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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 149/88

Date of decision: **6-7-93**

Shri P.P.Malhotra .. Applicant
Versus
Union of India & Others .. Respondents

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Hon'ble Mr. A.B.Gorthi, Member (A)

Hon'ble Mr. C.J.Roy, Member(J)

For the applicant .. Mr. P.P.Khurana, Counsel

For the respondents .. Mr. M.L. Verma, Counsel

JUDGEMENT (Delivered by Hon'ble Mr.C.J.Roy, Member(J))

This application is filed by the applicant under Section 19 of the Administrative Tribunal Act, 1985 claiming the following relief:

(1) To set aside the impugned order No.5-199/83-IESI dated 19.10.87 (Annexure A-14) and declare the applicant senior to Respondent No.2;

(2) To quash the order No.18014/25/76/AIS(W) dated 23.5.1978 (Annexure A-7); and

(3) To promote the applicant retrospectively wef the date Respondent No.2 was promoted to Level I Scale of Conservator of Forests with consequential benefits of payment of arrears of salary.

2. Briefly stated, the facts of the case are as follows.

On the basis of selection made through a competitive examination held by the Assam Public Service Commission (Govt. of NEFA-now Arunachal Pradesh), the applicant was selected and deputed for training to the year 1956-1959 course at the Indian Forest College, Dehradun. On successful

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completion of the said training, he was appointed to Class I Forest Service of NEFA (now Arunachal Pradesh) wef 1.10.1958 to the post of Assistant Conservator of Forests. Respondent No.2 of Assam Cadre was selected by the Assam Govt. through a competitive examination conducted by Assam Public Service Commission and was deputed for the above said training and on completion of the course was appointed to an identical post carrying identical scale of pay with effect from 2.10.58 to the Forest Service of Assam.

3. In the merit list of Forest Officers of 1956-59 batch, the applicant was placed at Sl.No.39, while that of the Respondent No.2 was placed at S.No.55 in a batch of 69 officers. On the constitution of Indian Forest Service with effect from 1.10.66 by the Government, the applicant was selected for appointment to the UT cadre of the IFS while Res.No.2 was selected for appointment to the Assam State Cadre. While the applicant was appointed to the junior scale i.e. ACR in Arunachal Pradesh with effect from 1.10.66 and was promoted on the same date as Deputy Conservator of Forests, the Res.No.2 was appointed with effect from 1.10.66 to the similar scale of the State of Assam.

4. The applicant alleges that in January, 1972, Res.No.2 who was transferred to Mizoram, then declared as a UT, managed his transfer to UT cadre in public interest and thus his seniority was fixed in the UT cadre of IFS in terms of Rule 6(i)(ii)(a) of IFS (Regulation of Seniority) Rules, 1962

and as such the seniority of Respondent No.2 was fixed below that of the applicant vide order dated 25.8.75 (Annexure A-4).

5. Res.No.2 made a representation to the DP&AR, which vide their Memo dated 29.6.77 (Annexure A-5) proposed to revise the seniority placing the Res.No.2 above that of applicant advancing a reason that Res.No.2 was a senior scale initial recruit. The applicant, alongwith similarly affected persons made a representation on 17.8.78 (Annexure A-6) but without disposing it of, the DP&AR revised the seniority vide Memo dated 23.5.78 placing the Res.No.2 above that of the applicant. Aggrieved by this, the applicant made a representation on 17.8.78, which was not replied. This was followed by several reminders and on meeting the Inspector General of Forests, the applicant was assured that both himself and Res.No.2 would be promoted simultaneously. But on the other hand, as a result of revised seniority list, while Res.No.2 was given promotion to the rank of Conservator of Forests in the UT cadre with effect from 12.12.83, the applicant was given this promotion only from 29.10.84. The applicant made a representation again on 17.6.85 to which he was informed vide letter dated 20.11.85 that a decision in the matter would be communicated separately. To his surprise, he received a communication dated 19.10.87 informing him that his representation was barred by laches and delay. Thus, the applicant has filed this application seeking the above relief.

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6. The respondents have filed their counter reply, which briefly stated, as follows. Both the applicant and Res.No.2 are initial recruit officers of the IFS, the year of allotment determined as 1962 1/2 under rule 3(2)(b) of the IFS(Regulation of Seniority) Rules, 1968. The applicant was appointed as an initial recruit to the UT cadre under rule 4(1) of the IFS (Recruitment) Rules, 1966, thencebefore having been a member of the State Forest Service of NEFA (now Arunachal Pradesh) while Res.No.2 was born on the Assam State Forest Service and was appointed as an initial recruit to the Assam Cadre of the IFS. Consequent upon reorganisation of the North-Eastern states, the Res.No.2 stood assigned/transferred to the UT cadre of IFS. The inter-se seniority was determined in accordance with Rule 7 of the IFS(Regulation of Seniority) Rules, 1968, which says:

(1) If any officer is transferred from one cadre to another in the public interest, his position in the gradation list of the cadre, to which he is transferred, shall be determined by the Central Government in accordance with the following principles:-

(ii) the following order shall be maintained among the different categories of officers of the same year of allotment, and the seniority of the transferred officers vis-a-vis officers of his category shall be determined in the following manner:-

(a) Initial recruit officers - an officer appointed to the service under sub-rule (1) of rule 4 of the Rectt. Rules shall be graded mainly on the basis of age without thereby disturbing, as far as possible, the existing inter-se seniority."

7. The respondents have further stated that in terms of provisions of the IFS (Initial Recruitment) Regulations, 1966, the officers appointed as initial recruits fall in two distinct categories, viz. those appointed as initial

recruits in the senior scale (Rule 4(1)) and those appointed as initial recruits in the junior scale (Rule 4(2)), the provisions of which are reproduced below:

(1) Every officer of the State Forest Service who, on the date of constitution of the service -

(a) is holding a cadre post substantively, or holds lien on such post, or (b) i. holds substantively a post in the State Forest Service; ii. who has completed not less than three years continuous service in an officiating capacity in a cadre post or in any other post declared equivalent thereto by the State Govt. concerned, shall be eligible for selection to the service in the senior scale.

(2) Every officer of the State Forest Service who has completed four years of continuous service on the date of constitution of the Service shall be eligible for selection to the Service in the Junior Scale.

8. It was argued that Res.No.2 was appointed as an initial recruit on the senior scale of the service, while the applicant was appointed as initial recruit in the junior scale and it was on this basis the seniority of Res.No.2 was determined above the applicant.

9. The respondents further urge that the applicant received the impugned order in June, 1978 and the petition is filed about 10 years from that date and on account of this delay, the petition can not be entertained.

10. The respondents have denied in their reply that they did not consider the representation filed by the applicant to Annexure A-5 and the impugned order as issued as a result of detailed and indepth consideration of the entire matter and there has been no mechanical action, or any violation of principles of natural justice.

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11. They have also concluded that it is not a fact that the applicant had been making representations since 1978, the first one being in 1985 and even if it was to be assumed that he had been making representations continuously, he should have filed an application earlier but not after a period of 7 years. Therefore the applicant is not entitled to any relief, being barred by limitation and therefore the application may be dismissed with costs.

12. We have heard the learned counsel Shri P.P.Khurana for the applicant and Shri M.L.Verma, learned counsel for the respondents and perused the records.

13. The short point for consideration is whether the applicant is senior to Respondent 2 and is entitled for the relief claimed.

14. The objection raised by the respondents is that the case is barred by limitation and latches.

15. We have seen the Annexure A-11, letter No.189/87-DFE/13-4-84 dated 11.2.87, a representation made by the applicant to the respondents through proper channel and the reply at Annexure A-12, letter No.11/394/83-Ests-I dated 3.12.87 from the respondents on the subject "fixation of seniority of Shri P.P.Malhotra in the UT cadre of the IFS vis-a-vis Shri A.K.Dutta, IFS, originally of Assam Cadre, transferred to UT cadre with effect from 21.1.72" stating

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that "in continuation of this office letter of even number dated 19.11.87 on the above mentioned subject, a copy of Ministry's letter No.5-199/83-IFS-I dated 19.10.87 is sent herewith". The letter dated 19.11.87 (S-&) from the Forest Instt. & College, Dehradun, while rejecting the representation dated 9.2.87 states as follows: "The orders by which Shri A.K.Dutta, IFS (UR.TR.1965) was assigned *Seniority* above Shri P.P.Malhotra were issued vide Min. of Home Affairs (Department of Personnel & AR) No.18014-25/76/AIS(IV) dated 23.5.78. It is observed that a representation has been filed against the said determination of seniority by Shri P.P.Malhotra only on 17.6.1985".

16. Since the OA is filed on 18.1.88 (received vide No.142 as seen from the office rubber stamp) taking the rejection letter dated 19.11.87 as the final order, is within time and not barred under Section 21 of Administrative Tribunal Act. When the respondents have chosen to reply to his letter, this can be ~~meaning~~ of final order, so it is not barred under Section 21. Therefore the contention raised by the respondents is negated.

17. In the merit list of Forest Officers of 1956-59 batch of Indian Forest College, Dehradun (at page 16), the applicant's name appears at Sl.No.39 and that of R-2 at Sl.No.55.

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18. We have seen at Annexure 2 a notification No.3-28/71/AIS dated 29.1.73, saying that "consequent upon their appointment to the IFS on probation, the President is pleased to appoint the following officers on an officiating basis in the posts mentioned against their names in the UT Cadre with effect from 1.10.66 and until further orders and in supersession of earlier orders." In this order the applicant's name figures at S.No.20. It is seen from this order that the applicant is also posted to the IFS Cadre with effect from 1.10.66. We have also seen at Annexure 7 (page 38) an extract copy of Govt. of India, Min. of Agriculture and Irrigation, Department of Agriculture letter No.3-3/76-AIS dated 7.6.1978 endorsed to Shri Malhotra, the applicant, and other, in which it is stated that fixation of seniority between Respondent 2 and the applicant was done and it is circulated. We have seen at page 40 (letter dated 23.5.78), which shows that the seniority list is altered by way of representation of Shri A.K.Dutta, Respondent 2, since he was appointed to senior scale initial recruit to the IFS while the applicant and others were appointed in junior scale of IFS at its initial constitution and therefore this order was issued, by which the applicant is aggrieved and started making representations and the final representation is replied only on 3.12.87.

19. It may be seen that the applicant alongwith S/Shri S.K.Chatterjee and R.N.Leganey, joined the Indian Forest College, Dehradun, sponsored by the Arunachal Pradesh

Government (erstwhile NEFA Govt.) to undergo training in the 1956-59 Diploma Course and on successful completion of the training they were appointed to the North East Frontier Agency (now Arunachal Pradesh) State Forest Service Class I as ACF and their seniority in NEFA (Arunachal Pradesh) was determined on the basis of position obtained in the final examination of IFS. The Respondent 2 also underwent the training in the same batch sponsored by Assam State. The applicant's name appears at Sl.No.3 and that of Respondent 2 at Sl.4, as is seen from the table given below:

Name	Date of appnt.	Date of birth	Position in batch of 69 probationers
1. S.K.Chatterjee	1.10.58	10.2.1933	22nd
2. R.N.Loganey	1.10.58	28.9.1934	25th
3. P.P.Malhotra	1.10.58	24.5.1932	39th
(The above officers were posted to the NEFA, now Arunachal Pradesh Forest Service)			
4. A.K.Dutta	2.10.58	13.12.32	55th
(This officer was appointed to Assam Forest Service)			

20. The date of birth of the applicant is 24.5.32 and that of Respondent 2 is 13.12.32. When the applicant was at Sl.No.39 and the Respondent at Sl.No.55, the applicant is senior by age than Respondent 2. The condition as obtained at that time that the applicant and the other two officers were governed exclusively by the North Eastern Frontier Agency (now Arunachal Pradesh) while the Respondent 2 came from Assam State and the inter-se seniority of the officers was determined on the basis of the position obtained in the final examination of the Indian Forest College. There was no combined cadre for North East Frontier Agency & Assam at that time. So the Respondent 2 Shri Dutta who was initially placed below the applicant would have continued to be placed always below the applicant in seniority. Since there were

two separate services (NEFA & Assam) each State had its own scope of promotion for its officers as both the States were not equally developed. The State of Assam was much developed whereas North Eastern Frontier Agency was in its infant stage and had yet to develop to offer better prospects to its officers. Shri Dutta got a chance to officiate in a senior scale in his State (Assam) earlier than the applicant and others who were promoted in their State Cadre as and when posts were created keeping in pace with the development activities of NEFA, now Arunachal Pradesh. Had there been a combined cadre for both NEFA and Assam or had the two states been on equal footing in development activities, Respondent 2 would not have the chance of promotion earlier than the three officer, i.e. including the applicant. Therefore the promotion of Respondent 2 is applicable only to the Assam State.

21. The applicant and others were appointed to UT Cadre of IFS in the junior scale because they had not completed 3 years of continuous service in the senior scale in the NEFA State Forest Service on 1.6.66, as per IFS Recruitment Rules. Subsequently the applicant and the others were also promoted with effect from 1.10.66 by a subsequent order of the Government, which is Annexure 3 at page 25. The name of the applicant appears at Sl.No.5 with date of appointment as Deputy Conservator of Forests from 1.10.66 in this notification dated 6.11.73. So the contention that Respondent 2 was appointed in senior scale of IFS (Assam

Cadre) on 1.10.66 while the applicant and others were appointed to the junior scale (UT cadre) is not correct in view of the fact the applicant and the others were given senior time scale with retrospective effect from 1.10.66 by virtue of the above mentioned notification.

22. It will further be seen that Respondent 2, transferred to UT Cadre in 1972 only, the applicant and others were holding the same appointment with the same year of allotment and were in the same scale of pay.

23. Rule 6(1)(ii)(a) of the Indian Forest Service (Regulation of Seniority) Rules reads as follows:

6. Fixation of seniority on transfer to another cadre-(1) if an officer is transferred from one ~~cadre~~ cadre to another in the public interest, his position in the gradation list of the cadre, to which he is transferred, shall be determined by the Central Govt. in accordance with the following principles:-

(i) his year of allotment shall remain unaffected;

(ii) the following order shall be maintained among the different categories of officers of the same year of allotment and the seniority of the transferred officer vis-a-vis officers of his category shall be determined in the following manner:

(a) Initial Recruitment Officers:- An officer appointed to the Service under sub-rule (1) of Rule 4 of the Rectt. Rules shall be graded mainly on the basis of age without thereby disturbing as far as possible, the existing inter-se seniority.

(b) Examination Recruits-The position of an officer appointed to the Service in accordance with rule 7 of the Recruitment Rules shall be in the order in which his name appears in the list prepared under rule 11 of the Indian Forest Service (Probation) Rules, 1968.

(c) State Service Officers-An officer belonging to a State Forest Service and appointed to the Service against the promotion quota shall be graded mainly on the basis of age without thereby disturbing as far as possible, the existing inter-se seniority.

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(2) If an officer is transferred from one cadre to another at his request, he shall be assigned a position on the gradation list of the cadre in which he is transferred, below all the officers of his category borne on that cadre who have the same year of allotment.

24. It is clear from the above that whenever any transfer is made from one cadre to another cadre in the public interest, the seniority of the officer in the cadre is to be decided mainly on the basis of age without disturbing as far as possible the existing interse seniority in the said cadre.

25. As is to be seen from the table given in the counter reply at page 2, para 7, the date of birth of the applicant is shown as 24.5.32 and that of Respondent 2 as 13.12.32 (transferred officer). Since the applicant as well as the Respondent 2 are appointed in a senior time scale with effect from 1.10.66, now ~~it becomes~~ mandatory to determine the applicant's seniority above Respondent 2.

26. After narrating the history of the case, the applicant claims to be declared senior to Respondent 2 and be promoted retrospectively with effect from the date Respondent 2 was promoted to the level of Conservator of Forests and also the rank of Additional Chief Conservator of Forests with consequential benefits of payment of arrears of salary.

27. Therefore, we have no hesitation to hold that the applicant has made out a case that his seniority is to be fixed above Respondent 2. According to their date of birth, both might have been retired. However the order dated 23.5.78 regarding the fixation of seniority is quashed and we

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direct the respondents to refix the seniority of the applicant just above Respondent No.2. A review D.P.C. shall be held for the purpose of assessing the suitability of the applicant for promotion to the next higher posts of Conservator of Forests and Chief Conservator of Forests in the light of his revised seniority. Should he be found fit for promotion, he shall be deemed to have been promoted from the respective dates on which the Respondent No.2 was promoted to the said posts. Consequently, the applicant's pay and allowances shall be refixed notionally, but the revised retiral benefits will be paid to him actually. The respondents are directed to complete this exercise within three months from the date of communication of this judgement.

28. The application is thus disposed of with no order as to costs.

W. S. Roy
(C.J.ROY) 6/7/93
Member (J).

A. B. Gorthi
(A.B.GORTHI)
Member (A).