

A SANJAY K. SINHA-II AND ORS.  
v.  
STATE OF BIHAR AND ORS.

MAY 31, 2004

B [BRIJESH KUMAR AND ARUN KUMAR, JJ.]

*Service Law :*

C *Bihar Forest Service Rules—Rules 3 and 35—Post of Assistant  
Conservators of Forests—Direct Recruits and promotees—Inter se  
seniority—Determination of—Posts to be filled by 50% direct recruits and  
50% promotees—Candidate appointed to substantive posts by direct  
recruitment—Appointment of candidates from feeder posts against non-  
existing posts during the relevant period—Thereafter, appointment order  
D of direct recruits issued—Final seniority list issued showing direct recruits  
junior to promotees—Validity of—Held : Appointments made contrary to  
the rules are merely fortuitous and do not confer benefit of seniority on  
appointees over and above the regular/substantive appointees to the  
E service—On facts, substantive posts not being available and promotion  
being made against non-existing post, there could be no appointment in  
service and as such promotees could not be given seniority with effect from  
the purported date of their promotion over and above the direct recruits—  
Hence, final seniority list quashed—Also the direct recruits cannot be non-  
F suited on the ground of delay in challenging the promotion order of  
promotees.*

In the State Forest Service, 50% posts of Assistant Conservators  
of Forests (ACFs) were to be filled by promotion and the other 50%  
by direct recruitment. Appellants were appointed as ACFs by direct  
recruitment. The process of direct recruitment was completed by  
G 8.6.1987 but the notification regarding appointment was issued on  
14.12.1987. Meanwhile, on 20.6.1987 the Departmental Promotion  
Committee was constituted to consider promotion from feeder posts  
and promotees were appointed to the posts of ACFs by notifications  
dated 6.10.1987 and 23.11.1987. It was the appellant's case that as per  
H the notification of 12.8.1987, at the relevant time the cadre strength of

the post of ACF was only 172 and the promotees were already occupying more than 50% posts. Thereafter, in 1989 final seniority list was issued showing the appellants who are direct recruits as juniors to the promotees. Appellants filed writ petition challenging the final seniority list; High Court dismissed the same on 3.4.1996. High Court again dismissed the writ petition on merits on 13.7.1998, after the remand order was passed by this Court. It rejected the case of the appellant challenging the promotions of the promotees. Meanwhile, on 9.2.1996 another Division Bench of High Court quashed the notifications of 6.10.1987 and 23.11.1987 and also the final seniority list. State Government was permitted to issue fresh notification with regard to the appointments of promotees but there was delay and, as such the promotees filed contempt application. The notification was ultimately issued on 15.7.2002 stating that the promotees could be appointed with effect from the date mentioned against their names, which is 20.6.1987.

In appeal to this Court, appellant - direct recruits contended that the posts of ACF were not available in the year 1987 for appointment of the promotees without first restoring the balance in the service but still respondents went ahead with appointments; and that the notification of 12.8.1987 is a resolution which only determines the cadre strength and is a decision which remains to be implemented.

Allowing the appeal, the Court

**HELD :** 1. Rule 35 of the Bihar Forest Service Rules provides that seniority of officers appointed to the service is to be determined with reference to the date of their substantive appointment. In order to become a member of the service the person concerned has to satisfy that the appointment must be in substantive capacity and has to be to the post in the service according to the rules and within the quota to a substantive vacancy. Further, it is settled law that the appointments made contrary to the rules are merely fortuitous and do no confer benefit of seniority on the appointees over and above the regular/substantive appointees to the service. [845-B-C; 847-B-C]

*C.K. Antony v. B. Muraleedharan and Others*, [1998] 6 SCC 630; *M.S.L. Patil, Asstt. Conservator of Forests, Solapur (Maharashtra) and*

A *Others v. State of Maharashtra and Others*, [1996] 11 SCC 361 and *State of Maharashtra and Another A.W. Dhope and Others v. Sanjay Thakre and Others*, [1995] Supp. 2 SCC 407, relied on.

B *Keshav Chandra Joshi and Others v. Union of India and Others*, [1992] Supp. 1 SCC 272, referred to.

C 2.1. Notification dated 12.8.1987 is in the form of a resolution. Heading of the resolution 'Determination of cadre strength of Bihar Forest Service' suggests that it is merely a determination of the cadre strength of the post of ACF. Determination is a decision as to what should be the cadre strength which needs to be implemented by creation of posts. Resolution cannot be said to be creating the posts. There is lot of difference between determination of cadre strength and creation of posts. For creation of posts certain formalities have to be gone through. Nothing has been shown to suggest that requisite formalities regarding creation of posts had taken place. [842-G-H; 843-A-B]

E 2.2 It is clear from the admissions made on behalf of the respondent-State Government by way of affidavits filed in judicial proceedings that as sufficient number of posts of ACFs for promotion of the promotees in the year 1987 had not been created and as such there was non-availability of posts when the promotees were promoted as ACFs, rather the promotions were made against non-existing posts. When the posts were not available at all the question as to whether the posts were falling within the quota of the promotees does not arise. The relevant information supporting the records with regard to the number of posts which are available, were not placed before the court. The record position is found from the affidavit of the Commissioner filed sometime in year 1998 from which it is clear that even till the date of filing of the affidavit sufficient number of posts had not been created by the State Government. Notification regarding appointment of promotees was issued on 15.7.2002 during the pendency of the present proceedings. This shows that the posts of ACFs might have been created by the State Government subsequently. While issuing the notification dated 15.7.2002, State Government could not ignore or prejudic officers like the appellants who were substantively appointed to the service w.e.f. 14.12.1987 i.e. about fifteen years prior to the

issuance of the notification. [846-E-F; 847-D-H]

2.3. The appointments of the promotees made between June and November, 1987 to the posts of ACFs cannot be termed as substantive appointments to the service since the posts to which substantive appointments were to be made were not available, therefore, there could be no appointment to the service and when there is no appointment to the service, much less substantive appointment to the service, it cannot confer any benefit of seniority on the promotees with effect from the purported date of their promotion over and above the appellants who were directly appointed to the service by notification of 14.2.1987. Hence, the final seniority list of 24. 7. 1989 is quashed and State Government is directed to issue fresh seniority list fixing the seniority of appellants over the promotees. Furthermore, the State Government may regularize the appointment of the promotees but they cannot be given seniority over the appellants. [845-D-E; 847-A-B; 848-A-B]

3. Appellant - direct recruits cannot be non-suited on the ground of delay in challenging the orders of the promotion of the promotees. Another Division Bench of High Court quashed the two notifications with regard to the appointment of promotees to the posts of Assistant Conservator of Forests (ACF) and also the final seniority list and permitted the State Government to issue fresh notification with regard to the appointments of promotees. On 3.4.1996 when the present writ petition challenging the final seniority lists showing appellants who are direct recruits as junior to promotees was earlier dismissed and again on 13.7.1998 when it was again dismissed by High Court after the remand order passed by this Court, there was no notification in existence regarding appointments of the promotees. The fresh notification was issued only on 15.7.2002. [839-F-H; 840-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6565 of 1999.

From the Judgment and Order dated 13.7.98 of the Patna High Court in Civil Writ Jurisdiction Case No. 8305 of 1989.

Gopal Subramaniam, Ajit Kumar Sinha and Pankaj Bhagast for the Appellants.

A S.B. Sanyal, Rudeshwar Singh, Shishir Pinaki, R.P. Wadhvani, Kumar Rajesh Singh, B.B. Singh, Anurag and Navin Prakash for the Respondents.

The Judgment of the Court was delivered by

B **ARUN KUMAR, J.** : This appeal is directed against a judgment dated 13th July, 1998 of a Division Bench of the High Court dismissing a writ petition filed by the appellants herein challenging a final seniority list issued by the State Government of Bihar whereunder the appellants who are direct recruits to the Bihar Forest Service were shown junior to the private respondents who are promotees in the service. The appellants were appointed as Assistant Conservators of Forests (ACFs) to the Bihar Forest Service (hereinafter called the 'service') as direct recruits in pursuance of advertisement issued by the Bihar Public Service Commission on 24th July, 1985 for filling 40 permanent posts of Assistant Conservators of Forests in the Service. According to the appellants the process of direct recruitment was completed on 8th June, 1987. However, the appointment orders with respect to the direct recruits were issued only on 14th December, 1987. The appellant state that at the relevant time the cadre strength of the post of Assistant Conservator of Forest was only 172 and the promotees were already occupying more than 50% posts. Their quota being only 50% of the posts. We may note here that it is not in dispute that the quota of promotees and direct recruits was 50% each at the relevant time.

F It appears that while all the formalities with regard to recruitment of direct recruits were completed by 8th June, 1987, a Departmental Promotion Committee was constituted on 20th June, 1987 to consider candidates for promotion to the posts of Assistant Conservator of Forests from the feeder posts of Range Officers. Other Departmental Promotion Committees for the same purpose were held on 2nd July, 1987 and 17th October, 1987. G Two notifications dated 6th October, 1987 and 23rd November, 1987 were issued whereby promotees were appointed to the posts of Assistant Conservator of Forests. The notification regarding appointment of direct recruits was issued only on 14th December, 1987 i.e. after the appointments of the promotees had been notified. This gave an edge to the promotees H in the matter of seniority order recruits. A tentative seniority list was issued

on 7th March, 1989 while the final seniority lists showing the appellants who are direct recruits as juniors to the promotees was issued on 24th July, 1989. The appellants challenged this final seniority list by filing a Writ Petition in the High Court. The said Writ Petition was dismissed by a Division Bench of the High Court on 3rd April, 1996. In a Special Leave Petition filed against the said judgment, this Court by order dated 2nd September, 1996 remanded the matter back to the High Court with a direction that the High Court should give fresh decision after hearing all parties.

After the remand order passed by this Court, the petitioners in the writ petition (who are appellants herein) filed an application for amendment of the writ petition on 28th November, 1996 in the High Court. Several points were sought to be raised in the amendment application. The amendment was allowed on 25th May, 1997. None of the parties filed any fresh counter affidavit in reply to the amended writ petition. As a matter of fact no reply was filed to the amendment application by any of the respondents. Ultimately the High Court passed the impugned judgment on 13th July, 1998 dismissing the writ petition. Apart from rejecting the case of the appellants on merits, the High Court has laid much stress on the aspect of delay on the part of the appellants in challenging the promotions of the respondents. In the original writ petition the appellants had not challenged the appointments of the promotees/respondents as such. They had only challenged the final seniority list. Absence of challenge to the appointments of the respondents i.e. promotees in the writ petition is another ground which weighed with the High Court in dismissing the writ petition.

We have heard the learned counsel for the parties on this aspect of the matter. In our view in the facts and circumstances of the case, the appellants cannot be non-suited on the ground of delay in challenging the orders of the promotion of the respondents. The important aspect of the case which persuades us to take this view is that the notifications dated 6th October, 1987 and 23rd November, 1987 with aspect to the promotions/appointments of the respondents had been quashed by another Division Bench of the High Court by its judgment dated 9th February, 1996 in C.W.J.C. 1634/1986. By the said judgment the High Court had permitted the State Government to issue fresh notification with regard to the appointments of promotees. The fresh notification came to be issued only

A on 15th July, 2002. Therefore, on 3rd April, 1996 when the present writ petition was earlier dismissed and again on 13th July, 1998 when it was again dismissed by the High Court after the remand order passed by this Court, there was no notification in existence regarding appointments of the respondents/promotees. The High Court had even quashed the final seniority list by the said judgment dated 9th February, 1996. In these facts, B the appellants cannot be non-suited on the ground of delay in challenging the order of promotion to the respondents.

Coming to the merits of the controversy, Mr. Gopal Subramaniam, learned counsel for the appellant raised the following points :

- C 1. Posts of Assistant Conservator of Forests were not available at the relevant time for appointments of the promotees. In any case promotees were already occupying posts of far in excess of their 50% quota and therefore, no promotee could be appointed till the process of direct recruitment was completed and direct recruits were given 50% quota in the service.
- D 2. The Departmental Promotion Committee which was constituted for purposes of making promotions to the posts of ACFs was not constituted in accordance with the rules and therefore, the promotions recommended by it were invalid and illegal.
- E 3. *Malafides* on account of delay in issuance of notification regarding appointment of direct recruits.

The point though raised was not pressed before us, and therefore, it need not be gone into.

F In our view the first point regarding alleged non-availability of post of ACFs for appointment of promotees at the relevant time is sufficient to decide this appeal. On the question of availability of posts the case of the appellants is that posts were not available and in the absence of the posts no appointments could be made. Still the respondents had gone ahead with the appointments of the promotees. Such appointments are mere fortuitous and cannot confer the benefit of seniority from the date of appointment. G The first document relied upon in support of this contention is a letter dated 23rd September, 1985 from the Chief Conservator, Forests and Environment Department, Government of Bihar, Patna. The letter directly deals with the H question of promotion of Forest Range Officer (FRO) to the post of

Assistant Conservator of Forests (ACF). The letter notes that under Rule 3 of the Bihar Forest Service Rules, at least 50% of the total existing vacancies have to be filled by promotion. It goes on to add : "Presently there are 125 officers in the cadre in the Bihar Forest Service, out of which 105 have been promoted from the post of Range Officer and rest are appointed by way of direct recruitment." According to this letter as per the cadre strength of the posts of ACF in Bihar State Forest Service, the promoted officers constituted 84%. The Chief Conservator of Forests expressed his view in the said letter that filling such large number of posts by way of promotions affects the quality of service. The Chief Conservator of Forests also notes that the State Service Commission had already issued advertisement for filling 40 posts of ACFs by direct recruitment. He has opined that in these circumstances it would not be proper to fill up the posts of ACF by promotion. This letter highlights the imbalance already existing in the service qua the posts of ACF so far as appointments of direct recruitments and promotees are concerned.

The process of filling the posts by promotion was undertaken in June, 1987 onwards, which culminated with the issuance of notifications regarding appointments of promotees as ACF on 6th October, 1987 and 23rd November, 1987. On the question of cadre strength qua the posts of ACF reference has to be made to a notification dated 12th August, 1987 on which reliance has been placed by both the sides. According to appellants the said notification shows that the posts were not available for appointment of the promotees while the respondents read the said notification as an instrument creating sufficient number of posts to which the promotees could be appointed. The notification dated 12th August, 1987 is in the form of a resolution. The subject is mentioned as "Determination of cadre strength of Bihar Forest Service". The notification states that the cadre strength of Bihar Forest Service is being determined by the State Government with effect from the date of the publication of the resolution as follows :

- (1) Sanctioned posts as per letter No. 4260 dated 26.8.1986 of Department of Forest & Environment as on 15th April 1985 .....151
- (2) Sanctioned posts after 15th April, 1985 as per letter No. 2856 Dated 11th April, 1985 of Chief Conservator of forest. ....21



A (3) Sanctioned posts of deputation under department of Rural Development for the implementation of Social Forestry Schemes. ....38

B (4) Created posts under Bihar State Forest department operation for development and extraction of minor Forest.....Producer .....18

(5) Non-Cadre posts of Divisional forest Officers created in the cadre of Bihar Forest Service. ....49

C -----  
Total .....277  
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D The learned counsel for the appellants submitted that the above resolution only determines the cadre strength. It notes the posts which can be available for the Bihar Forest Service from various departments. It is at best a decision which remains to be implemented. While posts at Serial No. 1 & 2 above are clearly available in the Bihar Forests Service, rest of the posts have to be added to it which would require certain formalities to be completed before the post could be taken as a part of Bihar Forest Service. In Government there are rules of business which have to be followed before the posts are created and become available. Thus according to the learned counsel for the appellants only 172 posts were existing in the service at the relevant time. Relying on the letter of the Chief Conservator of Forests, referred to hereinbefore, the learned counsel submits that firstly such large number of posts were not available for being filled by appointment of promotees secondly the promotees were already occupying posts far in excess of their 50% quota and therefore, without first restoring the balance in the service, promotees could not be appointed.

G We have carefully perused the said resolution. As the heading of the resolution suggests, it is merely a determination of the cadre strength of the post of ACF. It is a decision as to what should be the cadre strength. The resolution cannot be said to be creating the posts. There is lot of difference between determination of cadre strength and creation of posts.

H

Determination is a decision regarding what should be the cadre strength. A  
The decision needs to be implemented. Implementation is by creation of  
posts. For creation of posts certain formalities have to be gone through.  
Nothing has been shown to suggest that requisite formalities regarding  
creation of posts had taken place. The resolution therefore cannot be taken  
as a creation of posts. The discussion which follows will show that the State B  
Government itself understood the legal position in the same manner as the  
State Government has taken a stand in the subsequent proceedings that  
sufficient number of posts had not been created and therefore were not  
available.

In support of his contention that posts were not available for the C  
appointment of the promotees at the relevant time in the year 1987 the  
learned counsel for the appellants drew our attention to an affidavit filed  
on behalf of the respondent in response to a petition for initiating contempt  
to court proceedings against the State Government and its officers for not D  
complying with the judgment dated 9th February, 1996 of the Division  
Bench of the High Court. It will be recalled that by the said judgment the  
High Court had quashed the notifications dated 16th October, 1987 and  
23rd November, 1987 regarding appointments of promotees to the posts  
of Assistant Conservator of Forests and had permitted the State Government  
to issue fresh orders in this behalf in accordance with law. There was E  
inordinate delay on the part of the State Government in issuing the fresh  
notification regarding appointment of the promotees which led to certain  
promotees filing application for initiating contempt of court proceeding.  
In reply to the Contempt Application, the Commissioner-cum-Secretary,  
Department of Forests & Environment, Government of Bihar stated as F  
under :

*Para 8 :*

“That so far as the direction issued by this Hon’ble Court vide G  
paragraph 93, 94, 95 are concerned, steps have been taken for issuance of  
fresh notification. However, the process has not been completed because  
from the record it appears that the promotions were made in the relevant  
period against non-existing posts. As such necessary Government order is  
required to be issued for creation of post of Assistant Conservator of Forest  
by the State Government first. Thereafter fresh notification regarding H

A promotions of the petitioners will be issued after following the laid down procedure for giving promotions.”

B Para 17 of the affidavit states “that the Deponent had called for relevant records and from the records it was found that in the year 1985 there was 133 posts of ACF and in the year 1986 140 incumbents were holding the posts of ACF”.

C *Para 18* : “That from the record it further transpires that in the year 1987, 82 persons appears to have been promoted/appointed in addition to 140 ACFs already working from before but there was no sanction order regarding creation of these posts. Even as on date no sanction order for creation of these posts is available. After verifying from the records it transpires that only 133 posts of A.C.F. have been created by the State Government.”

D *Para 19* : “That this matter has been discussed within department and a proposal of creation or additional 91 posts of ACF has been moved. In absence of availability of sanctioned post of ACF, any notification for appointment of petitioners as ACF will be a nullity in the eyes of law.”

E *Para 21* : “That the deponent will issue fresh notification as soon as the Government sanctions additional post of ACF which will be subject to the result of the SLP No. 15295/1998 pending in the Hon’ble Supreme Court.”

F This stand of the Government is reiterated in para 11 of the Counter Affidavit on behalf of the State Government filed in response to the Special Leave Petition in this Court. It is stated “respondent-State being conscious of the direction issued by the Hon’ble Patna High Court has taken appropriate steps for issuance of notifications promoting/appointing the concerned ACFs, the Government could not take a decision to notify their promotion/appointment immediately after the judgment passed by the Hon’ble Patna High Court because of certain factors, such as, pendency of the instant SLP, pendency of MJC No. 631/1998 (R) in the Patna High Court, Ranchi Bench and also due to non-availability of sufficient number of posts of ACFs”.

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It is clear from the admission made on behalf of the respondents by way of affidavits filed in judicial proceedings that sanctioned number of posts were not available in the year 1987 when the respondents were promoted as ACFs, rather the promotions were made against non-existing posts. Can such promotions confer any right on the officers concerned particularly over and above the other duly appointed officers in the service like the appellants? In this connection we have to note that Rule 35 of the Bihar Forest Service Rules provides that seniority of officers appointed to the service is to be determined with reference to the date of their substantive appointment. In order to become a member of the service the person concerned has to satisfy at least two conditions - first, appointment must be in substantive capacity and (2) the appointment has to be to the post in the service according to the Rules and within the quota to a substantive vacancy. (per *Keshav Chandra Joshi and Others v. Union of India and Others*, [1992] Supp. 1 SCC 272.

In the present case neither of the two conditions is satisfied. The posts to which substantive appointments were to be made were not available, therefore, there could be no appointment to the service. When there is no appointment to the service, much less substantive appointment to the service, the promotees could not be given seniority with effect from the purported date of their promotion.

At this stage it must be noticed that as a matter of fact the notifications dated 6th October, 1987 and 23rd November, 1987 regarding appointments of the promotees had been quashed by the Division Bench by its judgment dated 9th February, 1996 in C.W.J.C. No. 1634/1986. The Division Bench had permitted fresh notification to be issued for the purpose. The notification regarding fresh appointment of the promotees was delayed. It was ultimately issued only on 15th July, 2002. The said notification again states that the officers are promoted at the post of Assistant Conservator of Forest with effect from the date mentioned against their names. The date which is mentioned against their names is 20th June, 1987. This notification was issued during pendency of the present proceeding in this Court. The appellant immediately applied for relief against this notification in the present proceedings. The question that arises is that when admittedly in June, 1987 the posts of ACFs were not available for the promotees, how could by a notification dated 15th June, 2002 the promotees could be

A appointed with effect from 20th June, 1987. Till the affidavit was filed in the contempt proceedings in 1998 the posts had not been created, a fact mentioned in the affidavit.

B The learned counsel for the respondents tried to explain this clear admission on the part of the State Government by saying that the affidavit was only by an officer of the Government and did not necessarily represent the view of the Government. In our opinion this argument is highly technical and least responsible to carry any credence. Firstly, the officer was impleaded in the contempt petition as a respondent because he was holding the key post at the relevant time. The officer filed the affidavit on the basis of record of Government which fact has been so stated in the affidavit itself at various places. Secondly, the State Government has reiterated the same view in the Counter Affidavit filed in response to the SLP in this Court. We are surprised that in spite of these facts, such a contention is advanced by a seniority counsel appearing on behalf of the respondents.

C We have no reason to discard the clear admissions made on behalf of the State Government about non-availability of posts of ACFs for promotion of the promotees at the relevant time. This leads to the conclusion that the appointments of the respondents-promotees between June and November, 1987 as ACFs were against non-existing posts. When the posts were not available at all the next question as to whether the posts were falling within the quota of the promotees does not arise. Therefore, we need not advert to it. The question of availability of posts and the number of posts which are available is a question which can be best answered on the basis of record. Unfortunately no effort was made to place the relevant information before the court by supporting it with records. The record position we got in this case only from the affidavit of Shri K.D. Sinha, Commissioner-cum-Secretary, Department of Forests & Environment, Government of Bihar filed in reply to the contempt petition in the Patna High Court, copy of which is available as Annexure R3 to the Rejoinder Affidavit filed on behalf of appellants in this Court. The affidavit with which copy of the affidavit of Shri K.D. Sinha is annexed, was filed on 4th November, 1999. No effort has been made on behalf of the State Government to controvert the factual position stated in the affidavit of Shri K.D. Sinha. We can safely accept the position explained by Shri K.D. Sinha

in his affidavit. Thus we hold that the appointments of the respondents/ pomotees made between June and November, 1987 to the posts of ACFs cannot be termed as substantive appointments to the service and therefore, they cannot confer any benefit of seniority on the respondents over and above the appellants who were directly appointed to the service vide notification dated 14th February, 1987.

It is settled law that appointments made contrary to the rules are merely fortuitous and do not confer benefit of seniority on the appointees over and above the regular/substantive appointees to the service.

See *C.K. Antony v. B. Muraleedharan and Others*, [1998] 6 SCC 630, *M.S.L. Patil, Asstt. Conservator of Forests, Solarpur (Maharashtra) and Others v. Sate of Maharashtra and Others*, [1996] 11 SCC 361 and *State of Maharashtra and another A.W. Dhope and Others v. Sanjay Thakre and Others*, [1995] Supp 2 SCC 407.

The exact date on which Shri K.D. Sinha filed the affidavit in response to the contempt petition is not ascertainable however it has to be sometime in the year 1998 or thereafter. From the affidavit of Shri K.D. Sinha it is clear that even till the date of filing of the affidavit sufficient number of posts had not been created by the State Government because Shri Sinha has stated that he will issue fresh notification about the appointment of the promotees as soon as the State Government sanctioned additional posts of ACFs. The State Government issued notification regarding appointment of the respondent on 15th July, 2002. The said notification purports to appoint the respondents with effect from 16th July, 1987. This shows that the posts of ACFs might have been created by the State Government subsequently. While issuing the notification dated 15th July, 2002, the State Government could not ignore or prejudice officers like the appellants who were substantively appointed to the service w.e.f. 14th December, 1987 i.e. about fifteen years prior to the issuance of the notification. By the notification dated 15th July, 2002 the seniority gained by the appellant fifteen years prior thereto is sought to be set at naught. The learned counsel for the appellant fairly submitted that the appellants were not interested in seeking quashing of the appointments of the respondents. They were only concerned about maintaining their seniority over the respondents. In the facts and circumstances of the case we see no

**A** justification for disturbing the seniority of the appellants and giving the respondents seniority over them. While the State Government may regularise the appointment of the respondents-promotees, we hold that the respondents cannot be given seniority over and above the petitioners-appellants. The Writ Petition succeeds on the question of seniority. The final seniority list dated 24th July, 1989 is quashed and the State Government is directed to issued fresh seniority list fixing the seniority of appellants over the respondents in accordance with this judgment.

**B**

**C** In view of the above discussion, we do not propose to go into the question of constitution of the Departmental Promotion Committee regarding promotion of the respondents. The appeal is accordingly allowed. No order as to costs.

N.J.

Appeal allowed.