
(2013) 04 P&H CK 0057
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 5763 of 2011 (O and M)

Krishan Lal Manhas

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Citation : (2014) LabIC 785 : (2013) 3 SCT 490

Hon'ble Judges : A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : D.S. Patwalia, for the Appellant; Puneet Sharma, Advocate for Respondent No. 1, Mr. O.S. Batalvi, Senior Standing Counsel for UOI with Ms. Kamla Malik and Mr. Brijeshwar Singh, Advocates for Respondent No. 2 and Mr. Kamal Sehgal, Addl. A.G., Haryana for Respondent No. 3 and Mr. Raj Kumar Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—The petitioner has challenged the validity of order dated 21.03.2011 passed by the Tribunal by which OA No. 472-HR of 2010 filed by D.N. Taneja has been allowed and OA No. 1052-HR of 2010 filed by the petitioner Krishan Lal Manhas has been dismissed. In OA No. 472-HR of 2010, D.N. Taneja had challenged the order dated 15.07.2009 by which a non statutory penalty of simple warning was imposed upon the petitioner and orders dated 30.07.2009 and 04.01.2010 by which the petitioner was promoted to the post of Additional Principal Chief Conservator of Forest (hereinafter referred to as the "APCCF") and Principal Chief Conservator of Forest (hereinafter referred to as the "PCCF") respectively and for direction to respondent No. 3 to impose one of the statutory penalties upon the petitioner and also prayed for grant of direction to respondent No. 3 to consider him for promotion as APCCF w.e.f. 01.04.2009 and as PCCF w.e.f. 04.01.2010 as he was officer next in seniority and was otherwise found fit by the Screening Committee. In the OA No. 1052-HR of 2010, the petitioner had challenged the order of his posting against an Ex. Cadre post of OSD Rules.

2. The relevant skeletal facts of the case are that the petitioner is an IFS officer of 1976 Batch of Haryana Cadre, whereas D.N. Taneja and Dr. Parvej Ahmed were IFS officer of 1977 Batch of Haryana Cadre. On 13.05.2005, the petitioner was charge sheeted under Rule 8 of the All India service (Discipline and Punishment) Rules, 1969. Enquiry Officer was appointed on 22.02.2006. The petitioner filed OA No. 43-HR of 2008 seeking quashing of the charge memo dated 13.05.2005 which was disposed of by the Tribunal on 07.11.2008 with a direction to expedite the disciplinary proceedings against the petitioner by concluding the same within a period of two months, which was further extended for 2 months on 19.02.2009. On 19.11.2008, report was submitted by the Enquiry Officer and a show cause notice was issued on 09.03.2009 for penalty of Censure by the State Government. A Departmental Screening Committee was held on 20.03.2009 for judging suitability of the officers for promotion to the post of APCCF in which the petitioner was placed at Sr. No. 1 and D.N. Taneja was at Sr. No. 3. Two posts were vacant and, therefore, person at Sr. No. 2, namely, Dr. Parvez Ahmed was selected and promoted on 26.05.2009 and case of the petitioner was kept in a sealed cover pending conclusion of the disciplinary proceedings. On 08.06.2009, the Punishing Authority of the petitioner took a decision not to award any punishment but to order a simple warning without the same being recorded in the service book and vide order dated 15.07.2009, order of simple warning was issued to the petitioner. The sealed cover applied in the case of promotion of the petitioner as APCCF was opened on 30.07.2009 and he was promoted as such w.e.f. 01.04.2009 with all consequential benefits. A meeting of the Screening committee was held on 11.12.2009 for selection of the solitary post of PCCF (Haryana Cadre) in which the petitioner was found eligible and was placed at Sr. No. 1. He was selected and promoted as PCCF vide order dated 04.01.2010.

3. On 04.02.2010, another Ex. Cadre post of PCCF was created in terms of Rule 9(1) of the Indian Forest Service (Pay) Rules, 1968. Dr. Parvez Ahmed was promoted to the rank of PCCF and posted vice petitioner and the petitioner was sifted to the post of Managing Director, Haryana Forest Development Corporation. Thus, till this point of time, two posts of APCCF and two posts of PCCF i.e. one cadre post and another excadre post became available.

4. Now, in case the petitioner is found to be unfit to be entitled to opening of the sealed cover, then he would remain as Chief Conservator of Forests and in his place, Shri D.N. Taneja was to be considered firstly for promotion to the post of APCCF w.e.f. 01.04.2009 when the vacancy became available and then as PCCF and if not w.e.f. 04.01.2010, at least w.e.f. 04.02.2010 when officer immediately senior to him, namely, Dr. Parvez Ahmed was promoted as such but the petitioner was promoted as APCCF w.e.f. 04.01.2010. He made a representation on 30.03.2010 and ultimately challenged the orders of promotion of the petitioner by way of OA No. 472-HR of 2010 before the Tribunal but retired during the pendency of the OA on 30.09.2010. However, the said OA was allowed vide order dated 31.03.2011 which is the subject matter of the present writ

petition.

5. It may be pertinent to mention here that the petitioner was served with a fresh show cause notice on 28.07.2010 for initiation of proceedings de-novo by withdrawing earlier order of punishment.

6. During the pendency of this writ petition, certain developments took place because of review of the simple warning administered to the petitioner by the State Government on the advice of the UPSC, fresh show cause notice was issued to the petitioner on 28.07.2010, as stated here-in-above, and after receiving his response, the matter was again taken up with UPSC and after advice of UPSC, penalty of reduction to a lower stage in the time scale of pay for a period of 14 months, with directions that he will not earn increments of pay during this period and on the expiry of such period, the reduction will not have the effect of postponing the future increments of pay and it will not have any adverse impact on his pension which has been awarded vide order dated 26.11.2012. Thus, the disciplinary proceedings initiated against the petitioner on 13.05.2005, as a result whereof the sealed cover was applied in his case on 20.03.2009, ultimately culminated into imposition of a major penalty.

7. Before the aforesaid development, which took place during the pendency of this writ petition because of the order dated 26.11.2012, the Tribunal, while allowing the OA No. 472-HR of 2010 filed by Shri D.N. Taneja and dismissing the OA No. 1052-HR of 2010 filed by the petitioner, made the following observations:--

35. The position that, thus, emerges from the above discussion is as under:--

i) The sealed cover procedure adopted at the time the DPC was held on 11.12.2009 on account of the pendency of a departmental enquiry against applicant Shri Manhas, had to necessarily stay under the wraps till the conclusion of the departmental proceedings. The deferment of the opening of the sealed cover would have been in accord with the relevant DOP&T instructions. The opening of the sealed cover by the imposition of a penalty (of warning), is foreign to the statutory penalties provided under the relevant rules and was, thus, not in order.

ii) The matter has to be compulsively referred to the UPSC before a penalty can be imposed upon applicant Shri Manhas. It cannot, thus, be said that the disciplinary proceedings against him have concluded to enable the opening of the sealed cover.

iii) The grant of retrospective promotion would be feasible only if the disciplinary proceedings end in out-right exoneration.

iv) If a penalty comes to be imposed, following indictment in a departmental enquiry, the matter pertaining to promotion of applicant Shri man-has can be taken up for consideration only at the next Screening Committee meeting and the grant of promotion to him can be considered only with prospective effect

"having regard to the penalty imposed upon him". That view is in accord with the law laid down by the Apex Court in Jankiraman"s case (supra).

36. Applicant Shri Manhas did not invite our attention to any factual inaccuracy in the averment aforementioned. We cannot, thus, find any fault with the competence of the Government of Haryana in creating the post of OSD (Rules) and the declaration of that post to be equivalent to that of the PCCF. The creation of that post, and also the declaration of its equivalence to the PCCF, is affirmed and no interference in this regard is required by this Tribunal. That disposes of O.A. No. 1652-HR of 2010 titled K.L. Manhas v. Union of India.

37. In the light of the discussion in the foregoing paras, O.A. No. 472-HR of 2010, titled D.N. Taneja v. Union of India, shall stand allowed. The impugned orders, Annexure A-1 dated 15.07.2009, Annexure A-2 dated 30.07.2009 and Annexure A-3 dated 30.07.2009 shall stand invalidated. Thereby, applicant Shri Taneja is held entitled to be considered for promotion to the post of APCCF from 1.4.2009. He is further held entitled to be considered for promotion to the post of PCCF w.e.f. 4.1.2010. In view of our findings in the foregoing paras of this judgment and in view of the fact of his superannuation w.e.f. 30.09.2010 applicant Shri Taneja has to be considered for substitution in place of applicant Shri Manhas in toto. If promoted, he shall be granted notional placement in the posts aforementioned and be given the arrears that shall become due to him on account of such placement on re-fixation of pay and pension etc. within a period of three months from the date of this order.

38. The OA filed by Shri K.L. Manhas shall stand rejected.

8. Learned counsel for the petitioner has argued that at the crucial date for consideration of the candidatures of the petitioner for selection and promotion to the post of APCCF and PCCF, there was no punishment order against the petitioner. There was only a simple warning and since there was no proceedings pending against the petitioner, there was no question of not considering his candidature. The show cause notice and the order of punishment were issued subsequent to the date of promotion/selection of the petitioner i.e. on 28.07.2010 and 26.11.2012 respectively. It is further submitted that Shri D.N. Taneja could not have any grievance against the promotion of the petitioner because in the minutes of the meeting of the Screening committee for consideration for the post of APCCF and PCCF, he was not shown in the zone of consideration in either of them for the two posts of APCCF as he was placed at Sr. No. 3 without there being any waiting list prepared and for the solitary post of PCCF he was at Sr. No. 3 also without any waiting list. It is further urged that the respondent No. 4 had also superannuated on 30.09.2010, much before the passing of the impugned order by the Tribunal. It is further urged that even assuming that there was warning against the petitioner, the order dated 26.11.2012, by which the major penalty was imposed, would operate prospectively and would not vitiate the selection/promotion made prior to the said date. It is further submitted that the Tribunal has wrongly directed for

consideration of Shri D.N. Taneja for promotion to the post of APCCF w.e.f. 01.04.2009 and PCCF w.e.f. 04.01.2010 despite the fact that DPC did not even consider Shri D.N. Taneja eligible as his name was not included in the zone of consideration or the list prepared by them. He has also submitted that the legal position in the case of Union of India Vs. K.V. Jankiraman, etc. etc., is not applicable in the present case because in that case it has been held that in case the departmental proceedings are pending against an employee, his case should be kept in the sealed cover and the consultation thereof should be done only when the departmental proceedings are culminated against him. It is further submitted that in the instant case, no penalty was imposed upon the petitioner except a simple warning, therefore, his case was considered and he has been rightly promoted and selected for the post of APCCF and PCCF.

9. Learned counsel for the State has submitted that after having been awarded a major penalty on 26.11.2012, in respect of the charge sheet dated 13.05.2005, the petitioner would not have been considered for promotion either to the post of APCCF or PCCF.

10. Learned counsel for the respondent No. 4 has also submitted that the order dated 15.07.2009 was patently illegal by which Punishing Authority had awarded punishment of simple warning which is not even provided in the Rules, not even denied by the petitioner in the counter filed by him before the Tribunal. He has also argued that opening of the sealed cover after imposition of penalty of warning was bad in law as the said punishment was not a part of the statutory penalties in the Rules and the order dated 15.07.2009 by which punishment of simple warning has been now reviewed and a major penalty has been inflicted upon the petitioner vide order dated 26.11.2012 which will relate back to the date on which the order of simple warning was passed and in that circumstance, the sealed cover could not have been opened and the petitioner would have to be declared unfit to be taken into consideration in the zone of consideration for the purpose of selection/promotion as APCCF or PCCF.

11. We have heard learned counsel for the petitioner and perused the record.

12. The facts are not much in dispute as in the meeting of the Screening Committee held on 20.03.2009 for judging the suitability of the officer of Indian Forest Service for promotion to the post of APCCF, the eligibility of the petitioner along with two others were adjudged but as there were two vacancies and a charge sheet was pending against the petitioner, his assessment was kept in sealed cover and the next in seniority, namely, Dr. Parvez Ahmed was considered for promotion. The entire dispute is based upon the fact that the State Government, vide its order dated 15.07.2009, had decided to impose a penalty of simple warning upon the petitioner and since it was not a punishment provided in the Rules, vide order dated 30.07.2009, he was considered for promotion after opening the sealed cover containing his assessment and was found suitable for promotion to the post of APCCF. The issue with regard to jurisdiction of the State to impose the alleged punishment of simple warning was

raked up by Shri D.N. Taneja in OA No. 472-HR of 2010 before the Tribunal in which it has been held that the said punishment is foreign to the statutory penalties under the relevant Rules and, thus, was not in order. As a matter of fact, the issue is now clinched with the order dated 26.11.2012 passed by the State by imposing a major penalty of reduction to a lower stage in the time scale of pay for a period of 14 months, with directions that he will not earn increments of pay during this period, which should have been the punishment as on 15.07.2009 when the State had passed the order of simple warning. Obviously, the consequence of the order dated 26.11.2012 are far reaching because had it been the punishment on 15.07.2009, the sealed cover of the assessment of the petitioner would not have been opened on 30.07.2009 when he was considered for promotion w.e.f. 01.04.2009 i.e. the date on which his junior Dr. Parvez Ahmed was promoted as APCCF and further to the post of PCCF on 04.01.2010. We do not agree with the contention of the learned counsel for the petitioner that when the orders dated 30.07.2009 and 04.01.2010 were passed, there was no proceedings pending against the petitioner because it was only due to the order dated 15.07.2009 by which simple warning was administered to him which is not considered to be a punishment and not provided anywhere as a punishment in the Rules. The State Government should have either exonerated the petitioner of the charges levelled against him or have inflicted the punishment provided under the statutory Rule, but it had no jurisdiction to indict the petitioner for his lapses and impose a punishment which has not been provided in the Rules. This action of the State has been deprecated by the Tribunal while allowing the OA filed by Shri D.N. Taneja and has also been corrected by the State vide its order dated 26.11.2012. In view of the aforesaid discussion, we do not find any merit in the present writ petition and the same is, thus, dismissed.