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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Judgment: 17.07.2019

+ W.P.(C) 7310/2008

Z.D. WANKHEDE

..... Petitioner

Through: Mr. Nitesh Kumar Singh, Advocate

Versus

UOI & ORS.

..... Respondent

Through: Mr. Bhagwan Swarup Shukla, CGSC
with Mr. Sanam Kumar Shukla,
Advocate for UOI
Mr. Naresh Kaushi, Mr. Tapasvi Raj,
Ms. Vibhuti Tyagi, Advocate for
respondent No. 4 – UPSC
Mr. Naushad Ahmed Khan,
Additional Standing Counsel (Civil)
for Govt. of NCT of Delhi with Mr.
Zahid Hanief, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

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JYOTI SINGH, J. (ORAL)

1. The present petition assails the order dated 31.07.2007 passed

by the Central Administrative Tribunal in OA 502/2006 as well as order dated 21.02.2008 in RA No. 207/2007. The petitioner has also sought a direction to the UPSC to consider him for promotion in the Indian Forest Service (hereinafter referred to as IFS) w.e.f. 2000 with all consequential benefits and also a direction to the GNCTD to give the benefit of the ACP Scheme to the scale of Rs. 10000-15200 w.e.f. 9.8.1999.

2. The facts as brought out in the writ petition are that the petitioner joined the post of Soil Conservation Officer (hereinafter referred to as 'SCO') on 4.4.1987 in the Development Department of GNCTD. There was only one sanctioned post and the same was reserved for SC candidate.

3. On 18.03.1987, the Development Department was bifurcated and Department of Environment of Forests and Wildlife was carved out. The sanctioned posts including that of Soil Conservation Officer were transferred to the new Department in July 2008. The petitioner continued to work in the new Department for years and claims to have an excellent record with no punishments or blemish. The existing post of Forest Officer in the pay scale of Rs. 2000-3500, a group 'B' post was upgraded to that of a Deputy Conservator of Forest in the scale of 3000-4500. As per the petition, the Recruitment Rules for the upgraded post were never finalized and in the Draft Recruitment Rules, the said post was shown as a promotion post for the post of Soil Conservation Officer. This upgradation took place in the year 1987.

4. On 26.10.1995, four posts in the IFS were created in Arunachal Pradesh, Goa, Mizoram and Union Territory (AGMUT) for Delhi segment.

5. On 26.10.1995, the IFS (Fixation of Cadre Strength) Regulation, 1995 came into effect. This was the sixth amendment to the Regulation. These four posts were required to be filled up in terms of IFS Recruitment Rules, 1966. Rule 8 provided that 33.33% of the posts were to be filled from State Forest Services, by way of promotion and therefore, out of the four posts, one came to the share of the State Forest Service personnel. Rule 2(g)(ii) of the RRs defined State Forest Service as under:

“2(g)(ii) Any service in such Central Civil Post; Class-I or Class-II, connected with forestry, as may be approved by the Central Govt. for the purposes of these Rules.”

6. As per the petitioner, for the purpose of declaring a service as a State Forest Service in a State/U.T., approval of the Central Government was required and the GNCTD by way of a communication dated 22.06.1998 wrote to the Central Government for bringing the post of Soil Conservation Officer within the purview of Rule 2(g) so that it could be treated as a feeder service to IFS. The petitioner further pleads that his case was also sent by the Delhi Government through a communication dated 27.11.2000 to the UPSC on the basis of an approval given by the Chief Secretary, Delhi Government. He emphasizes that a reading of the letter would show that it was stated therein that the petitioner was the only eligible

officer in the Department to be considered for promotion to the IFS. The petitioner further pleads that he was well qualified with a Master's Degree in Agriculture and experience of 21 years as Soil Conservation Officer. The ACRs of the petitioner along with his Integrity Certificate were also sent vide letter dated 20.10.2001. Ministry of Environment and Forest wrote to UPSC and intimated the vacancy position. It was also mentioned in the letter that promotions to IFS had been made from other UTs but the vacancy in the GNCTD was unfilled.

7. It is the further case of the petitioner that despite several recommendations, there was inordinate delay in completing the process of constituting a State Forest Service so as to include the post of the petitioner and on the other hand the post of Deputy Conservator of Forest, which was created as an ex-cadre post was being filled by officers from the IFS.

8. Since the grievance of the petitioner was not being redressed, he filed an OA 502/2006 along with another officer, who was working at the post of Assistant Conservator of Forests. The prayer made in the said OA is as under:

“(i) to declare the action of the respondents in filling up the post of Deputy Conservator of Forests [ex-cadre] from I.F.S. Officers, as illegal, arbitrary; and consequently set aside the impugned order dated 3.2.2006 [.....] qua the Respondent No. 7;

(ii) to direct the respondents to consider the case of the

applicants for induction in Indian Forest Services in terms rule 8 and 9 read with Rule 2(g) of I.F.S. (Recruitment) Rules, and if any of the applicant is found fit, he may be inducted from the due date, with all consequential benefits.

(iii) to direct the respondents to finalize the Recruitment Rules for the post of Deputy Conservator of Forests [ex-cadre] and consider the case of the applicants, and if any of the applicant is found fit, he may be promoted from the due date with all consequential benefits.”

9. However, the prayer for finalizing the Recruitment Rules for the post of Deputy Conservator of Forests was given up.

10. The learned Tribunal vide its judgment dated 31.07.2007 dismissed the petition, holding that since the post of Soil Conservation Officer was not approved by the Central Government under Rule 2(g) of the IFS Recruitment Rules, 1966 and was not constituted as a part of the State Forest Service, it could not be treated as part of a feeder service for promotion to the IFS. Thus, the claim of the petitioner for induction into IFS was rejected by the learned Tribunal.

11. Against the said judgment, the petitioner filed a Review Application, which was also dismissed on 21.02.2008. These two orders have been challenged before us in the present writ petition. We may also point out that in the writ petition, the petitioner has also prayed for grant of benefit under the ACP Scheme in the scale of Rs. 10000-15200 w.e.f. 9.8.1999 taking the post of Deputy Conservator of Forests as promotion post in the hierarchy.

12. Learned counsel for the petitioner contends that through several communications the GNCTD and the Central Government had acknowledged the fact that the petitioner deserved to be considered for promotion to the IFS. He submits that the GNCTD in its communication dated 27.11.2000 had clearly written to the Central Government to bring the post of Soil Conservation Officer within the purview of Rule 2(g) so that it becomes a part of feeder service to the IFS and once the Central Government had written to the UPSC intimating the vacancy position and had sent a proposal to prepare a select list, this was an approval to treat his post as a part of the State Forest Service within the meaning of Rule 2(g)(ii).

13. Learned counsel further contends that State Forest Service had been defined in Rule 2(g)(ii) and since the post of Soil Conservation Officer is a Central Civil Class II post, it automatically becomes a State Forest Service. His argument is that in a similar case, titled as *A.D. Nikam vs. Union of India & Ors.*, decided on 06.07.2004, in O.A. No. 662/2004, the Tribunal had issued directions to fill up the post and his case is fully covered by the said judgment. Learned counsel submits that only because the Delhi Government and the Central Government have been moving the files from one office to another and have inordinately delayed considering his case for promotion, he should not be made to suffer for their lethargy.

14. The next contention of the petitioner is that without prejudice to his right to be promoted to IFS, he was entitled to the ACP benefit

under the ACP scheme and he fulfills the criteria of getting the upgradation to the pay scale of Rs.10000 -15200/- which is the scale of the post of Project Officer. He submits that having served for over two decades with no blemish in his service, he has neither been given promotion to the IFS nor any ACP benefit and grave injustice had been caused to the petitioner.

15. *Per contra* learned counsel for the Delhi Government submits that the learned Tribunal has rightly dismissed the OA. Since the post of the petitioner was not a part of the State Forest Service, he could not be inducted into the IFS. He submits that a State Forest Service has to be constituted under Rule 2(g) of the IFS Recruitment Rules, 1966 and for which the approval of the Central Government is required. Since in this case, no approval was given by the Central Government, the State Forest Service could not be constituted and mere communications or recommendations cannot help the petitioner.

16. We have heard the respective parties and examined their contentions.

17. Insofar as the claim of the petitioner for the benefit under the ACP scheme is concerned, the petitioner had filed an OA 1639/2005 before the learned Tribunal, wherein he had sought the following relief:

“(a) to direct the respondents to consider the claim of the Applicant for ACP scheme, in the pay scale of Rs. 10000-15200, in accordance with law, from retrospective

effect that is from the date when Applicant completed 12 years of regular service along with all consequential benefits including interest @ 18% p.a. for the period of delay.”

18. A perusal of the said prayer shows that the relief claimed was grant of ACP in the pay scale of 10000-15200, is exactly one of the reliefs claimed in the present petition. The said OA was dismissed by the learned Tribunal on 21.07.2008. The claim to the pay scale of 10000-15200 was made on the basis that the promotion post in the hierarchy of a Soil Conservation Officer was that of a Project Officer and since the pay scale of the post of Project Officer was Rs. 10000-15200, the same should be granted to the petitioner, as the ACP Scheme envisages grant of financial upgradation to the pay scale of the next post in the hierarchy.

19. The learned Tribunal returned a categorical finding that the petitioner had sought promotional avenues in the Department of Forests in OA 502/2006 (the OA from which the present writ petition arises) whereas in this OA, ACP was being sought to a promotion post in the Development Department. The learned Tribunal, therefore, held that having opted for retention in the Forest Department and having foregone promotion to the post of Project Officer in the Development Department, it was not open for the petitioner to seek ACP benefit in the scale of Project Officer. The Tribunal also came to a finding that the post of SCO was an isolated post, and therefore, the financial upgradation was to be in accordance with Annexure II of the Scheme and the petitioner was entitled to a scale of Rs. 7450-11500 and not

Rs.10,000-15,200.

20. We had put a pointed query to the learned counsel for the petitioner, if the petitioner had challenged the said judgment of the Tribunal and the response of the learned counsel was that no challenge had been laid to the said judgment. Since the petitioner has not challenged the judgment dated 21.07.2008, it goes without saying that the judgment has attained finality and binds the petitioner. The relief of ACP sought in the present petition being identical to the one sought in OA 1639/2005 cannot be granted and hence the relief sought in prayer (c) is rejected.

21. Induction into the Indian Forest Service is governed by IFS (Recruitment) Rules, 1966. Rule 8 of the said RRs provides for recruitment to IFS by promotion. The said Rule is extracted hereunder for ready reference:

“8. Recruitment by promotion.- (1) The Central Government may, on the recommendations of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Government and the Commission, from time to time, make, recruit to the Service persons by promotion from amongst the substantive members of the State Forest Service.

(2) Where a vacancy occurs in a State cadre which is to be filled under the provision of rule the vacancy shall be filled by promotion of a member of the State Forest Service.

(3) Where a vacancy occurs in a Joint Cadre which is to be filled under the provisions of this rule, the vacancy shall, subject to any agreement in this behalf be filled by promotion of member of the State Forest Service of any of the State constituting the group.”

22. It is clear from a reading of the said Rule that recruitment to the IFS through the mode of promotion takes place from amongst the substantive members of the State Forest Service. The Central Government, on recommendations of the State Government concerned, and in consultation with the Commission, makes the said recruitment to the Service. State Forest Service has been defined under Rule 2(g)(ii), which we have extracted above. Rule 4 of the said RRs is also relevant and which we extract hereinunder:

“4. Method of recruitment to the Service.- (1) [* * *]

Provided that no member holding a post referred to in sub-clause (ii) of clause (g) of Rule 2 and so recruited shall, at the time of recruitment, be allocated to any State Cadre other than the cadre of a Union territory.

(2) [* * *] recruitment to the Service, shall be by the following methods, namely:-

(a) by a competitive examination;

(aa) [* * *]

(b) by promotion of substantive members of the State Forest Service.”

23. Reading of Rules 4 and 8 makes it clear that only a substantive member of a State Forest Service can be recruited by promotion to the IFS. In accordance with Rule 2(g)(ii), any service in Central Civil Post

class I or class II, will not be termed or be treated as a part of the State Forest Service, till it is approved by the Central Government in terms of the Rule. The petitioner, as rightly held by the Tribunal, had not placed any material or document on record to show that the post held by him viz. SCO was ever approved by the Central Government to be a part of a State Forest Service in accordance with Rule 2(g)(ii). In the absence of the post of the petitioner being a part of a State Forest Service, he could not be recruited into IFS as induction into IFS through the mode of promotion can only be from a State Forest Service, which constitutes the feeder service. We thus cannot agree with the contention of the petitioner that his post of SCO be treated as a State Forest Service and directions be issued for his promotion into IFS. Even otherwise, it is not the domain of the Court to issue directions to the Executive to constitute a Service or to direct that any post be included in a State Forest Service or in any other Service. Even assuming for the sake of argument that any such direction can be issued to the Central Government to include the post of SCO in the State Forest Service, insofar as the petitioner is concerned, he would still not get the relief sought for. We say so for the reason that the petitioner had retired in 2009. Any inclusion of the post of SCO at this stage or in future as a part of a State Forest Service would only be prospective and will be of no avail to the petitioner herein. We thus cannot allow the prayers in the present writ petition.

24. Before we conclude, we may like to notice that the petitioner is right when he states that recommendations were made in his favour by

the Delhi Government and correspondences were made with respect to treating the post of SCO as a part of the State Forest Service, but the inordinate delay in completing the process has caused injustice to him. We do understand and appreciate that in the Government, several Departments are involved and have to coordinate with each other but we may like to state that undue delays should be prevented as far as possible so that employees are able to receive in time what they deserve. We find no infirmity in the judgment of the learned Tribunal. Writ petition is accordingly dismissed along with all pending applications.

JYOTI SINGH, J

G.S.SISTANI, J

JULY 17, 2019
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