

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 1005 of 2013

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. Tarun Shridhar, Member (A)

1. Sri Kedar Ch. Dalai, aged about 52 years, S/o Late Ananda Dalai, At-Ankula, P.O. – Khuntakata, P.S. – Athagarh, Dist. – Cuttack, at present working as D.F.O., Bolangir (K.L.) Division, Dist – Bolangir.

.....Applicant.

VERSUS

1. Union of India represented through its Secretary, Ministry of Environment Forest and Climate Change, Jorbagh, Lodhi Colony, New Delhi – 110003.
2. State of Orissa, represented through its Chief Secretary, Secretariat Building, Bhubaneswar, Dist. – Khurda.
3. Principal Secretary, Forest and Environment Department, Secretariat Building, Odisha, Bhubaneswar, Dist. – Khurda.
4. Union Public Service Commission, Dholpur House, Sahajahan Road, New Delhi – 1, represented through its Chairman.
5. Manmohan Panigrahi, IFS, retired, C/o-Adikanda Panigrahi, Plot No. 1574/256, Lane – 4, At-

Bhaktamdhu Nagar, Gandamunda, Khandagiri,
Bhubaneswar, Dist. – Khurda.

6. Siba Narayan Mohaptra, IFS, Retired, Plot No. 11,
Samasti Residency, Aty-Satyabadi Nadagar, Unit-8,
Bhubaneswar, Dist- Khurda, PIN – 751003.
7. Prakash Chandra Mishra, IFS, Retired, A/4, Brindavan
Enclave, aT-Khandagiri bari, P.O. – Khandagiri,
Bhubaneswar, dist – Khurda, PIN – 751030.
8. Ramesh Chandra Sethi, IFS, CCF, K.L. Division,
Sambalpur Circle, aT/PO/Dist-Sambalpur.

.....Respondents.

For the applicant : Dr. J. K. Lenka, Advocate.

Mr. P. K. Behera, Advocate.

For the respondents: Mr. S. B. Jena, Advocate.
Mr. A. K. Mohapatra, Advocate.
Mr. J. Pal, Advocate.

Heard & reserved on : 17.12.2020

Order on :01.02.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) Issue necessary direction to the Respondents particularly Resp. No. 1 to select the applicant in the IFS cadre retrospectively at least with effect from when his immediate juniors got such benefit i.e., with effect from 21.02.2007;
- (ii) And further be pleased to direct the Respondents to give all financial benefits as due and admissible to the

applicant in the cadre of IFS from 21.02.2007 the date on which private respondent nos. 5 to 8 junior to the applicant got such promotion with all consequential and financial benefits;

(iii) Further direction be made to issue necessary corrigendum by modifying the position of the applicant in the gradation list of IFS Officers under Annexure – 6 i.e., in between Atish Kumar Behera and Ramesh Ch. Sethi and the year of allotment of the applicant may kindly be fixed during the year 1999.

(iv) And pass any other order(s)/direction(s) which would afford complete relief(s) to the applicant in the facts and circumstances of the case.

2. The applicant was initially appointed as Assistant Conservator of forest in the year 1988 and he was promoted to the rank of deputy Conservator of forest in the year 1998 under OFS Class-1. While he continuing in the OFS Class I service a departmental proceeding was drawn up against him. The applicant submits that a gradation list was published for OFS-I (Group A) officer as on 01.01.2006 (Annexure A/1) where his name was at Sl. No. 8. The applicant submitted as per the gradation list Govt of India in the department of Forest and Environment after considering the suitability and seniority of the applicant issued a notification on 08.02.2007 (Annexure A/2) wherein the applicant was provisionally selected to IFS cadre under the Indian Forest Service (appointment by promotion) Regulation 1966 and his name was found at Sl. No. 2 in the select list of 2003. Thereafter Respondent No. 1 issued another notification on 21.02.2007 (Annexure A/3) wherein some juniors to the applicant have been selected in the IFS cadre whereas the name of the applicant did not find place. The applicant made

several representations to the authorities with a prayer to select him in the IFS cadre from the date when his immediate juniors have been selected. While the matter stood thus the Govt. of Odisha in the department of Forest and Environment by the order of Hon'ble Governor dropped the departmental proceeding vide its order 08.07.2008 (Annexure A/4) which was drawn up against the applicant in the year 2002. After the dropping of charge sheet a notification dated 30.07.2009 (Annexure A/5) was issued by department of Forest and Environment, Govt of India wherein the applicant was selected in the IFS cadre with immediate effect. The applicant submitted that after selection to the IFS cadre his name was found at Sl. No. 96 in the disposition list (Annexure A/6) of All India Service Cadre whereas his immediate juniors (Respondent No. 5 to 8) who were provisionally selected along with applicant their names found place at Sl. No. 92, 93, 94 and 95. The applicant submitted that though he was selected in the IFS cadre along with his juniors by virtue of the notification dated 08.02.2007 but due to sheer inaction on the part of the respondents he was not selected in the year 2007 along with his juniors but in the year 2009. The applicant made two representation dated 24.02.2010 and 19.07.2010 (Annexure A/7s series) with a prayer to restore his seniority in the cadre of IFS but no action has been taken. Hence the OA.

3. Respondent No. 2 in their counter inter alia averred that Respondent No. 1 prepares the select list who are eligible for promotion to the next higher grade and placing the name of the officers in the notification of the select list is issued by Government of India and as per the notification of Government of India the select list is issued by the State Government from time to

time. The state government has no role for modification of the select list as well as the year of allotment. The respondents further submitted that departmental proceeding initiated against the applicant has been drawn by the Government of Odisha in Forest and Environment department vide their order dated 08.07.2007 and Respondent No. 2 has no comments on this issue and after closure of the departmental proceeding the applicant was selected in the IFS cadre vide notification dated 30.07.2009 and the complaint made by the applicant for inaction and delay in issuance of notification dated 30.07.2009 instead of 21.02.2007 is not correct but presumption.

4. Respondent No. 3 in their counter inter alia averred that in the year 2002 a departmental proceeding was initiated against the applicant for certain irregularities during his incumbency as DFO vide memo dated 16.09.2002. In the gradation list of OFS -1 (Group A) published as on 01.01.2006 the applicant was at Sl. No. 8. The respondent submitted that the applicant raised question of issuance of notification on 08.02.2007 where his position in the select list was at Sl. No. 2 but in another notification issued on 21.07.2002 wherein some juniors of the applicant were selected in the IFS cadre the name of the applicant does not find place. The respondent submitted that Respondent No.1 prepare the select list who are eligible for promotion to the next higher grade and placing the name of the officers in the notification of Government of India the select list is issued by the State Government from time to time. The state Government has no roll in modification of the select list along with the year of allotment. The notification issued by the Government of India has been carried out by the Government of Odisha from time to time

soon after received from Government of India. The respondents further submitted that in the notification dated 08.02.2007 regarding provisional selection of the applicant it was clearly mentioned that the name of the applicant has been included in the selection list provisionally subject to his clearance in the disciplinary proceeding and the departmental proceeding was dropped against the applicant vide order dated 08.07.2008. Regarding the issue of applicant name being placed in the disposition list of IFS cadre in Sl. No. 96 whereas the name of his junior been placed above in the Sl. No. 92, 93, 94 and 95 it is submitted by the respondent that as per the select list prepared and issued by the Government of India, the select list is prepared and issued by the Government of Odisha in Forest & Environment Department. It is further submitted that the representation of the applicant to Forest & Environment Department does not carry any meaning since in the selection of State Forest Service Officer to All India Forest Service the department has a minimum role i.e. to send the gradation list of OFS Officers and other required papers to the GA & PG department is the cadre controlling department of the all India services besides the UPSC & MoEF Government of India are the appropriate authorities to select the OFS Officers to the IFS cadre and also notification of select list and year of allotment so the place and position in the disposition list of the All India Service and non-selection of the applicant from the date of his junior got promoted to IFS would be answered by MoEF, Government of India and GA & PG department of the State.

5. Respondent No. 4 in their counter inter alia averred that in pursuance to IFS (Appointment by Promotion)

Regulations, 1966 as selection committee presided over by the Chairman/Member of the UPSC makes selection of State Forest Service (SFS) officers for promotion to the Indian Forest service (IFS). As per Regulation 5 (1) of the Promotion Regulations, the number of vacancies against which selection is made for a particular select list for promotion to IFS of a State Cadre is determined by the Government of India, MoEFCC in consultation with the State Government concerned. Thereafter the State Government forwards a proposal to the commission along with the seniority list, eligibility list of the state service officers, integrity certificates, certificates regarding disciplinary/criminal proceedings, certificate regarding communication of adverse remarks, details of penalties imposed on the eligible officers etc and complete ACR dossier of the eligible officers. After receipt of the above documents from the State Government it is examined by the commission for completeness and after deficiencies are resolved are placed before the selection committee which inter alia consider for inclusion of SFS Officers to IFS of the State Cadre in the manner referred in the Regulation as under:

*“The Selection Committee shall classify eligible officers as **"Outstanding"**, **"VeryGood"**, **"Good"** or **"unfit"** as the case may be on an overall relative assessment of their service records.*

*5 (4) The List shall be prepared by including the required number of names first from amongst the officers finally classified as **"Outstanding"** then from amongst those similarly classified as **"Very Good"** and thereafter from amongst those similarly classified as **"Good"** and the order of names inter-se within each category shall be in the order of their seniority in the State Forest Service.*

Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

Provided further that while preparing year wise select lists for more than one year pursuant to the 2nd proviso to sub regulation (1), the officer included provisionally in any of the Select List so prepared shall be considered for inclusion in the Select List of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis such inclusion shall be in addition to the normal size of the select list determined by the Central Government for such year.

EXPLANATION I: The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the officer or filed in a Court as the case may be.

EXPLANATION II: The adverse thing which came to the notice of the State Government rendering him unsuitable for appointment to the service shall be treated as having come to the notice of the State only if the details of the same have been communicated to the Central Government and the Central Government is satisfied that the details furnished by the State Government have a bearing on the suitability of the office and investigation thereof is essential.

7 (4) The Select List shall remain in force till the 31st day of December of the year in which the meeting of the Selection Committee was held with a view to prepare the list under sub-regulation (1) of regulation 5

or up to 60 days from the date of approval of the Select List by the Commission under sub-regulation (1) or as the case may be finally approved under sub-regulation (2) whichever is later:

Provided also that where the select list is prepared for more than one year pursuant to the second proviso to sub-regulation (1) of regulation 5, the Select Lists shall remain in force till the 31st day of December of the year in which the meeting was held to prepare such lists or up to 60 days from the date of approval of the Select Lists by the Commission under this regulation, whichever is later.

*Provided that where the State Government has forwarded the proposal to declare a provisionally included officer in the Select List as "**Unconditional**" to the Commission during the period when the Select List was in force, the Commission shall decide the matter within a period of **forty five** days or before the date of meeting of the next Selection Committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the Select List as unconditional and final, the appointment of the concerned officer shall be considered by the Central Government under regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the Select List ceased to be in force."*

The respondents submitted that the above procedure is being uniformly followed for all the State/Cadres in the matter of induction to All India Services.

6. Respondent No. 4 further submitted that the selection committee meeting for preparation of the year wise select list of 2002 and 2003 was held on 03.12.2003

for consideration for promotion of SSF Officers to IFS of Odisha Cadre. However, the meeting was re-convened on 24.11.2006 in continuation of the meeting held on 03.12.2003 on account of incomplete zone of consideration furnished by the State Government. The name of the Shri Atish Kumar Behera and Ramesh Ch. Sethi were included at Serial No. 1 and 3 respectively in the select list of 2003. The name of the applicant was provisionally included at Sl. No.2 in the select list of 2003 in the meeting held on 24.11.2006 subject to clearance in the disciplinary proceedings pending against him. The select list was approved by the Commission (Respondent No.4) on 06.02.2007 and acted upon by Respondent No. 1 vide notification dated 08.02.2007. Accordingly, as per the first proviso of Regulation 7(4) the select list of 2003 remained in force till 07.04.2007 i.e. 60 days from the date of approval of the select list. It is further submitted that as per provisions of Regulations 7(4) of the IFS (Appointment by Promotion) Regulations, 1966 the State Government is required to forward the proposal to declare a provisionally included officer in the select list and "unconditional" to the commission during the period when the select list was in force. Since the disciplinary proceedings against the applicant was dropped vide order dated 08.07.2008 i.e. after the expiry of the validity period of the select list of 2003 and no such proposal was received by the commission during the period when the select list was in force as such there is no cause of action in the matter on the part of the commission.

7. In the rejoinder in reply to counter filed by Respondent No. 2 & 3 the applicant submitted that because of departmental proceeding initiated against him vide memo dated 16.09.2002 he was not considered for

promotion to IFS even though his name was there at Sl. No. 2 of select list of 2003 vide notification dated 08.02.2007 but the private respondent no. 6, 7, & 7 got promotion vide notification dated 21.02.2007. The applicant submitted that vide letter dated 02.06.2007 (Annexure A/8) addressed to the Principal Secretary to Govt. Forest and Environment Department the CCF intimated that the applicant has been exonerated and charges were not established and that the applicant has performed his duty well and he should be rewarded and even pointed out that the junior of the applicant were confirmed in the IFS. The CCF again vide letter dated 06.10.2007 (Annexure A/9) wrote to the Govt for the same above said reason. In addition to the above Principal Chief Conservator of Forest vide letter dated 03.12.2003 (Annexure A/10) had also recommended the case of the applicant for promotion. The applicant further submitted that during pendency of the OA private respondents No. 7 & 8 were further promoted to the grade of CCF in super time scale of IFS as per notification dated 11.05.2017 (Annexure A/11) totally ignoring the legitimate claim of the applicant who is admittedly senior to the said private respondent no. 7 & 8. The applicant submitted that due to illegal action of the Govt in initiating departmental proceeding the applicant's legitimate promotion to IFS and his allotment year has been overlooked and even after total exoneration and despite representations, his year of allotment, promotion and seniority has not been restored. The applicant submitted that State Govt had initiated departmental proceeding against him and after exoneration the State should have moved the central Govt for restoration of year of allotment as well as seniority with promotion but nothing has been done by

the State Govt. It is submitted that soon after the closure of aforesaid departmental proceeding exonerating the applicant from all charges the applicant's appointment to IFS should be restored to 21.02.2007 instead of 30.07.2009 and accordingly gradation list should be finalized and the applicant should be placed above Ramesh Chandra Sethi and after Atish Kumar Behera.. The applicant submitted that the applicant was placed above private respondents No. 5 to 8 in the gradation list of 01.01.2006 therefore no objection was required to be filed.

8. After going through pleadings of the parties and materials on record it is seen that departmental proceeding were initiated against the applicant on 16.09.2002. After receiving his explanation Inquiry officer was appointed. The inquiry officer submitted his report on 10.02.2005 mentioning therein that the charges are not established. But the disciplinary authority had differed from the findings of the inquiry officer on some grounds. The representation invited in this regard was not accepted by the disciplinary authority and OPSC was consulted. The OPSC in their letter dated 21.04.2008 advised to reconsider the case. Then after careful consideration, basing on the report of CCF (Kendu Leaves) vide his letter dated 06.10.2007 and 02.06.2007, the disciplinary authority was pleased to drop departmental proceeding initiated against the applicant as seen from Annexure 4 dated 08.07.2008. As per the select list prepared by the selection committee as per Regulation 5 (1) IFS (Appointment by Promotion) Regulation 1966 issued by Govt of India, the select list is prepared and issued by Govt of Odisha in Forest and Environment department. The name of the applicant had been

included in the select list provisionally as per notification dated 08.02.2007, subject to his clearance in the departmental proceeding. As per regulation 5 (1) of IFS (Appointment by Promotion) regulation 1966, the number of vacancies against which selection is made for a particular select list for promotion to IFS of a state cadre is determined by Govt. of India in consultation with concerned state govt. Thereafter the state govt forwards a proposal to UPSC along with required documents. After examination of the relevant documents, the matter are placed before the selection committee in the matter referred in regulation. In case name of particular officer, so included in the list shall be treated as provisional, if the state govt withholds integrity certificate in respect of such an officer or any proceeding, departmental or criminal is pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the state govt. In this case departmental proceeding was pending against the applicant, therefore inclusion of his name in the select list was treated as provisional.

9. It is also provided that the officer included provisionally in any of the select list so prepared shall be considered for inclusion in the select list for subsequent year, in addition to the normal consideration zone. The proceeding shall be treated as pending only if charge sheet has been issued to the officer. In the present case, charge sheet was pending against the applicant when the matter was taken up by selection committee. The validity of selection list has expired. Therefore the applicant cannot claim that his name should be considered for inclusion in the select list for the relevant period in respect of which selection committee had taken decision. In the

counter filed by Respondent No 4 it has been specifically mentioned that the name of applicant was provisionally included at Sl. No. 2 in the select list of year 2003 in the meeting held on 24.11.2006 subject to clearance of disciplinary proceeding pending against him. The select list was approved by the commission, Respondent no. 4 on 06.02.2007 and was acted upon by respondent no. 1 vide notification dated 08.02.2007. The said select list remained in force till 07.04.2007 i.e. 60 days from the date of approval of select list.

10. No proposal was received by the commission during the period of validity of select list in question. Accordingly the respondents have rightly taken the stand that the applicant was not entitled to any promotion as per the select list which was no more in force after 07.04.2007. Indian Forest Service is not a promotion post in hierarchy of state forest service. The appointment by promotion is governed by specific regulation. In a similar circumstances, Hon'ble CAT Ernakulum Bench had refused to grant any relief to the applicant in OA 628/2008 disposed of on 03.04.2009 (R. Rajendran versus UOI). The citations relied by learned counsel for the applicant are not applicable to the facts and circumstances of the present case, and therefore the same are of not any help to the case of the applicant. Although it is revealed from the materials on record that one Atish Behera, junior to the applicant had been given promotion, the said person has not been made a party in this case. It is not known if the said person has retired in the meantime, although another person who was junior to the applicant and had been given promotion has been arrayed as Respondent No 8 i.e Ramesh Chandra Sethi. Besides that delay in

approaching this Tribunal in filing this OA in 2013 is not been explained although the applicant has mentioned that he has submitted two representations in the year 2010 vide Annexure A/7 series. In a promotional matter the delay in approaching the tribunal cannot be overlooked since the rights already accrued in favour of some other officers will be affected and normally the tribunal or court hesitate to take any steps to unsettle the settled position due to laches of the aggrieved in approaching this tribunal for redressal of his grievance.

11. Accordingly the OA being devoid of merit is dismissed but in the circumstances without any order to cost. The MA is accordingly disposed of.

(TARUN SHRIDHAR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)