

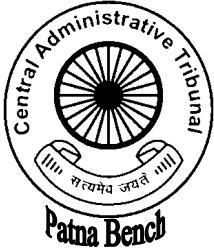
**CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA  
OA/051/00287/2020**

Reserved on: 09.02.2021  
Pronounced on: 26.02.2021

**C O R A M**

**HON'BLE MR. M.C. VERMA, JUDICIAL MEMBER**

**HON'BLE MR. SUNIL KUMAR SINHA, ADMINISTRATIVE MEMBER**



Shashi Nandkeolyar, aged about 59 years, son of Late Sheo Narayan Lall Nandkeolyar, resident of C-269, Road No. 1B, Ashok Nagar, P.O.- Ashok Nagar, P.S.- Argora, District- Ranchi-834002.

.... Applicant.

By Advocate: - Shri Ankit Vishal

-Versus-

1. Union of India, represented by Secretary, MoEF&CC, Department of Forest and Wildlife, Paryavarana Bhawan, CGO Complex, P.O. New Delhi, P.S.- New Delhi, New Delhi- 110003.
2. Secretary, Department of Personnel & Training, Government of India, North Block, P.O.- North Block, P.S.- North Block, New Delhi- 110001.
3. State of Jharkhand through its Chief Secretary, at Project Building, Dhurwa, P.O. Dhurwa, P.S.- Jaganathpur, District- Ranchi, Pin Code- 834004.
4. Principal Secretary, Department of Forest, Environment & Climate Change, Government of Jharkhand, at Nepal House, Doranda, P.S.- Doranda, District- Ranchi, Pin Code-834002.
5. Priyesh Kumar Verma, son of not known to the applicant presently working as PCCF (HoFF), having its office Van Bhawan, Dorand, P.O. Doranda, P.S.- Doranda, District- Ranchi- 834002.

.... Respondents.

By Advocate(s): - Shri Rajendra Krishna, Id. Sr. SC for R-1 & 2

Shri Rajiv Ranjan, Id. Advocate General with Shri Sachin Kumar, AAG-II and Shri Deepak Kumar Dubey, AC to AAG-II for R-3 & 4

Shri Bhanu Kumar, Sr. Advocate with Shri Bharat Kumar and Ms. Twinkle Rani for Pvt. Respondent No. 5

## **ORDER**

### **Per S.K. Sinha, AM :**

1. In instant OA decision of Jharkhand Government whereby Respondent No. 5 has been appointed as the Principal Chief Conservator of Forest (PCCF) cum Head of Forest Force (HoFF) has been assailed by the applicant, an IFS officer of 1986 batch, inter-alia on the plea, among other that after having considered the APARs of last 10 years, experience & performance in the past and the parameters of selection, the Special Selection Committee recommended the panel of three officers in order of merit in which applicant and one Shri Lal Ratnakar Singh (who before date of impugned order had superannuated) jointly were assigned position one and Respondent No. 5, who is his junior was placed below them at position two but without assigning any reason Respondent No. 5 has been appointed.

2. The applicant has prayed to quash Notification No. Bha.Va.Se (Stha).-155/2000-1630 dated 24.06.2020, whereby and where-under Shri Priyesh Kumar Verma ( respondent no. 5) has been appointed to the post of PCCF (HoFF) and further prayer is for issuance of direction commanding upon the official respondents to appoint the applicant to the post of PCCF(HoFF) giving all consequential benefits attached thereto w.e.f. 24.06.2020.



3. Have heard the rival submissions advanced by counsel of parties, perused the pleadings as well the written notes of argument filed by respective counsel. Before advertiring to merits of the matter, it appears worth noting to record admitted/indisputable facts which has emerged and the same are as under:-

(I). Govt. of India Under Rule 11 of the Indian Forest Service (Pay) Second Amendment Rule, 2008, in exercise of the Powers conferred by Sub Section 3 of The All India Services Act ,1951 created the post of Principal Chief Conservator of Forest (PCCF) cum Head of Forest Force (HoFF) , in Apex Scale in each State Cadre/UTs, to implement the Rule Ministry of Environment & Forest, Govt. of India did issue letter No. 16019/1/2008-IFS-II, dated 16.04.2009 prescribing guidelines for selection to said post and according to the Guidelines the officers holding the post of PCCF in the HAG+ scale (Rs. 75500-80000/ ) in the State would be eligible for selection to the post of PCCF(HoFF) in Apex scale and that for selection a Special Selection Committee comprising of the Chief Secretary of the concerned State/UT, as Chairperson and the Principal Secretary, Forest, the PCCF (Apex Scale) of the concerned State/UT and one PCCF in the Apex Scale, nominated by MOEF, Govt. of India would be its Members. The Guidelines also specify outstanding merit, competence, absolute integrity and specific suitability for the post as parameters for the selection.



(II). Principal Chief Conservator of Forest (HoFF) of Jharkhand, namely, Shri Sanjay Kumar was relieved, on 23.12.2019 from the State for Central Deputation and the applicant, who then holding the post of PCCF-cum Executive Director, Wasteland Development Board was given the additional charge of PCCF (HoFF).



(III). Ministry of Environment & Forest, Govt. of India was requested to nominate an officer in the rank of PCCF (Apex Scale) to the Special Selection Committee for selection for the post of PCCF (HoFF) in the State and after obtaining the nomination, the State Government held the Special Selection Committee meeting on 17.02.2020.

(IV). The Committee considered eight officers holding the rank of PCCF (Pay Matrix Level 16) in the state and one officer who was given proforma promotion to the Pay Matrix Level 16 in view of his Central Deputation. The Committee shortlisted three officers, namely, Shri Lal Ratnakar Singh(IFS:84), Shashi Nandkeolyar (IFS:86) and Shri Priyesh Kumar Verma (IFS:86) for consideration zone as they only were holding substantive post of PCCF (Level 16). Rest six officers were not considered as their promotion was against the temporarily created posts for two years.

(V). The committee recommended panel for appointment for the post of PCCF (HoFF). The recommendation and findings of

the Special Selection Committee neither has been agitated nor has been questioned by the Applicant or by the Respondent No.5 or by official respondents.

(VI). The recommendation of the Committee was forwarded, on 17/2/2020 itself by the then Additional Chief Secretary of Department of Forest, through Chief Secretary of State for placing before the competent authority, i.e. the Hon'ble Chief Minister, Jharkhand for appointment



(VII). The Hon'ble Chief Minister, vide his note dated 15/3/2020 sought clarification whether any of those three recommended officers was involved in North-Karnpura Coal Block Wildlife Management Plan and Watch Tower Construction in Tiger Reserve wherein irregularities were reported earlier. The Hon'ble Chief Minister also directed to put up the file with clear recommendation after examining the facts.

(VIII). The file was put up again before the Hon'ble Chief Minister, however, he, vide his note dated 25/5/20 made further enquiry about other IFS officers serving in the State in the rank of PCCF ( Level 16). Meanwhile, Shri Lal Ratnakar Singh had retired on 30.04.2020 after attaining age of superannuation.

(IX). The file, with details was sent again, on June 4, 2020 to the Hon'ble Chief Minister and the Hon'ble Chief Minister

selected Shri Priyesh Kumar Verma for the post of PCCF (HoFF) and also directed that in addition thereto Shri Priyesh Kumar Verma shall remain in charge of Chairman Jharkhand Pollution Control Board.

(X). The Govt. of Jharkhand issued notification on 24.06.2020 and Shri Priyesh Kumar Verma joined the post on 24.06.2020.



4. The applicant's case is that he is the senior most IFS officer of 1986 batch in Jharkhand Cadre. In his 34 years of service he worked in almost all the wings of the Department and at different places in the State. His service record is unblemished and because of his professional ability he was assigned additional responsibilities several times. He was given the additional charge of PCCF (HoFF) w.e.f. 23.12.2019 when Shri Sanjay Kumar was relieved on Central Deputation. Despite the recommendation of the Special Selection Committee as also that of the Principal Secretary, Forest and the Chief Secretary, Jharkhand in his favor the Competent Authority decided to appoint Shri Priyesh Kumar Verma as PCCF (HoFF). The decision of Competent Authority to appoint Shri Priyesh Kr Verma as PCCF (HoFF) overlooking recommendation of the Special Selection Committee. After the notification of appointment of Priyesh Kr Verma as the PCCF (HoFF) he requesting to consider his appointment as PCCF (HoFF) represented on 30.06.2020. The applicant has pleaded that the Special Selection Committee had made recommendation in order of merit but without assigning any ground for disagreement

the same has been overturned. That decision to appoint respondent No. 5 is arbitrary decision and the applicant, who is senior to private respondent no. 5, is forced to work under his junior is causing mental agony and harassment.

5. All the five respondents did file their WS. Respondent No. 1 and 2, In their joint WS have confined mainly to the basic facts of the case and craving leave to file further reply, if found necessary at a later stage, have confirmed that Shri Ravikant Sinha, IFS officer of West Bengal holding Apex Scale was the Central Government nominee in Special Selection Committee. No further reply was filed by them.

6. Contesting the OA and exclusively focusing on the ground of maintainability and craving leave to file further reply, Respondent No. 5 raising preliminary objections that the OA has been preferred without exhausting alternative remedy and is also not maintainable for non joining of necessary party, did file first Written Statement, on 9th September 2020. At the time of admission hearing parties were heard at length qua preliminary objections raised and having found the same not tenable, the OA, vide order dated 21/10/2020 was admitted. Needless to say that legality of said order dated 21/10/2020 was challenged in writ petition on the file of Hon;ble High Court by Respondent No.5 and upon dismissal of his writ petition he preferred the SLP, which has also been dismissed.



7. In his subsequent WS, respondent no. 5 did plead that the Special Selection Committee after going through the APARs of last 10 years of officers under consideration zone held that all the three officers, who were in zone of consideration fulfilled all the parameters of selection and hence are eligible and suitable for appointment to the post of PCCF (HoFF) and their names in the panel for the post. That absolute integrity is one of the four parameters for selection to the post. That one complaint was pending against the applicant and factum of pendency of complaint against him also has been noted down by the Special Selection Committee. That pendency of a complaint is sufficient for rejecting the applicant's name for the post of PCCF (HoFF). That as per the Guidelines of Govt. of India seniority is not a parameters for selection to the post of PCCF (HoFF). That once selection committee recommends the panel the "factum of merit or seniority" becomes irrelevant. That he and the applicant both have got average APAR score above 9 and DoP&T OM dated 23.07.2009 provides that those scoring between 8 and 10 are graded as Outstanding and are given an average score of 9 for the purpose of empanelment/ promotion and, hence comparing the two in terms of average APAR scores in decimal points is against the Govt. of India guidelines. Relating to averment of the applicant about the recommendation in his favour by the Principal Secretary, Forest and the Chief Secretary, Jharkhand , RespondentNo. 5 pleaded that after the recommendation of the Selection Committee comments by the



Secretary was an attempt to interfere in the process of selection and he also pleaded that additional charge of the office of PCCF (HoFF) was not given to the applicant on account of suitability and merit, the decision of the State Govt. was wrong and erroneous and one Shri L.R. Singh, who was two years senior to the applicant raised objection to that decision.



8. The respondents no.3 and 4 did file common WS, on 10<sup>th</sup> Sept 2020 and in said WS, they their without traversing through the different paragraph of the OA and craving leave to reserve their right to submit para-wise reply they pleaded that PCCF(HOFF) is a selection post and seniority is not the criteria for selection to the said post. The criteria for selection to the post of PCCF (HOFF) are more stringent than those for a promotional post and it is for the Selection Committee to fix a methodology to assess the officers and come to a conclusion. That the recommendation of the Special Selection Committee has not been questioned by either the applicant or respondent no. 5 and hence the recommendation of the said Committee can be said to be sacrosanct and the affected parties being in agreement with it. That the conclusion arrived at by the Selection Committee is of the nature of recommendation and that the State Government is the final authority to take a decision as to who is the most suitable officer.

9. Applicant, on 10<sup>th</sup> Sept 2020 did file **rejoinder** to this WS of respondent's no.3 and 4. He has stated that Selection Committee has

made recommendation in order of merit as well in order of seniority and in fact Lal Ratnakar Singh and the applicant were clubbed together in the matter of merit in the parameter of selection to the post. That Govt of India vide its OM dated 05/09/14 has issued Guidelines that unless statutory required not to arrange the names in the panel in the order of preference, the Selection Committee/Search cum Selection Committee must invariably indicate the order of preference. That selection of Respondent No. 5 to the post has been made in utter derogation to the specific recommendation of the Selection Committee as well the recommendation of the Departmental Secretary and of the Chief Secretary and that too without assigning any reason.

10. Respondent no. 4 on 27/10/2020 did file a separate supplementary counter affidavit stating that he took over the charge as Principal Secretary of the Department only on 15.05.2020 and that Hon'ble Chief Minister had sought certain clarification, when recommendation of the Special Selection Committee was placed before him in Feb. 2020. That when matter was again put up before the Hon'ble Chief Minister in May-end 2020 certain queries were made, which were mitigated and thereafter responding to the queries raised, the matter was put up before Hon'ble Chief Minister in June 2020. That in submission of files he did not make any evaluation or analysis of comparative merits of the two officers; he only affirmed the recommendation of the Special Selection



Committee as Principal Secretary of the Department and did not influence the decision of the Competent Authority in any manner. That the investigations against officers are currently under process and he at this point cannot comment on the allegations raised against any officers, however the relevant documents related to the complaints can be brought in sealed cover before the court.



11. The pleading does not end here. Applicant's counsel has advanced his final argument on 2/2/2021 and thereafter on February 8, 2021 one another written statement was filed by respondent's no. 3 and 4. In this written statement it has been stated that claim of applicant that he was given charge of the post of PCCF (HoFF) because he was most suited person is misconceived. No such evaluation was made nor was applicant most senior officer at that time. That action was underway in pending complaint against the applicant; it was the complaint reference of which has come in the minutes of the Selection Committee. That seniority is not a criterion whereas Absolute Integrity is of paramount importance and is a sine-qua non for selection. That there was no complaint against respondent No. 5. That all four criteria were considered in letter and spirit by the competent Authority. That order of competent authority to examine role of empanelled officers in the two specific cases, obviously was for the purpose of additional assessment of the parameter of Absolute Integrity. That it is incorrect that the Selection Committee expressed its explicit opinion in favour of Lal Ratnakar

Singh and the applicant only but the fact is that the Committee prepared a panel of three officers and recommended to select one from amongst of them. Learned Advocate General, appearing on behalf of the respondents on February 9, 2021 did urge that this written statement is only in the form of para-wise comments and is in furtherance of the written statement submitted earlier, he requested to take it on record and learned counsel for the applicant also gave his nod and stated that he would not file any supplementary rejoinder and hence it was taken on record.



12. Mr. Indrajit Sinha, learned counsel, appearing for the applicant submits that the average grading score of the APARs of the applicant is 9.722 and it is 9.361 for respondent No. 5 and that as per the recommendation of the Committee the applicant was better than the other two on the parameters of '*outstanding merit*' and '*competence*'. That the applicant was also senior to respondent no.5. He also did urge that the committee had arranged the names in order of preference based on merit, as required under the DoPT, Government of India OM dated 05.09.2014 (Annexure-R/1), he referred the OM . That Hon'ble CM, as per his recollection observed that there was some irregularity in North Karnpura Coal Block Wild Life Management Plan and construction of watch towers in Tiger Reserve and he directed to verify if any of the recommended officers were involved and that the file was re-submitted to the Hon'ble Chief Minister, on 20.05.2020, with due clarification. That

involvement of the applicant in the irregularities, referred to by the Chief Minister had not been alleged and hence, the apprehension of Chief Minister, if any, cannot be taken as directed against the applicant. He also urged that assertion of respondents is that pending complaint against the applicant was indicative of the lack of 'absolute integrity' but in fact it was an afterthought to compensate for the absence of any reason recorded in the Chief Minister's order.



13. Mr. Sinha urged further that it is no denied that the Chief Minister is the competent authority to take the final decision, however in case he decides to differ with the recommendation of the Selection Committee, he is required to assign reasons for that. He vehemently argued that the CM's decision to appoint respondent no. 5 is in disregarding of the recommendation of the selection committee and the disregarding without assigning any reason was arbitrary and against the settled law.

14. Learned Advocate General, Shri Rajiv Ranjan, appearing on behalf of respondent no. 3 and 4 argued that after submission of the recommendation it was the discretion of the Chief Minister to decide who in the panel the most suitable officer was. The Selection Committee's role is confined to submitting his recommendation, with a view to assisting the Competent Authority and Competent Authority is not required to record his reasons for his decision. That CM's decision in the capacity of competent authority was not subject to judicial review. Learned AG also urged that the CM's order was

based on all the four parameters mentioned in the guidelines for selection to the post of PCCF (HoFF) and Hon'ble CM was particularly concerned about the issue of absolute integrity as there was already a mention of three complaints pending against Shri Lal Ratnakar Singh and one complaint against the applicant and therefore the Chief Minister decided to appoint Shri Priyesh Kumar Verma as PCCF(HoFF). Learned Advocate General also informed, upon query that no action against the applicant had yet been initiated on the basis of complaint.



15. Learned Advocate General also did submit that Chief Minister's query, he gave the details of query, is reflective of his mind that he was trying to make an assessment of the officers recommended for the post of PCCF (HoFF). That the Principal Secretary, Forest and the Chief Secretary were making an attempt to push the name of applicant, they tried to influence the Competent Authority in favor of the applicant, they put up the file to the CM without giving a clear reply to his query and rather mentioned decimal of APAR score though DoP&T guidelines provides that APAR graded between 8 and 10 will be rated as Outstanding and will be given a score of 9 for empanelment/ promotion. that on 25.05.2020 also Hon'ble Chief Minister made a query as to how many more officers are there in the scale of PCCF (Pay Matrix Level 16) and putting of query not once but twice reflects that CM was examining the subject with an open mind. That this time also information

required by the Chief Minister was not provided in the file and while submitting the file, the Principal Secretary again reiterated the gist of recommendation of the Selection Committee. That after relieving of Shri Sanjay Kumar, former PCCF (HoFF) for central deputation the applicant was given the additional charge of the post of PCCF (HoFF) despite the fact that Shri Lal Ratnakar Singh then was the senior most officer and Shri Lal Ratnakar Singh did raise objection to the additional charge given to a junior officer (page 62 of OA) and present Chief Minister later inquired about the circumstances under which a junior officer was given the additional charge of PCCF (pg. 66 of OA).

16. Shri Rajendra Krishna, Sr. Standing Counsel appearing on behalf of respondent no. 1 and 2 urged that the Selection Committee was constituted in accordance with the guidelines. The recommendation of the Selection Committee which was constituted under the Govt. of India guidelines has great value. The had to be followed in 'letter and spirit in effecting selection to the post'. That the recommendation of the Selection Committee has not been honored by the Competent Authority In present case and the guidelines have not been observed in letter and spirit in effecting the selection to the post of PCCF(HoFF).

17. Shri Bhanu Kumar, learned Sr. Advocate, appearing for respondent no. 5 adopted the submissions advanced by learned AG and added that the edifice of OA stands on four assertions of the



applicant. That applicant in at Para 1.5 of the OA has averred that he was given the additional charge of the post of PCCF (HoFF) because he was considered the most suited for the job but the applicant was not the senior most IFS Officer in the cadre when the additional charge was given to him. The then Chief Minister had given the additional charge to the applicant ignoring Shri L R Singh who was two batches senior to the applicant. Shri L R Singh had raised objection to the applicant being given the additional charge. The current Chief Minister subsequently observed that if the applicant was not the senior most then how the additional charge was given to him. That applicant cannot derive any benefit from the fact that he was given the additional charge of the post of PCCF (HoFF). That at para 1.2 of the OA the applicant has pleaded that no departmental proceeding was pending nor any charge sheet was issued against him. Ld Counsel argued that non-pendency of a departmental proceeding or non-issuance of charge sheet is not relevant to the consideration of the issue. The proceedings of Special Selection Committee mentions that one complaint was pending against the applicant on which action was being taken and that there was no complaint pending against respondent no.5. A pending complaint is a relevant and germane consideration while deciding for a Selection post. That as per Government of India guidelines dated 16.04.2009 (Annexure 2) 'absolute integrity' is one of the four parameters for selection to the post of PCCF (HoFF). Even the slightest allegation or



pendency of a complaint would go against the claim to a Selection post for which absolute integrity is an essential parameter. That the applicant at Para 1.11 and para 1.12 of the OA has asserted that the Special Selection Committee as also the Principal Secretary , Department of Forest and the Chief Secretary, Jharkhand Government had recommended in his favor for the post. Learned counsel contended that the Special Selection Committee, after examining APARs of last ten years and work experience concluded that all the three shortlisted officers fulfilled the parameters of selection and are suitable for appointment to the post of PCCF (HoFF). The Committee finalized and recommended a panel of three names which were not in order of seniority and merit. The Committee did not recommend any specific name for the post; it just prepared a panel and left it to the competent authority to finally select one among the three officers. Learned counsel questioned the conduct of the Principal Secretary, Forest Department and the Chief Secretary and submitted that they tried to project the applicant as better than respondent no. 5 and made specific recommendation in favor of the applicant. This was an interference with the proceeding which went beyond his jurisdiction and that the action of Principal Secretary and Chief Secretary highlighting the name of applicant was not in accordance with the settled law and reflected their true intention to get the applicant appointed to the post of PCCF.



18. Mr. Bhanu Kumar argued further that one of the parameters of selection was absolute integrity and in view of the pending complaint against the applicant his case was dented and in appointment to selection post seniority is wholly irrelevant. He also submitted that the CM did not take the decision in haste and that assigning reasons in the order or on file was not necessary. The CM had made his choice on Doctrine of Trust and Doctrine of Necessity and his said act cannot be challenged before any court of law. In support of his submissions learned counsel has cited some decisions.



19. The learned counsel for applicant, in rebuttal, assailed the contention of Advocate General that the CM's query was not answered by the senior officials, i.e. by Principal Secretary, M/o EFCC and the Chief Secretary. He referred page 76 of the OA, where the Chief Secretary vide his noting dated 25.05.2020 had mentioned that the CM's query has been clarified. That Selection Committee in its recommendation has mentioned that the clearance from Vigilance and also from Lokayukt had been obtained in respect of all the three officers. The Selection Committee made its recommendation keeping the pending complaints against the officers in consideration. He vehemently has argued that the reasons behind final decision should be reflected in the order.

20. Having noted down the crux of submissions of counsel of the parties & the pleadings and having examined materials on record as

well having gone through the decision relied upon by rival parties, it is the time to advert to the merits of the case.

21. Learned AG have argued that CM's decision in the capacity of competent authority is not subject to judicial review and Mr. Bhanu Kumar, learned advocate has also argued that the CM had made his choice on Doctrine of Trust and Doctrine of Necessity and his said act cannot be challenged before any court of law. In instant case applicant has contended that the CM's decision to appoint respondent no. 5 as the PCCF (HoFF) is in disregarding of the recommendation of the selection committee and without assigning any reason, it was arbitrary and against the settled law.

22. The equality before the law not only includes the rule of law but also principle of natural justice and the main objective of Article 14 are to strike out arbitrariness from State action to ensure fairness and equality. The Chief Minister of the State has also no absolute discretion. We do not find merit in the submissions that CM's decision in the capacity of competent authority is not subject to judicial review and thus found ourselves unable to accept this submission that CM's decision is not subject to judicial review.

23. It has been emphasized in his pleading by the applicant that he is senior to respondent no.5 and he was given the additional charge of the post of PCCF (HoFF) so he could not be ignored. The applicant has referred decision rendered in *Government of Karnataka Vs C. Dinakar*, (1999) 5 SCC 161, in which it has been observed that



merit being equal between the rival claimants , the seniority of the petitioner could not have been ignored. The stand of contesting respondents is that the applicant cannot derive any benefit from the fact that he was senior or was given the additional charge of the post of PCCF (HoFF) as applicant was given additional charge of the post of PCCF (HoFF) not because he was considered the most suited for the job or he was the senior most IFS Officer in the cadre. The then Chief Minister had given the additional charge to the applicant ignoring Shri L R Singh who was two batches senior to the applicant, Shri L R Singh had raised objection and the present Chief Minister subsequently observed that if the applicant was not the senior most then how the additional charge was given to him.

24. Applicant only for the reason that he was senior to respondent no.5 and was given the additional charge of the post of PCCF (HoFF) cannot be said to have any pre-emptor's right to the post nor can derive any benefit from these facts, particularly when all these facts were before the Selection Committee and after having considered these all Selection Committee has made recommendation which has been accepted by all the parties to lis. It is also significant to note here that the decision in C. Dinakar's case, the decision relied upon by the applicant, was on different set of facts. In *Dr. Jai Narain Misra Vs State of Bihar and Others (1971) 1 SCC 30* Hon'ble Supreme Court has held that the question of seniority was not relevant in making appointment to a selection post. In *N P Mathur and Others Vs*



*State of Bihar (1972) AIR (Patna) 93* Full Bench of Hon'ble Patna High Court laid down that for appointment to a Selection Post seniority alone is not a criteria.

25. One issue that has been pressed for by the parties is about the role played by the Principal Secretary, Forest and the Chief Secretary. Applicant has asserted that Principal Secretary, Forest and the Chief Secretary, Jharkhand recommended in his favor. Submission of the respondent is that the Principal Secretary, Forest and the Chief Secretary tried to influence the Competent Authority in favor of the applicant, they put up the file to the CM without giving a clear reply to his query, they rather mentioned APAR score of Shri Shashi Nandkeyolar (9.722) and Priyesh Kumar Verma (9.361) though DoP&T guidelines, dated 23.07.2009 provides that APAR graded between 8 and 10 will be rated as Outstanding and will be given a score of 9 for empanelment/ promotion and this was an interference with the proceeding which went beyond their jurisdiction.

26. Suffice it would to say that it is settled legal position, as has been held by Hon'ble Supreme Court in *A.K. Doshi Vs. UOI (2001) 4 SCC 43* that after the Selection Committee completes the exercise and recommends one or more names for appointment, the recommendation along with materials considered by the committee should be placed before the Appointment Committee without any further addition or alteration. In instant case it is not the case that because of undue favour of the Principal Secretary, Forest and the



Chief Secretary the Competent Authority did appoint the applicant and hence it is not necessary to adjudicate the issue whether the Principal Secretary, Forest and the Chief Secretary tried to influence the Competent Authority in favor of the applicant. However, if State feels that they went beyond their jurisdiction, there is no impediment for the State to take appropriate step for that.

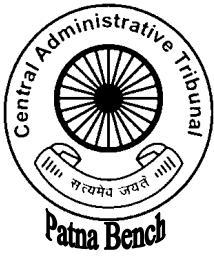


27. It has been asserted by the applicant that the Special Selection Committee had arranged the names in order of preference based on merit and contention of the respondent State and of private respondent is that the Committee finalized and recommended a panel of three names which were in order of seniority and not on merit, the Committee just prepared a panel and left it to the competent authority to finally select one among the three officers. We have considered these aspects.

28. DOPT OM dated 05.09.2014 (Annexure-R/1) states that the selection committee/search-cum-selection committee should invariably indicate the names in the panel in order of preference unless statutorily requirement prohibits so. It is case of none that the Act /Statute governing the post of PCCF ( HoFF) required that the Selection Committee not to recommend the panel in order of preference. The minutes of the Selection Committee is in Hindi and transcript in English of its relevant portion is as under :-

*“ ---- The the clearance from Vigilance department and Lok Ayukta are available in respect of all the three*

*shortlisted officers. No departmental proceeding is pending against any of them. Committee examined the details of pending complaints against the three shortlisted officers. Three complaints pending against Shri Lal Ratnakar Singh and one against Shri Shashi NandKeolyar are in process but no decision had yet been taken to initiate action against these officers. No complaint is pending against Priyesh Kumar Verma.*



*The committee deeply considered the APARs & work experience of last 10 years and on the basis of evaluation reached on conclusion that all the three shortlisted officers meet the parameters of selection and are suitable for the Post of PCCF ( HoFF).*

*Having considered the experience and particularly the post held by three officers in the past, in view of the committee Shri Lal Ratnakar Singh is better than other two officers on the parameter of specific suitability for the post.*

*On the other hand, in view of the committee Shashi Nandkeyolar on the basis of APARs is better than the other two on the parameters of outstanding merit and competence.*

*Accordingly it is difficult from among Lal Ratnakar Singh and Shashi Nandkeyolar to say the one as better from the other. In the light of aforesaid facts, the committee recommended the following panel for appointment for the post of PCCF (HoFF) in order of merit :-*

1. *Shri Lal Ratnakar Singh (1984), Shri Shashi Nandkeyolar (1986)*
3. *Shri Priyesh Kumar Verma (1986) -----"*

29. It is obvious that the committee had arranged the name of empanelled officers in order of preference based on merit, as required under the OM. The Special Selection Committee has

observed that it was difficult to say who among Shri Lal Ratnakar Singh and Shri Shashi NandKeolyar was better and hence did place them together at Serial number one in merit list and placed Shri Priyesh Kumar Verma at number three.

30. The Selection Committee was constituted in accordance with the guidelines. The parameters for selection, specified in the guidelines, were decided in consultation with the DoP&T. The recommendation of the Selection Committee which was constituted under the Govt. of India guidelines has great value. The forwarding letter dated 16.04.2009 mentions that the guidelines must be followed in 'letter and spirit in effecting selection to the post'. In the present case, the Competent Authority, the Hon'ble Chief Minister decided to appoint the officer lower in merit and thus it can be said that he differed from the recommendation of the Selection Committee in effecting the selection to the post of PCCF (HoFF).

31. It is not denied that the competent authority can differ however, in case he decides to differ with the recommendation of the Selection Committee is he required or not to assign reasons for that?

32. According to the applicant's counsel it is not denied that the competent authority has to take the final decision but in case he decides to differ with the recommendation of the Selection Committee he is required to assign reasons for that. The learned counsel to fortify his submission has placed reliance on decisions: (i).



*S. Chandramohan Nair V. Geroge Joseph & Others 2010(12) SCC 687,*  
*(ii) Dr. S.M. Bose V. All India Institute of Medical Sciences & Others*  
*1993 (26) DRJ 544, (iii) Ravi Yashwant Bhoir Vs. District Collector,*  
*Raigad & Others 2012(4) SCC 407 (vi) East Coast. Railway &*  
*Another Vs Mahadev Appa Rao & Others (2010) 7 SCC 678.* Learned  
Advocate General has argued that after submission of the  
recommendation it was the discretion of the Chief Minister to decide  
who in the panel the most suitable officer was and the Competent  
Authority was not required to record his reasons for his decision and  
counsel for respondent No.5 has endorsed said submission of  
learned AG by stating that in purely administrative matter reasons  
are not required to be recorded..



33. Hon'ble Supreme Court in *S. Chandramohan Nair's case* (cited supra and relied upon by applicant) has held that though the State Government is not bound to accept the recommendations made by the Selection Committee, if it does not want to accept the recommendations, then reasons for doing so have to be recorded. The State Government cannot arbitrarily ignore or reject the recommendations of the Selection Committee. It has also been held therein that if the appointment made by the State Government is subjected to judicial scrutiny, then it is duty bound to produce the relevant records including recommendation of the Selection Committee before the Court to show that there were valid reasons for not accepting the recommendation.

34. In *Ravi Yashwant Bhoir's* case (cited supra and relied upon by applicant) Hon'ble Apex Court highlighted the importance of recording the reasons. In *Deepak Bobaria & Ors. Vs. State of Gujarat* (2014) 3 SCC 502 Hon'ble SC observed in para 75 that “*while overruling the opinion of the Secretaries to the Department concerned, the Minister was expected to give some reasons in support of the view she was taking. No such reason has come on record in her file notings. She has ignored that howsoever you may high may be, the law is above you.*”



35. The main objective of Article 14 is to remove arbitrariness from State action and ensure fairness and equality. The Hon'ble Delhi High Court in *Dr. S. M. Bose's* case ( cited supra and relied upon by applicant) held as under:

“*20 ..... if the appointing authority wants to agree with the recommendations, there would be no difficulty. But if it wants to disagree with the recommendations, it must give reasons for disagreement. ..... Should the appointing authority disagree with the recommendations made by the selection committee, it must have good, strong, and cogent reasons for doing so. In any event, on a challenge in court, for whatever the appointing authority may do, it is bound to disclose the reasons to justify its decision.*”

36. Hon'ble Madras High Court in its order dated 4<sup>th</sup> September 2018 in case titled *A. Mahalingam Vs. A. N. Ray and Ors*, passed in W.P. No. 22253 of 2018, after examining the related judgments of Hon'ble Supreme Court and Other High Courts summarized the

settled law on the issue of recording reasons at para 47, which for sake of brevity is reproduced herein below :-

*"47. Summarising the above discussion, this Court holds:*

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
- (e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.*
- (f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies."*



37. Taking cue from said decisions we did find that the State Government cannot arbitrarily ignore or reject the recommendations of the Selection Committee and when the appointment made by the State Government is subjected to judicial scrutiny, then it is duty bound to produce the relevant records at least to show that there were valid reasons for differing with the recommendation. Needless to say that while passing order of appointment of respondent No. 5 no reason has been recorded for discarding the applicant who was having higher position in merit than respondent No. 5 nor any relevant records to show that there were valid reasons for differing with the recommendation has been placed before us. Equality before the law not only includes the rule of law but also principle of natural

justice. The main objective of Article 14 is to strike out arbitrariness from State action to ensure fairness and equality.

38. Learned AG also has contended that the Chief Minister's query regarding involvement of the officers recommended in the panel in irregularities in North Karnpura Coal Block Wildlife Management Plan and construction of watch tower in Tiger Reserve and query, on 25.05.2020 (page 77) that how many more officers are there in the scale of PCCF (Pay Matrix Level 16) are reflective of his mind that he was trying to make an assessment of the officers recommended for the post of PCCF(HoFF) and he was examining the subject with an open mind and that the Hon'ble CM particularly was concerned about the issue of absolute integrity as there was already a mention of three complaints pending against Shri Lal Ratnakar Singh and one complaint against the applicant. Learned AG emphasized that the CM's order was based on all the four parameters mentioned in the guidelines for selection to the post of PCCF (HoFF) and the applicant's claim for the post was untenable in view of a pending complaint against him. He urged that 'absolute integrity' was one of the four parameters for selection to the post and pendency of a complaint against the applicant has brought his 'absolute integrity' into question.

39. Learned Advocate General and counsel for Respondent No.5 both have pressed that the Chief Minister was concerned about this aspect and his noting on file also reflects that adequately. They have



submitted that the decision of Chief Minister in appointing Respondent No.5 as PCCF (HoFF) was influenced by this fact and therefore Hon'ble Chief Minister decided to appoint Shri Priyesh Kumar Verma as PCCF(HoFF). Counsel for respondent No.5 also has referred decision in *M V Thimmaiah & others Vs UPSC & others* (2008)2 SCC 119 and decision in *K A Nagmani Vs. Indian Airlines & Others* (2009) 5 SCC 515 which stipulates that in appointment to the selection post, no court can sit in appeal over the decision of the Selection Committee.



40. Ld. Counsel for applicant did dispute the submission stating that the Selection Committee in its recommendation has mentioned that the clearance from Vigilance and also Lokayukt had been obtained in respect of all the three officers. He denied the involvement of the applicant in irregularities referred to be verified by the Chief Minister and stressed that the State Government had also not alleged that in their WS and hence, the apprehension of Chief Minister cannot be taken as directed against the applicant. He questioned the assertion of respondents that a pending complaint against the applicant was indicative of the lack of 'absolute integrity' and he described it as an afterthought to compensate for the absence of any reason recorded in the Chief Minister's order. He assailed the contention of Advocate General that the CM's query was not answered by the senior officials, i.e. Principal Secretary, MoEFCC and the Chief Secretary and referred to page 76 of the OA, where the

Chief Secretary vide his noting dated 25.05.2020 had mentioned that the CM's query has been clarified and the CM was satisfied as reflected from subsequent notings.

41. Respondent No. 4 in his pleading has stated that no decision has yet been taken on the complaint pending against the applicant.

In answer to query of us Learned Advocate General also has stated at



Bar that no decision has yet been taken on the complaint and he also showed his helplessness to tell about the details of the complaint but offered to make the complaint available for perusal of the Tribunal, if it is directed so. Tribunal's role is not to assess the suitability of any officer or to sit over the judgment on the recommendation of the Special Selection Committee or decision of the Chief Minister. Needless to say that the same complaint against the applicant was pending on 17.02.2020, when the Special Selection Committee meeting was held and no action has been initiated against the applicant in last about one year, can it be said to be justified ground for not appointing the Applicant the post of PCCF (HoFF) despite the recommendation of the Special Selection Committee, on the basis of pending complaint upon which no action has been taken for the last one year or more. We find some observations of Hon'ble Supreme Court in judgment : *Union Of India Vs K.V. Jankiraman* [1991 SCC(4) 109] delivered on 27 August, 1991 relevant to the present case and extract of which is as under:

*“6 .....The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges.....”*



42. If the allegations in the complaint petition are serious enough to warrant a departmental action against the applicant then there was no reason to keep the same pending for over one year and also the Competent Authority could have easily mentioned that as the reason for his decision. Possibility of using the complaint petition as a red herring to create doubts about “absolute integrity” of the applicant can also be there. The argument that a complaint petition against the applicant created doubts about his “absolute integrity” and was the reason behind the Chief Minister’s decision does not appears to be convincible in view of above discussions.

43. The (HoFF) is a cadre post of Indian Forest Service which is an All India Service covered under Article 312 of the Constitution. Article 312 provides that the Parliament may, by law, regulate the recruitment and conditions of service of persons appointed to All India Services. The Indian Forest Service (Pay) Second Amendment Rules, 2008 thus draws strength from the Constitution. Thus the

Special Selection Committee stipulated under the guidelines supra has special status and its recommendations have great value. The Appointing Authority in the State Government has a constitutional obligation to observe the Rules and guidelines relating to All India Services. The forwarding letter of the guidelines on selection to the post of PCCF (HoFF) lays emphasis on compliance "in letter & spirit while effecting selection to the post of Principal Chief Conservator of Forests (Apex Scale).



44. It is trite to say that the CM is the Executive Head of the State and the PCCF (HoFF) works under his overall administrative control. Chief Minister of a State, may appoint/post officers to various offices/jobs to suit the administrative requirements subject to the extant rules/laws. We are not sitting in appeal over the decision of the Chief Minister but are simply exercising the power of judicial Review. Main issue evolved in this OA is whether the decision of Competent Authority in appointing Shri Priyesh Kumar Verma, (respondent no. 5) as PCCF(HoFF), overlooking the recommendation of the Selection Committee in respect of the applicant and without assigning any reason, was in accordance with the law /rules? and we find that the answer which comes is in negative. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well. As no reason has been assigned for, the order is against the settled law. In the absence of reasons such a decision becomes

arbitrary exercise of power and goes against the provisions of Article 14 and Article 16(1) of the Constitution.

45. In view of legal and factual scenario, discussed above, the order of appointing Shri Priyesh Kumar Verma to the post of PCCF (HoFF) and Notification No. Bha.Va.Se (Stha).-155/2000-1630 dated 24.06.2020, whereby and where-under Shri Priyesh Kumar Verma (respondent no. 5) has been appointed to the post of PCCF (HoFF) both are quashed and set aside. The State Government is directed to consider the recommendation of the Special Selection Committee dated 17.02.2020 afresh and to pass a reasoned order for appointment to the post of PCCF (HoFF), within a month of receipt of this order and till no such decision is being taken, the status qua manning of post of PCCF (HoFF) shall remain, as it was immediately before appointment of Shri Priyesh Kumar Verma.

46. The OA to the extent, noted above allowed. Pending MA, if is any, also stand disposed of accordingly.

47. No order as to cost.

**[ Sunil Kumar Sinha]  
Administrative Member**

**[ M.C. Verma ]  
Judicial Member**

**Srk.**

