

RESERVED

Court No. - 33

Case :- WRIT - A No. - 14255 of 2014

Petitioner :- Rajaram Yadav

Respondent :- State of U.P. and others

Counsel for Petitioner :- Ashok Kumar Lal, S.A. Imam

Counsel for Respondent :- C.S.C.

Hon'ble J.J. Munir,J.

This writ petition has been instituted, seeking issue of a writ, order or direction in the nature of *mandamus*, commanding the respondents to consider the petitioner's case for promotion to the post of a Forester with effect from the date when juniors to him in the cadre of Conservator were granted promotion, within a stipulated period of time.

2. The facts giving rise to this petition are that the petitioner says that he was appointed as a Conservator on 01.02.1991 after selection by the U.P. Public Service Commission. He was selected in the 'Other Backward Category' (for short, the 'OBC'). The petitioner was posted at the Sohagi Barwa Wildlife Sanctuary, Maharajganj. Throughout his career, the petitioner had an unblemished run and there were no complaints against him. No punishment was awarded to him and his conduct was satisfactory.

3. The petitioner says that the Zonal Forest Officer, Sohagi Barwa Wildlife Sanctuary, Maharajganj had issued a seniority list for Conservators dated 31.03.1991, wherein the petitioner was placed at Serial No. 33. The said seniority list showed the date of his appointment as 01.02.1991 and the category as OBC. It is next said that the State Government issued a Government order No. Va.Aa.-2-

561/ Dus-62(M)/2008 dated 04.05.2010 and *vide* paragraph no. 2(1) (ii) of the said Government Order, it was provided that employees, who have been granted their first promotional pay scale after completion of 14 years of service, would be entitled to the benefit of the second Assured Career Progression (for short, 'ACP'). It is further stated that in terms of the aforesaid Government Order dated 04.05.2010, the petitioner was granted benefit of the second ACP with effect from 01.02.2009 by an order dated 19.10.2011, whereas he had completed 18 years of continuous satisfactory service from the date of his initial appointment on 01.02.1991, entitling him to the benefit of the second ACP with effect from 01.02.2009. There appears to be some confusion here regarding the petitioner's claim about the date with effect from which he is entitled to the second ACP.

4. It is next said that according to an order dated 19.10.2011 issued by the Divisional Forest Officer, Sohagi Barwa Wildlife Sanctuary, Maharajganj, the petitioner's seniority in the seniority list is shown to be 11 and the date of grant of the second ACP as 01.02.2009. Subsequently, a tentative seniority list was issued by the Divisional Forest Officer dated 01.01.2013, wherein the petitioner, according to his case, was incorrectly ranked 22. This happened because the date of his appointment has been wrongly mentioned as 04.10.1995. The petitioner put in his objections dated 18.01.2013 to the said tentative seniority list that were invited, wherein he has said that the seniority list was flawed, because his date of appointment has been incorrectly shown as one of the year 1995, instead of 1991. He demanded that the petitioner ought to be placed at serial no. 18 of the said list. The Divisional Forest Officer, *vide* his memo dated 17.10.2013, published final seniority list, wherein the petitioner was placed at serial no. 9, with 8 persons senior to him in the cadre of Conservator.

5. It is the petitioner's case that without application of mind and in arbitrary exercise of power, the Principal Chief Conservator of Forests, Wildlife (East), Gonda issued a number of promotion orders dated 02.05.2013, 17.10.2013 and 28.12.2013, promoting various persons junior to the petitioner to the post of Forester, relying upon the tentative seniority list.

6. It has been pleaded in paragraph no. 14 to substantiate his case that his junior Durga Prasad Kushwaha, one of the promotees, who was wrongly placed at Serial No. 17 of the tentative seniority list, was granted promotion *vide* order dated 02.05.2013, although he was junior to the petitioner. Similarly, Ashok Kumar Gupta, Ram Bahadur and Dinesh Nath Tripathi, respondent nos. 5, 6 and 7 were granted promotion *vide* order dated 28.12.2013 by the respondents without considering the fact that they were juniors to the petitioner.

7. It is urged that the respondents passed these promotion orders without application of mind and without taking into consideration the final seniority list. They acted on the dictate and command of political superiors, exercising their power to promote arbitrarily.

8. The petitioner says that he approached the respondents pointing out patent anomalies, but was not heard. He retired from service on 31.12.2013. The case of the petitioner is that he has been discriminated in the matter of consideration for promotion, and, wrongfully denied promotion, contrary to his entitlement.

9. It is argued that in not considering the petitioner's case for promotion according to his entitlement in the seniority of Conservators, promoting his juniors to the post of Foresters, the respondents have denied the petitioner's right under Articles 14 and 16 of the Constitution. It is urged that the equal protection of laws generally to all citizens find specific expression under Article 16 of the Constitution in the matter of consideration for employment or

appointment under the State. The right to be considered for promotion is protected under Article 16, which postulates consideration in accordance with one's entitlement that has not been done. It is on the foot of all these facts and pleas that the petitioner says that his case ought to be considered for promotion with effect from the same date that juniors to him have been promoted.

10. In paragraph no. 9 of the counter affidavit, the stand taken is that Durga Prasad Kushwaha, Forester was placed at Serial No. 17 in the tentative seniority list and the date of his appointment is 01.02.1991. He is senior to the petitioner. It is urged that the employees who have been promoted are all seniors to the petitioner. So far as *Vanadesh* No. 45/16-6 dated 28.12.2013 is concerned, the date of promotion of Ashok Kumar Gupta, Ram Bahadur and Dinesh Nath Tripathi has been determined as 01.01.2014, 01.03.2014 and 03.01.2014, respectively. It is said that considering the entire facts, the petitioner is not entitled to the benefit of promotion.

11. It is also pleaded in paragraph no. 8 of the counter affidavit that promotion on the post of Forester has been undertaken after considering the date of birth, seniority and suitability of the concerned employees.

12. In the rejoinder affidavit, the petitioner has reiterated his case without adding anything material to the case already pleaded in the writ petition.

13. Heard Ms. Vartika Srivastava, Advocate holding brief of Mr. Ashok Kumar Lal, learned Counsel for the petitioner and Mr. Yashwant Singh, learned Standing Counsel appearing on behalf of respondent nos. 1 to 4.

14. A perusal of the final seniority list dated 01.10.2023 shows that respondent nos. 5, 6 and 7, Ashok Kumar Gupta, Ram Bahadur and Dinesh Nath Tripathi are placed at serial nos. 10, 12 and 14 of

the said list, whereas the petitioner is at serial no. 9. He is certainly senior to respondent nos. 5, 6 and 7. Upon a perusal of the promotion order relative to respondent nos. 5 to 7, it is evident that the first vacancy against which Ashok Kumar Gupta was promoted on 01.01.2014 occurred on account of retirement of the previous incumbent on 31.12.2013, that is to say, the date when the petitioner too retired. Therefore, the petitioner could not have been promoted against the post of an incumbent, who was retiring on the same day as the petitioner. Notwithstanding the fact that Ashok Kumar Gupta ranked junior to the petitioner in the final seniority list, he was promoted on the next following date i.e. 01.01.2014, as he was still borne in the feeding cadre on the said date, when a clear vacancy arose, whereas the petitioner had already retired the previous day. Needless to say that the two other juniors, Ram Bahadur and Dinesh Nath Tripathi were promoted on 01.03.2014 against vacancies that came into existence much after the petitioner's retirement from the post of Conservator. In this manner, so far as respondent nos. 5, 6 and 7 are concerned, there is absolutely no case of discrimination or arbitrariness made out.

15. The only issue that survives is about Durga Prasad Kushwaha, who was promoted on the post of Forester with effect from 02.05.2013 *vide Vanadesh* No. 34/16-6. The petitioner says that in the tentative seniority list dated 01.01.2013, the petitioner has been wrongfully shown at serial no. 22 by misrepresenting his date of appointment as 23.02.1995. In column no. 6 of the said list, the petitioner's date of appointment has been correctly shown as 01.02.1991, but he has indeed been wrongly placed at serial no. 22 because four other employees in the said list, to wit, Bharat Pratap Singh, Ram Bahadur, Ram Awadh Yadav and Ashok Kumar Gupta whose dates of appointment are 23.03.1995, 22.01.1994, 22.01.1994 and 04.09.1992, respectively, all of which fall after the petitioner's

appointment have been ranked above the petitioner. Ashok Kumar Gupta is shown at serial no. 18 of the seniority list, whereas Durga Prasad Kushwaha is shown at serial no. 17. The error in the tentative seniority list is certainly there, so far as the persons mentioned at serial nos. 18 to 21 of the tentative seniority list are concerned. This error has obviously been rectified in the final seniority list, where the petitioner has been moved up and placed above the men shown incorrectly at serial nos. 18 to 21 of the tentative seniority list.

16. But, the question is, whether this entitles the petitioner to say that he is senior to Durga Prasad Kushwaha, who is at serial no. 17 of tentative seniority list. In his representation against the tentative seniority list dated 01.01.2013, which is a document dated 18.01.2013, the petitioner has urged that he ought to be placed at serial no. 18. Even if this representation were to be allowed as such, the petitioner would not rank above Durga Prasad Kushwaha, in any case.

17. The question whether the petitioner is senior to Durga Prasad Kushwaha is clinched in terms of Vanadesh No. 14/16-1 dated 19.10.2011, which is an order awarding the second ACP to five Conservators. It includes both Durga Prasad Kushwaha and the petitioner. Both these Conservators were awarded the second ACP, but in the said order also, the petitioner ranks below Kushwaha in column no. 2, where seniority is mentioned. Durga Prasad Kushwaha is shown in the relevant column to be at 10th rank in the seniority, whereas the petitioner ranks 11th. This order or no part of it was ever challenged. There is nothing in the writ petition raising a plea or pointing out proceedings to show that the petitioner at any point of time endeavoured to establish that he was senior to Durga Prasad Kushwaha. Rather his representation, as already said, against the tentative seniority list, asked for being placed at serial no. 18 which

would be below Kushwaha, who ranked there at serial no. 17. This would almost impliedly estop the petitioner from saying that he was at any time senior to Kushwaha and entitled to be promoted to the post for Forester before him. So far as the other three men, who are indeed junior to the petitioner are concerned, they have all been promoted against the vacancies that arose after the petitioner's retirement.

18. In this view of the matter, no case of practice of hostile discrimination or arbitrariness in the matter of consideration for promotion of the petitioner *vis-a-vis* his juniors is made out.

19. In the result, this petition fails and is **dismissed**. There shall be no order as to costs.

Order Date:- 19.10.2023

Deepak