

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 788 of 2018**

*{Arising out of order dated 07.03.2018 passed by learned Single Judge in Writ Petition
(S) No. 4765 of 2005}*

1. State of Madhya Pradesh through its Secretary, Government of Madhya Pradesh, Department of Forests, Mantralaya, Vallabh Bhawan, Bhopal (M.P.)
2. Principal Chief Conservator of Forest Satpuda Bhawan, Bhopal (M.P.)

---- Appellants**Versus**

1. A.P. Dubey, Deputy Ranger, 323, Ganjpara Ward, Bemetara, District Durg (now District Bemetara) (C.G.)
2. State of Chhattisgarh, Through its Secretary, Government of Chhattisgarh, Department of Forest, Mantralaya, D.K. Bhawan, Raipur, (now at Mahanadi Bhawan, Naya Raipur) District Raipur (C.G.)

---- Respondents

For Appellants	:	Shri Manish Nigam, Advocate.
For Respondent No.1	:	In person.
For Respondent No.2/State:	:	Shri Gagan Tiwari, Deputy Government Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu

Judgment on Board**Per Ajay Kumar Tripathi, Chief Justice****04.02.2019**

1. Heard the learned counsel for the Appellants, the Respondent No.1 and the learned Deputy Government Advocate for the State.
2. I.A. No. 1 of 2018 is an application for condonation of delay of 195 days. For the reasons indicated in the said I.A, the same is allowed. Delay is condoned.
3. The State of Madhya Pradesh is in appeal against the order dated 07.03.2018 passed by the learned Single Judge limited in its scope in the sense that the

direction which has been issued in favour of the private Respondent No.1 to grant him consequential benefits including monetary benefits, is contrary to the observation and direction given by the Madhya Pradesh High Court in its order dated 22.02.2018 passed in W.P. No. 4717 of 2001. The operative portion of the order dated 07.03.2018 passed by the learned Single Judge in WPS No. 4765 of 2005 reads as under:

“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.”

4. The present litigation has a long history behind it. A dispute arose in the undivided State of Madhya Pradesh when certain persons were granted promotion to the post of Deputy Ranger from the post of Forester even though they were said to be junior in service. Those who were granted benefits of promotion to the post on Deputy Ranger or Ranger were considered for such benefit on circle basis and many a juniors earned a promotion not on the basis of their seniority but on the basis of the fortuitous circumstances of their posting.
5. One Ganesh Prasad Dubey and others moved the Madhya Pradesh State Administrative Tribunal, Bench at Bhopal (for short, 'Tribunal') raising a

grievance that since they were recruited prior to the year 1979 and such recruitment was a centralized recruitment at the State level, therefore, the promotion should have also been considered on the basis of the seniority at the State level, even though subsequently in the year 1979, the rule was amended and recruitment as well as promotion was allowed at circle level.

6. The Tribunal allowed the OA application. The State of Madhya Pradesh moved the Division Bench of the Madhya Pradesh High Court which set aside the order of the Tribunal. The matter traveled thereafter to the Hon'ble Apex Court and the Hon'ble Apex Court in turn set aside the order of the Division Bench and remanded the matter on 23.08.2017 for fresh consideration.
7. It is after the order of the remand that on 22.02.2018, the Madhya Pradesh High Court has decided the matter in following terms:

“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.

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.”

8. Keeping the above litigation and developments in mind as well as holding that the private Respondent did not earn his promotion to the post of Deputy Ranger or Ranger subsequently, because of the fact that promotions came to be considered on circle basis and the person junior to the private Respondent namely one Shri O.P. Sharma and Shri S.C. Sharma earned the benefit of promotion by virtue of their posting in a particular circle. He decided to litigate.
9. Since there was an observation of the Hon'ble Supreme Court 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 post in the same service, not only the learned Single Judge but also a Division Bench of the Madhya Pradesh High Court took a view in favour of such promotions by not interfering with the order of the Tribunal initially passed in the year 2001 but did not allow the matters to be reopened keeping in mind the long passage of time and also the fact that most of the said persons appointed prior to 1979 had superannuated.
10. Private Respondent No.1 who was also appointed as a Forester in the year 1971 encouraged by the decision of the Tribunal filed an OA application before the Chhattisgarh State Administrative Tribunal. However, before the issue could be heard and decided, the Tribunal was abolished and the matter finally got transferred and heard by the learned Single Judge.
11. It seems that the matter was earlier heard and disposed off by the learned Single Judge, however, the State of Chhattisgarh filed a review petition for recall of the order so passed on the ground that certain subsequent developments having vital bearing to the dispute was not brought to the notice

of the learned Single Judge. Review application was therefore allowed and a fresh order dated 07.03.2018 has been passed which is the impugned order in the present appeal.

12. Submissions of the learned counsel representing the State of Madhya Pradesh is that the direction issued by the learned Single Judge giving monitory benefit and consequential benefits by allowing promotion to the private Respondent on the date Shri O.P. Sharma and Shri S.C. Sharma were promoted as Deputy Ranger and then as Ranger, is in variance to the facts and circumstances of similar dispute of which the present litigation is an off shoot.
13. The private Respondent was not alone in his fight against non-grant of promotion to the post of Deputy Ranger or as Ranger. The litigation on such issue as a class was initiated before the State Tribunal of Madhya Pradesh, carried to the Division Bench of the High Court and then the Hon'ble Apex Court. Only on 23.08.2017, the matter was remanded back by the Apex Court and the Division Bench of the Madhya Pradesh High Court passed the subsequent order.
14. Since there is similarity between the relief and the grievance so raised by the private Respondent *vis a vis* Ganesh Prasad Dubey's case therefore, in the interest and in consistency of justice, the consequential monitory benefit should not have been allowed. Though appropriate revision in the pay scale as well as pension should accrue to the private Respondent from the date the juniors namely O.P. Sharma and S.C. Sharma came to be promoted as Deputy Ranger w.e.f. 26.11.1980, and then as Ranger w.e.f. 30.12.1995.
15. Submissions of private Respondent who appears in person is that he cannot be punished for the wrong done by the Respondents. He was entitled to his promotion over and above his junior and if for reasons not attributable to him, his promotion failed him, then he should be entitled to all the monitory benefits.

16. We have difficulty in accepting that position because a litigation initiated by the private Respondent No. 1 was not a litigation in isolation. It was a kind of class action initiated by one of them. It was not an open and shut case of a senior not having been granted benefit of promotion at the appropriate time.
17. The other aspect which is required to be considered by us is that the Petitioner never held the post of a Ranger or performed the duty of a Ranger as he retired from the post of a Deputy Ranger. If that be so, it will be inequitable to allow him benefit of salary or its the arrears of the post, on which he had never worked.
18. It will be an equitable compensation to the private Respondent if the benefit of promotion on the post of Deputy Ranger is shifted to 26.11.1980, the day his juniors were granted promotion and notionally also granted promotion on the post of Ranger w.e.f. 30.12.1995 and consequentially retiral benefit and pension is refixed.
19. The appeal of the State of Madhya Pradesh to that extent succeeds. The order giving a direction for giving consequential benefits including monitory benefits stands quashed. However, the Respondent are directed to consider promotion to the post of Deputy Ranger and Ranger in terms of the direction of the learned Single Judge contained in paragraph 27, which read as under:

“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.”

20. Yet another question which is sought to be raised by the counsel on behalf of the State of Madhya Pradesh is as to whose obligation and duty it becomes to settle the outstanding dues etc. in terms of the Madhya Pradesh Reorganization Act, 2000.
21. That question is being left open. It will be governed by Section 69 of the Madhya Pradesh Reorganization Act, 2000.
22. Before parting, it is clarified that since the private Respondent retired in the year 2007 from the newly created State of Chhattisgarh, the obligation to re-fix the such promotions as well as his pay etc. for calculation of pensionary benefits and retrial dues, will have to be worked out by the State of Chhattisgarh and if need be, appropriate correspondence and communication be also made with the State of Madhya Pradesh thereafter.
23. Appeal is allowed to that extent indicated above.

Sd/-

(Ajay Kumar Tripathi)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge