

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.15034 of 2012
Reserved on: 03.05.2016
Decided on : 18.05.2016**

Ravinder Singh

... Petitioner

Versus

The State of Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. T.S. Chauhan, Advocate
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab
for respondents No.1 to 3.

None for respondent No.4.

G.S. Sandhawal, J.

The petitioner seeks modification in the seniority list of Forest Guards dated 25.07.2012 (Annexure P-6) by placing him at Sr. No.104 below Gurinder Singh and above respondent No.4 Gurcharan Singh. The relief is claimed on the basis of continuous length of service of the petitioner which is more than the persons mentioned at Sr. No.104 to 316 on the strength of Rule 8 of the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (hereinafter referred to as '1994 Rules'). Resultantly, the quashing of the said list is also sought to the extent that it declares persons at Sr. No.104 to 316 as senior to the petitioner.

As per the pleaded facts, the petitioner was granted

compassionate appointment on account of death of his father on 05.05.1998 and given appointment on 28.05.1998 (Annexure P-1), on which date he joined as Forest Guard. It is the case of the petitioner that the service conditions are governed by the Punjab Forest Subordinate (Group-C) Executive Service Rules, 2006. The rules being silent regarding determination of seniority, therefore, the 1994 Rules would be applicable. Further promotion from the post of Forest Guard to the post of Forester is on the basis of seniority-cum-merit. The provisional seniority list of the Forest Guards was drawn up on 01.12.2012 after merger of the Forest Guards of Forest Department and Wild Life Wing. Objections were invited against the provisional seniority list circulated on 27.04.2012 (Annexure P-2) and the petitioner only came to know in the first week of June, 2012, whereby he had been placed at Sr. No.319 and the persons mentioned at Sr. No.104 to 316 are being placed before him, even though they joined subsequent to the petitioner. He had objected to the same by filing objections on 22.06.2012 (Annexure P-3) and his sister had to seek information under the Right to Information Act, 2005, but the same was not supplied. The petitioner had again raised objections on 17.07.2012 (Annexure P-5), but without considering the same the earlier provisional seniority list had been maintained. Resultantly, the present writ petition was filed.

Respondents No.1 to 3 in their reply raised the issue of

delay, as the seniority list had earlier been issued in the year 2005 and the petitioner has raised no objection regarding the seniority. Seniors to the petitioner had not been impleaded, who were likely to be effected and, therefore, the petition was liable to be dismissed on this ground. The Subordinate Service Selection Board, Punjab (hereinafter referred to as 'SSSB') had recommended 199 candidates for the post of Forest Guard vide letter dated 30.03.1998 (Annexure R-3/3). Thereafter, vide letter dated 02.06.1998 (Annexure R-3/4) and 02.07.1998 (Annexure R-3/5) 50 more candidates from the waiting list were also included in the list. The seniority of the said 249 candidates, as per the provisions of the 1994 Rules, was fixed above the candidates appointed otherwise like the case of the petitioner, who was appointed on compassionate ground. The final seniority list as it stood on 01.04.2005 had been issued on 13.12.2006 (Annexure R-3/7) and the name of the petitioner had been placed at Sr. No.538 in the list below the Forest Guards who were recommended by the SSSB in the months of March, 1998. The petitioner had raised no objection against the fixation of seniority, as it stood on 01.04.2005 (Annexure R-3/8). The fresh provisional seniority list as it stood on 01.04.2011 was issued vide letter dated 09.01.2012 and widely circulated and many objections were raised and considered. However, the petitioner did not raise any objection regarding his position in this list also. It is, however, admitted that

the petitioner had raised objections against the provisional seniority list (Annexure P-2), but the same was duly considered and filed being devoid of merit. The information had been supplied to his sister, who concealed the fact that she is sister of the petitioner and required the information for her brother. On the basis of the seniority list, promotion had been made to the rank of Foresters in the month of August, 2012.

The petitioner in the replication took the plea that the final seniority list as on 01.02.2012 had been circulated on 25.07.2012, after merging of the cadres and the earlier list issued in the year 2005 stood superseded. Gurcharan Singh having seniority No.104 and being senior most had been impleaded and all the effected persons need not be required to be impleaded. The instructions referred to by the State were neither applicable nor superseded under the provisions of the rules. The petitioner having joined on compassionate ground prior was entitled for the seniority as per Rule irrespective of the fact that the said persons had been recruited through the SSSB.

Counsel for the petitioner has, accordingly, relied upon the judgment of the Apex Court in 'Suraj Parkash Gupta Vs. State of Jammu & Kashmir' 2000 (7) SCC 561 to submit the petitioner services had been regularised on 28.05.2000, as per the seniority list (Annexure P-6), whereas the services of the private respondents were regularised on 25.03.2003 and, therefore, as per

the provisions of 1994 Rules, he was entitled for seniority and over and above the said persons.

Counsel for the State on the other hand stressed on the delay which has occurred and, accordingly, submitted that the petitioner having accepted the seniority list in the year 2005 could not subsequently rake up the issue of seniority again after a period of 7 years, when the second seniority list was circulated.

After hearing counsel for the parties and from the above factual narration, it is apparent that the petitioner's claim for mandamus and certiorari quashing the seniority list is not sustainable. The State has been able to demonstrate the fact that the petitioner never objected to the first seniority list of the Forest Guards, as it stood on 01.04.2005 and circulated on 13.12.2006 (Annexure R-3/7). In the said list, the petitioner was shown at Sr. No.538 below the persons, who have been appointed on the basis of the recommendations of the SSSB. The petitioner at that point of time had raised no objections and had let the seniority become final. The interest of the said appointees, thus, became confirmed and the delay which has occurred has not been explained in any manner. The Apex Court in such circumstances has held that, it would not be justified to put the clock back and disturb the seniority position, if the employee had slept over his right. It was, accordingly, held that in **'Vijay Kumar Kaul Vs. Union of India'**

2012 (4) RSJ 696 that the persons had to come to the Court at the

earliest or at least within a reasonable span of time. A belated approach was held to be impermissible. The relevant observations read as under:-

“21. From the aforesaid pronouncement of law, it is manifest that a litigant who invokes the jurisdiction of a court for claiming seniority, it is obligatory on his part to come to the court at the earliest or at least within a reasonable span of time. The belated approach is impermissible as in the meantime interest of third parties gets ripened and further interference after enormous delay is likely to usher in a state of anarchy.

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23. In the case at hand, as the factual matrix reveals, the appellants knew about the approach by Parveen Singh and others before the tribunal and the directions given by the tribunal but they chose to wait and to reap the benefit only after the verdict. This kind of waiting is totally unwarranted.

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27. In the case at hand it is evident that the appellants had slept over their rights as they perceived waiting for the judgment of the Punjab and Haryana High Court would arrest time and thereafter further consumed time submitting representations and eventually approached the tribunal after quite a span of time. In the meantime, the beneficiaries of Punjab and Haryana High Court, as we have been apprised, have been promoted to the higher posts. To put the clock back at this stage and disturb the seniority position would be extremely inequitable and hence, the tribunal and the High Court have correctly declined to exercise their jurisdiction.”

Another issue which arises, as noticed is that apart from respondent No.4, the other employees senior to the petitioner, have not been arrayed as respondents in spite of an objection having been taken by the State and in their absence any directions issued would adversely affect them and due to this aspect again no relief can be granted to the petitioner. It has been

further specifically averred by the State that further promotions have been made to the post of the Forester. The petitioner in his replication has contended that respondent No.4 has been impleaded and the respondents from Sr. No.105 to 316 need not be impleaded. This cannot be accepted as their interest would also be involved. This aspect was also noticed by the Apex Court in **Vijay Kumar Kaul (Supra)**. The principle laid down read as under:-

“28. Another aspect needs to be highlighted. Neither before the tribunal nor before the High Court, Parveen Singh and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant. In this context we may refer with profit to the decision in Indu Shekhar Singh & Ors. v. State of U.P. & Ors.[8] wherein it has been held thus: -

“There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority.”

29. In Public Service Commission, Uttaranchal v. Mamta Bisht & Ors.[9] this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus: -

“7. In Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, Bihar & Anr., AIR 1963 SC 786, wherein the Court has explained the distinction between necessary party, proper party and proforma party and further held that if a person who is likely to suffer from the order of the Court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of

natural justice. More so, proviso to Order I, Rule IX of Code of Civil Procedure, 1908 (hereinafter called CPC) provide that non-joinder of necessary party be fatal. Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141, CPC but the principles enshrined therein are applicable. (Vide Gulabchand Chhotalal Parikh v. State of Gujarat; AIR 1965 SC 1153; Babubhai Muljibhai Patel v. Nandlal, Khodidas Barat & Ors., AIR 1974 SC 2105; and Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior & Ors. AIR 1987 SC 88).

8. In Prabodh Verma & Ors. v. State of U.P. & Ors. AIR 1985 SC 167; and Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors. (2009) 1 SCC 768 : (AIR 2008 SC (Supp) 824), it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties.”

30. From the aforesaid enunciation of law there cannot be any trace of doubt that an affected party has to be impleaded so that the doctrine of audi alteram partem is not put into any hazard.”

Resultantly, keeping in view the above factual matrix that the petitioner accepted the seniority list of Forest Guards seven years earlier before the seniority list was again circulated in the year 2012 and neither the affected persons from Sr. No.105 to 316 have been impleaded, this Court does not feel that it is a fit case to exercise its equitable jurisdiction under Article 226 of the Constitution of the India. Accordingly, the present writ petition is dismissed.

MAY 18, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE