

(2020) 03 SHI CK 0033

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 1208 Of 2020

Sunil Dutt Sharma & Others

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 24-03-2020

Acts Referred:

Citation : (2020) 03 SHI CK 0033

Hon'ble Judges : L. Narayana Swamy, CJ; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Dilip Sharma, Manish Sharma, Rajesh K. Sharma, Ashok Sharma, Adarsh K. Sharma

Final Decision : Disposed Of

Judgement

L. Narayana Swamy, CJ

1. In view of the nature of order we propose to pass, notice to respondent No.3 is dispensed with.

2. Respondent No.3 had approached the Central Administrative Tribunal (in short 'the Tribunal') by way of O.A. No.063/1350/2019, with a prayer for quashing order dated 21.05.2019 (holding order dated 24.09.2018 regarding redetermination of his year of allotment as 1987 in place of 1989 in abeyance).

3. Initially, the Tribunal granted interim order dated 20.12.2019, restraining the respondent-State from holding DPC for promotion to the post of Principal Chief Conservator of Forests (PCCF). In the proceedings before the Tribunal, the present petitioners had not been made as party, hence, they made an application before the Tribunal in January, 2020, with a prayer to implead themselves as party respondents, but the same has not been considered as yet. The interim order granted by the Tribunal, restraining the respondent-State from holding DPC was upto 17th January, 2020 and thereafter it was not extended. In view of this, the learned Senior Counsel submitted that since there is no interim order as of now, restraining the respondent-State from holding DPC, hence, the respondent-

State should have proceeded further to hold DPC. The respondent-State has not taken any steps either to get clarification from the Tribunal or to proceed further to hold DPC, which has ultimately deprived the valuable right of promotion of the petitioners. It is submitted by the learned Senior Counsel that since the petitioners are due for superannuation within a short span of two months, they have filed the present writ petition with a prayer to direct the respondent-State to hold DPC for promotion to the post of PCCF. It is further submitted that initially, DPC was fixed for 24.12.2019, but was deferred in view of the interim order passed by the Tribunal. Since the respondents have already fixed the date for DPC and also in view of non-continuation of the interim order granted by the Tribunal w.e.f. 17th January, 2020, for all purposes, respondent- State must have proceeded further to hold DPC for promotion to the next higher cadre.

4. Learned Senior Counsel for the petitioners further submitted that in case respondent No.3, who is the applicant before the Tribunal, succeeds, he will remain junior to the petitioners and would only be accommodated against a single post. Under these circumstances, non- holding of DPC virtually deprived the chances of the petitioners for being considered for promotion to the next higher cadre.

5. Learned Additional Advocate General submits that in view of the interim order granted by the Tribunal earlier, the DPC was deferred/postponed. Though the interim order has not been continued w.e.f. 17th January, 2020, yet there is no specific order, directing the State Government to proceed further to hold DPC, thus, the same has not been convened.

6. Learned Assistant Solicitor General of India for respondent No.1-Union of India submits that the matter is still pending before the Tribunal. Moreover, the application of the present petitioners for vacating the interim order and impleadment as party respondents, has not been decided by the Tribunal.

7. We have heard learned counsel for both the parties and gone through the record.

8. Since the lis between the parties is pending adjudication before the Tribunal, we do not want to express any opinion on the merits of the case. However, in the instant case, the petitioners' right of consideration for promotion to the next higher cadre is required to be considered since they are approaching towards superannuation. It is true that a person, who has served for about two-three decades, would have an aspiration to reach at the highest post. In the instant case also, the petitioners are due for superannuation in the near future. The case of the applicant (respondent No.3 herein) before the Tribunal is individual in nature and in case he succeeds, he can be accommodated against a single post and it will not be appropriate to postpone the valuable right of consideration of the petitioners for promotion. Since the DPC was already fixed by the respondent-State for 24.12.2019, but could not be held due to the interim order granted by the Tribunal, it shows that the respondent-State has already made its mind to

consider the cases of the petitioners as well as similarly situated persons, who are eligible for promotion to the further higher cadre. Under these circumstances, it is for respondent No.3 to make an application before the learned Tribunal for interim relief, which application, if any made, shall be decided by the Tribunal as expeditiously as possible.

9. Under these circumstances and in view of the observations made hereinabove, we dispose of the present writ petition by directing the respondent-State to take a decision with regard to holding of DPC for promotion to the post of PCCF and proceed further accordingly within a period of four weeks from today. However, it is made clear that in case the respondent-State decides to go ahead with the DPC, the same shall be implemented only with the prior approval of the Tribunal.

10. Pending application(s), if any, also stand(s) disposed of.

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