

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**LPA No. : 168 of 2022 a/w CWP
No. 6930 of 2022 and
LPA No. 154 of 2022**

Reserved on : 14.03.2023

Decided on : 22.03.2023

1. LPA No. 168 of 2022

Sandeep Kumar and Ors.

....Appellants.

Versus

State of Himachal Pradesh and Ors.

...Respondents.

2. CWP No. 6930 of 2022

Yogesh Kumar and Ors.

....Petitioners.

Versus

State of Himachal Pradesh and Ors.

...Respondents.

3. LPA No. 154 of 2022

Intzar

....Appellant.

Versus

State of Himachal Pradesh and ors.

...Respondents.

Coram

Hon'ble Ms. Justice Sabina, Acting Chief Justice.

Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹ Yes

For the appellants : Mr. Devan Khanna, Advocate for the appellants in LPA No. 168 of 2022 and for the petitioner in CWP No. 6930 of 2022.

Mr. B.C. Negi, Sr. Advocate, with Mr. Nitin Thakur, Advocate, for the appellant in LPA No. 154 of 2022.

For the respondents: Mr. P.P. Singh, Additional Advocate General for the respondents in LPA No. 168 of 2022 and CWP No. 6930 of 2022 and for respondents No. 1 to 4 in LPA No. 154 of 2022.

Mr. Tek Chand Sharma, Advocate for respondents No. 5, 16 to 18 and 20 in LPA No. 154 of 2022.

Ms. Minakshi Sharma, Advocate, for respondents No 21 to 23 in LPA No. 154 of 2022.

Satyen Vaidya, Judge

Letters Patent Appeals Nos. 168 and 154 of 2022 alongwith CWP No. 6930 of 2022 were heard together and are being decided by a common judgment as all these matters involve common questions of facts and law. Both the LPAs otherwise also arise out of common judgment.

2. CWP No. 2765 of 2019, titled Intzar & Ors. Vs. State of H.P. & Ors. and CWP No. 3077 of 2020, titled Sandeep Kumar & Ors. Vs. State of H.P. & ors., were

filed by the petitioners therein seeking identical relief to quash letter dated 08.08.2019 (Annexure P-12 in CWP No. 2765 of 2019 and Annexure P-20 in CWP No. 3077 of 2020), issued by Principal Chief Conservator of Forests, H.P (for short, "PCCF"). Both the petitions were dismissed by learned Single Judge, vide impugned judgment dated 22.08.2022. Appellants, who were the petitioners in the writ petitions, have assailed judgment dated 22.08.2022, passed by learned Single Judge by way of present appeals.

3. During the pendency CWP No. 2765 of 2019 and CWP No. 3077 of 2020, impugned communication dated 08.08.2019 in the said petitions, was implemented in some Forest Circles of the State. Aggrieved against such implementation CWP No. 6930 of 2022, has been preferred.

4. Parties hereinafter shall be referred to the same status which they held before Writ Court.

5. Department of Forests, has a cadre of Forest Guards. The R&P Rules to the post of Forest Guard were initially governed by *Himachal Pradesh Deputy Forest*

Rangers and Forest Guards Class-III (Executive Section) Recruitment, Promotion and Certain Conditions of Service Rules, 1978 (for short “1978 Rules”). Separate R&P Rules for the post of Forest Guards were notified on 01.02.2003 as Himachal Pradesh Forest Department, Forest Guards, Class-III (Non-Gazetted) (Executive Section) Recruitment & Promotion Rules, 2003 (for short “2003 Rules”), whereby 1978 Rules, in so far as those related to the posts of Forest Guards, were repealed. 2003 Rules were further amended, *vide* notification dated 02.04.2007. The Government of Himachal Pradesh, *vide* notification dated 20.09.2014, notified New Recruitment & Promotion Rules for the posts of Forest Guard in the Department of Forests (for short “2014 Rules”). 2003 Rules, were repealed by 2014 Rules.

6. 1978 Rules, in so far as those related to the posts of Deputy Forest Ranger, remained in vogue.

7. Despite repeated repeal and promulgation of R&P Rules for the post of Forest Guards, the mode of recruitment i.e. 90% by direct recruitment and 10% by

promotion through limited competitive test remained unchanged. Petitioners were the directly recruited Forest Guards.

8. The cadre of Forest Guards is a feeder cadre to the promotional post of Deputy Forest Rangers. As per 1978 Rules, 60% of the posts of Deputy Forest Rangers are filled by way of promotion and remaining 40% by direct recruitment.

9. *Vide* communication dated 08.08.2019, PCCF issued direction to all concerned to re-cast the seniority list of Forest Guards as per merit gained in direct recruitment/limited direct recruitment.

10. According to the petitioners, the instructions/directions issued by PCCF, *vide* impugned communication dated 08.08.2019, were against the statutory rules. As per petitioners, the cadre of Forest Guards in Department of Forests, H.P., was a Circle Level Cadre. The seniority was maintained Circle-wise and for consideration of seniority for the purposes of promotion to the post of Deputy Forest Rangers, length of service was the only criteria prescribed under

statutory rules. Thus, the instructions issued by Principal Chief Conservator of Forests, H.P., *vide* communication dated 08.08.2019, were alleged to be *dehors* the statutory rules as the merit gained in direct recruitment was irrelevant criteria.

11. The claim of the petitioners was contested on the grounds that the seniority of Forest Guards maintained in some of the Forest Circles, on the basis of length of service was contrary to R&P Rules as also the direction contained in letter dated 29.09.2003, issued by PCCF. As per respondents, the seniority of Forest Guards was to be maintained at Circle level, on the basis of marks /merit obtained by each candidate in the selection process. The respondents defended the communication dated 08.08.2019, issued by PCCF, being in conformity with the relevant R&P Rules and in compliance to order dated 13.02.2019, passed by erstwhile H.P. Administrative Tribunal in O.A. No. 584 of 2019. Respondents also defended its action under the umbrella of powers to relax R&P Rules in appropriate cases.

12. Learned Single Judge vide impugned judgment has upheld the communication dated 08.08.2019, issued by the PCCF, by rejecting the claim of the petitioners, broadly on the ground that the relevant R&P Rules were silent on the yardsticks to be adopted while amalgamating the seniority of Forest Guards of different Circles, at the time of their consideration for promotion to the next higher post of Deputy Forest Ranger. Learned Single Judge further held that in absence of any specific provision in R&P Rules, respondents were within their right to apply appropriate criteria. In this manner, the criteria proposed, vide impugned communication dated 08.08.2019 for consideration of seniority on the basis of merit in the direct recruitment/limited direct recruitment was held permissible. Further, the said criteria has also been held to be fair and legal by testing the same at the touch stone of legal principle enunciated from time to time.

13. We have heard learned counsel for the parties and have also gone through the record carefully.

14. Learned counsel for the petitioners contended that the learned Single Judge while passing the impugned judgment, had ignored the relevant provisions of 1978 Rules, wherein the joint seniority list of Forest Guards for the purposes of promotion to the post of Deputy Forest Rangers was to be prepared by the PCCF, on the basis of length of service in the grade. Reference has been made to *Note (p)* of 1978 Rules, which reads as under:-

“(p) For the purpose of promotion to the posts of Deputy Forest Rangers a joint seniority list of Forest Guards will be prepared by the Chief Conservator of Forests on the basis of length of service in the grade by application of KLM Formula.”

15. Noticeably, from the impugned judgment, it is not inferable that learned Single Judge had noticed the aforesaid provision. Evidently, learned Single Judge took notice of *Note (l) and (r)* of 1978 Rules, which reads as under:-

“(l) The Chief Conservator of Forests may constitute more than one DPC/ Selection Committee in the State for the purpose of recruitment/promotion of Deputy Forest Rangers but he shall prepare a joint list of merit

for the purpose of seniority before the orders of appointment are issued.

(r) Promotion to the posts of Deputy Forest Rangers will be made by seniority subject to rejection of unfit.”

16. In our considered view, reliance placed by learned Single Judge on *Note (l) ibid* was foreign to the issue involved in the matter. The dispute was with respect to the criteria to be adopted for framing the seniority list of the Forest Guards for the purposes of promotion to the post of Deputy Forest Rangers, whereas *Note (l)* related to the recruitment to the post of Deputy Forest Rangers and further promotion of Deputy Forest Rangers to the next promotional post. The language employed while casting *Note (l)* is couched in such words, which can have no other interpretation. It is specifically mentioned that more than one DPC/Selection Committee in the State can be constituted for the purpose of recruitment/promotion of Deputy Forest Rangers. Thus, the purpose is of promotion of Deputy Forest Rangers and not the promotions to the posts of Deputy Forest Rangers. We

are strengthened in our this view by the *Note (m)* following *Note (l)*, which reads as under:-

“(m) The Conservator may constitute more than one DPC/Selection Committee in his Circle for recruitment of Forest Guards but he shall prepare a joint list of merit for the purpose of seniority before the orders of appointment are issued.”

17. *Note (m)* deals with the same situation for Forest Guards, which is dealt by *Note (l)* for Deputy Forest Rangers. Had the import of *Note (l)* been to denote merit for the purpose of seniority of Forest Guards, there was no need to separately incorporate *Note (m)*, as noticed above.

18. Vide *Note (p)*, appended to 1978 Rules, it has been made crystal clear that a joint seniority list of Forest Guards is to be prepared by Chief Conservator of Forests, for the purpose of promotion to the posts of Deputy Forest Rangers, on the basis of length of service in the grade. Thus, there is a clear cut stipulation in 1978 Rules with respect to the criteria to be adopted for preparation of seniority list of Forest Guards for the purposes of promotion to the next higher post. It is not

in dispute that 1978 Rules remained in force in respect of the Deputy Forest Rangers, therefore, *Note (p)* of said Rules also held the field as it related to the filling-up of posts of Deputy Forest Rangers by way of promotion from feeder category of Forest Guards.

19. Petitioners were appointed as Forest Guard by direct recruitment in the year 2007. 2003 Rules as amended in 2007 were in force at the time of their appointments. Even 2014 Rules are not substantially different from 2003 Rules, in so far as, these relate to the issue under adjudication. In 2003 Rules as also in 2014 Rules, it was clearly provided that a final merit list of successful candidates would be prepared for each Forest Circle category-wise i.e. General, OBC, SC and ST etc. as per reservation policy of the government. The merit list was to be prepared on the basis of total marks obtained in each category viz. physical efficiency test, written test and personality test. Offer of appointment was to be made in order to merit as per availability of vacancy. *Note (r)* of the Notes appended to 1978 Rules, as noticed by learned Single Judge, has to

be read in conjunction with the relevant provisions of 2003 and 2014 Rules, as noticed above. Since, the cadre of Forest Guards in Department of Forests, H.P. is a circle level cadre and the seniority is also maintained at circle level, the preparation of seniority on the basis of merit in the selection process is relatable only to the preparation of select list, however, for the purpose of amalgamated seniority of Forest Guards of all the circles for the purposes of promotion to the post of Deputy Forest Rangers has to abide by the mandate of 1978 Rules, especially, *Note (I)* appended thereto, where the length of service has been specifically provided to be the criteria to determine the seniority.

20. Thus, we stand to differ from learned Single Judge and hold that there was a specific provision in R&P Rules, with respect to the relevant criteria for fixing seniority of Forest Guards for the purpose of promotion to the post of Deputy Forest Rangers. In view of existence of such specific criteria and without their being any challenge thereto, such rule having statutory recognition has to prevail and can be substituted by its

amendment or substitution by another statutory rule and not by a simple administrative instruction.

21. We have also found substance in the contention raised on behalf of the petitioners that even the very premise of impugned communication dated 08.08.2019, being in compliance to order dated 13.02.2019, passed by erstwhile H.P. Administrative Tribunal in O.A. No. 584 of 2019, was a misconceived notion. Petitioners in O.A. No. 584 of 2019 had raised their grievance with respect to the rules for the Forest Guards promoted by way of promotion through limited direct competitive test. Petitioners belong to a different category as they were direct recruits. In this view of the matter, the impugned communication dated 08.08.2019 cannot be said to have its legal basis in order dated 13.02.2019 passed by erstwhile H.P. Administrative Tribunal, in O.A. No. 584 of 2019.

22. We also deem it proper to make reference to the communications dated 06.05.2019 and 02.08.2019, issued by Principal Chief Conservator of Forests, H.P., which find mention in impugned communication dated

08.08.2019. In the communication dated 06.05.2019, (Annexure P-18 in CWP No. 3077 of 2020), the entire reference is to the recruitment of Forest Guards made in the year 2002-03 by way of promotion through limited competitive test after one time relaxation of R&P Rules. It has also a reference to communication dated 29.09.2003, issued by PCCF, which again deals with the recruitment of Forest Guards through limited competitive test. The communication dated 02.08.2019 was also on the same subject and hence, we have no hesitation to hold that the reliance on all the aforesaid communications and order dated 13.02.2019, passed by erstwhile H.P. Administrative Tribunal was totally misplaced and could not have formed a legal basis for issuance of communication dated 08.08.2019 and consequently crafting changes in the criteria to fix seniority of Forest Guards for the purposes of promotion to the post of Deputy Forest Rangers.

23. Once we have held that a specific criteria in 1978 Rules existed for fixing seniority of Forest Guards for their promotion to next higher post, we do not find it

necessary to delve into the legality or fairness of the procedure adopted by the PCCF while issuing administrative instructions *vide* impugned communication dated 8.8.2019.

24. In view of above discussion, LPAs Nos. 168 and 154 of 2022 are allowed. The impugned judgment dated 22.08.2022, passed by learned Single Judge in CWP No. 3077 of 2020 and CWP 2765 of 2019 is set aside. The communication dated 08.08.2019, Annexure P-12, issued by Principal Chief Conservator of Forests, (Hoff) H.P., in CWP No. 2765 of 2019 and Annexure P-20 in CWP 3077 of 2020, is quashed and set aside. Respondents are directed to adhere to the seniority list of directly recruited Forest Guards, for the purposes of promotion to the post of Deputy Forest Rangers, strictly basing the criteria of length in service.

25. In view of our aforesaid finding, CWP No. 6930 of 2022 is also allowed. Letter/order dated 12.09.2022, Annexure P-15, issued by Principal Chief Conservator of Forests (HoFF) H.P., in CWP No. 6930 of 2022, is quashed.

26. Both the appeals and writ petition are accordingly, disposed of, so also the pending miscellaneous application(s), if any.

(Sabina)
Acting Chief Justice

22nd March, 2023
(*sushma*)

(Satyen Vaidya)
Judge