IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(101) **CM-19098-CWP-2023 in/and CWP-16850-2012**
Date of Decision : December 05, 2023

Mohan Lal **.. Petitioner**

Versus

State of Haryana and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. D.S. Patwalia, Senior Advocate, with
Ms. Sehar Navjeet Singh Sandhu, Advocate, for the petitioner.

Mr. Pankaj Middha, Addl. Advocate General, Haryana.

Mr. Arvind Rajotia, Advocate, for respondent No.4.

Mr. F.S. Virk, Advocate, for
Mr. Munish Kapila, Advocate, for respondent No.5.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-19098-CWP-2023

In the present application, the prayer of the petitioner is for staying the process of filling up the post of Indian Forest Services as well as meeting of the Departmental Promotion Committee.

Learned senior counsel appearing on behalf of the petitioner submits that either the process of filling the post of Indian Forest Service may kindly be stayed or in the alternative, his writ petition which is pending for the last 11 years may kindly be taken up on board and heard on merits.

Notice of the application to the counsel opposite.

Mr. Pankaj Middha, learned Addl. Advocate General, Haryana,

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who is present in the Court, accepts notice on behalf of respondent-State. Mr. Arvind Rajotia, Advocate, accepts notice on behalf of respondent No.4 and Mr. F.S. Virk, Advocate, accepts notice on behalf of respondent No.5.

Learned counsel for the respondents raise no objection for deciding the writ petition itself as compared to the application seeking the staying of the process of filling up of the post of Indian Forest Service.

Keeping in view the above, the present application is disposed of and the main petition which stands admitted, is taken up for hearing for final adjudication on the joint request of the parties concerned.

CWP-16850-2012

1. The challenge in the present writ petition is to the order dated 19.08.1998 (Annexure P-9) by which, the claim of the petitioner for the grant of seniority on the basis of the merit list prepared by the selecting agency keeping in view the facts and circumstances of the present case, which benefit has wrongly been declined in favour of the petitioner as well as the order dated 06.04.2010 (Annexure P-14) by which, the appeal preferred against the said order has been dismissed by the Appellate Authority.

2. The facts leading to the filing of the present writ petition needs to be noticed so as to understand the issue in hand.

3. The petitioner competed for the post of Forest Ranger which was advertised by the Subordinate Service Selection Board Haryana. The petitioner was selected for the said post along with respondent No. 4 and 5, over and above whom the petitioner is now seeking seniority in the Cadre of Forest Ranger.

4. As per the rules governing the service titled Punjab Forest Subordinate Service (Executive Group) Rules, 1944, the appointment to the

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post of Forest Ranger can only be made from the persons who have been selected for training under Rule 6 of the said Rules and have obtained the higher standard certificate or in case of the persons who are already member of the Service have obtained a lower standard certificate granted in the training.

5. The petitioner joined the training along with respondent No. 4 and 5 at Balaghat, Madhya Pradesh. After a period of 04 days of training, the petitioner submitted resignation on 12.12.1991 and left the training after a period of four days. Respondents No. 4 and 5 underwent the complete training process and obtained the required certificate which was necessary for appointment as Forest Ranger and both respondent No. 4 and 5 were given appointment on the post of Forest Ranger on 01.11.1993.

6. That petitioner re-considered his action of resigning from the post and submitted an application on 24.02.1992 so as to allow him to withdraw his resignation and the said application of the petitioner was accepted by the authorities concerned vide letter dated 09.03.1992. As the petitioner left the training in between, he was sent for training with the next batch which started in April, 1992.

7. After completing the training in April, 1994 with the next batch, the petitioner was appointed on 01.04.1994 as a Forest Ranger. After joining the said post, the petitioner raised a grievance for the first time in the year 1998 that the petitioner be given seniority in the cadre of Forest Ranger according to the merit prepared by the selecting agency keeping in view the fact that the petitioner was placed above in the merit as compared to respondent No. 4 and 5, hence he is to be treated senior to respondent No. 4 and 5 despite the fact that he was appointed six months after the appointment of respondent No. 4 and 5 after completing the training with

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next batch.

8. The said claim was considered by the Department and the same was rejected by the respondent-State on 19.08.1998, a copy of which has been appended with this petition as Annexure P-9. The respondent-State recorded that as the petitioner had left the training in between which was necessary for appointment to the post of Forest Ranger and never completed the same along with candidates, who were selected for training along with him and had rather completed the training after respondent No. 4 and 5 in the next batch and his appointment order is also much after the appointment of respondent No. 4 and 5, hence, the petitioner cannot be given seniority over and above respondent No. 4 and 5.

9. The petitioner preferred an appeal/representation against the said order and ultimately, vide order dated 06.04.2010 having endorsement date 10.04.2010, the said appeal was also rejected, hence, the present writ petition in which both the orders have been impugned.

10. Learned senior counsel appearing on behalf of the petitioner submits that keeping in view the rules governing the service according to which, the seniority is to be maintained in case of the directly recruited Forest Rangers keeping in view the merit assessed by the selecting agency, wherein, the petitioner was concededly senior to respondent No. 4 and 5, merely because appointment was after respondent No. 4 and 5 will not change the said position for determination of seniority and the petitioner will be entitled for seniority according to rules to be placed over and above respondent No. 4 and 5 in the cadre of Forest Ranger.

12. Learned senior counsel for the petitioner further submits that once the Rules permit the grant of seniority as per merit obtained, the same cannot be co-related with the date of appointment or of the clearing of the

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examination with subsequent batch, hence, once the petitioner has cleared the training and had been appointed, the petitioner regains seniority over and above respondent No. 4 and 5 in the cadre of Forest Ranger keeping in view the rules governing the service.

13. Learned senior counsel for the petitioner further submits that even otherwise, before appointment of private respondents, the petitioner had already cleared the training and therefore, merely on account of petitioner being appointed after a period of six months, the petitioner cannot be denied the benefit of seniority over and above respondent No. 4 and 5.

14. Learned counsel for the respondent-State submits that in the present case, the petitioner was duly selected along with respondent No. 4 and 5 and it is a matter of fact that in the selection process, the petitioner was placed over and above respondent No. 4 and 5 but according to the Rules governing the service, the appointment can only be made after successfully clearing the training by obtaining a specific standard in that training and once the petitioner did not clear the training in the same batch along with respondent No. 4 and 5 and had cleared the training in subsequent batch, the petitioner cannot be treated as senior to the private respondents merely because he was placed above them in the select list.

15. Learned counsel appearing on behalf of the private respondents submits that once the petitioner on his own left the training in between by submitting a resignation and did not complete the same along with private respondents, the petitioner cannot be allowed to raise the grievance that he regains his seniority over and above the private respondents even after clearing the training subsequent to the respondent No. 4 and 5.

16. I have heard learned counsel for the parties and have gone through the record with their able assistance.

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17. From the facts which have been enumerated hereinbefore, it is clear that a candidate is selected by a selecting agency and the said candidate has to undergo training before he becomes eligible for appointment. The appointment and selection are two different process. In case, the selection process is over after being selected by selecting agency and no further process such as training is to be done by a selected candidate to become eligible for appointment, it would be in the fitness of things for the petitioner to contend that once the appointment was not dependent upon any subsequent event to the selection process, the merit prepared by the selecting agency be strictly adhered to for determination of seniority. But in the present case, after the selection process, a candidate was required to complete the training and only upon successful completion of the said training, the candidate become eligible to be offered appointment. In the present case, it is a conceded fact that after selection process, the petitioner joined for the training with selected batch along with respondent No. 4 and 5 but submitted his resignation immediately after four days of joining training and left the same in between.

18. It was only thereafter, upon acceptance of petitioner's application for withdrawal of his resignation by respondent-State that the petitioner was again sent on a training, completion of which was pre requisite for appointment, with the subsequent batch. That it is an undisputed fact that the petitioner completed the said mandatory training and was appointed on dates, both of which were subsequent to that of respondent No. 4 and 5. It is a conceded fact which has gone un-rebutted that after completing the selection process as well as the training, respondent No. 4 and 5 were appointed on 01.11.1993 whereas the

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petitioner was appointed on 01.04.1994. Once the petitioner's appointment is much subsequent to the date, respondent No. 4 and 5 were appointed, which fact is only due to an act attributable to the petitioner himself, which is on account of his submission of resignation only to be withdrawn at a later stage on his own voilition leading to him completing the requisite training for appointment at a belated date, the petitioner cannot be allowed to contend that he will regain his merit/seniority as fixed by the selecting agency upon appointment, even if he failed to clear the mandatory training along with selected batch.

19. The argument which has been raised by the learned senior counsel for the petitioner is that as per the service rules, a candidate is only required to complete training and seek appointment and once the petitioner had completed the training and was concededly appointed, he will regain his position of seniority in accordance with the Rules to be given as per merit obtained by the selecting agency. The said contention is to be dealt by application of logical and functional reading of the rules in question.

20. A logical and functional approach to the reading of rules will dictate that a selected candidate, who undergoes the training along with other selected candidate and completes the same along with them, will sustain the same seniority as fixed by the selecting agency while preparing the merit list, but in case, a candidate for reasons attributable to the candidate him/herself, does not clear the mandatory training which makes a candidate eligible to be appointed and is ineligible to be appointed along with the batch he is selected with, he cannot claim the benefit of literal interpretation, which is not good enough to claim appointment in a manner that the candidates who fulfilled the necessary requisite for appointment in

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accordance with the law prior in time and who have already been appointed accordingly on a prior date, gain seniority over and above a candidate who could not gain eligibility for appointment upto the said date and that too due to his own action. Giving an interpretation of the said nature as contended by learned senior counsel for the petitioner will be setting a bad precedent giving premium to such act which disturb the discipline of appointment process, which are solely attributable to the candidate himself.

21. In the present writ petition, the petitioner resigned on his own voilition and left the training just after four days of joining the same. That being so, he could not complete the training along with the other selected candidates of his own batch whereas the same was completed by respondent No. 4 and 5. Once the petitioner has missed the bus due to his own act, he cannot claim that upon completing the said training by him at a belated stage, he be given the benefit of seniority as per the initial merit list, which merit concededly as per rule is not good enough to claim appointment. Granting such claims will create irreconcilable anomalies and disturb equity which is not borne out from a functional interpretation of the relevant rules. The Rules have to be given a logical and functional interpretation and in the present case, the selection does not become final immediately upon declaration of result by the selecting agency and is upon the candidate completing requisite mandatory training for the purpose of appointment, therefore, the completion of training at appropriate time along with other candidates remains an important factor for fixation of seniority as well.

22. Hence, once the petitioner has cleared the training along with subsequent batch whereas respondent No. 4 and 5 concededly have completed the same at appropriate time which was prior to that when the petitioner completed the same, the claim that the petitioner will regain

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seniority over and above respondent No. 4 and 5, cannot be sustained/allowed, hence, the orders passed by the respondent-Department for declining the benefit of the same, needs no interference.

23. No other argument was raised.

24. Keeping in view the above, in the facts and circumstances of the present case, no interference is called for by this Court.

25. Dismissed.

December 05, 2023 **(HARSIMRAN SINGH SETHI)**
harsha **JUDGE**

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

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