

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH
CIRCUIT BENCH, RANCHI
OA/051/00642/2019**

Date of Order: 23.01.2020

C O R A M

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MR. M.C. VERMA, JUDICIAL MEMBER**



Manel Tudu, aged about 59 years, son of Late Lakhiram Tudu, resident of Rabindra Nagar, Phase-II, Tagore Hill Road, Ranchi, P.O.- Morabadi, P.S.- Bariatu, District- ranchi-834008 (presently posted as Divisional Forest Officer, Social Forestry Division, Latehar, P.O. & P.S.- Latehar, District- Latehar.

.... Applicant

By Advocate: - Mr. Bhanu Kumar

-Versus-

1. Union of India through the Secretary, Ministry of Environment, Forest and Climate Change, Indira Paryawaran Bhawan, Jorbag, Aliganj, New Delhi- 110003.
2. State of Jharkhand through the Chief Secretary, Project Building, P.O. & P.S.- Dhurwa, District- Ranchi.
3. Additional Chief Secretary, Department of Forest, Environment and Climate Change, Govt. of Jharkhand having office at Nepal House, P.O. & P.S.- Doranda, District- Ranchi.
4. Principal Chief Conservator of Forest (Head of Forest Force), Van Bhawan, P.O. & P.S.- Doranda, District- Ranchi.

.... Respondents.

By Advocate: - Mr. Rajendra Krishna, Id. Sr. SC for R-1

Mr. R.A. Gupta, Id. S.C for State of respondents no. 2 to 4.

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**ORDER
[ORAL]**

Per Dinesh Sharma, A.M.:- In the instant OA, the applicant has
prayed for the following reliefs :-

“(a) For confirmation of service in IFS cadre after completion of one year of probation period as per Rule 3(3) of the IFS (Probation) Rules, 1968.

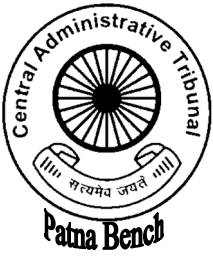
(b) For grant of selection grade pay scale Rs. 37400-67000, GP 8700(PB-4) after completion of 13 years of service w.e.f. 01.01.2017.

(c) For grant of regular promotion to the post of Conservator of Forest, Pay scale Rs. 37400-67000, GP 8900 (PB-4) w.e.f. 01.01.2018

(d) For payment of difference of arrears of salary on account of aforesaid promotions as a consequential relief.

(e) The applicant prays for allowing the cost of litigation incurred in filing the instant application upon the respondents.

(f) The applicant prays for other relief/relief(s), direction/direction(s) as this Hon’ble Tribunal may deem fit for doing conscionable justice to the applicant under the facts and circumstances of the instant case.”



2. Applicant was appointed to the Indian Forest Service by order dated 13.12.2017 (Annexure A/1) and he joined in that capacity from 14.12.2017 (Annexure A/2). By another order dated 01.03.2018, he was allotted 2004 as the year of allotment in the Indian Forest Service. However, even after completion of one year after his joining in the Indian Forest Service, he has still not been confirmed. A comment has been made in the letter dated 18.04.2019 (written by Principal Chief Conservator of Forest, Jharkhand to Additional Chief Secretary Forest Environment and Climate change Department Jharkhand). That the assessment report for the year 2017-18 has been sent back for comment by the Reviewing Officer. The applicant has argued that non confirmation



of his services, and also not granting of non- functional pay scale w.e.f. 01.01.2017 and not promoting him as SCCF is against the rules. The applicant has cited the guidelines regarding promotion of members of IFS, according to which an officer of Junior Administrative Grade shall be eligible for appointment to the Selection Grade on completion of 13 years and those who are working in Selection Grade and have completed 14 years of service shall be eligible for appointment in the post of Conservator of Forest, subject to availability of vacancies in the grade. Since the applicant has been assigned the 2004 batch in the IFS cadre, he became eligible for appointment in Selection Grade in the year 2017 and for consideration for promotion to the post of Conservator of Forest after completing 14 years in the year 2018. The non- confirmation of the applicant on ground of non-availability of ACR is in violation of DOPT OM dated 10.03.1989 and the consequent denial of Selection grade and regular promotion to the Conservator of Forest are wrong and, hence, this OA.

2. A written statement has been filed by the respondents State of Jharkhand in which, they have denied the claim of the applicant. It is stated that a memo of charges was issued against the applicant by memo No. 3907 dated 12.09.2018 alleging gross negligence of duties resulting in wasteful expenditure amounting to Rs. 37,03,937/-. The written statement also quotes Section 3(4)A of IFS Probation Rules, according to which, the probation of an IFS Officer can be extended if the probationer

is under suspension, or disciplinary proceedings are contemplated or started against him or investigation, inquiry or trial relating to a criminal charge is pending against him. Since there is a departmental proceeding pending against the applicant, the applicant is not eligible for confirmation or for grant of promotion during the pendency of the said departmental proceeding and, hence, the OA deserves to be dismissed.



3. A rejoinder has been filed by the applicant in which he has stated that the rule 3 (4)A relates to the powers of Central Government to extend the period of probation. There is no proposal from the State Government to the Central Government for extending the probation period and, therefore, this rule cannot be cited for denying him confirmation/NF upgradation to selection scale/further promotion as Conservator of Forest. The applicant has also argued in this rejoinder that as on date, no departmental proceeding is pending against him and the memo no. 3907 dated 12.09.2018 is only in the nature of preliminary enquiry or fact-finding inquiry. He has cited another memo (No. 1248) dated 23.03.2018 issued against another member of IFS cadre where it is clearly stated that a decision has been taken to initiate departmental proceeding. In the memo issued to the applicant, it is only “proposed” and therefore, it cannot be considered initiation of departmental proceedings. The applicant has also argued that initiation of any departmental inquiry about nine years after the expiry of the period to which it relates is a sign of malafide intention and there are decisions of

Hon'ble Apex Court where it has been decided that no proceedings could be initiated upon stale charges.

4. We have gone through the pleadings and heard argument of the parties. During the course of argument, learned counsel for the applicant cited decisions of the Apex Court in the case of **M.V. Bijlani vs. U.O.I. & Ors.** [2006 (5) SCC], to support his argument that delay in initiation of disciplinary proceedings is prejudicial to the delinquent Officer. He cited the case of **P.V. Mahadevan vs. M.D. T.N. Housing Board** to support the same argument about delay in initiation of departmental proceedings. Learned counsel for the applicant also cited the judgment of the Hon'ble Apex Court in **Delhi Development Authority vs. H.C. Khurana** [1993 SCC 196] and the oft-quoted case of **UOI vs. K.V. Jankiraman** to support his contention that a sealed cover procedure should have been followed only in cases where a charge sheet has been given. Since in the current case, argued the learned counsel for the applicant that the memo given by the respondents does not amount to a formal charge sheet, the respondents should not have delayed his confirmation/promotion.



5. After going through the pleadings and hearing the argument, it is clear that the confirmation of the applicant and subsequent promotion has been denied because what respondents claimed that the pending departmental inquiry against the applicant. The Memo of this inquiry dated 12.09.2018 (Annexure A/12) stated that it is



proposed to start departmental inquiry under Rule 8 of All India Services (Discipline and Appeal) Rules 1969 and Articles of charges, imputation of misconduct and misbehaviour and a list of documents is enclosed with this communication. Though the learned counsel for the applicant considers this to be an initiation of preliminary inquiry or just a show cause notice proposing inquiry as different from actual issue of charge sheet, we do not think this can be accepted as a valid argument. Just because a slightly different language is used in another communication (Annexure A/13) where it is stated that a decision has been taken to initiate departmental inquiry under Rule 8 of All India Services (Discipline and Appeal) Rules 1969 and Article of charges and imputation of misconduct and misbehaviour and list of document is attached, this cannot lead to definite conclusion that the article of charges by letter dated 12.09.2018 does not amount to formal giving of charge sheet. We also noticed that the applicant did not mention anything about his having been served this charge sheet in his OA and it was argued by learned counsel for the respondents that this amounts to the applicant not coming with clean hands before this Tribunal. The applicant was certainly aware of the pending departmental proceeding against him and, being an All India Service officer can be expected to be aware of this being a relevant factor for his non confirmation in the IFS/consequent promotion etc. His reluctance to mention even a word about this does amount to his not revealing all the relevant facts which the Tribunal expects from any applicant to do.

6. Another issue very pertinent in this matter is whether the applicant can be considered as confirmed in the IFS since the Central Government has not extended the period of probation. It is an admitted fact that no orders have been issued either confirming the applicant for extending his probation. The learned Sr. SC for the Central Government argued that though no confirmation order issued, it is the specific requirement of Rule 4 of IFS Probation Rules, 1968 that a probationer shall be confirmed in the service at the end of probation where a probationer has completed his period of probation to the satisfaction of Central Government. In the absence of a clear order by the Central Government expressing dis-satisfaction and confirming the service, there cannot be automatic confirmation at the end of probation. We are reproducing the rules relating to extension/confirmation of IFS Officers under Indian Forest Service Probation Rules 1968:-



“ 3(3) Every person recruited to the Service in accordance with the Indian Forest Service (Appointment by Promotion) Regulations, 1966, shall be appointed to the Service on probation for a period of one year.

Provided that in the case of any person so recruited any period for which he has been appointed to a cadre post may, having regard to his performance in such post, be counted towards the period of probation.

Provided further that the Central Government may in exceptional circumstances of any case, after consulting the Commission, reduce the period of probation.

3(4) The Central Government may, if it so thinks fit in any case or class of cases extend the period of probation subject to the conditions that-

- (a) The total period upto which a person recruited to the service referred to in sub-rule(i) or sub-rule(3) may be kept on probation, shall not ordinarily exceed two years; and
- (b) The total period upto which a person recruited to the service referred to in sub-rule(2) of sub-rule(3) may be kept on probation, shall not ordinarily exceed six years.

3(4)A:- Notwithstanding anything contained in sub-rule(4) if during the period of probation, a probationer is placed under suspension, or disciplinary proceedings are contemplated, or started against him, the period of his probation may be extended for such period as the Central Government may think fit in the circumstances of the case.

3(5):- In this rule, 'Cadre post' has the same meaning as in clause(b) of rule 2 of the Indian Forest Service (Cadre) Rules, 1966.

4. Confirmation- Where a probationer has completed his period of probation to the satisfaction of the Central Government, he shall subject to the other provisions of these rules, be confirmed in the Service at the end of his period of probation."

6. It is clear from the reading of above provision that it is within the power of Central Government to extend the period of probation and it may be extended for such period as the Central Government may think fit, if any disciplinary proceedings are started or are contemplated. However, we find that no orders have been issued by the Central Government extending the period of probation or for confirming the services of the applicant.

7. Taking into account, all the aforesaid circumstances, we are clear that even if it is to be concluded that there is a departmental action pending against the applicant, his case should have been sent to the



Govt. of India for extending the period of probation under the relevant rules. If that was not done and if the respondents considered him ineligible for consideration by the relevant screening committee because of the pendency of disciplinary proceedings, the matter should have been placed before the Screening Committee while suggesting the sealed cover procedure. We are not informed about any of these two actions have been taken by the State Government though it was argued by the learned counsel for the State of Jharkhand that there is no allegation by the applicant that any one junior to him has been given promotion.



8. Under the circumstances, we dispose of this OA with direction to respondent no. 2 to approach the Central Government, respondent no. 1 with clear recommendation about action to be taken with respect to the confirmation of the service in IFS cadre of the applicant. This should be done within one month from the date of receipt of a copy of this order. The Govt. of India (respondent no. 1) will take a decision about confirmation/extension of probation within one month from the date of receipt of a copy of this order. We also direct the respondents State Government to consider the case of the applicant following the sealed cover procedure in case the applicant falls within the zone of consideration for promotion to selection grade/post of Conservator of Forest, while following the sealed cover procedure, if the disciplinary proceeding, as alleged by him, is pending. Since we are

informed at the time of argument that the applicant is retiring in six days, the decisions of the State Government/Central Government following the directions of this Tribunal will be given notional effect, in case they turn out in favour of the applicant. No order as to costs.

[M.C. Verma]
Judicial Member
Pkl/Srk.

[Dinesh Sharma]
Administrative Member

