

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.2195 OF 1994

New Delhi this the 21st day of August, 2000

Hon'ble Mrs. Lakshmi Swaminathan, M (J)
Hon'ble Mr. S.A.T.Rizvi, M (A)

Sher Singh Sikriwal
(By Advocate: Sh. S.N.Shukla)

....Applicant.

VERSUS

Union of India & Ors.

.....Respondents

(By Advocate: Sh. V.S.R.Krishna for Respondent No.1

Sh. A.K.Bhardwaj for Respondent No.2

None for Respondent Nos. 3 & 4.

Sh. B.T.Kaul for Respondent Nos. 5 to 7)

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| 1. | To be referred to the Reporter or not? | Yes |
| 2. | To be circulated to other Benches of the Tribunal? | No |


(S.A.T. RIZVI)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL. PRINCIPAL BENCH

O.A.NO.2195/94

New Delhi, this the 31st day of August, 2000

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

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Sher Singh Sikriwal, IFS, S/O Sh. Harlal Singh, R/O Village-Gujjar-Ghatal, P.O.-Malpura, Tehsil & District-Rewari, Haryana.

Posted as Director, Land Use Board, Haryana, S.C.O.No.1-2-3, 17-Bays Building, Sector-17D, Chandigarh.Applicant.
(By Advocate: Sh. S.N.Shukla)

Versus

1. Union of India Through: The Secretary, Ministry of Environment & Forests, Deptt. of Forest & Wild-Life, Paryavaran Bhawan, C.G.O. Complex, Lodhi Road, New Delhi.
 2. The Chairman, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.
 3. State of Haryana through, the Secretary to Haryana Government, Forest Department, Chandigarh.
 4. Shri Brij Bhushan Sharma, IFS, Divisional Forest Officer, Production Forest Division, Kurukshetra (Haryana).
 5. Sh. R.P.Balwan (As per amended Memo of Parties)
 6. Sh. M.M.Joshi (As per amended Memo of Parties)
 7. Sh. R.K.Singh (As per amended Memo of Parties)
-Respondents

(By Advocates: Sh. V.S.R.Krishna for Respondent-1
Sh. A.K.Bhardwaj for Respondent-2
None for Respondent Nos. 3 & 4
Sh. B.T.Kaul for Respondent Nos. 5 to 7)

O R D E R

Hon'ble Mr. S.A.T. Rizvi, Member (A):

This O.A. has been filed against the decision of the Government of India, Ministry of Environment & Forests, Department of Forest & Wild-Life, conveyed by the Commissioner and Secretary to Haryana Government, Forest Department, Chandigarh vide their Memo dated 19.5.1994 (Annexure-17), in response to the applicant's

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representation dated 16.9.1993 (Annexure A-16). To begin with four different parties were made respondents in this case, but later three more respondents got themselves impleaded thereby raising the total number of respondents to seven including three official respondents. The amended Memo of parties has been placed on file. Among the reliefs sought by the applicant in this case is a direction to the official respondents to appoint him to the IFS by promotion w.e.f. 1.1.1988 with all consequential benefits together a further direction to the same respondents to fix 1978 as the year of allotment (YOA).

2. The applicant's case as brought out in the O.A. is that earlier he had filed an O.A. No. 2318/1992 in this Tribunal to secure directions to the aforesaid official respondents to appoint him to the IFS by promotion w.e.f. 1.1.1988 and to give him all the consequential benefits. This O.A. was disposed of by this Tribunal on 18.8.1993 with a direction to the applicant to make a fresh representation to the respondents to consider and dispose of the applicant's fresh representation within 3 months. It was left to the applicant to pursue his interest further in accordance with law if he felt aggrieved by the orders passed by the official respondents after considering his fresh representation. Not being satisfied with the decision of the official respondents on his aforesaid fresh representation, he has decided to file this O.A.

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3. The applicant has mentioned that after his initial selection in February 1973, he was appointed to the Haryana Forest Service (HFS) Class II by Haryana Government's order dated 22.7.1975. He was appointed substantively against a permanent post in the HFS w.e.f. 2.3.77 vide State Government order dated 23rd October, 1979 (Annexure A-1 & A-2). He has claimed that he became eligible, for being considered for promotion to the IFS, on 1.1.1982, in accordance with the IFS (Recruitment) Rules 1966 and the IFS (Appointment by Promotion) Regulation Rules, 1966, hereinafter, for the sake of brevity, called "Recruitment Rules 1966" & "Promotion Regulation 1966". He has further stated that his name was included in the select list prepared in accordance with the Promotion Regulations, 1966, and the said list was approved by the UPSC on 15.2.1983. According to the applicant, the select list was again prepared subsequently in December, 1984 and then again in December 1985 in both of which his name again figured, and no select list was prepared in 1986.

4. On 15.4.1986, the applicant was charge sheeted in accordance with the Punjab Civil Services (Punishment and Appeal) Rules, 1952 since been substituted by the Haryana Civil Service (Punishment & Appeal) Rules, 1987. On completion of the disciplinary proceedings, the applicant was warned to be careful in future vide order dated 8.3.1991 (Annexure A-6). A copy of the said order was not required to be placed in the character roll of the applicant. Meanwhile, the select list was again prepared in 1987 which was approved by the UPSC on 20th

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May, 1987. In this select list, the name of the applicant figured at Sl.No. 1 and it remained in force up to 27.12.1988. The next select list was prepared on 28.12.1988. The applicant's contention is that but for the departmental proceedings then pending against him, he would have been duly promoted to the IFS on the basis of the aforesaid select list of 1987 w.e.f. 1.1.1988. In the select list prepared over again in 1989, he figured once again and the position of the applicant vis-a-vis, the private respondent No. 4 remained unaltered.

5. The applicant's contention is that after the completion of the disciplinary proceedings against him on 8.3.1991, the State Government recommended his name for appointment to the IFS by promotion on 3.7., 1991, and while doing so, the State Government appended a certificate that there was no deterioration in the work and conduct of the applicant in the period following the last meeting of the selection committee. However, notwithstanding this position, the Govt. of India failed to appoint the applicant to the IFS. His contention is that it was mandatory on the part of the Government of India to appoint him to the IFS w.e.f. 1.1.1988. The State Government once again moved in the matter in 1992, but this time again the Govt. of India did not appoint the applicant to the IFS. According to the applicant, the act of withholding of his promotion in this manner by the Government of India was illegal and arbitrary.

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6. The applicant's further contention is that consequent upon Cadre review, 7 more posts were added to the promotion quota of the Haryana Cadre of the IFS and thus as many as 8 vacancies existed in this quota as on 6.9.90. Unfortunately, no meeting of the selection committee was held during the years 1990, 1991 and 1992. Later in 1993, a meeting of the selection committee did take place and 10 State Forest Service Officers were brought on the select list. Out of this select list, 8 Officers of the HFS were appointed to the IFS by promotion vide Govt. of India (MOE&F) (DOWL) notification dated 17.3.1994 (Annexure A-9). In this notification, the applicant has been shown as junior to the private respondent No. 4, who was not only junior to the applicant in the State Forest Service of Haryana, but was also placed below him in the select lists prepared from December 1982 onward. The applicant has raised a presumption that the lowering of his position in the select list in question must have the result of the assessment of his own merits afresh by the authorities concerned. According to the applicant, such a fresh assessment was not required as he had already been included in the earlier select list of 1987 and in that list, he was placed at Sl. No. 1, above the private respondent No. 4. He has also pointed out that before proceedings of the latest selection committee meeting held on 31.3.1993 and 3.1.1994 were finalised, the State Government of Haryana vide their letters dated 30.3.1993 and dated 23.12.1993, had clarified that the warning administered to him as result of the aforesaid disciplinary proceedings was not a minor penalty (Annexure A-10 & A-11).

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7. Amongst other things, the applicant has also pointed out that Rule 10 of the IFS (Cadre) Rules required that cadre posts could not be kept vacant or held in abeyance for periods exceeding 6 months without the approval of the Central Govt. This particular Rule has been violated, according to the applicant, by keeping 8 posts vacant from 6.9.1990 right up to 17th March 1994, and, by not promoting him to the IFS w.e.f. 1.1.1988, the official respondents had acted against the provisions of the said Rule 10. The applicant has also referred to the provisions of the DOPT OM dated 14.9.1992, laying down the procedure for dealing with the cases of promotion in which disciplinary proceedings are found to be pending at the time of consideration of cases for promotion. He has talked about the sealed cover procedure and, by necessary implication, pointed out that since he had been exonerated in the departmental proceedings undertaken against him, he should have been promoted on the basis of the select list of 1987. In this connection, he has reiterated that the administration of warning to him did not amount to imposition of a penalty as clarified by the State Government of Haryana (Annexures A-10 & A-11).

8. As regards the allocation of the YOA, the applicant has referred to the relevant provisions of the IFS (Regulations of Seniority) Rules, 1968, hereinafter called "Seniority Rules", and has stated that he was entitled to the allocation of 1978 as year of allotment. He has, in particular, mentioned that he remained on the

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select list for appointment to the IFS by promotion since December, 1982, without any interruption or break and that his officiation on cadre posts commenced w.e.f. 10.12.81. The select list of 1982 on which the applicant figured, was approved by the UPSC on 15.2.83 and that on the aforesaid date, one Sh. Dilip Tondon, an IFS Officer recruited under Rule 7 of the Recruitment Rules, 1966 and having 1978 as the year of allotment was the junior-most in the senior time scale of pay. On this basis, the applicant has argued that as per Rule 3 (2) (c) of the Seniority Rules, 1978 should be the year of allotment in his case.

9. Based on the facts mentioned in the OA, the applicant has sought two different reliefs which would seem to be mutually inconsistent. Firstly, he has sought his appointment to the IFS w.e.f. 1.1.88 with all consequential benefits. Secondly and at the same, he has pleaded for allocation of 1978 as the year of allotment in his case. These two positions are obviously inconsistent mutually.

10. The official respondents No. 1 have admitted that select lists were indeed drawn up by the Selection Committee on 28.12.1988 and 15.12.1989 and that the name of the applicant figured in those lists above the name of the private respondent No. 4. They have, however, stated that the applicant's name was so included on a provisional basis pending finalisation of the departmental proceedings then underway. According to the same official respondents, the applicant could be

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appointed to the IFS only after his inclusion in the select list had been made unconditional by a decision of the official respondent No. 2, namely, the UPSC.

11. The respondent No.1 has reproduced the reply of the respondent No.2 (UPSC) dated 29.11.92 to indicate that the latter had duly conveyed their decision that the name of the applicant could not be made unconditional in the select list prepared in December, 1989. The next meeting of the selection committee was held on 31.3.93 and 3.1.94 to fill up the 8 vacancies then available in the promotion quota. Ultimately, the respondent No.2 (UPSC) approved the select list consisting of 10 names, including that of the applicant, on 1.2.94. Based on this, 8 Officers, including the applicant, were promoted to the IFS vide Notification dated 17.3.94. It has been admitted that the private respondent No.4 (Sh. Brij Bhushan Sharma) was placed at Sl.No.1 in the said select list after the relative assessment of the merit of all the eligible SFS Officers by the committee. In relation to the plea of the applicant for allocation of 1978 as the year of allotment in his case, the respondent No.1 has submitted that officiation in the cadre post for the purpose of determining seniority can be taken into account only if such officiation has been in each case approved by the Central Govt./ UPSC in accordance with Rule 9 of the IFS (Cadre) Rules, 1966. Referring to the representations of the applicant dated 12.3.91 & 9.9.91, the respondent No.1 has clearly stated that keeping in view the opinion of the UPSC (respondent No.2), already referred to, they did not find it appropriate to appoint

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the applicant to the IFS and that accordingly his request for promotion was rejected and the decision was duly conveyed to the applicant vide letter dated 29.5.94.

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12. In his rejoinder, the applicant has mentioned that the inclusion of his name in the select lists of 1988 and 1989 on "provisional" basis had no legal basis in terms of the Recruitment Rules, 1966 and the Promotion Regulations Rules, 1966 and has insisted that he should have been promoted to the IFS w.e.f. 1.1.88. Later, the applicant has tried to argue that since the warning dated 8.3.91 administered to him as a result of the departmental proceedings undertaken against him, had not been placed on his character-roll, the same did not amount to a minor penalty under Rule 4 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987, a fact which had been communicated by the Haryana Govt. to the UPSC vide their letter dated 23.12.93 and dated 30.3.93. According to the applicant, only a penalty imposed on him could have been considered for the purpose of making his appointment to the IFS conditional.

13. On behalf of respondent No.3, namely, the State of Haryana, an affidavit has also been filed which brings out the fact that the applicant's representation dated 16.9.93 was rejected by the Govt. of India (Respondent No.1) on 19.5.94. They have also averred that in the meeting of the selection committee held in December, 1987, the name of the applicant was included in the select list subject to his name being cleared in the departmental enquiry then underway against him in

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accordance with Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987. They have also stated that the Govt. had decided the enquiry against the applicant and had issued a warning to him to be careful in future vide order dated 5.3.91. They have further stated that the learned counsel for the applicant had agreed that if the respondents considered his case for promotion w.e.f. 1.1.88, he would not claim arrears of salary etc. The State of Haryana accordingly expressed its willingness to consider the promotion of the applicant w.e.f. 1.1.88.

14. In their counter, the three private respondents have stated that the claim of the applicant was time barred under Section 21 of the Administrative Tribunals Act, 1985. According to them, the applicant accepted his promotion (in 1994) and also the year of allotment, namely, 1989, and did not challenge the said order, and on this account also, he could not rake up this old issue at this stage. They have also pointed out that the applicant did not approach the Chandigarh Bench of this Tribunal and this they have done with an amount of deliberation, as matters relating to the seniority of HFS Officers promoted to the IFS, were then pending in the Chandigarh Bench. They have also mentioned that the applicant has filed another OA, namely, 1205/99 in the Principal Bench, seeking allocation of 1978 as the year of allotment in his case. They have also pointed out that since the applicant's selection in February, 1973 was stipendiary in nature and no salary was paid during the training period at that time, the actual date of his

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appointment to the Haryana Forest Service-II, for all practical purposes, should be reckoned from 3.3.75. Their plea is that the applicant could not claim any benefit in respect of the stipendiary period aforesaid. The applicant, according to these private respondents, was appointed substantively to the HFS-II w.e.f. 2.3.77 and, therefore, he could not become eligible for promotion to the IFS prior to 2.3.85. They have alleged that the process of cadre review has been used by the State of Haryana as a tool to promote the interests of the HFS Officers to the disadvantage of the directly recruited IFS Officers and have brought out certain facts and figures in support of this claim. They have also stated that the inclusion of the applicant's name in the select lists of 1987 and 1988 was contrary to the rules and was against the law on the subject and that no posts in the promotion quota existed prior to the cadre review of 1990. According to them, the calculation of 9 posts as falling in the promotion quota is wrong and against the law.

15. In the rejoinder filed by the applicant in response to the counter filed by the private respondent Nos. 5, 6 & 7, the applicant has covered more or less the same grounds earlier covered by him in the OA and has also mentioned that the OA No.1205/99 is based on distinct facts and that the same is not similar at all to the present OA in regard to its subject matter and the reliefs claimed. According to him, the private respondent No.4 (Sh. B.B.Sharma) made a party in this case, has not filed any counter reply.

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16. We have heard the learned counsel for the parties and have perused the records. At the outset, we would like to take the liberty to point out that the applicant does not seem to have done clear thinking on the reliefs specifically sought by him in this OA. We have already pointed out that claiming of the year 1978 as the year of allotment and along-side wanting to be appointed to the IFS by promotion w.e.f. 1.1.88, are stands mutually inconsistent and make no sense to us inasmuch as by asking for 1978 as the year of allotment, the applicant is indirectly, though clearly, wanting his seniority to be counted from that very year and this position obviously contradicts the other position, namely, that of his appointment to the IFS w.e.f. 1.1.88. It would have been much better if the applicant had done clear thinking on the issue before filing the present OA.

17. It is admitted that the applicant remained on the select list from 1982 to 1985 but unfortunately for him, could not be promoted to the IFS merely because no vacancy existed in those years. He was placed under departmental enquiry w.e.f. 15.4.86 which ended in the order dated 8.3.93 passed by the Govt. of India. No selection committee meeting was held in 1986. The applicant again remained on the select lists prepared in the years 1987, 1988 and 1989 but on account of the departmental enquiry pending against him, his candidature for appointment to the IFS could not be considered. No meeting of the selection committee was held in 1990, 1991 and 1992. According to sub-rule (iv) of Promotion

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Regulations Rules, 1966 a select list is subject to be reviewed and revised every year. Another meeting of the selection committee was ultimately held on 31.3.93 and in this list too the name of the applicant figured and he was ultimately appointed to the IFS vide Govt. of India's Notification dated 17.3.94 alongwith seven other Officers of the HFS-II. Under sub-rule 9 (2) of the IFS Promotion Regulations, 1966, the following provision has been made:-

"It shall not ordinarily be necessary to consult the Commission before such appointments are made, unless during the period intervening between the inclusion of the name of a member of the State Forest Service in the Select List and the date of the proposed appointment there occurs any deterioration in the work of the member of the State Forest Service which in the opinion of the State Government, is such as to render him unsuitable for appointment to the Service."

It appears to us that the official respondents have acted in accordance with this sub-regulation and have taken into account the deterioration in the work of the applicant as a member of the SFS reflected in the charge-sheet served on him in 1986. It has been mentioned that soon after the conclusion of the departmental proceedings against the applicant in March, 1991, the State of Haryana made recommendations in favour of the applicant in their correspondence with the Union Govt. and also the UPSC. The State of Haryana, in fact, went to the extent of clarifying to the Union Govt. as well as UPSC that the warning administered to him in consequence of the departmental proceedings, did not

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amount to a minor penalty in accordance with the relevant Service Rules. Going by the dates of these communication and the final order of rejection dated 19.5.94 conveyed by the Union of India, we cannot help presuming that both the UPSC as well as Union Govt. had duly considered the recommendations made and the clarifications given by the State of Haryana in favour of the applicant.

18. To sum up, we find that there has been no irregularity or illegality on the part of the official respondents in dealing with this matter and that the applicant's claim for appointment to the IFS w.e.f. 1.1.88, has no force whatsoever and must be rejected. In view of this, we do not consider it necessary to go into the other questions of a subsidiary/ancillary nature raised by the applicant and the private respondents as any possible decision in respect of any of these would not materially alter the situation in favour of the applicant.

19. The OA is accordingly dismissed with no order as to costs.

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(S.A.T. Rizvi)
Member (A)

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

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