

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 30.04.2025
Pronounced on: 06.05.2025

WP(C) No.1841/2019

MOHAMMAD ASHRAF MIR

.. PETITIONER(S)

Through: - Mr. Zahoor Jan, Advocate.

Vs.

**J&K STATE FOREST CORPORATION
AND OTHERS**

...RESPONDENT(S)

*Through: - Ms. Maha Majeed, Assisting counsel vice
Mr. Mohsin-ul-Qadiri, Sr. AAG.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner, through the medium of present petition, has sought a direction upon the respondents to promote him as Block Manager from the date his promotion is due.

2) As per case of the petitioner, he is holding the substantive post of Field Supervisor in J&K State Forest Corporation. It has been submitted that as per Jammu and Kashmir State Forest Corporation Employees (Condition of Services) Amendment Regulations, 2010 (hereinafter for short "the Regulations of 2010"), the next promotion of Field Supervisors is to the post of Block Manager. As per the Regulations of 2010, the posts of Block Managers are to be filled up 40% by direct recruitment, 15% by promotion from

Field Supervisors who are graduates and having a minimum of five years services as Field Supervisors and 45% by promotion from Field Supervisors who are matriculates and having a minimum eight years service as Field Supervisors. According to the petitioner, he appeared in Bachelor of Arts examination during Session February-March, 2018 and also completed eight years of service as Field Supervisor and, thus, became eligible for promotion to the next higher post of Block Manager on both counts i.e. on account of being graduate Field Supervisor and also on account of his seniority.

3) It has been submitted that in the year 2017, the respondent Corporation initiated a process for promoting Field Supervisors to the posts of Block Managers and, accordingly, APRs for the years 2014-15, 2015-16 and 2016-17 as well as work and conduct, non-involvement and integrity certificates of the eligible Field Supervisors, were sought from all the Chief General Managers and General Managers of the Corporation. It has been contended that the petitioner is figuring at serial No.8 in graduate quota of Field Supervisors of Kashmir Division. The aforesaid documents in respect of the petitioner were also sought, which were duly forwarded to the Chief Manager concerned.

4) It has been further submitted that the total cadre strength of Block Managers is 500, out of which 479 posts

have been filled up and 21 posts are lying vacant. It is being claimed by the petitioner that out of 479 posts of Block Managers, 192 posts is the quota of direct recruitment, 72 posts is the quota of graduate Field Supervisors and 215 posts is the promotional quota. It is being claimed that instead of 215 posts of Block Managers earmarked for promotees, 321 posts have been filled up under the said quota thereby exceeding 106 posts. Thus, according to the petitioner, the respondent Corporation has violated the rules governing the subject.

5) It has been contended that the petitioner despite being graduate and being eligible has not been promoted to the post of Block Manager in spite of availability of the posts in the quota meant for graduate Field Supervisors whereas his junior has been promoted in the said quota in terms of Order No.393 of 2018 dated 03.12.2018, thereby discriminating against him. On the basis of these contentions, the petitioner has sought a direction upon the respondents to accord promotion to him to the post of Block Manager from the date it became due to him.

6) The petitioner has also filed a rejoinder affidavit, in which it has been submitted that during pendency of the petition, the respondent Corporation has issued Order No.197 of 2023 dated 29.05.2023, whereby the petitioner has been accorded promotion to the post of Block Manager

with effect from 26.04.2023 instead from the date it was due to him as per the Regulations of 2010. It has been submitted that the petitioner was due for promotion with effect from 26.06.2018 when he qualified Bachelor of Arts examination or at least with effect from 18.08.2018 when, as per seniority, he became eligible for promotion under promotional quota.

7) The respondent Corporation has contested the writ petition by filing a reply thereto. In its reply, the respondent Corporation has submitted that the post of Block Manager was filled up through DPC which was held on 11.04.2018 and at that time all the eligible Field Supervisors were promoted in all categories after scrutinizing their eligibility and other requisite documents. It has been submitted that at the relevant time, the petitioner was not eligible for being considered for promotion by then DPC. It has been contended that the petitioner has no cause to approach this Court by way of the writ petition as he is being considered for promotion as Block Manager in the next DPC.

8) I have heard learned counsel for the parties and perused record of the case.

9) The grievance of the petitioner is that he has been granted promotion to the post of Block Manager with effect from 16.04.2023 though promotion was due to him on

26.06.2018 when he had acquired the qualification of graduation. It is further case of the petitioner that even as per seniority, he was eligible for promotion on 18.08.2018 as at that time, he had completed eight years of service as Field Supervisor. Thus, the petitioner claims retrospective effect to his promotion with effect from the date he had become eligible to promotion to the post of Block Manager.

10) The criteria for promotion to the post of Block Manager from the post of Field Supervisor is governed by the Regulations of 2010, as noticed hereinbefore. The petitioner is not claiming appointment to the post of Block Manager by direct recruitment but he is claiming appointment to the said post by promotion. There are two sources of promotion to the post of Block Manager, as is clear from a perusal of the Regulations of 2010. 15% of the posts of Block Manager are to be filled up by promotion from Field Supervisors who are graduates having five years of service whereas 45% of the posts are to be filled up by promotion from Field Supervisors who are matriculates having a minimum of eight years service as Field Supervisors. The petitioner has placed on record copy of communication dated 30.03.2019 addressed by the respondent Corporation to the petitioner in answer to his RTI query, according to which the total cadre strength of Block Managers is 500 posts. As per the ratio given in the Regulations of 2010, 40% of these posts i.e. 200 posts are to

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be filled up by direct recruitment, 15% of the posts i.e., 75 posts are to be filled up by promotion from graduate Field Supervisors whereas 45% of the posts i.e., 225 posts are to be filled up by promotion from matriculate Field Supervisors.

11) The petitioner, as per his own case, acquired qualification of graduation on 25.06.2018, as is clear from the marks sheet placed on record by him. He claims that his junior, Shri Nazir Ahmad Sheikh, was promoted in terms of Order No.393 of 2018 dated 03.12.2018 and, therefore, the respondent Corporation has discriminated against him. A perusal of the order dated 03.12.2018 shows that the same has been issued on the basis of the recommendations of the DPC which was held on 11th April, 2018, meaning thereby that the eligible graduate Field Supervisors and matriculate Field Supervisors were considered by the DPC in the said meeting and recommended for promotion to the post of Block Manager.

12) Admittedly, the petitioner has acquired the qualification of graduation on 25.06.2018, meaning thereby at the time when the DPC was conducted, he was not a graduate. As per the petitioner's own case, he had completed eight years of service as Field Supervisor on 18.08.2018, meaning thereby that even as a matriculate Field Supervisor, he had not the requisite experience for being considered for

promotion on 11th April, 2018, when the DPC was conducted. Therefore, on both counts, the petitioner was not eligible for being promoted as Block Manager on the crucial date when the DPC was conducted. Thus, the petitioner cannot claim that he has been discriminated against when his junior Shri Nazir Ahmad Sheikh was promoted to the post of Block Manager, particularly when it is not the case of the petitioner that Shri Nazir Ahmad Sheikh was not eligible for promotion as Block Manager on the date when the DPC was conducted.

13) The respondent Corporation has claimed that in the next DPC, the petitioner was granted promotion to the post of Block Manager in terms of Order No.197 of 2023 dated 29.05.2023 and in between no DPC was conducted. In fact, it is not even the case of the petitioner that between 11th April, 2018 upto 26th April, 2023, any DPC was conducted by the respondent Corporation. During the intervening period i.e. from 11th April, 2018 upto 26th April, 2026, the petitioner had certainly acquired the eligibility on both counts by qualifying graduation and also by completing eight years' service as Field Supervisor.

14) The respondents have not denied the assertion of the petitioner that the posts were available in the cadre of Block Managers on which he could have been considered for

promotion during this period. The question that arises for consideration is as to whether merely because the posts of Block Managers were available on the date when the petitioner had acquired eligibility for promotion, the petitioner can claim retrospective promotion from the date he had become eligible for promotion.

15) The law on the aforesaid issue is well settled. An employee has a right to be considered for promotion as and when the matter regarding filling up of the posts by promotion is taken up by employer. Merely because there is a promotional post available for being filled up does not give a right to an employee to claim promotion from the date when the said post became available. An employee cannot claim retrospective seniority or promotion unless the rules or statute governing the field provide for the same. In normal circumstances, a promotion or recruitment to a post takes effect from the date when an order to this effect is issued and not from a date anterior to the same. Learned counsel for the petitioner has not brought to the notice of this Court any statute or rule that would entitle the petitioner to the grant of retrospective promotion.

16) The Supreme Court has, in the case of **State of Uttaranchal and another vs. Dinesh Kumar Sharma**, (2007) 1 SCC 683, while dealing with the issue as to whether

an employee can be granted retrospective promotion, observed as under:

“34. Another issue that deserves consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited. Here the respondent's contention is that since the vacancy arose in 1995-96 he should be given promotion and seniority from that year and not from 1999, when his actual appointment letter was issued by the appellant. This cannot be allowed as no retrospective effect can be given to the order of appointment order under the Rules nor is such contention reasonable to normal parlance. This was the view taken by this Court in Jagdish Ch. Patnaik v. State of Orissa.”

17) In the face of aforesaid position of law, it is not open to the petitioner to claim retrospective promotion from the date he actually became eligible for promotion. He is entitled to promotion from the date his case was considered by the respondent Corporation, which in the instant case has been done in the year 2023, whereafter he has been granted promotion in terms of Order No.197 of 2023 dated 29.05.2023 with effect from 26.04.2023. The claim of the petitioner is, therefore, not legally tenable.

18) For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed.

(Sanjay Dhar)
Judge

Srinagar,
06.05.2025
“Bhat Altaf-Secy”

Whether the order is reportable: **Yes/No**