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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 22nd July, 2013

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W.P.(C) 101/2001

SHER SINGH SIKRIWAL

.... Petitioner

Represented by: Mr. Raman Duggal,
Advocate.

versus

UOI & ORS.

..... Respondents

Represented by: Mr. Rajinder Nischal,
Advocate for R-1.

CORAM:

HON'BLE MR.JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J. (Oral)

1. A short issue arises for consideration in the instant writ petition.
2. It appears that the learned Members of Bench of the Central Administrative Tribunal got thoroughly confused by the pleadings in OA No. 2195/1994 and probably the counsel for the petitioner could not explain the nuances of petitioner's case resulting in the Tribunal penning in paragraph 16:-

“At the outset, we would like to take the liberty to point out that the applicant does not seem to have done clear thinking on the reliefs specifically sought by him in this OA. We have already pointed out that claiming of the year 1978 as the year of allotment and alongside wanting to be appointed to the IFS by promotion W.E.F. 1.1.88 are stands mutually inconsistent and make no

sense to us in as much as by asking for 1978 as the year of allotment, the applicant is indirectly, though clearly, wanting his seniority to be counted from that very year and this position obviously contradicts the other position, namely, that of his appointment to the IFS W.E.F. 1.1.88.”

3. As we would be noting the facts, it would be apparent that the learned Members of the Tribunal were thoroughly confused and just did not, nay, were not made to comprehend the issue which arose.

4. The Indian Forests Service (Recruitment) Rules 1966, inter alia, lay down the procedure to make appointment to the service and we find that as per Rule 4 thereof one method of appointment to the service is by promotion from amongst the members of the State Forest Service adjudged suitable in accordance with such regulations as may be made by the Central Government in consultation with the State Government and the Union Public Services Commission. As per Rule 8 of the Rules, members of State Forest Service would be entitled to be promoted to the Indian Forest Service with respect to vacancies accruing in the State quota. The Indian Forest Service (Appointment by Promotion) Regulations 1966 lay down the provisions as to how list of candidates suitable for promotion from the State Forest Service to the Indian Forest Service have to be prepared, and suffice would it be to note that as per Rule 5, such lists have to be prepared each year. The seniority of officers in the Indian Forest Service is governed by the Indian Forest Service (Regulation of Seniority) Rules 1968 and with respect to officers who are appointed to the service by promotion, Rule 3 envisages assigning a year of allotment in accordance with the Rules. Thus, the year of allotment

being assigned for purposes of seniority is a matter different and independent of the year in which a person is appointed by promotion in the Indian Forest Service.

5. Being not guided even an inch by the impugned decision of the Tribunal, we would be constrained to note the facts as they emerge from the pleadings. And we note that the facts are extremely simple. While working as a Member of the Haryana Forest Service the petitioner came within the zone of consideration to be empanelled for appointment by way of promotion to the Indian Forest Service. One vacancy assignable to the State of Haryana in the Indian Forest Service being anticipated to fall due on January, 01, 1988, at a meeting held by a Scrutiny Committee on March 25, 1987 the name of petitioner as also that of respondent No.4 was entered in the list, with the name of petitioner being at serial No.1 and that of respondent No.2 at serial No.4. But UPSC kept pending the necessary clearance for petitioner to be appointed in the Indian Forest Service by promotion on account of the fact that a charge sheet had been issued to the petitioner and the disciplinary proceedings were pending. The proceedings ultimate culminated in the issuance of a warning to be more careful in future upon the petitioner on March 05, 1991.

6. The matter thus had to be taken ahead.

7. As per Haryana Civil Service (Punishment and Appeal) Rules 1987, a warning with a copy kept in the personal file (Character Roll) was one of the five minor penalties listed. Since the warning issued to be petitioner at the culmination of the disciplinary proceeding was not directed to be placed in the personal file (character roll) the State of Haryana informed UPSC that the simple warning issued to the petitioner

was not a minor penalty. The State of Haryana also informed UPSC as also the Cadre Controlling Authority of the Indian Forest Service, as required by the Rules, that since his empanelment in the year 1997, there has been no deterioration in the service of the petitioner. In spite thereof, the Union Public Service Commission sent a communication to the Cadre Controlling Authority that the petitioner could not be extended the benefit of he being empanelled at serial No.1 for the reason, and we quote from the letter of UPSC :-

“The Commission have carefully considered the matter. They observed that the name of Sh.S.S.Sikriwal was included in the Select List of 1989 (S.No.1) provisionally subject to clearance of enquiry pending against him. It is noted that Sh.Sikriwal has been found guilty of laxity of supervision and poor control over his subordinates and a warning has been issued to him which is a minor penalty under Haryana Civil Service (Discipline and Appeal) Rules 1987. Accordingly, the Commission advise that the name of Shri S.S.Sikriwal cannot be made unconditional in the Select List prepared for 15th December, 1989.”

8. It appears that for the next year i.e. the year 1989 a Select Panel had also been made in the year 1988, in which the name of petitioner was provisionally included at serial No.1 subject to clearance of enquiry and that of respondent No.4 at serial No.2.

9. We need to discuss no further. It is apparent that UPSC has not correctly read the applicable rule pertaining to the penalty envisaged by the Haryana Civil Services (Punishment & Appeal) Rules, 1987. The Rule in question is No. 4. It reads as follows:-

“4.(1) The following penalties may, for good and

sufficient reasons and as hereinafter provided, be imposed on a Government employee, namely:-

Minor Penalties

- (i) *Warning with a copy in the personal file (Character Roll).*
- (ii) *.....”*

10. Admittedly the warning in question issued to the petitioner cannot be treated as a minor penalty because it contains no direction that a copy thereof be placed in the personal file/character roll of the petitioner. Such a simple thing if understood correctly by UPSC would have not troubled either the petitioner or the respondents nor the Tribunal and neither us.

11. The undisputed position is that a vacancy allocable to the State of Haryana State Forest Service Cadre was available in the year 1988 in the Indian Forest Service, to be filled up by promotion. It is the petitioner who would get the same being at serial No.1 of the Select Panel. Accordingly, we direct that the petitioner be accorded appointment by way of promotion to the Indian Forest Service in the year 1988.

12. Undisputedly, the petitioner would be entitled to seniority determined as a member of the Indian Forest Service as per the Indian Forest Service (Regulation of Seniority) Rules 1968 and as per Rule 3 thereof would be entitled to be assigned a year of allotment. Based on assignment of the year of allotment and the seniority, the petitioner would be entitled to further promotions keeping in view the date when person immediately junior to him in the Indian Forest Service was promoted.

13. We note statement made by learned counsel for the petitioner on instructions from the petitioner that he superannuated on October 31, 2012. Learned Counsel for the petitioner on instructions from the

petitioner further states that the petitioner would not claim any back wages for the reason he has not discharged duties of the promotional posts to which he would be entitled to, but would pray that notional benefits be granted for purposes of pay fixation since this would ultimately impact the pension which the petitioner is receiving.

14. Accordingly, we dispose of the writ petition issuing the following directions:-

- (i) The warning issued to the petitioner would not be treated as a minor penalty.
- (ii) The petitioner would be appointed by promotion in the Indian Forest Service for the vacancy available in the year 1988.
- (iii) Based on direction No.(ii) above, the year of allotment and consequently seniority of the petitioner would be fixed with reference to the applicable rules of the Indian Forest Service (Regulation of Seniority) Rules 1968 and needless to state the mandate of Rule 3(2)(c) shall be kept in mind which makes a reference to Rules 4 and 7 in the context of continuous officiation in a post.
- (iv) With reference to petitioner being appointed by promotion to the Indian Forest Service in respect of the one post for State of Haryana available in the year 1988 and keeping in view the year of allotment assigned to the petitioner and his seniority position in the seniority list the petitioner would be granted further promotions from the date personal immediately junior to him in the said list earned a promotion and pay be fixed accordingly on notional basis, without any arrears being paid.
- (v) Petitioner's pension payable would be re-fixed with reference

to the pay notionally to be fixed as per direction (iv) above and revised pension would be paid with effect from November 01, 2012.

15. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

JULY 22, 2010
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