

(1975) 03 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 169 of 1970 and 74 of 1973

Inder Jit Singh Kang

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-03-1975

Acts Referred:

All India Services Act, 1951 — Section 2A, 3, 3(1)
Constitution of India, 1950 — Article 309, 312
Indian Forest Service (Cadre) Rules, 1966 — Rule 3(1), 5(2)
Forest Service (Recruitment) Rules, 1966 — Rule 4(1), 4(3A), 6
State of Himachal Pradesh Act, 1970 — Section 39(2), 39(4)

Citation : (1975) 4 ILR HP 161

Hon'ble Judges : R.S. Pathak, C.J.; Chet Ram Thakur, J

Bench : Division Bench

Advocate : S. Malhotra and D.P. Sud, for the Appellant; B. Sita Ram, General, H.S. Thakur, Chhabil Dass, K.D. Sud and P.N. Nag, for the Respondent

Judgement

R.S. Pathak, C.J.—Shri Inderjit Singh Kang, the Petitioner in C.W.P. No. 169 of 1970, entered service in 1956 as an Assistant Conservator of Forests in the Pepsu Government, and consequent upon the integration of the State of Punjab with effect from November 1, 1956, under the States Re-organisation Act, 1956, he was absorbed as Divisional Forest Officer in the State of Punjab. On the eve of the re-organisation of the State of Punjab on November 1, 1966, an order dated October 30, 1966, was made by the Government of India u/s 82(1) of that Act requiring Shri Kang to serve provisionally, with effect from November 1, 1966, in connection with the affairs of the Union territory of Himachal Pradesh.

2. Shri R. C. Dutta, the Petitioner in C.W.P. No. 74 of 1973, joined the Himachal Pradesh Forest Service when Himachal Pradesh was a part "C State. He was a Class-I Officer of that service. His seniority was determined among the Class-I officers in 1964, and being aggrieved by the place of seniority assigned to him, he represented to the President of India. By a notification dated March 6, 1971, he was confirmed as a Class-I officer of the Himachal Pradesh Forest Service with

effect from February 20, 1959. By the time the present two writ petitions were filed, the final seniority list of Class-I officers of the Himachal Pradesh Forest Service as before October 1, 1966, had not been prepared.

3. On July 1, 1966, the Government of India constituted the Indian Forest Service u/s 2A of the All India Services Act, 1951. By a notification dated October 31, 1966, made under Rule 6 of the Indian Forest Service (Recruitment) Rules, 1966, it appointed to the Punjab cadre of the Indian Forest Service with effect from October 1, 1966, a number of officers of the Punjab Slate Forest Service recruited under Rule 4(1) of the said rules. Shri Kang was considered but was not selected apparently because his confidential reports contained adverse entries. By notification dated January 31, 1968, the Government of India appointed to the Union territories cadre of the Indian Forest Service several Himachal Pradesh Forest Service officers, including Shri Dutta, with effect from October 1, 1966.

4. Subsequently, the case of Shri Kang for recruitment to the Indian Forest Service was reconsidered, and after hearing him in respect of the adverse remarks in his confidential reports, by a notification dated June 10, 1968, he was inducted into the Punjab cadre of the Indian Forest Service with effect from October 1, 1966. On the same date, another notification made under Rule 5(2) of the Indian Forest Service (Cadre) Rules, 1966, by the Government of India, in concurrence with the State Government concerned, transferred him from the Punjab cadre of the Indian Forest Service to the Union territories cadre of that service with effect from November 1, 1966.

5. On May 30, 1970, the Government of India wrote to the Himachal Pradesh Administration intimating that Shri Kang, then Deputy Conservator of Forests, Hirnachel Pradesh Forest Department, had been selected for promotion as Conservator of Forests in the same department in an officiating capacity with immediate effect, but that the promotion would not confer any right or title on Shri Kang to hold the post consequent on regular or permanent appointment being made against the post in the future. It was requested that internal posting orders appointing Shri Kang to officiate as Conservator of Forests "in an existing vacancy in the Hirnachel Pradesh Forest Department" may be issued by the Hirnachel Pradesh Administration. It appears that no serious attempt was made by the Hirnachel Pradesh Administration to comply with this request. Thereafter, on September 5, 1970, the Government of India made an order promoting Shri Kang to the cadre post of Conservator of Forests in the Hirnachel Pradesh Forest Department with immediate effect. It was recited that the order was without prejudice to the interest of the other officers of the Union territories cadre, whose seniority was being determined. In the endorsement to the Accountant General, Hirnachel Pradesh and Chandigarh, it was recited that Shri Kang was posted against the seventh vacant cadre post of Conservator of Forests in Hirnachel Pradesh. On December 16, 1970, the Government of India wrote to the Himachal Pradesh Administration inviting its attention to the letter dated May 30, 1970, and the order dated September 5, 1970, and requested, that

necessary internal posting orders in respect of Shri Kang should be issued at once.

6. Hirnchal Pradesh become a State with effect from January 25, 1971. By a notification dated January 23, 1971, made u/s 39(2) of the State of Himachal Pradesh Act, 1970, and Section 3(1) of the All India Services Act, 1951, read with Rule 3(1) of the Indian Forest Service (Cadre) Rules, 1956, the Central Government constituted a State cadre of the Indian Forest Service for the State of Hirnchal Pradesh with effect from January 25, 1971. Both Shri Kang and Shri Dutta were shown in that cadre.

7. Meanwhile, the Supreme Court of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, examined the validity of the selection to the Jammu and Kashmir cadre of the Indian Forest Service, and finding it invalid quashed it. Falling in line with that decision, the Central Government issued a notification dated July 28, 1971, stating that the appointments of officers to the Punjab cadre of the Indian Forest Service with effect from October 1, 1966, had been rendered ab-initio void, and that the Central Government proposed to take early steps to make fresh recruitment under Rule 4(1) of the Indian Forest Service (Recruitment) Rules, 1966.

8. By a notification dated March 1, 1971, the Central Government amended the Indian Forest Service (Recruitment) Rules, 1966, by adding the following Sub-rule (3A) in Rule 4 of the those rules:-

(3A) Notwithstanding anything contained in this rule, where appointments to the service in pursuance of the recruitment under Sub-rule (1) have become invalid by reason of any judgment or order of any court, the Central Government may make fresh recruitment under that sub-rule and may give effect to the appointments to the service in pursuance of such fresh recruitment from the same date on which the appointments which have become invalid as aforesaid had been given effect to.

9. By a notification dated December 7, 1971, issued under Rule 6 of the Indian Forest Service (Recruitment) Rules, 1966, the Government of India appointed a number of State Forest Service Officers, recruited under Sub-rule (1) read with Sub-rule (3A) of Rule 4 of those rules to the Indian Forest Service, to the Union territories cadre of that service with effect from October 1, 1966. The list of names included Shri Dutta. Similarly, by a notification dated December 11, 1971, made under the provision, Shri Kang was appointed to the Punjab cadre of the Indian Forest Service with effect from October 1, 1966. Thereafter, the Government of India issued a notification dated December 31, 1971, under Rule 5(2) of the Indian Forest Service (Cadre) Rules, 1966, superseding the earlier notifications dated October 31, 1966, and June 10, 1968, and transferring with the concurrence of the State Government concerned the officers, including Shri Kang, borne on the Punjab cadre of the Indian Forest Service to the Union territories cadre with effect from November 1, 1966. The result of those

notifications was to bring Shri Dutta and Kang once more into the Union territories cadre of the Indian Forest Service. They were then transferred from the Union territories cadre to the newly constituted Himachal Pradesh State cadre of the Indian Forest Service with effect from January 25, 1971, by a notification dated January 4, 1972, made u/s 39(4) of the State of Himachal Pradesh Act, 1970, and Section 3(1) of the All India Services Act, 1951, read with Rule 5(2) of the Indian Forest Service (Cadre) Rules, 1966.

10. On February 26, 1972, the Government of India notified the confirmation with effect from October 1, 1967, in the Indian Forest Service of Shri Kang, Shri Dutta and other officers borne on the cadre of the Union territories.

11. On November 24, 1972, the Government of India notified the appointments of certain officers on an officiating basis to the posts mentioned against their names in the Union territories cadre of Himachal Pradesh with effect from October 1, 1966, in supersession of earlier orders. It was recited that the appointments would not confer any right or title on any of the officers concerned over their seniors in the event of regular or permanent appointments made subsequently against the respective posts. Shri Dutta was shown appointed as Conservator of Forests upto May 6, 1968, and Deputy Conservator of Forests from May 7, 1968. On the same date a similar notification was made in respect of the Punjab Officers transferred to the Union territories cadre with effect from November 1, 1966. Shri Kang was shown as Deputy Conservator of Forests. The notification was superseded by a notification dated March 27, 1973, which recited:

Consequent upon their transfer to the Indian Forest Service Cadre of the Union territories from November 1, 1966, from the Indian Forest Service cadre of Punjab, the President is pleased to appoint the following officers on an officiating basis in posts mentioned against their names in the Union territories cadre in Himachal Pradesh with effect from November 1, 1966, and until further orders. This appointment will not confer any right or title on any of the officer concerned over their seniors in the event of regular/permanent appointments that may be made subsequently against respective posts:

6. xxxxxxxxxxxx

7. Shri Inderjit Singh Kang. Deputy Conservator of Forests from 1-11-1966 to 4-9-1970 and Conservator of Forests from 5-9-1970.

12. In C.W.P. No. 169 of 1970, Shri Kang prays for a direction to the Respondents, the Union of India and the State of Himachal Pradesh and its officers to implement the orders of promotion dated September 5, 1970, and March 27, 1973, and to issue orders posting him as Conservator of Forests with effect from September 5, 1970, with consequential benefits. He has also prayed for the quashing of the order dated March 6, 1971, confirming Shri Dutta and other officers in the Himachal Pradesh Forest Service (Class-I) with effect from February 20, 1959.

13. In C.W.P. No. 74 of 1973, Shri Dutta has prayed for an order quashing the promotion and posting orders of Shri Kang made on May 30, 1970, September 5, 1970, and March 27, 1973. He has also prayed for an order declaring him entitled to all consequential benefits arising from the post of Conservator of Forests to which he would have been promoted from the date on which a junior incumbent was promoted instead of him.

14. The two writ petitions have been heard together, and very exhaustive arguments have been made by learned Counsel for the parties before us. A common question which arises on the pleadings of the parties in the two cases is whether the promotion and posting of Shri Kang by the order dated May 30, 1970, and September 5, 1970, and the order dated March 27, 1973, are valid. It is this question which has been the subject of considerable controversy before us. Several grounds have been detailed by Shri Dutta in his writ petition, but we may set out those grounds only which have been pressed before us. It is contended that:

(1) The order dated March 27, 1973, has been made with retrospective effect, and as no power was conferred under the All India Services Act to make an order having retrospective operation, the order is invalid.

(2) The orders dated May 30, 1970, and September 5, 1970, are void and have not been revived by the enactment of Clause 4 (3A) of the Indian Forest Service (Recruitment) Rules, 1966, nor by any order made thereafter.

(3) Shri Kang never became a member of the Union territories cadre of the Indian Forest Service because the notification dated December 31, 1971, transferring him from the Punjab cadre to the Union territories cadre of that service with effect from November 1, 1966, is invalid inasmuch as there is no power in the Government of India under Rule 5(2) of the Indian Forest Service (Cadre) Rules, 1966, to make an order with retrospective operation. The validity of the notification dated January 4, 1972, transferring Shri Kang from the Union territories cadre to the Himachal Pradesh State cadre with effect from January 25, 1971, has also been challenged and on the same ground.

(4) The notification dated March 27, 1973, could not be made by the Government of India because on that date Himachal Pradesh had become a State and the cadre and controlling authority was the State of Himachal Pradesh. Alternatively, assuming that September 5, 1970, is the relevant date, the authority having power to make an order on that date was the Administrator of Himachal Pradesh and not the Government of India.

(5) The orders dated May 30, 1970, September 5, 1970, and March 27, 1973, promoting and posting Shri Kang are vitiated by mala fide because:

(a) no attempt was made by the Government of India to comply with the directions of the Delhi High Court in certain writ petitions directing the Government to finalise the seniority list of the Himachal Pradesh Forest Service

Officers. Had the list been finalised, it is said, Shri Dutta would have been given a high position in seniority. In consequence, when the final integrated seniority list of the Union territories cadre as on November 1, 1966, was prepared, on the basis of the seniority so attained Shri Dutta would have been found to be senior to Shri Kang. It is alleged that the Government of India deliberately avoided preparing the final seniority list of the Himachal Pradesh Forest Service officers and the final integrated seniority list of the Himachal Pradesh cadre of the Indian Forest Service in order that meanwhile Shri Kang may be promoted to the post of Conservator of Forests.

(b) There was no vacant post of Conservator of Forests on September 5, 1970, and, therefore, Shri Kang could not possibly be promoted and appointed to such post.

(c) Shri Kang was promoted to the post of Conservator of Forests with effect from September 5, 1970, without considering the cases of other eligible officers in the Union territories cadre of the Indian Forest Service.

Point No. 1:

15. Is the order dated March 27, 1973, invalid because it has been made with retrospective effect ?

16. By the order dated March 27, 1973, the Government of India has posted Shri Kang as Deputy Conservator of Forests from November 1, 1966, to September 4, 1970, and as Conservator of Forests from September 5, 1970. Plainly it is an order which operates retrospectively. The Indian Forest Service (Cadre) Rules, under which the order has apparently been made, do not in terms envisage the making of an order having retrospective operation. An order can be made with retrospective effect only if the statutory provision conferring such power envisages such an order. There is nothing in the All India Services Act, 1951, nor in the relevant rules made thereunder which permit the passing of an order, such as that of March 27, 1973, with retrospective operation.

17. It is well settled that for rules and orders to have retrospective operation there must be something in the parent Act which either expressly or by necessary intendment envisages framing of such rules or orders. *Dr. Indramani Pyarelal Gupta Vs. W.R. Nathu and Others*, and *Income Tax Officer, Alleppey Vs. M.C. Ponnose and Others*, The Punjab High Court in *Shri K.D. Vasudeva v. The Union of India* 1971 (2) S.L.R. 487 held that the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, could not be applied retrospectively. The Court pointed out that the rules framed for the regulation of recruitment and conditions of service of persons appointed to an All-India Service framed under the All India Services Act, 1951, did not confer power on the Government of India to make appointments of officers from a date earlier than the actual date of passing the orders.

18. Considerable reliance has been placed by learned Counsel for B.S. Vadera Vs.

Union of India (UOI) and Others, where the Supreme Court upheld the validity of a rule operating retrospectively which was contained in a scheme framed by the Railway Board under rules enacted by the President pursuant to the proviso to Article 309 of the Constitution. That decision of the Supreme Court was explained by that Court in *M.C. Ponnose* (supra). It was pointed out that because of the particular language employed in the proviso to Article 309 that "any rules so made shall have effect subject to the provisions of any such Act", the clear and unambiguous expression used in the Constitution had to be given full and unrestricted meaning unless hedged in by any limitations. It was also observed that when the language employed in the main part of Article 309 was compared with that of the proviso it was clear that the power given to the legislature for laying down the conditions of service were identical with the power given to the President or the Governor in the matter of regulating the recruitment of government servants and their conditions of service. Inasmuch as the legislature could legislate prospectively as well as retrospectively, the President or the Governor must also, within the contemplation of the proviso to Article 309, be considered to enjoy the same power when framing rules.

19. Now, the rules made by virtue of Section 3(1) of the All India Services Act cannot be referred to the proviso to Article 309 of the Constitution. Article 309 speaks of Acts and rules for regulating the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. In the case of the affairs of the Union Parliament is the legislative, and the President is the rule-making, authority while in the case of the affairs of a State the State Legislature and the Governor are the corresponding authorities. What is envisaged by Article 309 are Acts or rules in respect of a service or post concerning the Union [alone or the State alone. Article 309 does not contemplate legislation in respect of a service or post which is concerned with the Union and the States. Provision for such legislation has been made by Article 312. Article 312 provides that if the Council of States declares by resolution by the prescribed majority that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more All India Services common to the Union and the States⁶, and regulate the recruitment, and the conditions of service of the persons appointed, to any such service. It is clear that Article 309 and Article 312 operate in two mutually exclusive fields. An Act or body of rules framed under Article 312 cannot be referred to Article 309. Now, if regard be had also to the terms of Article 312, it is apparent that there is no such language therein as the Supreme Court noticed in Article 309 when deciding *B. S. Vadchra* (supra). In the circumstances, I am of opinion that the general principle should apply to rules made under an Act enacted by virtue of Article 312, the general principle being that if the parent statute does not expressly or by necessary intendment provide for the framing of rules with retrospective operation, such rules cannot be made validly.

20. We have been referred by learned Counsel for Shri Kang to Shayamal Kumar

Sarkar v. Union of India 1972 S.L.R. 627, where a learned single Judge of the Calcutta High Court has upheld the validity of retrospective rules and regulations made under the All-India Services Act. With great respect to the learned Judge, I am unable to agree with him. The learned Judge has assumed that such rules and regulations are governed by the same considerations as those found in Article 309.

21. It is pointed out by learned Counsel that the principle governing the decision in B. S. Vadehra (supra) was applied by the Patna High Court in Gaya Prasad Pandey v. The State of Bihar 1973 (1) S.L.R. 1 and by the Mysore High Court in P.L. Kumarswamy v. State of Mysore 1973 (2) S.L.R. 216. Both those cases deal with rules made under the proviso to Article 309 of the Constitution. They are not concerned with an All-India Service.

22. Learned Counsel for Shri Kang has placed before us certain observations of the Supreme Court in D.S. Garewal Vs. The State of Punjab and Another, Those observations, which have been made with respect to the fourth and fifth points raised on behalf of the Appellant in that case, are concerned merely with the question whether Article 312 prohibits Parliament from delegating its function of making a law regulating the recruitment and conditions of service of an All-India Service, and whether the delegation actually effected in that case by Section 3 of the All India Services Act was excessive and should be struck down. The Supreme Court did not lay down the proposition that as in the case of Article 309 so in the case of Article 312 rules could be made having retrospective operation.

23. Reliance is next placed on behalf of Shri Kang on R.P. Khanna and Ors. v. S.A.F. Abbas and Ors. 1972 S.L.R. 373. The case is distinguishable because the Supreme Court did not hold there that the impugned provision operated retrospectively; it was construed as declaratory of an existing fact.

24. It is next contended that rules framed under an Act must be construed as part of the Act, and therefore, the order dated March 27, 1973, made under rules framed under the All India Services Act could be made with retrospective operation. The dictum that rules must be considered as if they form part of the parent Act relates to their legal effect-the rules are regarded as having the same force of law as the Act has-but the dictum does not give to the rules a higher status than they enjoy. They continue to remain subordinate legislation, and must conform to the limitations set for them by the Act and the general principles of law. If the Act does not provide for rules operating retrospectively, any rule framed with such effect is invalid and cannot be treated as if part of the Act.

25. On the ground of its retrospective operation, therefore, the order dated March 27, 1973, must be held invalid.

26. It has been pointed out by learned Counsel for Shri Kang that the order dated March 27, 1973, is an ad hoc order, made because the circumstances then prevailing did not permit promotion and posting in the ordinary course of things.

He draws our attention to the recital in the order that the appointments to the posts have been made on an officiating basis, and that they will not confer any right or title on the officers concerned over their seniors in the event of regular or permanent appointments that may be made subsequently. And so, he says, it is not open to Shri Dutta to challenge the order, he having no right even to be considered for an ad hoc promotion. We are referred to the observations of this Court in *A.N. Bhoil v. Union of India and Ors.* (1973) 2 HIM. 523. Now an order, even of an ad hoc nature, must be an order within the jurisdiction of the authority making it. If it is not within jurisdiction, it is a nullity. It would be in excess of jurisdiction if it lies outside the limits which the statute prescribes for making it or if it runs counter to some constitutional provision or if it is vitiated by mala fides. If an order is nullity, it is non est and does not exist in the eye of law. In that event, an officer who falls within the field of eligibility is entitled to come to the Court and say; "I had a possibility of being considered, but that possibility has been negated by an order which is non-existent in law". The ad hoc order challenged in *A. N. Bhoil* (supra) was not found to suffer from any of the defects which render an order null and void, and the Court held in that case that there was no constitutional or legal obligation on the authority to consider cases of all eligible officers when making the "ad hoc" order of promotion. It is not disputed that if Shri Kang had not been promoted and posted by the order dated March 27, 1973, the appropriate authority would have, assuming that the contention of Shri Kang is right that there was a vacant post, considered one of the eligible officers, who included Shri Dutta, for promotion to that post.

Point No. 2:

27. Have the orders dated May 30, 1970, and September 5, 1970, been revived by the enactment of Rule 4(3A) of the Indian Forest Service (Recruitment) Rules, 1966, or by any order made thereafter?

28. Learned Counsel for Shri Kang contends that in case he does not succeed on the basis of the order dated March 27, 1973, he is entitled to relief on the basis of the orders dated May 30, 1970, and September 5, 1970. It is urged that by the enactment of Sub-rule (3A) in Rule 4 of the Indian Forest Service (Recruitment) Rules, 1966, the orders dated May 30, 1970, and September 5, 1970, are revived. It will be recalled that a number of officers of the State Forest Services in the country had been recruited to the Indian Forest Service, and in the case of those appointed from Jammu and Kashmir the Supreme Court had held in *A. K. Kraipak* (supra) that the recruitment was invalid. Because of that decision, the Government of India had declared that the appointments made to the Indian Forest Service from the Himachal Pradesh Forest Service officers and the Punjab Forest Service officers were ab initio void. By the enactment of sub-rule (3A) in Rule 4 by the notification dated March 1, 1971, the terms of which have been set out earlier, it was provided that "the Central Government may make fresh recruitment under that Sub-rule 4(1) and may give effect to the appointments to the service in pursuance of such fresh recruitment from the

same date on which the appointments which have become invalid as aforesaid had been (given effect to". On a proper construction of the language, it is clear that Sub-rule (3A) merely empowered the Central Government to make fresh recruitment to the Indian Forest Service with retrospective effect, that is to say, the recruitment now made would date back to the date on which the appointments, which had become invalid, had been made. Nothing more is achieved by Sub-rule (3A). It does not validate the original recruitment; the language shows that the recruitment has to be made afresh. Since it does not validate the original recruitment, it cannot be taken by any stretch of reasoning to validate the notifications relating to the recruited officers which followed that recruitment. There is nothing in the language of Sub-rule (3A) which can lend itself to the construction that as a result of Sub-rule (3A) the orders dated March 30, 1970, and September 5, 1970, stood automatically revived. It was indeed in those circumstances that the Government of India felt compelled to issue a series of orders after Sub-rule (3A) had been enacted corresponding to the orders made before March 1, 1971.

29. I hold that the promotion and posting of Shri Kang as Deputy Conservator of Forests with effect from November 1, 1966, and as Conservator of Forests with effect from September 5, 1970, are invalid.

30. As the decision on the first two grounds is sufficient to dispose of this part of the case, it is unnecessary to enter upon the other grounds raised by learned Counsel for Shri Dutta for challenging the validity of the orders dated May 30, 1970, September 5, 1970, and March 27, 1973. The validity of these orders alone has been assailed. Although it has been urged that the order dated December 31, 1971, transferring Shri Kang from the Punjab cadre to the Union territories cadre of the Indian Forest Service and the order dated January 4, 1972, transferring him from the Union territories cadre to the Himachal Pradesh State cadre are invalid, those points have been raised merely as grounds for contending that the orders dated May 30, 1970, September 5, 1970, and March 27, 1973, are invalid and should be quashed. No relief has been sought against the aforesaid orders of transfer. It is also not necessary to express any opinion on the question whether the notification dated March 27, 1973, could have been made by the Government of India or by the State of Himachal Pradesh. Nor is it necessary to decide whether the impugned orders promoting and posting Shri Kang are vitiated by mala fides.

31. In my judgment, Shri Dutta is entitled to the relief claimed in his writ petition for the quashing of the orders dated May 30, 1970, September 5, 1970, and March 27, 1973, so far as they relate to Shri Kang. For the same reason, Shri Kang is not entitled to the relief claimed in his writ petition for an order requiring the Respondents to enforce the promotion and posting orders made in his favour.

32. The only relief left in Shri Kang's writ petition is his prayer for the quashing of the order dated March 6, 1971, confirming Shri Dutta and other Himachal Pradesh Forest Service Officers in the Himachal Pradesh Forest Service from

February 20, 1959. Now Shri Kang was never an officer of the Himachal Pradesh Forest Service on February 20, 1959. Indeed, he became an officer in Himachal Pradesh as from November 1, 1966, only. Before that he was an officer in the erstwhile State of Punjab. I am unable to see how except for the matter of determining his seniority in the integrated seniority list as on November 1, 1966, Shri Kang can be said to be affected by what has happened in the case of those officers before that date. As regards the effect of that order on his position in the integrated seniority list, it is open to him to file an objection before the appropriate authority entrusted by the law with finalising that list, and we have no doubt that the appropriate authority will consider whether the objection is open to Shri Kang and if so what should be the decision thereon. At this stage, we need express no opinion in the matter.

33. Accordingly, as Shri Kang is not entitled to any relief on his writ petition, the writ petition is liable to be dismissed.

34. As regards Shri Dutta's writ petition, what is left for consideration is the prayer for an order declaring him entitled to the benefits arising from the post of Conservator of Forests to which he claims he would have been promoted if Shri Kang had not been promoted. Now the invalidity of Shri Kang's promotion does not lead to the necessary conclusion that Shri Dutta would have been promoted instead of him. It has not been shown that he was the only officer eligible for such promotion. It was a matter lying within the discretion of the appropriate authority to decide which one of the eligible officers should be promoted. Shri Dutta's promotion was a mere chance, and so long as it is viewed as a chance only he cannot claim as of right any of the benefits prayed for by him. This relief must, therefore, be refused.

35. It may be mentioned that originally Shri Dutta had prayed for the further relief that the Respondents be directed to finalise the seniority list of the Himachal Pradesh Forest Service officers in compliance with the directions of the Delhi High Court in certain writ petitions disposed of some years ago. Learned Counsel for Shri Dutta has stated before us that he abandons that relief.

36. The result is that Shri Dutta's writ petition is entitled to succeed in part only.

37. Accordingly, Civil Writ Petition No. 169 of 1970 is dismissed and Civil Writ Petition No. 74 of 1973 is allowed to the extent that the orders dated May 30, 1970, September 5, 1970, and March 27, 1973, so far as they relate to Shri Inderjit Singh Kang, are quashed while the remaining reliefs are refused. The parties are left to bear their own costs.

Chet Ram Thakur, J.:

38. I agree.