

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.: 409 of 2019

Date of Decision: 27.07.2026

Dharam Chand

...Petitioner

Versus

State of H.P. and Others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?¹

For the petitioner:

Mr. R.L. Chaudhery, Advocate.

For the respondents:

Mr. Vishav Deep Sharma, Additional
Advocate General for respondents No. 1 to
4.

Respondent No. 5 already *ex-parte*.

Jiya Lal Bhardwaj, Judge (oral)

The petitioner by way of present petition has prayed for
the following substantive reliefs:-

"a) That the entire record of the case may kindly be
summoned and after perusing the same the order
dated 11.7.2003 and order dated 11.5.2005 in
respect of Junior persons may kindly be quashed and
set-aside.

b) That the respondents may be directed to promote the present applicant since his name stood at Sr. No. 63 as per the seniority list.”

2. The facts as emerge from the pleadings are that the petitioner was engaged as a Forest Worker with the respondent-Department on 09.01.1993 and his services were regularized on 09.01.1998. As per the seniority list of Forest Workers circulated by the respondent-Department, he was at serial No. 63. On the basis of the seniority list, the promotions to the posts of Forest Workers were to be made and respondent No.5, who was junior to the petitioner and at serial No.200, was promoted and the petitioner was ignored though he had also qualified the written examination. It has also been averred that the respondent-Department had adopted the pick and choose policy for making promotion of the Forest Workers to the posts of Forest Guards, which was in violation of Articles 14, 16 and 19 of the Constitution of India.

3. It has further been averred that the petitioner had made a representation to the respondent-Department on 12.12.2005 (Annexure A-2), but no action was taken by the respondent-Department. Respondent No.5 was promoted to the post of Forest Guard as per office order dated 11.05.2005 (Annexure A-3). As per the Recruitment and Promotion Rules for the post of Forest Guard,

Class-III (Non-Gazetted) (Executive Section) in the Department of Forests, Himachal Pradesh, it is a non-selection post and 90% posts are to be filled up by direct recruitment and 10% by promotion. But despite the fact that the petitioner had qualified the written examination, he was not offered appointment to the post of Forest Guard, ignoring his seniority in the feeder category of Forest Workers being Class-IV, which action is arbitrary and as such he prayed that the respondent-Department may be directed to promote him from the date when his juniors were promoted after quashing appointment of respondent No.5.

4. Respondents No.1 to 4 filed reply to the petition and raised preliminary submissions that as per the Recruitment and Promotion Rules (for short "R&P Rules") for the post of Forest Guard, 10% posts of Forest Guards are filled by limited competitive test from out of Class-IV employees of the Department with requisite qualification and experience i.e. Matriculate with 5 years of service or Middle pass with at least 10 years of service. Out of the eligible Class-IV employees, the Selection Committee will select persons for appointment as Forest Guards by a limited competitive test. As per vacancy position, 19 posts of Forest Guard were to be filled from amongst Class-IV employees against 10% quota in Mandi Circle, as

such, an interview/limited competitive test was held in Circle Office Mandi on 27.05.2003, when total 76 number of Class-IV employees appeared for the said interview/limited competitive test and select list of 24 candidates was drawn by the Selection Committee, in which the petitioner did not find place. 19 candidates were given appointment offers in July, 2003 and the remaining 5 candidates were kept in the panel. 4 more posts of Forest Guards to be filled up from amongst Class-IV employees were found vacant, hence appointment was offered to 4 more candidates in November, 2003, out of the above referred panel. As such, 11 Peons, 11 Forest Workers and 1 Chowkidar were selected/appointed as Forest Guards for filling 23 vacancies of Forest Guards. It has been admitted that the petitioner had appeared in the interview on 27.05.2003 and the criteria for selection was laid down as limited competitive test, as such, a limited competitive test was conducted and the candidates were selected for appointment as Forest Guards by promotion as per merit determined on the basis of limited competitive test. It has been admitted that the petitioner had qualified the limited competitive test, but he did not come in the merit, so he could not be appointed to the post of Forest Guard.

5. Respondent No.5 filed his separate reply and supported his appointment. It has been averred that respondent

No.5 was promoted as Forest Guard by the Forest Department keeping in view the procedure laid down in the R&P Rules, for the post of Forest Guard after taking limited competitive test. The seniority is not only single criteria for the selection of the candidates, but educational qualification and limited competitive test etc. are also criteria for selection of Forest Guard.

6. The petitioner did not file rejoinder to the replies filed by the respondents.

7. I have heard the learned counsel for the petitioner as well as learned Additional Advocate General for the respondents and also perused the case file carefully.

8. Before advertng to the submissions made by the learned counsel for the parties, it would be relevant to quote the relevant R&P Rules for the post of Forest Guard, i.e. Rules No. 5, 7, 10 and 11 which read as under:-

"5. Whether selection post : Non-selection
or non-selection post

7. Minimus educational
and other qualifications
required for direct
recruits.

Educational Qualification

Must have passed the Matriculation Examination or its equivalent from any recognised University/Board.

Physical Standard**Men:**

- i) Height :165 cm.
- ii) Chest :79 cm without expansion and 84 cm after expansion.
- iii) Capacity to walk: 25 Kms in 4 hours.

Women

- i) Height :150 cm
- ii) Chest :74 cm without expansion and 79 cm after expansion.
- iii) Capacity to walk: 14 Kms in 4 hours.

(Physical Standards in respect of Scheduled Tribes candidates will be relaxable upto 5 cm in height and 4 cm each in respect of chest without and with expansion)

10. Method of recruitment, whether by direct recruitment or by promotion, deputation, transfer and the percentage of posts to be filled in by various methods.

- 1) 90% by direct recruitment
- 11) 10% by promotion.

11. In case the recruitment by promotion, deputation, transfer, grade from which promotion/deputation /transfer is to be made.

By promotion from amongst Class-IV employees of Forest Department who are Matriculate with five years or Middle Pass with ten years regular service or regular combined with continuous adhoc service in the grade respectively.

Provided that the promotion shall be made on the basis of limited competitive test."

9. A perusal of Rule 5 of the R&P Rules reveals that the post of Forest Guard is a non-selection post. As per educational qualification, a candidate must have passed Matriculation Examination or its equivalent from any recognized Board/University. 90% of the posts of Forest Guards are to be filled by direct recruitment and 10% by promotion. While filling up the post by promotion, under Rule 11, the same has to be filled up from amongst Class-IV employees of Forest Department, who are Matriculate with 5 years or Middle Pass with 10 years regular service or regular combined with continuous ad-hoc service in the grade, respectively. Proviso has been added which clearly stipulates that the promotions shall be made on the basis of limited competitive test.

10. Learned counsel for the petitioner has vehemently argued that once the petitioner had qualified the limited competitive test, thereafter, instead of making promotion on the basis of the merit drawn in the limited competitive test, the petitioner, being senior to respondent No.5, ought to have been offered the appointment to the post of Forest Guard. The said plea cannot be accepted for the reason that the R&P Rules do not envisage that in case a person qualifies the limited competitive test, thereafter, the person who is senior in the

category of Class-IV employee has to be given preference and not on the basis of the merit drawn in the limited competitive test.

11. Learned counsel for the petitioner further vehemently argued that once the post is a non-selection post, then in that case, it is only seniority-cum-merit which has to be followed for the purpose of making promotion to the post of higher post. He placed reliance upon the judgment of the Constitution Bench of the Hon'ble Supreme Court in ***State of Kerala and another Vs. N.M. Thomas and others, (1976) 2 SCC 310*** and subsequent judgment by a three-Judge Bench of the Hon'ble Supreme Court in ***B.V. Sivaiah and others Vs. K. Addanki Babu and others, (1998) 6 SCC 720***. As per the judgment of the Constitution Bench in ***N.M. Thomas'*** case (supra), the Hon'ble Supreme Court had the occasion to deal with the principle of seniority-cum-merit and held that seniority-cum-merit means that even the minimum necessary merit requisite for efficiency of administration, the senior though the less meritorious shall have priority. There is no dispute with the said preposition of law, but the same is not attracted to the facts of the present case for the reason that under the R&P Rules, it is not provided that in case a Class-IV employee qualifies the limited competitive test, he being not in the merit list, but only being senior has to be given preference while

offering appointment. Another judgment cited by the learned counsel for the petitioner in ***B.V. Sivaiah's*** case (supra) also deals with the same proposition, and the ratio laid down in the said judgment is also not attracted to the facts of the present case for the reason that in the case at hand, the R&P Rules do not specifically mention that after qualifying the limited competitive test, the senior has to be given preference for the purpose of offering appointment. No doubt, the post of Forest Guard is a non-selection post, but for the purpose of making promotion under 10% quota, the promotion has to be made from amongst Class-IV employees of Forest Department, who are Matriculate with 5 years or Middle Pass with 10 years regular service or regular combined. The petitioner only fulfilled the minimum qualification prescribed under the R&P Rules, but in the written test conducted by the respondent-Department for the purpose of making promotion under 10% quota from amongst Class-IV employees, he was not in the merit drawn by the respondent-Department for filling up 19 posts, which were later on increased to 23 vacancies. Respondent No.5 was higher in merit and was among 19 candidates who were offered the appointments to the posts of Forest Guards.

12. Learned counsel for the petitioner has also placed reliance upon the judgment of the Hon'ble Supreme Court in ***Civil***

Appeal No. 4482 of 2021, titled ***Tek Chand and others*** Vs. ***Bhakra Beas Management Board (B.B.M.S.) and others***, to canvass that since the petitioner was senior in the seniority list to respondent No.5, the respondent-Department has wrongly ignored him for making promotion to the post of Forest Guard. This judgment is also not attracted to the facts of the present case for the reason that the R&P Rules do not say that after qualifying the written test, the merit has to be ignored while making promotion to the post of Forest Guard simply considering the said post as a non-selection post.

13. Learned Additional Advocate General representing the respondent-State has argued that the similar issue which has been raised in the present petition had come before a coordinate Bench of this Court in ***CWPOA No. 5572 of 2020***, titled ***Subhash Chand*** Vs. ***State of H.P. and others***, and the petition was dismissed. The relevant paragraphs of the judgment read as under:-

"RECORDS REQUISITIONED"

6. During the course of hearing, Learned Counsel for the petitioner stated that though the petitioner was higher in merit [amongst Class-IV Employees who appeared in Test/ Interview on 27.05.2003] but the respondents recommended/ promoted those incumbents who were lower in merit as Forest Guard(s) in May 2003. In these circumstances this Court ordered the production of records on 18.11.2024 and then, on 26.11.2024 and further records were produced before this Court today.

6(i). Perusal of requisitioned records reveals that once the selection process was initiated for filling up of 19 posts of Forest Guards in Mandi Forest Circle from Class-IV Employees under 10% Promotion Quota and based on the Test/Interview conducted by the Selection Committee on 27.05.2003, only those 19 Class-IV Employees who were higher in merit, against these 19 earmarked posts, were approved for promotion in May 2003 and were promoted as Forest Guard in July 2003, by the respondents.

ANALYSIS

7. After taking into account the entirety of the facts and circumstances and available material and upon perusal of the summoned records, this Court is of the considered view that the non-promotion of the petitioner as Forest Guard, in July 2003, does not call for any interference for the following reasons:

(i). Undisputedly, the selection process was initiated for filling up 19 posts of Forest Guards, in Mandi Forest Circle by the Respondent No. 3 Conservator of Forests, Mandi Circle against 10% promotion quota [by limited test] on 13.02.2003 [Annexure R-III], for which a Selected Committee was constituted on 22.05.2003 [Annexure R-IV], directing all eligible Class-IV employees to appear in Test/Interview on 27.05.2003. Pursuant to this, the petitioner appeared and was duly considered for promotion **but due to his lower merit vis-à-vis the higher merit of others, non-promotion of the petitioner as Forest Guard in July 2003 does not suffer from any infirmity or illegality.**

(ii). Petitioner does not have any vested right of promotion. Even the R&P Rules of 2003 [Annexure R-XI] for the post of Forest guard does not provide that mere completion-fulfillment of eligibility will entitle the petitioner for promotion automatically. The petitioner only has a limited right of consideration. Non-promotion, after due consideration does not suffer from any infirmity, unless the petitioner

carves out a case of malafides or bias or arbitrariness, and once these factors are absent in present case, therefore, no indulgence can be shown, against the non-selection of the petitioner as Forest Guard in July 2003.

(iii). Upon participation in interview held on 27.05.2003 and consideration, the State Authorities have rightly denied the promotion to petitioner as Forest Guard in July 2003, against 19 Earmarked posts of Forest Guard, in Mandi Forest Circle, due to lower merit. The non-promotion of petitioner as Forest Guard due to lower merit in July 2003, against 19 Earmarked vacancies is legal and valid. Promotion of Class-IV Employees as Forest Guard who were higher in merit does not suffer from any infirmity, moreso, when, the petitioner along with other Class-IV Employees, had participated in the selection process [interview held on 27.05.2003] before Four Member Selection Committee. In these circumstances, no fault can be found with the promotion of 19 Class-IV Employees as Forest Guards in July 2003, who were higher in merit vis-à-vis the petitioner, who had lower merit.

(iv). Non promotion of petitioner, who figured at Sr. No. 21, in the List produced before this Court can neither confer any right nor any locus to the petitioner for promotion, against 19 Earmarked posts, against which those 19 feeder category Class IV Employees having higher merit were promoted as Forest Guard in July 2003.

(v). Claim for promotion as Forest Guard is not tenable, for the reason, that after selecting and appointing 19 Class-IV as Forest Guards [based on higher merit] in July 2003, the Respondents took a conscious decision to fill up the anticipated - 10 - vacancies from the List of 23 candidates. Pursuant to this, Class-IV Employees, including the petitioner was promoted as Forest Guard, against the

"Four additional anticipated vacancies" on 24.11.2003 [Annexure R-VI] and the claim for retrospective promotion as Forest Guard from July 2003 cannot be permitted de hors the Rules.

CONCLUSION AND DIRECTIONS:

8. In view of above discussion and for the reasons hereinabove, this Court finds no infirmity against the denial of promotion to the petitioner as Forest Guard in July 2003 [being lower in merit]; coupled with the fact that petitioner has subsequently been promoted as Forest Guard on 24th November, 2003 [Annexure R-VI] and has joined the promotional post, therefore, the instant petition being devoid of any merit is dismissed.

In aforesaid terms, the petition is dismissed and all pending application(s), if any, shall stand disposed of, accordingly."

14. In the aforementioned judgment, a plea was taken by an employee, who was Class-IV that though he was higher in merit, but he was wrongly ignored for appointment as Forest Guard. The Court had held that the petitioner though appeared and duly considered, but he being lower in merit vis-a-vis the higher merit of others, non-promotion of the petitioner as Forest Guard in July 2003 does not suffer from any infirmity or illegality. Therefore, in the present case too, the petitioner was lower in merit and respondent No.5 being higher in merit has rightly been offered the appointment and thus, no illegality has been committed by the respondent-Department while making promotion of respondent No.5 to the post of Forest Guard,

who was having higher merit in the limited competitive test conducted by the respondent-Department.

15. Consequently, I do not find any merit in the petition and the same is accordingly dismissed. However, there shall be no order as to costs. Pending application(s), if any, shall also stand disposed of.

(Jiya Lal Bhardwaj)
Judge

27th July, 2026
(*sushma*)