the date on which they were actually promoted and it is from that date they will be considered to be senior to the direct recruit officers of 2010 batch. In other words, the applicants are to be considered notionally promoted to WBFS cadre with effect from the date the directly recruited

WBFS officers joined in their posts in the year 2010 for the purpose of determination of seniority, while their actual promotion with all service benefits will be from the dates on which they joined in the promotion posts in the WBFS cadre.

12 The next issue for consideration is whether any direction is to be given for promotion of the applicants to the post of Divisional Forest Officers. We would not like to give any direction on the issue and hold that after the revision of seniority list, the issue of promotion can be taken up by the state respondents in accordance with law. The interim order dated 08.11.2017 is vacated.

13 Having regard to our findings and decisions on the relevant issues as discussed in details in the foregoing paragraphs, we hold that the applicants are to be considered to be senior to the direct recruit officers of 2010 batch in the WBFS cadre. Accordingly, we direct the state respondent no. 1, Principal Secretary, Forest Department, Government of West Bengal to revise the gradation list of the WBFS cadre taking into consideration the observation and decisions mentioned above within a period of 8 (eight) weeks from the date of communication of the order and to take subsequent action relating to promotion/ awarding of senior duty posts in the WBFS cadre..

14 In view of our discussions and observations made in the foregoing paragraphs, MA-137 of 2018 which was an application by the private respondents for vacating interim order dated 08.11.2017 is dismissed.

15 With the above direction, the original application is **disposed**.

16 The urgent Xerox certified copy of the judgment and order may be supplied to the parties, if applied for, subject to compliance of necessary formalities.

(Dr. Subesh Kumar Das)
MEMBER(A)

(Ranjit Kumar Bag)
MEMBER (J).