

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 7805-7806 OF 2022

(Arising out of SLP(C) No(s).14088-14089 of 2022)

DR. AJIT KUMAR SHRIVASTAVA

...APPELLANT(S)

VERSUS

**THE STATE OF MADHYA PRADESH
AND OTHERS**

...RESPONDENT(S)

J U D G M E N T

Rastogi, J.

1. Leave granted.
2. The appellant, a member of the Indian Forest Services (IFS), approached the Central Administrative Tribunal, Jabalpur, with the grievance that his candidature was considered for promotion to the

post of Principal Chief Conservator of Forests in the DPC held on 12th May, 2020 and the officer junior to him was promoted pursuant to the recommendations made by Order dated 4th September, 2020, but without any cause or justification, his candidature was kept in a sealed cover and mandamus was sought by him to direct the authorities of the State to open the sealed cover which was adopted by the DPC held on 12th May, 2020 as illegal and pass further orders in accordance with law.

3. The Central Administrative Tribunal, after examining the complaint of the appellant, arrived at the conclusion that in the absence of any departmental enquiry instituted/pending under the All India Services (Discipline and Appeal) Rules, 1969 (hereinafter referred to as “the Rules 1969”), the authorities were not justified in keeping the candidature in a sealed cover and accordingly under its order dated 13th January, 2022, directed the respondents to open the sealed cover and give effect to the recommendations made by the DPC held on 12th May, 2020 with all consequential benefits.

4. That order of the Tribunal came to be challenged before the High Court by the respondents by way of a writ petition under

Article 226 of the Constitution and order of the Tribunal came to be set aside on the premise that the show cause notice dated 22nd April, 2016 which has been challenged by the appellant before the Tribunal is pending in OA No.387 of 2019 and because of interim order passed by the Tribunal on 11th October, 2019, followed with later orders, departmental enquiry under the Scheme of Rules 1969 could not have been initiated and thus delay in initiating the departmental enquiry could not be attributed to the respondents and accordingly while setting aside the order of the Tribunal dated 13th January, 2022, directed the Tribunal to decide OA No.387 of 2019 and OA No.76 of 2021 analogous in accordance with law under the orders impugned dated 28th April, 2022. The review petition against the aforesaid order also came to be dismissed by the High Court by its order dated 8th July, 2022, which is the subject matter of challenge in appeals before us.

5. The appellant is an IFS Officer of 1987 Batch. On an alleged complaint made by some timber merchant, the preliminary enquiry committee enquired into the complaint and submitted its report on 17th April, 2016 and accordingly, based on the observations made, a

show cause notice dated 22nd April, 2016 was served upon the appellant calling for his written explanation failing which proceedings under the Rules 1969 will be initiated against him. The extract of the show cause notice dated 22nd April, 2016 is reproduced hereunder:

“6. Therefore, you Shri Ajeet Shrivastava (IFS) may show cause within a period of 15 days from the date of receipt of this letter that why not you may be punished while initiating proceedings under provisions provided under All India Services (Discipline and Appeal) Rules, 1969 against you in accordance with law rules provided under Rule 3(1) and 3(2A) of All India Services (Conduct) Rules 1968 for conduct adverse act against the expectation and giving introduction of indiscipline against the conduct expected from you being a member of IFS in connection with above allegations?”

6. The appellant submitted his detailed response dated 24th May, 2016, but no action was taken thereafter and the fact is that departmental enquiry for minor penalties under Rule 10 or major penalties under Rule 8 of the Rules 1969 admittedly has not been initiated against the appellant so far.

7. That earlier, the DPC met for the purpose of promotion to the post of Additional Principal Chief Conservator of Forests on 5th February, 2016 and the DPC decided to keep the recommendations

of the appellant in a sealed cover and of other officers, orders were issued on 5th March, 2016.

8. That on some complaint made by an individual person, enquiry committee was constituted and the veracity of the complaint was examined by the preliminary enquiry committee before a regular departmental enquiry instituted under the scheme of Rules 1969 and because of the later show cause notice dated 22nd April, 2016, the respondents failed to open sealed cover of the appellant and that was challenged by him in Original Application No.200/00623/2018 before the Central Administrative Tribunal, Jabalpur and came to be decided by an order dated 1st August, 2018 with a direction to the respondents to open the sealed cover and if the Officer is found fit, he may be promoted from the date his immediate junior officers were promoted in terms of the promotion order dated 5th March, 2016, with all consequential benefits. In compliance thereof, order came to be passed by the respondents on 1st August, 2018 promoting him to the post of Additional Principal Chief Conservator of Forests.

9. Since no further action was taken by the respondents after the show cause notice dated 22nd April, 2016 being served, the appellant challenged the inordinate delay in initiating departmental action by filing OA No387 of 2019. While the OA remain pending, the DPC was held again on 12th May, 2020 to consider the eligible officers for promotion to the post of Principal Chief Conservator of Forests and, at this stage, his candidature was kept in sealed cover and a person junior to him was promoted by order dated 4th September, 2020.

10. Being aggrieved by the action of the respondents in putting the candidature of the appellant in a sealed cover, he approached the Central Administrative Tribunal, Jabalpur by filing a subsequent OA No.200/00076/2021 seeking direction to the respondents to open the sealed cover of the appellant held by the DPC on 12th May, 2020 which is primarily the subject matter of challenge in appeals before us.

11. We have heard learned counsel for the parties and with their assistance perused the material on record.

12. For the misconduct, if any, being committed by an officer under the All India Services (Conduct) Rules, 1968, the officer can be subjected to disciplinary enquiry as being contemplated under the scheme of Rules 1969, which has been framed by the Central Government in exercise of its power under sub-Section (1) of Section 3 of All India Services Act, 1951. That apart other provisions, under the Disciplinary Rules, schedule of penalties (minor/major) has been provided under Rule 6 to be imposed on the member of service for good and sufficient reasons and what would be the procedure to be followed for imposing minor/major penalties has been provided under Part IV of the Rules and to be more particular, procedure for imposing major penalties is provided under Rule 8 and for minor penalties, the procedure has been provided under Rule 10 of the Rules 1969.

13. Indisputably, disciplinary enquiry as contemplated under Rule 10 or Rule 8 for minor/major penalties as prescribed under Part IV of the scheme of the Rules 1969 has neither been instituted nor pending against the appellant so far. What is pending against him is the show cause notice dated 22nd April, 2016 served upon him

pursuant to which he was called upon to submit his explanation within 15 days, failing which disciplinary proceedings be initiated against him under the Rules 1969.

14. In reference to the show cause notice, detailed response was furnished by the appellant without any delay on 24th May, 2016, but no action in furtherance thereof has been initiated by the respondents so far. Thus, it can safely be recorded that no disciplinary enquiry, as provided under the scheme of Rules 1969, has either been instituted or pending against the appellant as on the date when the DPC met on 12th May, 2020 and candidature of the appellant was considered for promotion to the post of Principal Chief Conservator of Forests, but kept in a sealed cover on the premise that a show cause notice served upon him on 22nd April, 2016 is pending as he has challenged the initiation of show cause notice in Original Application before the Tribunal and there is an interim order passed in those proceedings. That being the reason for which further action of initiating disciplinary proceedings could not have been initiated against him and that prevailed upon the

High Court in setting aside the order of the Tribunal under the order impugned.

15. The respondents have filed a counter-affidavit, in which annexed to para 9, is a tabulation sheet which indicates that the proceedings of the departmental enquiry have been referred to and the chronological dates on which the matter has been processed and the show cause notice has reached to a stage where punishment of stoppage of one grade increment without cumulative effect is being proposed from 1st December, 2017 and has been further referred to the Union Public Service Commission for necessary approval for inflicting punishment under Rule 9(3) of the All India Services (Conduct) Rules, 1968 on 24th September, 2019, but it reveals from the record that the Union Public Service Commission by its letter dated 9th October, 2019 referred the matter to the State Authorities with the following observations:

**“No.5/663/2019-S.I
Union Public Service Commission
Single Window System
Services-I Branch**

Date: 09/10/2019

**Subject: Disciplinary Proceeding case against Shri Ajit Kumar
Shrivastava, IFS, M.P. Govt.**

State Government of Madhya Pradesh have forwarded the disciplinary case of **Sh. Ajit Shrivastava** for consideration advice of the Commission through window system on **09/10/2019**.

2. On scrutiny of the case, the following deficiency(ies) has/have been found and this has been informed to the representative of the **State Government of Madhya Pradesh namely Shri Amitabh Agnihotri ADDL.PCCF**.

(i) Any other deficiency pointed out during scrutiny at SWS.

(ii) (a) The Disciplinary Authority has considered the merits of the case and come to the conclusion that a formal penalty is called for, is not available. The same may be provided with the approval of the Disciplinary Authority, (b) It is not clear under which specific rule the charge memorandum was issued. This may be clarified. (c) It has not been indicated as to whether charge memorandum was issued with the approval of Competent Authority, (d) ACR folder is not available. The same may be provided, (e) Present status of the pending court case, along with the next date of hearing may be provided.

3. In view of the above mentioned documentary deficiency(ies), the case is returned herewith, with the request to make a fresh self-contained reference with complete case records, after removing the deficiency (ies).

M D Meena

ASO

Dated: **09/10/2019**

Sd/-

Under Secretary”

16. When we put the question to learned counsel for the State as to what proceedings have been instituted subsequent to the notice dated 22nd April, 2016 served upon the appellant in reference to which a detailed response was submitted by him on 24th May, 2016 and any disciplinary action has been instituted or whether the

procedure for imposing minor penalties as referred to under Rule 10 of the Rules 1969 has been initiated against the appellant, no such record has been made available to us except the procedure which has been followed by the State Authorities to which reference has been made in para 9 of counter affidavit, which, according to the respondents, is the mechanism adopted in concluding disciplinary enquiry at their end.

17. In our considered view, in the absence of a disciplinary action for imposing minor/major penalties as contemplated under Rule 10 or Rule 8 of the Rules 1969 either initiated or pending, there could not be any occasion of proposing the penalty to be inflicted upon the delinquent officer and what is being projected by the respondents in para 9 of its counter affidavit of which reference has been made of proposing penalty to be inflicted upon the appellant, in the given facts and circumstances, is nothing but putting a cart before the horse.

18. Before a disciplinary enquiry being initiated in terms of the procedure prescribed under Rules 1969, there could not be any possibility of proposing a punishment as being contemplated under

Rule 6 of the Rules 1969 and that could have been possible after the authorities have applied its mind in inflicting penalty for good and sufficient reasons. Neither the procedure as being known to the scheme of Rules 1969 nor further action, if any, initiated has been placed on record. The stage to inflict penalty upon the appellant, in the given facts and circumstances, does not arise.

19. The defence of the respondents that because the appellant preferred OA before the Tribunal in questioning the show cause notice dated 22nd April, 2016 served upon him and because of interim stay passed by the Tribunal, the respondents remain precluded from proceeding to conclude the disciplinary enquiry, in our considered view, is nothing but a lame excuse and no adverse presumption can be drawn that because of pendency of OA filed by the appellant before the Tribunal in questioning the show cause notice, the delay caused in initiation of departmental enquiry be attributable to the appellant, even if that is taken as a justification tendered by the respondents, still the fact remains that no disciplinary enquiry as contemplated under the scheme of Rules 1969 has so far either been instituted or pending against the

appellant. In absence thereof, there was no justification for the DPC held on 12th May, 2020 to keep the candidature of the appellant in sealed cover and grant promotion to a person junior to him by order dated 4th September, 2020.

20. Consequently, the appeals deserve to succeed and are accordingly allowed. The orders passed by the High Court dated 28th April, 2022 followed with 8th July, 2022 are hereby set aside. The respondents are directed to open the sealed cover of the DPC held on 12th May, 2020 qua the appellant for the post of Principal Chief Conservator of Forests (PCCS) and pass further orders in accordance with law with all consequential benefits in terms of the order of the Tribunal. Necessary compliance be made within two months. No costs.

21. Pending application(s), if any, shall stand disposed of.

.....**J.**
(AJAY RASTOGI)

.....**J.**
(C.T. RAVIKUMAR)

NEW DELHI
OCTOBER 21, 2022.