

CWP-12348-2020 (O&M)
Date of decision: 28.04.2021

Anil Sharma

.....Petitioner

versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**Present:** Mr. G.S. Bal, Senior Advocate with
Ms. Mandeep Kaur Madahar, Advocate
for the petitioner.Mr. Vikas Mohan Gupta, Addl.A.G., Punjab
for respondent No.1-State.**FATEH DEEP SINGH, J.**

Due to outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

In the instant civil writ petition under Articles 226/227 of the Constitution of India, the petitioner-Anil Sharma, presently working as Conservator of Soils with respondent No.1, has sought writ by way of *certiorari* seeking quashment of order dated 27.05.2020 (Annexure P-13) laying challenge to extension of tenure to respondent No.2 on the post of Chief Conservator of Soils, Punjab,

termining it to be illegal and arbitrary as well as the quashment of instructions dated 14.12.2016 (Annexure P-19) to the effect that period of Current Duty Charge (CDC) will not be counted for the purpose of experience or seniority or any other benefit and similarly, sought quashment of the orders/reply dated 14.08.2020 (Annexure P-21) of the respondents and thereby, seeking writ in the nature of *mandamus* to consider and promote the petitioner to the post of Chief Conservator of Soils, Punjab with effect from 24.05.2020, the day, the petitioner claims to have qualified and fulfills the experience laid down for the said post and all consequential benefits arising there from.

What is reflected from the records and remain undisplaced, the petitioner was appointed as Section Officer (S.O.) in the Soil Conservation Department, on ad-hoc basis, on 05.09.1989, by the Departmental Selection Committee (DPC) and was regularized with effect from the same very date. Subsequently, the State, re-designated the post of Section Officer (S.O.) as Soil Conservation Officer (SCO) through notification dated 07.07.2004. Earlier, the Soil Conservation Department employees were governed by the Punjab Soil Conservation and Engineering Services (Class-I) Rules 1978 and Punjab Soil Conservation and Engineering Services (Class-II) Rules, 1974 and which have been subsequently, repealed and replaced by the Punjab Soil and Water Conservation (Group-A) Service Rules, 2014 with effect from 29.08.2014. The post of Soil

Conservation Officers (SCO), Sub-Divisional Soil Conservation Officers (SDSCO) and Divisional Soil Conservation Officers (DSCO), were merged together into a single cadre with entry as Soil Conservation Officer and their salaries/pay were regulated by notifications (Annexures P-1 & P-2). By virtue of Statutory Rules of 2014, the post of Soil Conservation Officers, Sub-Divisional Soil Conservation Officers and Divisional Soil Conservation Officers were again de-merged and framed as per the cadres which was laid under the Rules of 2014 that Soil Conservation Officer with 08 years of experience can be promoted as Sub-Divisional Soil Conservation Officer and a Sub-Divisional Soil Conservation Officer with 05 years of experience can be promoted as Divisional Soil Conservation Officer while the Divisional Soil Conservation Officer with 03 years of experience could be promoted as Conservator of Soils and the Conservator of Soils with 02 years of experience could be promoted as Chief Conservator of Soils, the same is well elicited in the chart highlighted in the petition. It is during the course of events, on account of certain vacancies, in the higher echelons, of the Department of Soil Conservation, additional charge to higher posts were given to Officers holding lower substantive posts. It is consequent upon of this policy being adopted by the State; the petitioner was given temporary/additional charge to the post of Sub-Divisional Soil Conservation Officer from 19.10.2009 to 06.12.2011 and, thereafter, Current Duty Charge (CDC) of the said post from

07.12.2011 to 30.10.2014. The petitioner was, subsequently, given temporary/additional charge to the post of Divisional Soil Conservation Officer from 03.09.2012 to 21.11.2012 and Current Duty Charge (CDC) from 22.11.2012 to 13.08.2013 which is well depicted in Annexure P-5. The proposals sent by the Department for grant of exemption in experience under Rule 10 of 2014 Rules for promotion to the next higher post of the Divisional Soil Conservation Officer was accepted by the Department as per their letter dated 15.04.2015 (Annexure P-6) with the stipulation that those promoted officers continue to draw their salaries in their present scales till they fulfill the statutory requirement of experience in the lower post. It is under these circumstances, the petitioner claims that he was promoted as Divisional Soil Conservation Officer on 05.09.2015 vide Annexure P-7. The petitioner claims that as per pay fixation order dated 04.10.2013 (Annexure P-4), he was already getting salary in the pay scale of Conservator of Soils in the grade of Rs.37400-67000+8600 (G.P.) that is higher than the pay scale admissible to the post of Divisional Soil Conservation Officer. The petitioner alleges that since the petitioner had completed 03 years of experience on 16.09.2018, his file was sent for regular promotion to the post of Conservator of Soils and was also in the meanwhile, granted additional charge to the said post vide order dated 24.05.2018 (Annexure P-8). At that point of time, the post of Chief Conservator of Soils was lying vacant and it is claimed that out of

extraneous reasons, respondent No.2 was appointed as Chief Conservator of Soils by way of deputation with effect from 08.06.2018 while he was holding substantive post of the Chief Conservator of Forest in Forest Department in the Punjab Government being from Indian Forest Services (IFS) cadre regarding which, formal order Annexure P-9 was issued on 10.12.2018. The allegations have come about that respondent No.2, out of malice, malafidely, for motivated cause to continue on the said post even after deputation period of two years had expired on 07.06.2020, manipulated the records and carried on such making himself eligible for promotion as the Chief Conservator of Soils. It is with this claim the petitioner has invoked the jurisdiction of this Court by way of this petition which was subsequently, remodelled and amended.

Respondents No.1 and 2, though filed separate sets of written replies but the primary crux was that the petitioner was given additional charge to the post of Conservator of Soils and which cannot be considered as experience for promotion to the post of Chief Conservator of Soils and placing reliance on the said order dated 24.05.2018 (Annexure P-8) claimed that it was done keeping in view the administrative exigency and said posting was by way of additional charge and not a promotion and, therefore, by additional charge cannot claim it to be a substantive promotion. It was contended that the term "Current Duty Charge" has been notified by the Department of Personnel, Punjab through notification dated

14.12.2016 clarifying that would not be counted towards experience, seniority or any other benefits by citing the notification. It is pleaded that the petitioner was promoted as Divisional Soil Conservation Officer from the feeder cadre post of Soil Conservation Officer on 16.09.2015 by giving him relaxation of experience as he did not possess requisite experience of 05 years from the feeder cadre post and was only a one time measure and relied on order dated 15.04.2015 (Annexure P-6). It is further the stand of the respondents that promotion from the post of Divisional Soil Conservation Officer to the post of Conservator of Soils, experience of 03 years is required on the feeder cadre post which the petitioner attained on 16.09.2018 and the DPC considered and promoted him as Conservator of Soils vide order dated 15.10.2019 (Annexure P-10). It is claimed that the petitioner was holding additional charge of Conservator of Soils with effect from 24.05.2018 in addition to his substantive post of Divisional Soil Conservation Officer and which period cannot be counted towards his experience. The respondents have contended that promotion from the post of Conservator of Soils to the post of Chief Conservator of Soils requires 02 years of experience to the post of feeder cadre post and having been promoted on 15.10.2019, petitioner would fulfill the requirement of promotion only on 14.10.2021 and thus, termed the claim to be false and incorrect and untrue.

The respondents have taken a plea that petitioner was

given one time relaxation during his service on promotion to the higher post of Divisional Soil Conservation Officer on 16.09.2015 and again could not seek this relaxation for promotion surpassing the Rules of the service and whereby, terming the allegations to be figment of lies unsubstantiated and denied the same.

In respect of respondent No.2, it is the plea that the deputation of respondent No.2 was duly accorded approval by the Governor of Punjab initially for a period of 02 years or till such time as the departmental employee becomes eligible for consideration to the post of Chief Conservator of Soils. It is worthwhile to refer here that during the course of pendency of the present petition, respondent No.2 had been taken as Secretary to Government of Punjab, Department of Agriculture and Farmers Welfare and, therefore, his contest ceases to be there at the time of arguments and in his place, one Sh. Rajesh Vashisth has been appointed as Chief Conservator of Soils, Punjab. The counsel of respondents cited judgments passed in CWP No.22289 of 2012 titled as 'Surinder Mohan Dhir and others versus State of Punjab and another'; CWP No.9781 of 2013 titled as 'Darshan Singh versus The State of Punjab and another'; LPA No.1743 of 2016 titled as 'Harpal Singh and others versus State of Haryana and others' and Supreme Court's judgment passed in Civil Appeal No.5573 of 2006 titled as 'State of Uttranchal and another versus Dinesh Kumar Sharma'. It is in light of this scenario, the present petition has come up for adjudication.

From the stand of the two sides, it is explicitly clear that the petitioner was recruited initially to the post of Section Officer (S.O.) on 05.08.1989 which was re-designated subsequently, as Soil Conservation Officer and was promoted to the rank of Sub-Divisional Soil Conservation Officer which required experience of 08 years as Soil Conservator Officer on 31.10.2014.

The service Rules provided that the next promotion was to the rank of Divisional Soil Conservation Officer after putting in 05 years as Sub-Divisional Soil Conservation Officer which petitioner got on 16.09.2015. The petitioner became Divisional Soil Conservation Officer on 24.05.2018 which required 03 years putting in as Divisional Soil Conservation Officer on 24.05.2018 petitioner was given additional charge of Conservator of Soils. It is at this juncture, the post of Chief Conservator of Soils became vacant, the State appointed respondent No.2 on deputation as the Chief Conservator of Soils with effect from 08.06.2018 while he was working as the Chief Conservator of Forests in Forest Department regarding which orders were made on 10.12.2018 (Annexure P-9). As per these orders, respondent No.2 was supposed to be on deputation for a period of 02 years from the date of his joining or till the Departmental Officer becomes eligible for consideration of the said post. The primary dispute that has cropped up is that respondent No.2 whose posting was on deputation initially for a period of 02 years and which

tenure was supposed to expire on 07.06.2020 managed to carry on to that post. The claim of the petitioner to the post of the Chief Conservator of Soils was thus, thwarted and that is how the order dated 27.05.2020 (Annexure P-13), instructions dated 14.12.2016 (Annexure P-19) and order dated 14.08.2020 (Annexure P-21) have come to be challenged through this writ petition. The assailment to the claim of the petitioner by the respondents is that the Current Duty Charge (CDC) does not vest in its claim of experience and, therefore, the experience required of 02 years as Conservator of Soils does not stand fulfilled by the petitioner on the day of his claim for which much support is sought to be taken by letter No.4/11/04-3PP14755 dated 19.04.2005 and the same is sought to be refuted with much force and vehemence on behalf of the petitioner by Mr. G.S. Bal, Senior Advocate assisted by Ms. Mandeep Kaur Madahar, Advocate on the claim of that the word experience includes the period spent as Current Duty Charge (CDC) and has cited judgments of this Court passed in CWP No.310 of 1984 titled as 'Roshan Jagdish Lal Duggal and others versus The Punjab State Electricity Board, Patiala and others'; a Division Bench judgment passed in CWP No.77 of 2012 titled as 'Chief Engineer, Union Territory, Chandigarh versus Ram Sarup Walia and others'; CWP No.3986 of 2016 titled as 'Kailash Devi versus State of Punjab and others'; CWP No.25342 of 2016 titled as 'Satish Kumar and others versus Kurukshetra University, Kurukshetra and another' and

CWP No.26621 of 2013 titled as 'Sukhminder Singh and others versus State of Punjab and others'.

This Court in a Division Bench view, in a similar proposition in the case bearing CWP No.77 of 2012 titled as 'Chief Engineer, Union Territory, Chandigarh versus Ram Sarup Walia and others' has clearly held Current Duty Charge (CDC) is to be treated as a part of experience for promotion to the next higher post as it is an experience gained on a post and has nothing to do with to the claim of seniority as the very Rules governing the Department lays down only requirement of experience and which admittedly, the petitioner has gained during his tenure on Current Duty Charge (CDC) from 24.05.2018. It could not be claimed or is the case of the respondent-State that the petitioner did not gain experience and when admittedly, he worked on that post for which qualifying need is of experience, he has certainly gained that. Since, the petitioner has gained experience while working on Current Duty Charge (CDC) then to the mind of this Court, he clearly fulfills the requirement of the Rules and, therefore, qualifies to be considered to the promotion of post of Chief Conservator of Soils and the claim that he has not gained experience on the substantive post does not impress the Court much for which reliance is placed on the ratio laid down by this Court in the case of 'Ashok Kumar, Clerk versus state of Haryana', 2003 (5) SLR 773, thus, it is clearly held that the petitioner has gained required experience substantive period of 02 years as

Conservator of Soils entitling him to be considered for promotion to the post of Chief Conservator of Soils. It needs to be distinguished between the word “service” and “experience” and it is not by virtue of seniority he is claiming so, but claiming that he has gained sufficient experience for being considered to that post. The taking on and carrying with the deputation of then respondent No.2 as Chief Conservator of Soils, Punjab and its continuation is more pregnated with political and bureaucratic convenience than of administrative needs, especially, when the deputationist was from another field of “Forests” and the requirement was of in the field of “Soil”. Thus, it cannot be taken that the deputationist was having better experience or could be to the advantage of Department and rather when the Department could have availed of the experience of petitioner in the field of “Soils” is another distressing feature in the case of respondents. The instructions cited and relied by the respondents, thus, pales into insignificance. Since, the petitioner had gained sufficient experience of 02 years as Conservator of Soils and has qualified to be considered to the post of Chief Conservator of Soils in the State. Therefore, any deputationist from other Department would be *malafide* illegal and purely to defeat the right of the petitioner that has crystallized by way of his claim to the said post.

In light of the above discussions, discussed and detailed above, the instant petition stands allowed and impugned orders/letter Annexures P-13, P-19 and P-21, are hereby set aside and quashed.

The claim of the petitioner needs to be decided within a period of one month, from the date of receipt of certified copy of this order, by passing a speaking order.

The petition stands disposed off accordingly.

28.04.2021
Neha

(FATEH DEEP SINGH)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No