

2025:AHC:133396

Reserved on : 23.07.2025

Delivered on : 07.08.2025

Court No. - 5

Case :- WRIT - A No. - 62302 of 2011

Petitioner :- Mahendra Dev Narain Tiwari

Respondent :- U.P.Forest Corporation Thru.Its M.D. Lucknow
And Others

Counsel for Petitioner :- Pramod K. Gupta

Counsel for Respondent :- S.C.

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Sri J.P. Singh, learned counsel for petitioner and Sri Dhananjay Awasthi, learned counsel for respondents.

2. The petitioner was appointed in Uttar Pradesh Forest Corporation on 01.04.1977 and retired on 31.07.2009, after attaining age of superannuation. It is the case of petitioner that during his service period, he was entitled for promotion, firstly from Grade III to Grade II in 1981 and on its basis secondly from Grade II to Grade I in 1985, but was not considered due to an adverse entry in his service book of the year 1979-80.

3. During his service period, petitioner finds that he was ignored for promotion and his juniors were promoted, therefore, he has filed a writ petition no. 1115 of 1990, which was allowed by an order dated 08.05.1998 that he shall be promoted. The respondent corporation has filed a Special Appeal against said order, which was disposed of by an order dated 17.01.2000 that petitioner's case may be considered for promotion with effect from the date his juniors were promoted

ignoring the uncommunicated adverse entry, if any. A copy of the said order is not on record.

4. In pursuance of above order, case of the petitioner was considered for promotion, however, concerned committee rejected his claim on a ground that adverse entries awarded in 1979-1980 was already communicated. The petitioner thereafter filed a Writ Petition no. 52895 of 2000, which was dismissed by an order dated 17.02.2005, therefore, he has filed a Special Appeal, which was also dismissed vide judgment dated 23.03.2005, that adverse entry of the year 1979-1980 was communicated in the year 1981. It appears that said order was not further challenged at the behest of petitioner.

5. It appears that, before above referred orders were passed the Managing Director of the U.P. Forest Corporation had issued an order dated 16.02.1991, whereby petitioner was granted promotion on the post of Assistant Grade II, with effect from the date of order of promotion. It was modified by a subsequent order dated 27.04.2007 that date of promotion would be with effect from 04.06.1981, when his juniors were promoted though with a caveat that "सहायक वर्ग 2 से सहायक वर्ग 1 में पदोन्नति का विचारण चयन समिति के माध्यम से विचारण के उपरान्त नियमानुसार लिया जायेगा"

6. In the aforesaid circumstances, petitioner has approached this Court by way of filing a Writ Petition No. 55289 of 2008, that he may be considered for promotion on Grade I with effect from 20.08.1985, when his juniors were promoted on the

post of Assistant Grade - I. The said writ petition was disposed of by following order dated 17.09.2010:-

“Heard Sri H.P. Misra, learned counsel for the petitioner.

Learned counsel for the petitioner has already retired from service on 31.7.2009. The petitioner was claiming promotion from the post of Assistant Grade III to Assistant Grade II and then from Assistant Grade II to Assistant Grade I in the UP Forest Corporation.

The said claim of the petitioner was partially allowed vide order dated 27.4.2007. The petitioner thereafter pursued his remedy before the departmental authorities claiming that his promotion has been unduly delayed and he ought to have been promoted as Assistant Grade I. The said claim was looked into and in paragraph 4 of the counter affidavit, filed in response to the present writ petition, it has been stated that the selection committee in its meeting held on 4.3.2008 came to the conclusion that there is no question to consider the promotion of the petitioner w.e.f. 20.8.1985 on the post of Assistant Grade I.

Learned counsel for the petitioner submits that apart from the aforesaid averment, nothing has been intimated to the petitioner and he has also retired.

In view of the aforesaid position, let the authorities communicate to the petitioner the reason for the decision so taken, as indicated in the counter affidavit, within 3 weeks from today.

The writ petition is disposed of, without prejudice to the rights of the petitioner to approach the appropriate authority for redressal of his claims. ”

7. In pursuance of above order, claim of the petitioner was considered even though he was retired, however, Departmental Promotional Committee, in its meeting dated 04.03.2008, decided that, once petitioner was not in the Grade II in the year 1985 since at that time earlier order of promotion dated 16.02.1981 was enforced and it was partially modified by a subsequent order dated 27.04.2007, though it was directed that promotion to the post of Grade II will be with effect from 04.06.1981, but being a subsequent order, therefore, its effect would not be such that petitioner be deemed to be on the post

of Grade II in the year 1985. A caveat was also part of order dated 27.04.2007, that further promotion on Grade II would be only in terms of law. The proposal adopted on 04.03.2008 is reproduced hereinafter :-

“श्री एम०डी०एन०एम० तिवारी, सहायक वर्ग-2 (वेतनमान रु० 4500-7000) को दिनांक 20.8.1985 से सहायक वर्ग-1 (वेतनमान रु० 5000-8000) के प्रबन्ध निदेशक के आदेश संख्या ई-1429/3-2(3-10)/पदोन्नति स०वर्ग-2 दिनांक 19.05.2007 एवं संख्या ई-2186/3-2(3-10)/पदोन्नति सहायक वर्ग-2 दिनांक 07.06.2007 के द्वारा गठित चयन समिति की बैठक अध्यक्ष, चयन समिति / महाप्रबन्धक (विपणन) के कार्यालय कक्ष में 04.03.2008 को हुई।

कार्मिक प्रबन्धक ने समिति को यह अवगत कराया कि सहायक वर्ग-1 के कुल 08 पद भरे हुए हैं जिनमें से 01 अधिसंख्य का पद बैकलाग के अन्तर्गत अनुसूचित जाति की पदोन्नति से भरा हुआ है। इस पद का अभी सहायक वर्ग-1 का पद उपलब्ध न होने के कारण संवर्ग के विरुद्ध समायोजन नहीं हुआ है। इस प्रकार सहायक वर्ग-1 का कोई पद रिक्त नहीं है। जहाँ तक श्री तिवारी को दिनांक 20.8.1985 से सहायक वर्ग-1 के पद पर पदोन्नति का प्रश्न है, अभिलेखों के अनुसार प्रबन्ध निदेशक के आदेश संख्या ई-8975/3-2(3-7) दिनांक 16.2.1991 के द्वारा उन्हें फरवरी 1991 से सहायक वर्ग-3 से सहायक वर्ग-2 के पद पर पदोन्नत किया गया था। तदपश्चात् अप्रैल, 2007 में प्रबन्ध निदेशक के आदेश संख्या ई 796/दस-3 (एम-22) दिनांक 27.04.2007 के द्वारा पदोन्नति आदेश दिनांक 16.2.1991 में आंशिक संशोधन करते हुए उनकी 04.06.1981 (जब से उनसे कनिष्ठ कर्मियों की पदोन्नति प्रदत्त है) निर्धारित की गयी है। अगस्त 1985 में श्री तिवारी सहायक वर्ग-2 के पद पर नहीं थे जिसके कारण तत्कालीन चयन समिति के द्वारा उनकी सहायक वर्ग -1 के पद पर पदोन्नति हेतु विचार नहीं किया गया। इसलिए अब लगभग 23 वर्ष बाद इस चयन समिति द्वारा श्री एम०डी०एन०एम० तिवारी की दिनांक 20.8.1985 सहायक वर्ग-1 के पद पर पदोन्नति करने हेतु विचार करने का कोई औचित्य नहीं बनता है।”

8. The aforesaid proposal was communicated to petitioner by an order dated 11.04.2010:-

“मा० उच्च न्यायालय, इलाहाबाद द्वारा उक्त विषयगत याचिका पर दिनांक 17.9.2010 को पारित आदेश के परिपालन में आपको सूचित किया जाता है कि आपकी सहायक वर्ग-2 से सहायक वर्ग-1 के पद पर दिनांक 20.8.1985 पर पदोन्नति हेतु विचार करने के लिए जो चयन समिति की बैठक दिनांक 04.03.2008 को सम्पन्न हुई थी उसके द्वारा यह कारण देते हुए मत व्यक्त किया गया है कि "जहाँ तक श्री तिवारी को दिनांक 20.8.1985 से सहायक वर्ग-1 के पद पर पदोन्नति का प्रश्न है, अभिलेखों के अनुसार प्रबन्ध निदेशक के आदेश संख्या ई-8975/3-2(3-7) दिनांक 16.2.1991 के द्वारा उन्हें फरवरी 1991 से सहायक वर्ग-3 से सहायक वर्ग-2 के पद पर पदोन्नत किया गया था। तदपश्चात् अप्रैल, 2007 में प्रबन्ध

निदेशक के आदेश संख्या ई-796/दस-3 (एम-22) दिनांक 27.4.2007 के द्वारा पदोन्नति आदेश दिनांक 16.2.1991 में आंशिक संशोधन करते हुए उनकी पदोन्नति दिनांक 04.06.1981 (जब से उनसे कनिष्ठ कर्मियों की पदोन्नति प्रदत्त है) निर्धारित की गयी है। अगस्त 1985 में श्री तिवारी सहायक वर्ग-2 के पद पर नहीं थे जिसके कारण तत्कालीन चयन समिति के द्वारा उनकी सहायक वर्ग-1 के पद पर पदोन्नति हेतु विचार नहीं किया गया। इस लिए अब लगभग 23 वर्ष बाद इस चयन समिति द्वारा श्री एम०डी०एन०एम० तिवारी की दिनांक 20.8.85 से सहायक वर्ग-1 के पद पर पदोन्नति करने हेतु विचार करने का कोई औचित्य नहीं बनता है।"

अतः उपरोक्तानुसार अवगत होवे।"

9. Learned counsel for the petitioner has submitted that, once he was granted promotion with effect from 04.06.1981 by making partial modification by a subsequent order dated 27.04.2007 in his promotional order dated 16.02.1991, he ought to have been considered for promotion on the post of Grade I despite he was retired after getting age of superannuation in the year 2009.

10. The Court also takes note of following submissions mentioned in the written submission filed by learned counsel for petitioner :-

"(1) Once by order dated 27-04-2007 the earlier order dated 16-02-1991 was partly modified altering Petitioner's date of promotion on the post of Assistant Grade-II from 04-06-1981, it did not lie in the mouth of Managing Director to refuse Petitioner's claim for promotion on the post of Assistant Grade-I by observing that in August, 1985 Petitioner was not holding the post of Assistant Grade-II. Reasons given by the Managing Director for refusing notional promotion and benefits available to Assistant Grade-I are contrary to his own order dated 27-04-2007.

(2) Even otherwise the Petitioner was fully eligible for promotion on the post of Assistant Grade-I in the year 1985 cannot be denied notional promotion and the other consequential benefits flowing from such notional promotions when it was fault of the Respondents in not giving timely promotion.

(3) Petitioner's case is squarely covered by the judgment of this Court dated 07-11-2024 passed in Writ-A No. 13967 of 2023 connected with Writ No. 11048 of 2023. Where this Court has allowed the claims of Writ-Petitioners wherein with a direction to extend benefit of promotion from Assistant Grade-III Assistant Grade-II notionally with consequential benefits w.e.f. the date they are entitled to it under Regulation. True copy of the judgment is enclosed.”

11. Learned counsel for petitioner has also placed reliance on a judgment passed by Co-ordinate Bench of this Court in the case of **Mahendra Deo Narain Tiwari Vs. State of U.P. and others, Writ Petition No.115 of 1990**, that in case where an employee was denied for promotion for which he was entitled and it was delayed due to an act of respondent, a direction can be given for his promotion with consequential benefits even after his retirement, though on notional basis.

12. Per contra, learned counsel for respondent has submitted that the petitioner was initially granted promotion from Grade III to Grade II with effect from the date of order i.e. 16.02.1991 and said order was never challenged as well as it has not brought on record in the present writ petition also. The petitioner has filed Writ Petition No. 5289 of 2000, which was dismissed by an order dated 17.02.2005 and Special Appeal thereof was also dismissed by an order dated 23.05.2005. Both orders are not on record.

13. The Court also takes note that respondents by a subsequent order dated 27.04.2007, modified the promotion order dated 16.02.1991, that promotion on the post of Grade II will be considered with effect from 04.06.1981, when his juniors were promoted. This order was passed on 21.04.2007.

14. In the aforesaid circumstances, before his retirement, petitioner has approached this Court by filing writ petition No. 55289 of 2008 that his claim from promotion on the post of Grade I be considered though writ petition was disposed of after petitioner got retired on 31.07.2009. It is not under dispute that promotion on post from Grade II to Grade I would be considered only when petitioner has worked on the said post for a period required for purpose of promotion. The petitioner has claimed that he be promoted with effect from 20.08.1985, however, admittedly, petitioner has worked as Grade II w.e.f. 16.02.1991 only, therefore, his claim was rightly rejected. Otherwise also much water has flown and now after three decades, prayer sought cannot be considered.

15. The Court also takes note that by order dated 27.04.2007, there was a caveat that further promotion will be considered strictly in accordance with law and since requisite conditions were not fulfilled, therefore, his claim was not considered after his retirement, therefore, also relief sought cannot be granted.

16. Accordingly, writ petition is **dismissed**.

Order Date :- 07.08.2025

P. Pandey