

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

O.A.No.327 of 2011

**Present: Hon'ble Mr.Gokul Chandra Pati, Member (A)
Hon'ble Mr.Swarup Kumar Mishra, Member (J)**

Debabrata Ray, aged about 57 years, Son of Late S.K.Ray, resident of Plot No. 685, Saheed Nagar, Bhubaneswar, Dist. Khurda at present working as Divisional Forest Officer (KL), At/Po. Padampur, Dist. Bargarh.

.....Applicant

-Versus-

1. Union of India represented through its Secretary, Ministry of Environment & Forest, Paryabharan Bhawan, CGO Complex, Lodhi Road, New Delhi-110 001.
2. State of Orissa represented through its Chief Secretary to Government of Orissa, Bhubaneswar, Dist. Khurda.
3. Principal Secretary, Forest & Environment Department, Government of Orissa, Secretariat Building, Bhubaneswar, Dist. Khurda.
4. Special Secretary to General Administration Department, Government of Orissa, Bhubaneswar, Dist. Khurda.
5. Shri Abhimanyu Behera, IFS at present working as DFO, Cuttack, At/Po/Dist. Cuttack.
6. Shri R.Raghuprasad, IFS at present working as DFO Satakosia (wild Life) Division, Dist. Angul

.....Respondents

7. Shri Abhiram Das, aged about 56 years, Son of D.Das, Village/Po. Palasole, District: Jagatsinghpur, at present working as DFO, K.L. Division, Athamallik, At/Po. Athamallik, Dist. Angul.

..... Proforma Respondent

For the Applicant : Mr.B.Routray, counsel
 Mr. P.K.Sahoo, counsel
 Mr. S.Jena, counsel.

For the Respondents: Mr. J. Pal, Counsel

Heard & reserved on: 06.11.2020 Order on: 25.11.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A):

This OA has been filed by the Applicant seeking the following reliefs under section 19 of the Administrative Tribunals Act, 1985 as under:

- “i) Under the circumstances, it is humbly prayed that this Hon’ble Tribunal may be graciously pleased to admit the original application and call for the records;
- ii) The respondent Nos.2,3 and 4 be directed to consider the case of the applicant for promotion to the selection grade of IFS with effect from 17.07.2010, the date on which the respondent Nos. 5 and 6 were given promotion to such selection grade of IFS and accordingly the notification under Annexure-8 be suitably modified and further direct the respondent Nos. 2,3 and 4 to give the applicant promotion to the Conservator of Forest grade in super time scale at least from the date when the respondent Nos. 5 and 6 were supposed to get such promotional benefit and the respondents be further directed to issue necessary corrigendum to the Notification dated 22.03.2011 by giving promotion to the applicant to the grade of Conservator of Forest in the super time scale;
- iii) To any other relief to which the applicant is entitled to.”

2. The applicant was promoted to Indian Forest Service (in short IFS) on 15.6.2007 and was allotted the year 1995. In IFS, he was promoted to the Junior Administrative Grade w.e.f. 1.1.2004. When the respondent nos. 5 & 6 were promoted to the Selection grade vide order dated 17.7.2010 (Annexure-5 of the OA), the applicant submitted a representation dated 19.7.2010 (Annexure-6) addressed to the respondent no. 4 for promotion to the Selection Grade of IFS and he was promoted to the said grade vide order dated 15.3.2011 (Annexure-8 of the OA) which was subsequent to the date of promotion of his juniors respondent nos. 5 & 6. In the seniority list for IFS published on 1.10.2010, the applicant was placed at serial number 86 (Annexure-7 series) and the respondent nos. 5 & 6 were placed below the applicant at serial numbers 87 and 88 respectively. Vide order dated 22.3.2011 (Annexure-10 of the OA), the respondent nos. 5 & 6 were promoted to the next higher rank of Conservator of Forests (in short CF), where as the applicant’s case was not considered for such promotion. Being aggrieved, the applicant has filed this OA claiming promotion to selection grade from 17.7.2010 instead of 15.3.2011 and promotion to the rank of CF from 22.3.2011.

3. The main ground urged in the OA is that the applicant being senior to the respondent nos. 5 & 6, should not have been ignored for promotion to the rank of Conservator of Forest at least from the date when his juniors i.e. respondent nos. 5 and 6 were promoted to the said rank. It is stated by the applicant that though he was representing since 2008 for promotion to the rank of CF, but his case was ignored by the respondents.

4. The respondents have filed Counter opposing the OA. It is stated that the promotion to the rank of JAG is given after scrutiny of the ACRs. The ACRs of the applicant were collected from different quarters and then steps were taken for promotion of the applicant to JAG rank w.e.f. 1.1.2004 vide the order dated 15.3.2010 of the GA Department (Annexure-4 of the OA). It is further stated that as per the rules, an IFS officer of JAG rank will be entitled for promotion to selection grade after completion of 13 years of service in IFS. It is further stated in the Counter that the applicant's case was considered for promotion to Selection grade, but on assessment of his ACRs/PARs records and general performance, the Screening Committee in its meeting held on 5.7.2010 found the applicant to be 'unfit' for promotion to Selection grade, where as the respondent nos. 5 & 6 were considered fit for such promotion and they were accordingly promoted vide order dated 17.7.2010 (Annexure-5 of the OA) and that such decision in respect of the applicant's promotion to Selection grade was as per the guidelines dated 22.12.2000 of the Government of India (Annexure-R-4/3 of the Counter).

5. It is also averred in the Counter that the applicant's case was considered by the Screening Committee for promotion to Selection grade in its meeting held on 1.3.2011 and he was found fit for the said promotion. Accordingly, he was promoted to Selection grade vide order dated 15.3.2011 (Annexure-8 of the OA) with immediate effect. The Screening Committee in its meeting held on 1.3.2011 also considered the case of the respondent nos. 5 & 6 for promotion to the rank of CF and after being found fit for such promotion by the Committee, they were promoted to the rank of CF vide order dated 22.3.2011 (Annexure-10 of the OA). It is averred in the Counter that although the applicant was senior to respondent nos. 5 & 6, his case could not be considered for promotion to the rank of CF as he was not in the Selection grade on the date of consideration of the Screening Committee.

6. The applicant filed Rejoinder, opposing the contentions in the Counter and stating that since the ACRs of the applicant for the period 2008-09 and 2009-10 (Annexure-7 series) were outstanding, there was no reason for the Screening Committee to assess the applicant unfit for promotion to the Selection grade while assessing the respondent nos. 5 & 6 to be fit and hence, the stand taken in the Counter is incorrect. It is also stated in the Rejoinder that there was no valid reason for not promoting him to the rank of CF while promoting the respondent nos. 5 & 6 w.e.f. 22.3.2011 although they were junior to the applicant and hence, such action of the respondents was illegal.

7. A reply to the Rejoinder has been filed by the respondents broadly reiterating the contentions in the Counter. It is stated that the applicant was

found unfit by the Screening Committee for promotion to Selection Grade as there was adverse remarks in his ACR for the period 2006-2007. For promotion to the rank of CF, it is stated that as per the guidelines dated 22.12.2000 of the MOEF, the officers working in Selection grade and completing 14 years of service are entitled for promotion to the rank of CF. Since the applicant was not in the selection grade as on 1.3.2011 when the Screening Committee meeting was held, his case for promotion to the rank of CF was not considered.

8. Heard learned counsel for the applicant, who also filed a date of events in which it was submitted that his promotion to the grade of JAG was delayed till 2010 though it was given effect from 2004. In 2008, he was due for consideration for promotion to selection grade. But it was not considered as his JAG promotion was delayed and for that reason, his promotion to selection grade could not be considered in the year 2008 and to the grade of Conservator in the year 2009. It was further submitted that although applicant's ACR for the year 2006-07 was modified from adverse to 'average' subsequently, but the Screening Committee held on 5.7.2010 did not take into consideration such modification of the ACR, while assessing the applicant to be unfit for promotion to selection grade. His subsequent ACRs were outstanding but the same could not be finalized in time for which the applicant could not be promoted to selection grade on 17.7.2010 (Annexure-5) when his juniors were promoted. It was also pointed out that if the applicant was found unfit for selection grade in 2010, how he was found fit for promotion in 2011 and it shows that his promotion to selection grade was deliberately delayed. It is also submitted that the applicant's case was not considered till his superannuation in the year 2015 although the disciplinary proceedings against him was set aside by the Tribunal.

9. Learned counsels for the respondents were heard. A written note was also submitted on behalf of the respondent nos. 2 and 4, stating therein as under:-

“2..... But due to adverse remarks in the CCR for the year 2006 and 2007 and want of the CCR for the year 2008 & 2009 his case could not considered along with his junior Respondent Nos. 5 & 6 for promotion to the Selection Grade, when the meeting for Selection Grade was convened on 05.07.2010.”

Reference to Clause 25 of the General Guidelines for promotion in question has been referred to in the written submissions. It is submitted that "since the wanting CCR were made available in the year 2011 therefore when the Departmental promotion Committee met on dated 01.03.2011, the case of the applicant was considered and he was promoted to the Selection Grade with effect from 15.03.2011....."

10. Learned counsel for the respondents at the time of hearing on 3.11.2020 also filed a copy of the proceeding of the Review Screening Committee meeting held on 3.1.2011 as per the direction from us in view of the submissions by learned counsel for the applicant that applicant's case for promotion to selection grade could have been considered in the said Review Committee. It is seen from the said proceedings that the Review Committee was convened as per the direction of this Tribunal in OA No. 452/2010 filed by one Abhiram Das for consideration of his promotion to selection grade at par with his juniors by reviewing the Committee meeting held on 5.7.2010. Since the Review Committee was convened for specific purpose, the applicant's case for promotion to selection grade was not considered in the said Review Committee meeting.

11. We have perused the pleadings on record and considered the submissions made by both the parties. The sole point to be considered is whether actions of the respondents to delay the promotion of the applicant to selection grade till 15.3.2011 when his juniors were promoted w.e.f. 17.7.2010 and not to promote the applicant to the next higher grade of CF are in accordance with the guidelines of the Government of India (in short GOI).

12. Regarding promotion to selection grade and to the rank of Conservator of Forest, the guidelines dated 22.12.2000 of GOI (Annexure-R-4/3 of Counter) are as extracted below:-

“III. APPOINTMENT TO SELECTION GRADE”

An officer of the Junior Administrative Grade shall be eligible for appointment to the Selection Grade on **completion of 13 years of service** as per the proviso to rule 3(3) of the IFS (Pay) Rules, 1968. A Committee consisting of the Chief Secretary, Principal Secretary-in-charge of Forest, Principal Chief Conservator of Forests of the State Government and Additional Principal Chief Conservator of Forests wherever available, shall screen the eligible members of the Service for promotion in this grade. Thus grade will be available from or after 1st January of the relevant year subject to availability of vacancies in this grade.

IV. PROMOTION TO THE POST OF CONSERVATOR OF FORESTS

The members of the Service who are working in the Selection Grade and have **completed 14 years of service** shall be eligible for appointment to the post of Conservator of Forests in the scale of Rs. 16400-450-20000 *at any time during the year* of their eligibility subject to availability of vacancies in this grade. The Screening Committee to consider officers for promotion in this scale would consist of the Chief Secretary, Principal Secretary looking after the work of Forests, Principal Chief Conservator of Forests in State Government and Additional Principal Chief Conservator of Forests wherever available as members.”

13. The respondents have also enclosed a General Guidelines for promotion in the written note of submissions, highlighting the paragraph 25 of the said

guidelines, which states that if an officer could not be included in the panel for promotion, the reason for his supersession should be recorded in writing and such officers would be eligible for reconsideration after earning two more reports. The paragraph 23 of the General Guidelines provides for holding Review Committee meeting if it is necessary to review the proceedings of any Committee if all material facts were not considered by the Committee earlier or if 'there were grave errors in the procedure followed by them'. It also provides for special review for the cases where adverse ACRs are expunged or modified.

14. The reason furnished by the respondents for not promoting the applicant to selection grade with respondent nos. 5 & 6 (vide para 5 of their Reply to Rejoinder) is that there were adverse remarks in the applicant's CCR for the year 2006-2007 for which the Committee held on 5.7.2010 found him unfit for promotion. However, his case has been reconsidered by the Committee in its meeting held on 1.3.2011 and he was promoted to the Selection grade w.e.f. 15.3.2011. The applicant in his pleadings has not furnished any valid ground to challenge the recommendations of the Committee in its meeting held on 5.7.2010 in respect of the applicant's promotion to selection grade. We are, therefore, unable to consider the submissions in this regard in the written note of submissions filed on behalf of the applicant since these were not included in the pleadings on record. Hence, the respondents' action to promote the applicant to selection grade w.e.f. 15.3.2011 cannot be faulted.

15. Regarding consideration of the applicant's case for promotion to the rank of CF in the Screening Committee meeting held on 1.3.2011, it is stated by the respondents in their pleadings that since the applicant was not promoted to selection grade as on 1.3.2011, he was not eligible for promotion to the rank of CF. It is undisputed that the applicant was promoted to selection grade w.e.f. 15.3.2011 after being found fit by the Committee on 1.3.2011 and his juniors (respondent nos. 5 & 6) were promoted to the rank of CF w.e.f. 22.3.2011. As per the guidelines for promotion to the rank of CF as extracted in paragraph 12 of this order, the Screening Committee meeting can be held any time of the year to consider an eligible member of service for promotion to the rank of CF. Hence, as per the rules, after the applicant attained the eligibility for consideration for the post of CF on 15.3.2011, the Committee could have considered his case for promotion to the rank of CF so as to promote him w.e.f. 22.3.2011 alongwith his juniors. Since the Screening Committee held on 1.3.2011 found the applicant fit for promotion to selection grade, it should also have considered his case for promotion to the rank of CF, since the only reason for his non-eligibility was that the applicant was not in selection grade and after he was found fit for selection grade, he acquired eligibility for

consideration for promotion to the rank of CF. Alternatively, as per the guidelines dated 22.12.2000 (Annexure-R-4/3 of the Counter) for promotion to the post of conservator of forests, the respondents should have convened the Screening Committee meeting again after 15.3.2011 to consider the case of the applicant for promotion to CF from the date his juniors respondent nos. 5 & 6 were promoted to the post of conservator of forests w.e.f. 22.3.2011. The reason furnished by the respondents for not promoting the applicant to the post of Conservator is not in accordance with the guidelines dated 22.12.2000 (Annexure-R-4/3 of the Counter) and therefore, the applicant's case for promotion to the rank of CF w.e.f. 22.3.2011 deserves reconsideration.

16. In the light of the discussions above, we allow the OA in terms of the following directions to the respondents:-

- The Review Screening Committee is to be convened by the respondents to review the recommendations of the Committee in its meeting held on 1.3.2011 and to consider the case of the applicant for promotion to the post of Conservator of Forests with effect from the date the respondent nos. 5 & 6 were promoted to the post of Conservator of Forests i.e. from 22.3.2011.
- In case the applicant is found to be fit for promotion by the Review Committees as stated above, then he will be promoted on notional basis with no differential arrear salary, but he will be allowed consequential differential pension and other retirement benefits including arrear retirement benefits as per the rules.
- These directions are to be complied by the respondent nos. 2, 3 and 4 by issuing appropriate orders, copies of which are to be communicated to the applicant within four months from the date of receipt of a copy of this order.

17. The OA is allowed as above. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)