

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A.No.2023/94

New Delhi: this the 30th day of December, 1996.

HON'BLE MR.S.R.ADIGE MEMBER (A).

HON'BLE DR.A.VEDAVALLI MEMBER (J).

M.R.Dewan, IFS (AGMU)

D-315, Nirman Vihar,

Delhi -92

.....Applicant.

(Applicant in person)

Versus

1. Union of India, through
the Secretary,
Ministry of Environment & Forest,
Prayavaran Bhawan, CGO Complex,
Lodi Road,
New Delhi - 110003

2.The Joint Cadre Authority (JCA) for IFS (AGMU)
Cadre through
the Joint Secretary (UTS)
Ministry of Home Affairs,
New Delhi

.....Respondents.

By Advocate: Shri V.S.R.Krishna by proxy Shri Shukla)

JUDGMENT

BY HON'BLE MR.S.R.ADIGE MEMBER (A).

The applicant seeks

1. i) a declaration that all orders/directions
issued by Respondent No.1 after 3.4.89
i.e. the formation of JCA for IFS (AGMU)
Cadre are invalid/illegal/ unconstitutional
and nonest.
- ii) a declaration that he is senior to Shri
J.M.Chowdhary and others who were
promoted to STS of IFS on/after 22.7.78;

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- iii) declare him deemed to be promoted as Conservator of Forests (CF) w.e.f. 12.12.85 as Shri J.M. Chowdhary was promoted as CF on 13.12.85.
- iv) direction to respondents to pay him difference of pay and allowances between the present and CF's pay and allowances w.e.f. 12.12.85 along with interest.
- v) Award costs amounting to Rs.6,00,000/- to compensate him for losses caused to him and his family due to mental agony/stress.

2. The applicant who is a 1974 batch direct recruit to the Indian Forest Service, after completion of training joined as Asstt. Conservator Forests in Junior Scale in July, 1976, and was promoted to Senior scale w.e.f. 1.3.79. He approached the Guwahati High Court for antedating his promotion to Senior Scale w.e.f. 1.3.77. The case was transferred to CAT Guwahati Bench in March, 1986 upon the enforcement of the A.T. Act which was finally disposed of by judgment dated 8.9.86 with the following direction:-

"In view of the above discussion, we hold that there is substantial force in the application for antedating the promotion of the applicant to the senior time scale to 1.3.78 with all the consequential benefits regarding seniority etc. vis-a-vis the promoted officers and others. Accordingly, the

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petition is allowed and it is directed that the applicant be deemed to be promoted to the senior time scale with effect from 1.3.78 No order is made as to costs."

3. It is not denied that the applicant is deemed to have been promoted to Senior scale w.e.f. 1.3.78 pursuant to the above judgment. His grievance now is that he has not been given other consequential benefits including seniority etc. vis-a-vis the promoted officers and others, in terms of that order.

4. The respondents have taken the preliminary objection of res-judicata. They point out that the question whether the applicant's seniority undergoes any change in view of his deemed promotion to senior scale w.e.f. 1.3.78 vis a vis the seniority already fixed and further, whether the year of allotment "1969" assigned to the 10 promotee officers in DPAR's O.M. dated 29.7.80 undergoes any change, has been conclusively and deliberated, decided upon by the Tribunal and already confirmed by the Hon'ble Supreme Court in dismissing the SLP against the Tribunal's judgment. They state that the same issue, between the same parties having been finally and conclusively adjudicated upon, the OA is squarely hit by res judicata and is fit to be dismissed on that account.

6. We notice that the applicant filed CCP No.123/87 dated 31.8.87 before the Tribunal alleging non-compliance of the judgment dated

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8.9.86 and alleging that respondents had promoted two officers S/ Shri Thapliyal and Chowdhary to the rank of CF in December, 1985 and as these officers had been given senior scale in IFS on/after 22.7.78 the applicant should have been considered and promoted to the rank of CF on or before December, 1985, As he had been declared by the judgment dated 8.9.86 deemed to be promoted to Senior scale w.e.f. 1.3.78 with all consequential benefits, i.e. declared senior to these officers, and the respondents' failure to do so constituted clear Contempt of Court. That CCP was contested by the answering respondents in their written reply (Annexure-AF/1), who on the basis of the relevant provisions of the rules as well as the Hon'ble Supreme Court's rulings, took the stand that what determined the inter se seniority of direct recruits and promotees to the IFS was not their date of promotion to the senior scale but continuous officiation in an IFS senior cadre post, and that as the 10 officers promoted to IFS in July/ Augst, 1978 were continuously officiating in senior posts prior to their promotion, their seniority had to be counted from the date (s) of their continuous officiation against those senior posts. Other contentions were also raised in that reply.

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7. The applicant subsequently filed his rejoinder and reply to that rejoinder was also filed by the answering respondents.

8. That CCP was heard and was thereafter disposed of by the Tribunal's order dated 7.7.88 with a direction to the respondents to fix the applicant's seniority in accordance with rules within 2 months, with a further observation that in case the applicant felt aggrieved by the action of the respondents in the matter of fixation of seniority, it would be open to him to challenge the same by way of a separate OA. Subsequently he filed M.A.No.2484/88 praying for restoration of CCP No.132/87 alleging the breach of undertaking dated 7.7.88 given by the respondents. This MA was contested by the answering respondents, and a rejoinder was filed to which the answering respondents gave a further reply and eventually by their judgment dated 29.5.89 the Tribunal declined to restore the CCP and discharged the CCP as well as the MA. While doing so the Tribunal noted that the respondents had promoted the applicant to STS w.e.f. 1.3.78 and had given him the difference of pay and allowance due to him. The bone of contention now was whether the other consequential benefits regarding seniority etc. vis a vis the promoted officer and others had been given to the applicant by the respondents in terms of the judgment dated

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8.9.86. That judgment had not given any specific direction in regard to the manner of fixation of inter se seniority between the applicant and the promoted officer and others, and in such a situation the respondents were expected to proceed in the matter in accordance with the relevant rules and instructions. The respondents had conducted an exercise pursuant to the directions contained therein and decided that the year of allotment assigned to the applicant would be "1974" and whereas the year of allotment assigned to 10 promotee officers as "1969" remained unchanged. The Tribunal made it clear that it was not required to go into the question as to whether the determination of the allotment year and the fixation of inter se seniority by the respondents was in conformity with the relevant rules and instructions as the same would not fall within the scope of a Contempt petition. If the applicant still felt aggrieved, it was open to him to file a fresh OA in accordance with law, if so advised.

9. We note that against the order dated 29.5.89 the applicant filed SLP No.11545/89 in the Hon'ble Supreme Court in which he specifically sought compliance of judgments dated 8.9.86 and dated 7.7.88, and in which he contended that as the official respondents had promoted these officers from DCF to CF rank in December, 1985 who were give STS in IFS on or after 22.7.78, the applicant should have in terms of judgment dated 8.9.86, been considered and promoted to the rank of CF on or before December, 1985.

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That SLP came up for hearing on 18.10.89 when the Hon'ble Supreme Court was pleased to pass the following order:-

"Issue notice returnable on 9.11.89 confined to the question as to whether the direction of the Tribunal dated 8.9.86 has been fully complied with."

Accordingly notices on SLP No.11545/89 were issued to the respondents on 4.11.89, in reply to which the respondents took the plea that the order of CAT Guwahat Bench had been fully complied with and the settled position of seniority of the applicant vis-a-vis the promoted officers and others required no change. Detailed reasons were given in support of their stand.

10. Meanwhile the official respondents themselves had filed a SLP in the Hon'ble Supreme Court against the CAT Guwahati Bench's judgment dated 8.9.86.

11. On 20.7.90, SLP No.11545/89 filed by the applicant together with SLP No. /90 filed by the official respondents against the CAT Guwahati Bench's judgment dated 8.9.86 came up before the Hon'ble Supreme Court who were pleased to pass the following order:-

"The petitioner in person has argued his case. We have gone through the judgment of the Tribunal and we find no infirmity in the same. While arguing the petitioner insisted that his case be sent to Court No.2. We see no reason to send this case to any other Court. We accordingly dismiss the Special Leave Petition I.A.No.1(In SLP No...../90). The petition is dismissed as withdrawn."

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12. Thus as pointed out by the respondents in their reply, after hearing the arguments, the Hon'ble Supreme Court was pleased to dismiss the SLP filed by the applicant, and in view of the dismissal of that SLP, the Addl. Solicitor General on behalf of UOI requested the Hon'ble Court to permit UOI to withdraw the SLP as dismissed, as nothing survived in view of the dismissal of the applicant's SLP, and under the circumstance, the Hon'ble Supreme Court was pleased to order dismissal of the SLP filed by the UOI as withdrawn.

13. In the light of the above, the preliminary objection raised by the respondents succeeds and the present OA is barred by res-judicata.

14. The applicant has strenuously argued that it is still open to us to consider granting the relief sought for by him as outlined in paragraph 1 above and has cited a very large number of judgments, which have been listed in his written submissions.

15. We have give the matter our careful consideration but find outselves unable to agree with the same. It was open to the applicant to have raised all these contentions when he had appeared before the Hon'ble Supreme Court in person in the SLP on 20.7.90. His SLP on the same issue between the same parties having been dismissed by the Hon'ble Supreme Court on 20.7.90, by a speaking order, we are no longer at liberty to reopen those very issues and consider granting the applicant

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declaration/direction that he seeks.

16. Under the circumstance, without going into merits of the case, this OA is dismissed as barred by res-judicata. No costs.

A. Vedavalli
(DR .A. VEDAVALLI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
MEMBER (A).

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