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HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 4765 of 2005

A. P. Dubey, Deputy Ranger, 323, Ganjpara Ward, Bemetara, District Durg Now District Bemetara Chhattisgarh **---- Petitioner**

Versus

1. State Of Madhya Pradesh Through Its Secretary, Government Of Madhya Pradesh, Department Of Forests, Mantralaya, Vallabh Bhawan, Bhopal M.P.
2. The Principal Chief Conservator Of Forest, Satpuda Bhawan, Bhopal M.P.
3. State Of Chhattisgarh Through Its Secretary, Government Of Chhattisgarh, Department Of Forests, Mantralaya, D.K. Bhawan, Raipur, Chhattisgarh ---**Respondents**

For Petitioner : Mr. A.P. Dubey, Petitioner in Person
For State : Mr. A.S. Kachhawaha, Additional A.G.

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

07/03/2018

Heard.

1. The petitioner, in person, has remained firm and determined in his order of justice which was started with filing of an original application before the State Administrative Tribunal at Raipur, way back in the year 2002. The petition filed before the Tribunal had to be transferred to this Court because the Tribunal was abolished. The petition was heard and order was passed by this Court allowing the petition vide order dated 09.09.2016. The matter, however, did not come to an end as the State filed a review petition seeking review and recall of the aforesaid order on tenable grounds that the order of this Court was based on the order of the State Administrative Tribunal and subsequent order passed on 22.07.2000 by the Government, whereas both were not in existence on the date the order was passed. Faced with this situation, this Court had to recall its earlier order vide order dated 21.11.2017, restoring the petition to its original number.

2. The case has a checkered history. The petitioner was initially appointed

as Forester in Raipur Circle in the year 1971. Recruitment to the post of Forester and promotion to the higher post of Deputy Ranger at the relevant time and even now are governed by the Recruitment Rules known as Madhya Pradesh (now Chhattisgarh) Class-III (Non-Ministerial) Forest Service Recruitment Rules, 1967 (for short 'the Recruitment Rules of 1967'). Under the Rules as it existed at that point of time, when the petitioner was appointed as Forester, the recruitment to the post of Forester were to be made by a Selection Committee to be headed by the Chief Conservator of Forest as provided in Rule 12 of sub-rule (2) of the Recruitment Rules of 1967. In course of time, however, the Rules, specifically with regard to the unit within which recruitment of Forester were tobe made, were amended. The amendment was brought about vide notification dated 23.10.1978 published in the Madhya Pradesh Official Gazette on 11.05.1979 which read as under :

> "No.10191-3136-XI-78- In sub-rule (2) of Rule 12 of Madhya Pradesh Class III (Non-Ministerial) Forest Service Recruitment Rules, 1967 published vide this Department notification No.9414-6183.X-1/67, dated the 31st August 1967 for the words, "The selection of candidates by direct recruitment for the post of Foresters will be made by departmental committee with the Chief Conservator of Forest as its head", substitute "the election of candidates by direct recruitment for the posts of Foresters, in each circle, will be made by departmental Committee with the Conservator of Forest of the Circle concerned as its head and 2 other members who will be posted in the circle (Senior Divisional Forest Officers) nominated by the Conservator of Forests concerned".

3. In so far as promotion to the post of Deputy Ranger is concerned, the Recruitment Rules provided the channel of promotion, eligibility criteria and constitution of Departmental Promotion Committee in Schedule-IV of the Recruitment Rules of 1967 as below :

Schedule IV
(See Rule 14)

Name of Department – Forest

Name of Service or post from which promotion is to be made	Name of service or post to which promotion is to be made	Period (i.e. numbers of years of service in post in column (2) after which promotion is to be considered	Name of number of the Departmental promotion Committee vide Rule 14
(1)	(2)	(3)	(4)
Forest Guard Forester..	3 years after training the Forest Guards training school or after 12 or more Year of service in case of untrained Forest Guards.	For promotion in Divisional Office.	Divisional Forest Officer one or two Asstt. Conservator of Forests depending on their Number in the Division.
Forester ..Dy. Ranger	5 years service of has stood first at Dy. Ranger or Forester Training School of the State		
Dy. Ranger.. Forest Ranger Surveyor .. Head Surveyor Asstt. Teacher Head Master.	. . . .	For promotion in Divisional and Circle Offices.	Conservator of Forests. 2 Divisional Forest Officers.

4. It appears that after the amendment in the Rules, referred to as above, the post of Forester as well as the post of Deputy Ranger were being treated

as posts borne in each circle as one unit. The petitioner was promoted as Deputy Ranger in his own circle i.e. Raipur Circle vide order dated 28.12.1988.

5. There, however, existed anomaly that the post of Deputy Ranger were being filled up by way of promotion from Foresters within the circle only and not at the State level. The effect was that the Forester, who may have been appointed at an earlier point of time and posted in one circle, was not promoted to the next higher post of Deputy Ranger for want of vacancy, whereas in other circle, junior Forester was promoted due to a fortuitous circumstance of availability of vacancy of Deputy Ranger in that circle. Thus, junior Foresters were promoted to the Deputy Ranger whereas senior Forester of other circle were promoted as Deputy Ranger after the promotion of junior Foresters.

6. The senior Foresters who suffered this anomaly, raised a grievance by filing an Original Application-O.A. No.355 of 1996 (Ganesh Prasad Dubey and another Vs. State of Madhya Pradesh) before the M.P. Administrative Tribunal Bhopal, Bench Bhopal. The Tribunal passed an order on 12.05.1999 legitimising the grievance of the petitioner therein by holding that the Foresters who were appointed earlier in point of time were entitled to be considered for promotion over and above, those junior Foresters who got promotion as Deputy Ranger in their own circle at an earlier point of time. This verdict of the Tribunal resulted in upheaval of the seniority position of the Deputy Ranger in the State of M.P. The State Government, bound by the order of the Tribunal, proceeded to pass an order on 22.07.2000 directing redrawal of seniority list of Deputy Ranger and also reversion.

7. The State, however, filed a writ petition before the High Court of Madhya Pradesh assailing correctness and validity of the Tribunal's order. The petition filed by the State was allowed by the Division Bench of the High Court of Madhya Pradesh vide order dated 07.11.2003. It was held in the concluding paragraphs as below :

> “In view of the aforesaid, while not disturbing the promotions that have already been given effect to, we set aside the order of the Tribunal. We may clarify that some persons had filed original applications before the Tribunal and the said applications have been transferred to this Court after abolition of the Tribunal. It needs no special emphasis to state here that the cases before this Court which have been renumbered shall be decided on their own merits

> inasmuch as the order of the Tribunal cannot be a precedent for this Court. We may further clarify that parties in all cases are at liberty to raise all contentions before the learned Single Judge to get the advantage. We have only set aside the order of the Tribunal and if any scenario has been left out it would be open for them to agitate their grievances".

8. The State Government, thereafter, proceed to pass a consequential order on 29.12.2008 withdrawing earlier order dated 22.07.2000 (order dated 29.12.2008 has been filed as Annexure A/3 in the Review Petition No.95 of 2017 which is available before the Court while passing this order).

9. The present petitioner had raised an identical issue as was raised by Ganesh Prasad Dubey and anr. Vs. State of Madhya Pradesh before the Madhya Pradesh State Administrative Tribunal Bhopal and in which, the order was passed by the Tribunal on 12.05.1999. When this petition was earlier taken up for hearing, the order of the High Court of Madhya Pradesh referred to as above and Government's order dated 29.12.2008 were not brought to the notice of the Court by either of the parties. For the lack of the said information before this Court, this Court proceeded to pass an order in favour of the petitioner in view of obvious reason that there was an order of the Tribunal passed on 12.05.1999 and a direction for redrawal of seniority was also ordered on 22.07.2000 by the erstwhile State of Madhya Pradesh.

10. After the order was passed, a Review Petition No. 95 of 2017 was filed by the State bringing to the notice of the Court the order of the Madhya Pradesh High Court passed in WP No.4717 of 2001 decided on 07.11.2003 and the subsequent order of the State Government passed on 29.12.2008.

11. Inevitably, the order passed by this Court earlier on 09.09.2016 had to be recalled vide order dated 21.11.2017 and that is how the matter is again before this Court.

12. When the matter is taken up for hearing, further developments are also brought to the notice of the Court by the petitioner and learned counsel for the State. It is brought to the notice of the Court that the order passed by the High Court of Madhya Pradesh in WP No.4717 of 2001 was challenged before the Supreme Court and the Supreme Court set aside the order of the High Court of Madhya Pradesh vide its order dated 23.08.2017 and the matter was remitted for consideration afresh with following observation:

> "**10**. However, since we are not quite clear with regard to rules regarding selection and fixation of seniority and as we are not getting assistance in that regard, we set aside the judgment of the High Court and remit the matter to the High Court for consideration afresh. We request the High Court to dispose of the matter expeditiously and preferably within six months from today."

13. Thereafter, as informed to this Court by learned Additional Advocate General, the High Court of Madhya Pradesh has finally decided the petition vide order dated 22.02.2018. The concluding observations in the said order of the High Court of Madhya Pradesh are reproduced as below :

> "**10**. We need not examine the contentions raised by the petitioners as to whether the unit for promotion was the Circle in terms of Schedule IV Column 4 or the State as the question of seniority is academic only at this stage as all the foresters appointed prior to 1979 have retired.
>
> **11.** We find that the order passed by the Tribunal is fair and just though may not be legal so as to confer all the Foresters equal right of consideration for promotion to the post of Deputy Rangers when, the posts of Foresters were being upgraded to that of a Deputy Rangers.
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> **12**. In view of the said fact, we do not wish to interfere in the order passed by learned Tribunal when all the Foresters have retired. However, we may observe that the seniority of the Deputy Rangers and/or Forest Rangers shall be re-determined in view of their seniority as the Foresters who have been found suitable for promotion to the posts of Deputy Rangers. But, such re-fixation of seniority will be relevant only for re-fixation of pension and other retiral dues and that the Deputy Rangers and/or Forest Rangers will not be entitled to any arrears of pay and allowance on account of re-fixation of seniority in the rank of Deputy Rangers and/or Forest Rangers."

14. With the aforesaid developments having been taken place in the present case, the petitioner, in person, fervently urged this Court to grant him relief by submitting that in view of the observation made by the Supreme Court in para 9 of its order and in view of admitted position on record that two officers junior to the petitioner namely Shri O.P. Sharma and Shri S.C. Sharma were promoted as Deputy Ranger with effect from 26.11.1980 and 17.01.1981 respectively, the petitioner is also entitled to be granted promotion as Deputy Ranger from the same date and further promotion as Ranger with effect from 30.12.1995 on which date, the aforesaid two junior officers of the petitioner were promoted as Ranger. He would submit that the verdict of the High Court of Madhya Pradesh shows that finally order of the Tribunal was not set aside by the High Court of Madhya Pradesh and the main operative reason for such decision was not to disturb the list because all the officers, junior or senior, have retired from service. He would further submit that the petitioner, Shri O.P. Sharma and Shri S.C. Sharma all were recruited as Forester at the time when

the Rule postulated centralized selection and State level seniority of the Foresters. The seniority which the petitioner acquired over these two officers could not be set at naught upon amendment of the Rules in the year 1978-79 because the Rules would operate only prospectively and not take away the seniority which the petitioner was enjoying over the two junior officers as Forester. Therefore, in his submission, the amendment in the Rules would not have any material bearing on petitioner's claim for promotion as Deputy Ranger and Ranger from the date on which Shri S.C. Sharma and Shri O.P. Sharma were promoted.

15. Learned Additional Advocate General in reply, would contend that after the order of the High Court of Madhya Pradesh was set aside by the Supreme Court and the matter was remitted for consideration afresh, the Division Bench of the High Court of Madhya Pradesh has clearly held in para 8 of its order that after amendment, the posts of Forester are borne in the cadre circle-wise and the State Cadre of Foresters which existed prior to amendment is no longer exists and further that if the Cadre of Foresters is circle-wise, the promotion could be made only circle-wise. Therefore, that being the statement of law, the petitioner could not claim promotion on the ground that two officers Shri O.P. Sharma and Shri S.C. Sharma were junior to him as Forester because it is not a case where those two officers were found in the same circle in which the petitioner was working at the time of their promotion as Deputy Ranger.

16. The State counsel took somewhat fair stand while submitting that in the light of the order which has been passed by the Division Bench of the High Court of Madhya Pradesh, the petitioner could only be granted notional benefit as has been ordered in para 12 of that order but nothing more.

17. I have heard learned counsel for the parties and bestowed my anxious consideration to the submissions made by them as also the records of the case including various orders passed from time to time by the Supreme Court, High Court of Madhya Pradesh and also this Court.

18. It is not in dispute that at the time when the petitioner, Shri S.C. Sharma and Shri O.P. Sharma were recruited as Forester, the Rule existing at that point of time did postulate State Level Recruitment and seniority of Forester which would be clear from the provision contained in Rule 12 of sub-rule (2) of the Recruitment Rules of 1967 as it existed prior to the amendment. The relevant part of the Rule 12 of sub-rule (2) reads as below :

> **"R.12(2)** The selection of candidates by direct recruitment for the post of Forester will made by departmental committee with the C.C.F. as its head. The committee will conduct a qualifying or a competitive examination, interview and physical test as may be decided and advertised. For direct recruitment of Forester the prescribed standard comprises of success in the qualifying or competitive examination, interview and physical test of 16 miles walk. For departmental candidates for Forester's training, the prescribed standard is success in the qualifying examination conducted by the Directors of the different Foresters Schools in the State."

19. On a literal reading of the Rules, it is crystal clear that the Forester's recruitment were to be made at the State level and the selection committee was to be headed by the Chief Conservator of Forest.

20. The aforesaid Rule underwent amendment in the year 1979 in the manner that in place of "the selection of candidates by direct recruitment for the post of Foresters will be made by the departmental committee with the Chief Conservator of Forest as its head", it was substituted as "the election candidates by direct recruitment for the posts of Foresters, in each circle, will be made by departmental committee with the Conservator of Forest of the Circle concerned as its head and 2 other members who will be posted in the circle (Senior Divisional Forest Officers) nominated by the Conservator of Forests concerned".

21. No doubt, from this amendment onwards, the recruitment of Forester was confined at the circle level. But then, the Rule no where indicate that it would have a retrospective effect in the sense that the Forester recruited earlier when there existed state level cadre of Forester, would be losing their inter-se-seniority. It is trite law that normally the rule making authority does not have power to operate rules retrospectively unless such power is conferred upon it under the constitution or the enabling Act expressly or by necessary implication. The Rules were framed by the Governor in exercise of its Rule making power conferred under proviso to the Article 309 of the Constitution of India. Therefore, unless the Rule itself expressly stated that it would operate retrospectively so as to effect inter-se-seniority which was already being enjoyed by the Foresters recruited under unamended Rules, the amendment would not affect the inter-se-seniority. Therefore, despite amendment made in the Rule, the petitioner was entitled to enjoy a preferential treatment in the matter of promotion by virtue of his seniority over and above and Shri O.P. Sharma and Shri S.C. Sharma.

22. Unfortunately, the Rule making authority did not take care to protect

such rights of senior Foresters after the amendment in the Rules which resulted in the anomaly that senior Forester who were posted in one circle remained without promotion for want of vacancy of Deputy Ranger in their circle and at the same time, junior Foresters who were fortunate because in their circle fortuitously existed the vacancy of Deputy Ranger, were quickly promoted. This exactly happened with the petition when he remained posted in his own circle being senior to Shri O.P. Sharma and Shri S.C. Sharma as Forester under centralized recruitment but had to wait for promotion as Deputy Ranger until 1988 whereas Shri S.C. Sharma and Shri O.P. Sharma got fortuitous promotion earlier in the year 1980 and 1981, in their own circle due to availability of vacancy. This situation was required to be properly dealt with by giving a fair treatment to senior Forester like the petitioner one way or the other. But unfortunately, the State did not carry out any amendment in the Rules nor issued any circular filing the gap in the Rules to remove the anomaly. One of the way to redness the grievance of senior Forester like the petitioner was that as and when they get promotion in their circle, the promotion are granted from the date from which their junior Foresters were promoted in their own circle. This exactly was done by the Tribunal vide order dated 12.05.1999. In the absence of there being any stipulation in the Rules to the contrary, in the considered opinion of this Court, grant of seniority to a senior Forester as and when he is promoted as Deputy Ranger, over and above, junior Foresters who got promotion earlier in point of time in their own circle, was necessary to give just and fair treatment respecting his seniority. Obviously, this could be done only in respect of those Foresters who were appointed under pre-amended Rules when recruitment of Forester used to be made at the state level and it was a state level cadre.

23. The Supreme Court set aside the order passed by the High Court of Madhya Pradesh in WP No.4717 of 2001 and remitted the matter for consideration afresh, while at the same time, laying down the principle which must be applied with full force in the present case. It was observed as below :

> "**9**. On the pure question of law, we would like to make the legal position clear that members of the same service getting accelerated promotion merely on account of fortuitous postings in a particular circle cannot steal a march over their seniors in the higher posts in the same service."

24. The aforesaid principle laid down by the Apex Court provides sufficient justification for the view which this Court has taken above.

25. Even the High Court of Madhya Pradesh in the second round of hearing

did not disturb the order of the Tribunal and allowed the benefits to be enjoyed keeping in view injustice meted out to senior Forester upon amendment of the Rules.

26. In the conclusion, this Court is inclined to allow the petition with the direction that the petitioner shall be entitled to seniority as Deputy Ranger with effect from 26.11.1980 when Shri O.P. Sharma and Shri S.C. Sharma were promoted as Deputy Ranger. As Shri O.P. Sharma and Shri S.C. Sharma both were promoted as Ranger on 30.12.95, the petitioner is also entitled to be considered for promotion as on the date Shri S.C. Sharma and Shri O.P. Sharma were considered for promotion on 30.12.95, subject to scrutiny of his records and the criteria of promotion applicable in force on the date Shri S.C. Sharma and Shri O.P. Sharma were considered and promoted as Ranger. If subject to his fitness and eligibility for promotion, as per the then existing criteria of promotion, the petitioner is found fit, he would also be granted promotion with effect from 30.12.1995 on the post of Ranger with all consequential benefits including monetary benefit which he would have earned had he been promoted as Ranger in the year 1995. Further in that case, the pension case of the petitioner would be required to be revised and also retiral dues had he retired as Ranger on 31.01.2007.

27. This Court hopes that taking into consideration that the petitioner has been fighting for justice since last 15 years, the respondent shall do well to hold review DPC to consider the case of the petitioner in the light of the aforesaid observation made herein, positively within a period of 3 months from the date of receipt of copy of this order so that the petitioner may not have to face a situation where even after an order in his favour he has left without any fruits of the same in his lifetime. The direction of this Court will have to be complied with positively within a period of 3 months from the date of receipt of copy of this order.

28. The petition is accordingly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Rekha