

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.063/00041/2016

Chandigarh, this the 8th day of March, 2018

...
**CORAM: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Pardeep Kumar Sinha son of Sh. Surindra Kumar Sinha (deceased) through his legal heirs:-

- (1) Smt. Alaka Verma w/o Late Sh. Pardeep Kumar Sinha, age 58 years, R/o Flat No.C-9, Verma Apartment, Dyerton Estate, Kanloj, The-Shimla Urban, Shimla.
- (2) Sh. Ayush Sinha S/o Late Sh. Pardeep Kumar Sinha, aged 27 years, R/o Flat No.C-9, Verma Apartment, Dyerton Estate, Kanloj, The-Shimla Urban, Shimla.

....Applicant

(Present: Mr. D.R. Sharma, Advocate)

VERSUS

1. Union of India through Secretary, Government of India, Ministry of Environment and Forests, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi-110003.
2. Government of Himachal Pradesh through Principal Secretary (Forests), Department of Forests, Talland, Shimla-171001.
3. Chief Secretary to the Govt. of Himachal Pradesh-cum-Chairman, Screening Committee, H.P. Secretariat, Shimla.
4. Union Public Service Commission through its Secretary, Dholpur House, Shahjahan Road, New Delhi.

....Respondents

Present: None for Respondent No.1.

Mr. Rishi Tandon, Advocate for Respondents No.2&3
Mr. B.B. ?Sharma, Counsel for Respondent No.4)

**ORDER (Oral)
JUSTICE M.S. SULLAR, MEMBER (J)**

1. The challenge in the instant Original Application (O.A.), initially instituted by original applicant Pardeep Kumar Sinha, retired Additional Principal Chief Conservator of Forest (APCCF), (since deceased), was to the impugned reasons recorded in office file noting dated 29.7.2015, adjourning the Screening Committee Meeting (for brevity “SCM”), scheduled to be held on 29.7.2015, for making recommendations for promotion of the suitable officers to

the post of Principal Chief Conservator of Forest (PCCF), against the anticipated vacancy caused on retirement of Sh. S.C. Srivastava, previous PCCF .

2. The matrix of the facts & material, which needs a necessary mention, for the limited purpose, of deciding the core controversy, involved in the instant O.A., expository from the record, and as claimed by the original applicant, was that he initially joined Indian Forest Service (IFS) in the recruitment year 1981. Subsequently, he was promoted to the post of APCCF. The Government of Himachal Pradesh, notified two posts of PCCF, vide notification dated 31.5. 2012 (Annexure A-2). It was alleged that two cadre posts of PCCF were available as on 1.8.2015 and the applicant was due for promotion to the post of PCCF w.e.f. 1.8.2015, on the retirement of Sh. S. C. Srivastava, PCCF (HoF), on 31.7.2015, who was holding a cadre post in the Department.

3. The case set up by the Original Applicant, in brief, in so far as relevant, was that Additional Chief Secretary (Forests) issued Memorandum for consideration of the Screening Committee Meeting (SCM) to be held on 29.7.2015 for making recommendations of suitable officers for promotion to the posts of PCCF, against the vacancies, to be caused on retirement of officers on 1.8.2015 and 1.9.2015. As Assistant Chief Secretary (Personnel), was on tour, so only three members of the SCM met, and no decision could be arrived at, on account of administrative issue and evaluation of the availability of the officers vis-à-vis their seniority. Consequently, the meeting of the SCM was postponed by the impugned noting (proceedings) dated 29.7.2015.

4. Aggrieved thereby, the applicant has filed the instant O.A., challenging the impugned file noting, inter-alia, on the following grounds:-

- (a) That the applicant cannot be subjected to sufferings of non-promotion on account of inaction and delay on the part of the respondents. The Screening Committee meeting on 29.07.2015 was meant for anticipated vacancies and the applicant was very much in service at the time of holding of Screening Committee Meeting on 29.07.2015 and was the only senior most officers posted in the department and could easily have been promoted for one post w.e.f. 01.08.2015. The vacancies were/are available and eligible officer (applicant) was available, therefore, non-conducting of Screening Committee proceedings on 29.07.2015 was / is unjustified.
- (b) That the on-conclusion of Screening Committee proceedings on 29.07.2015 is arbitrary and illegal because Screening Committee meeting cannot be deferred on administrative grounds. It is true that an employee has no vested right for promotion, but, the respondents cannot act arbitrarily and without any reasonable excuse defer the meeting of DPC and thereby deprive the employee of his legitimate expectation for being considered for promotion to a post to which he is eligible for being promoted. In such a case, the Tribunal or the Court, as the case may be, have ample powers to step in and direct the respondents to convene DPC for the vacancy year and consider the petitioner if otherwise eligible and falling in the zone of consideration for promotion against the vacancies arising in the vacancy year. Any other view would negate the policy of the Government to prepare the Select List well in advance demoralize the employees and also result in the vacancies remaining unfilled without any reasonable excuse.
- © That once admittedly the respondents as well as Screening Committee acted upon OM dated 18.11.2002 issued by the respondent No.1/Ministry, and once such OM provides at Serial No. 2 that the requirement of convening regular meetings of the Committees can be dispensed with only after a certificate has been issued by the Secretary-in-charge of the Personnel Department and Principal Chief Conservator of Forest to the effect that there are no vacancies to be filled by promotion or no officers are due for promotion / confirmation during the year in question, and once there is no such certificate issued, the action of the respondents in denying the consideration and promotion in meeting held on 29.07.2015 is arbitrary and illegal. The Hon'ble Court would consider and appreciate that though the authority must act reasonably, fairly and in public interest and omission thereof should not be arbitrary.
- (d) That the reasoning recorded for not holding Screening Committee meeting on 29.07.2015 that only three members of Committee were available comes under cloud for the reasons that in subsequent meetings the recommendations have been made by three member committee only, out of 4 member committee. Further, clause 13 of OM dated 18.11.2002 also provides that In such cases and provided that the Chairman was not absent, the proceedings of the Committee shall be legally followed and can be acted upon and in case the Chairman is not available, the majority of the members constituting the Committee should represent the meeting.
- (e) That in the list of 13 IFS Officers in whose respect the integrity Certificate and Vigilance Clearance Certificate was attached as Annexure III and IV to the Memorandum for consideration of the Screening Committee meeting held on 09.09.2015 the name of applicant was included, hence, the non-consideration of the applicant for promotion in the rank of Principal Chief Conservator of Forests and along with others is unjustified and unsustainable in the eyes of law.
- (f) That the Hon'ble Delhi High Court in judgment dated 28.1.2012 while upholding the order dated 17.1.2007 of C.A.T. Principal Bench, New Delhi in O.A.No. 2125/2005, has held that DPC meeting should normally be held and not deferred arbitrarily and one has a legitimate expectation for promotion.
- (g) That in Union of India etc. Vs. Vipinchandra Hiralal Shah, (1996) 6 SCC 721, the Hon'ble Apex Court has held that failure on the part of committee to meet during a particular year would not dispense with requirement of

preparing the select list for that year and if it meets subsequently, separate list (year wise) is to be prepared, keeping in view the number of vacancies for a particular year. Similar view was taken in Vinod Kumar Sangal v. Union of India & Others, (1995) 4 SCC 246. A direction was issued to convene a DPC, for selection against relevant years and if found fit, the concerned selectee be extended all consequential benefits.

5. Levelling a variety of allegations and narrating the sequence of events, in detail, in all, the applicant claims that the SCM could not have deferred its meeting without any logic or reason and applicant is entitled to promotion as PCCF from due date. On the strength of the aforesaid grounds, the applicant seeks to quash the impugned file noting (grounds), in the manner, indicated hereinabove.

6. On the contrary, the respondents have refuted the claim of the applicant and filed the written statement, in the following manner :-

(a) That merely because the name of the applicant was not included in the list of the candidates eligible for promotion does not mean that the applicant had lost his right for selection to the post of PCCF. The post of PCCF (HoFF) is not to be filled on the basis of seniority alone, rather, the same being the highest post in the cadre is to be filled on seniority cum merit. In the instant case, the post of PCCF fell vacant on 1.8.2015 on account of retirement of the predecessor PCCF on 31.7.2015. The efforts were made by the department to convene the DPC and in fact the Screening Committee met on 29.7.2015 for considering the names of the persons for promotion including the applicant. However, the Screening Committee could not make the recommendation on account of non availability of one member. In the mean time, the applicant retired from service on 31.8.2015, after attaining the age of superannuation. The meeting of the Screening committee took place on 9.9.2015 and since the applicant by that time had already retired from service, hence due to this reason his name was not included in the list of candidates eligible for promotion. The grievance of the applicant that he has suffered because of non inclusion of his name in the list is totally baseless for the reason that the promotion has to be effective prospectively and not retrospectively. As highlighted above, since the applicant had retired with effect from 31.8.2015 and the meeting of the Screening Committee took place on 9.9.2015, even if the name of the applicant is to be included in the list, the applicant could not have been promoted because by that time, he had already retired from service. As per guidelines dated 18.11.2002 (Annexure R-I), there is no provision for granting promotion retrospectively.

(b) That the instant application further deserves to be dismissed on the ground that there is no allegation of bias or favouritism against the members of the Screening Committee or against the answering respondents. Further, it is not the case of the applicant that the meeting of the Screening Committee deliberately delayed to await the retirement of the applicant in order to adjust the officer of their own choice. Rather, it is submitted that the meeting of the screening committee took place on 29.7.2015 prior to the retirement of the then PCCF. This shows the bonafide of the respondents. It is a different matter that committee could not make its recommendation on

29.7.2015, due to non availability of one member, who was on tour.

© That due to non availability of 4th Member i.e. Additional Chief Secretary (Personnel), who was on tour, the meeting of SCM could not be held and it was decided to re-convene the meeting shortly. Since it was only postponed, there was no need to record any certificate, by the PCCF. There are two cadre posts of PCCF (HoFF) and PCCF (Wildlife), but as on 1.8.2015, only one vacancy of PCCF was available w.e.f. 1.8.2015. As per seniority list, in the cadre of 1981, there were three incumbents including the applicant, who was at Sr. No.3. The PCCF is to be filled on the basis of seniority-cum-merit, hence applicant cannot claim that since seniors to him were on deputation, he was the only person for promotion to the indicated post. Merely assignment of charge of the post of PCCF to a junior to the applicant, cannot be termed as illegal, as it was done on administrative grounds and as stop-gap arrangement. The seniors to applicant, who were on deputation, were also eligible and fell within the zone of consideration and their cases, were also to be considered by the SCM. The plea that SCM could have recommended the name of applicant, is not tenable as there were three persons in zone of consideration.

7. However, it was pleaded that as per Cadre Review, 2012, there are two Cadre Posts of PCCF i.e. PCCF (HoFF) and PCCF (Wildlife), but as on 1.8.2015 only one vacancy of PCCF was available due to retirement of Shri S.C. Srivastava on 31.07.2015. As per seniority list of IFS officers the applicant Shri P.K.Sinha, IFS was figuring at Serial No.3 of their seniority and one other senior officer was available in the State. However, it is totally wrong that applicant was due for promotion to the rank of PCCF. It is pertinent to mention here that as per seniority list, in the cadre of 1981 there were three incumbents including the applicant and the applicant was at serial no.3 in the seniority list. There were only two vacancies and further the post of PCCF is to be filled on the basis of seniority cum merit hence the applicant cannot claim that since two persons senior to him were on deputation, hence he was the only person to be promoted to the post of PCCF. According to the respondents, that neither there was any promotional post, nor the applicant was eligible as two persons senior to him, were available for promotion to the post of PCCF, so he has no claim, in this relevant connection.

8. Instead of reproducing the entire contents of the reply, in toto, and in order to avoid repetition of facts, suffice it to say that virtually acknowledging the factual matrix and reiterating the validity of the impugned note sheet, the respondents have stoutly denied all other allegations and grounds contained in the OA and prayed for its dismissal.

9. Controverting the pleadings of the written statement filed by the respondents and reiterating the grounds contained in the OA, the original applicant had filed the rejoinder and prayed for the acceptance of the OA. That is how, we are seized of the matter.

10. At the very outset, it will not be out of place to mention here that the Original Applicant had already retired from service on 31.8.2015, after attaining the age of superannuation. Not only that, now he has expired on 15.12.2017, as per the Death Certificate, Annexure CM-1 and his Legal Representatives (LRs) have already been impleaded as parties, in his place, subject to all just exceptions.

11. Having heard the learned counsel for the parties, having gone through the record with their valuable help, and after considering the entire matter, we are of the firm view that the instant OA deserves to be dismissed, for the reasons, mentioned herein below.

12. As is evident from the record that a proposal for holding the SCM meeting for promotion to the post of PCCF was initiated and it was scheduled to be held on 29.7.2015, at 4.00 PM, as per the information received vide letter dated 3.2.2015 (Annexure A-4). However, it was deferred vide impugned noting dated 29.7.2015, which reads as under :-

"The Screening Committee met today – Only three members, as ACS (Pers) was on tour. No decision could be arrived at on account of administrative issue and evaluation of the suitability of the officers vis-à-vis their seniority. The Screening Committee meeting needs to be conveyed again. Please put up next week".

Sd/-
29/7/15".

The Original Applicant had challenged the impugned reasoning of deferring the meeting, on the various grounds, depicted hereinabove. It is not a matter of dispute that the meeting of the SCM was subsequently held on 9.9.2015 (Annexure A-5/A), and the eligible officers were promoted to the post of PCCF, with immediate effect, vide order dated 17.9.2015 (Annexure A-5/B).

13. Thus, it could be seen that the facts of the case are neither intricate, nor much disputed, and fall within a very narrow compass, in order to decide the real controversy between the parties, involved in the present case.

14. Such thus being the position on record, now the short and significant question, that arises for our consideration, in this case is, as to whether, the applicant has any ***locus standi*** to challenge the impugned administrative file noting dated 29.7.2015, or had any right for promotion to the post of PCCF, in the given peculiar facts and special circumstances of this case or not?

15. Having regard, to the rival contentions of the learned counsel for the parties, to our minds, the answer must obviously be in the negative, in this regard.

16. Ex-facie, the main celebrated arguments of the learned counsel for the applicant that on earlier occasions, the SCM meeting was held, even in the absence of one Member, but since the SCM meeting scheduled for 29.7.2015, was deferred on account of absence of Additional Chief Secretary (Personnel), so the impugned

reasons to adjourn the SCM meeting are arbitrary and illegal, are not only devoid of any merit but mis-placed as well.

17. What cannot possibly be disputed here is that the post of PCCF is not to be filled on the basis of seniority alone, but it has to be filled up on the basis of seniority-cum-merit. It was duly explained by the respondents in the written statement that the post of PCCF fell vacant only on 1.8.2015, on account of retirement of predecessor on 31.7.2015. Thereafter, the efforts were made by the Department to convene SCM meeting, which met on 29.7.2015. However, the SCM could not make any recommendation, on account of non availability of Additional Chief Secretary (Personnel). Thereafter, the meeting of the SCM was again convened on 9.9.2015, and since the Original Applicant, by that time, had already retired from service, so he was not entitled for promotion. As per the guidelines dated 18.11.2002, Annexure A-1, since the meeting was only postponed, and not cancelled, so there was no necessity to obtain any certificate from the PCCF, as claimed on behalf of the applicant. Therefore, there was sufficient ground to postpone the meeting of the SCM on 29.7.2015, particularly, when the applicant has neither brought on record any material nor levelled any allegations of malafide against any member of the SCM, in this regard.

18. There is yet another aspect of the matter, which can be viewed entirely from a different angle. The specific case of the respondents is that as per the Cadre Review of 2012, there were only two cadre posts of PCCF but as on 1.8.2015, only one vacancy was available, due to retirement of Shri S.C. Srivastava, on 31.7.2015 and officials senior to the applicants, were available for promotion, so he was

not, at all, entitled for promotion to the post of PCCF. The mere fact that two persons senior to the applicants were on deputation, ***ipso facto***, is not a ground, much less cogent, to promote the applicant on the post of PCCF, because those two senior persons were not debarred and were entitled for promotion on the indicated post, at the first instance.

19. Not only that, even as per the instructions dated 14.11.2014 of the Central Government, a retired official would have no right for actual promotion. This claim of the applicant is not only speculative, but bereft of any merit as well. Thus, seen from any angle, once it is held that the Original Applicant had no claim for promotional post of PCCF, as alleged by him, in that eventuality, the LRs cannot claim any better title, in this relevant connection, in the obtaining circumstances of the case.

20. No other point worth consideration has either been urged or pressed by the learned counsel for the parties.

21. In the light of the aforesaid prismatic reasons, as there is no merit, so the instant OA is hereby dismissed, as such. However, the parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Dated: 08.03.2018

'HC'