

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH : NEW DELHI

OA. No. 1266 of 1990

Dated New Delhi, this the 17th day of May, 1994

Hon'ble Shri J. P. Sharma, Member(J)  
Hon'ble Shri B. K. Singh, Member(A)

Shri Yashvir Singh  
S/o Raghveer Singh  
R/o U.P. Forest Department  
Lucknow, Mukham Range, Lambgaon  
District Tehri Garhwal (U.P.) ... Applicant

By Advocate: Shri B. B. Baval

VERSUS

1. Union of India  
through its Secretary  
Ministry of Environment & Forest  
Wild Life, B-Block  
CGO Complex, Lodi Road  
NEW DELHI-110003
2. Union Public Service Commission  
through its Secretary  
Shahjahan Road  
NEW DELHI-110011 ... Respondents

By Advocate: Shri P. H. Ramchandani  
and Shri N. S. Mehta

O R D E R (Oral)

Shri J. P. Sharma, M(J)

The applicant took the Indian Forest Service Examination (IFS) in the year 1985 and in the result of that examination, the name of the applicant did not figure in the merit list. A supplementary list for whatever reasons was also notified to the applicant and he was informed vide letter (Annexure A-1) No.F:1/2(14)/85-E-IX Roll No.1190/85 that his name has been recommended in the supplementary list to the Ministry of Environment and Forest (Department of Environment, Forests and Wildlife). The Government of India, Ministry of Environment and Forests vide letter dated 3.3.87 conveyed to the applicant that UPSC has recommended his candidature for appointment to the IFS and the matter is engaging the attention of the department in this regard. The applicant was also asked to

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convey his willingness to accept the appointment.

Before the applicant received the above communication, for the betterment of his career prospect while already serving in the State Forest Service, in pursuant to an advertisement by UPSC, applied for Civil Service Examination for the year 1986. It was subsequently found that the applicant had already availed of maximum number of chances allowed to candidates for the said examination and the applicant did not clearly expose this fact in his candidature for the said examination as he had already availed of three clear chances for the same examination held by UPSC earlier. This fact, however, came to the notice of UPSC and after taking the explanation of the applicant regarding submission of examination form for the 1986 Civil Service Examination, the UPSC vide their decision dated 18.2.87 took action in the form of penalty debarring the applicant for any of the examination/selection to be conducted by UPSC for three years w.e.f. 16.2.87. Besides, his candidature for Civil Service Examination for the year 1986 was also cancelled. It is evident that the supplementary list was declared sometime in 1987 and in March, 1987 the Government had asked confirmation from the applicant whether he is still willing to join the IFS as a result of his name being in the supplementary list of the 1985 IFS Examination. The applicant was finally informed by the impugned memo dated 1.5.87 that since he has been debarred from all the examination or selection to be conducted by the UPSC for the period of three years w.e.f. 16.2.87, his candidature for IFS Examination, 1986

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has been cancelled. Vide memo of 23.12.88, the applicant was informed that he is not suitable for appointment on the basis of result of IFS Examination, 1985. The applicant has also represented through Member of Parliament and he was also informed in the same manner by the Ministry of Environment and Forests vide letter 8.9.89. The applicant thereafter filed this OA on 25.5.90 which was subsequently got amended and he prays for the grant of reliefs that the letters dated 23.12.88, 18.2.87 be quashed and since the applicant has undergone the disabilities as a measure of punishment, he be given appointment on the basis of 1985 Supplementary list with effect from 17.2.90 with notional seniority of 1985.

2. However, during the course of the argument, Shri B. B. Raval, appearing for the applicant, moulded the relief to the extent that the applicant is prepared to accept the ~~fresh~~ seniority from the year of his appointment. The respondents did not file any reply to the amended OA and the learned counsel for respondent no.1 Shri P. H. Ramchandani and Shri N. S. Mehta, counsel appearing for respondent no.2, adopted the same reply filed in the OA.

3. We heard the learned counsel for the parties at length and perused the record. Only a short issue involved in this case for adjudication and that is, whether a person who by virtue of having taken a examination was subsequently declared <sup>zone of</sup> successful coming in the merit appointment, and in the meantime, if any act or omission done by

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such a person amounts to suppression of facts in connection with some civil service examination conducted by UPSC, whether he should be declared unfit for appointment by the Government on the basis of recommendation of UPSC? The learned counsel for the respondents argued that the Government is within its right to consider the suitability for appointment to a post particularly after verification of antecedents of a potential employee. The learned counsel for the respondent has also referred to an authority in the case Dr S. Mukherjee versus Union of India reported in 1984 SLJ vol.51 p. 107 where the Hon'ble Supreme Court held that the Government is within its right not to follow the recommendations of the UPSC taking into account subsequent event before appointment of the recommended candidate.

4. The learned counsel for the applicant, however, argued that any act or omission of the applicant was a subsequent event that is, after he had already taken IFS Examination, 1985 and though the result of his coming within zone of appointment on account of supplementary list, was published subsequently but since the applicant was not in the original list, he applied for the Civil Service Examination, 1986. Though the act or omission on the part of the applicant was questioned by UPSC and that was also ended in a punitive action against the applicant debarring for sitting in any subsequent examination of UPSC <sup>for three years</sup> w.e.f. 16.2.87 besides cancelling his candidature for Civil Service Examination, 1986. The position, therefore, is evident that a person cannot be punished twice for the same act or omission either amounting to an offence or a

misconduct and Article 20 of the Constitution of India Sub-Clause 2<sup>a</sup> lays down that no person can be punished for the same offence more than once. Here the case is not different with the recommendation of the UPSC but the Government of India did not find the applicant eligible only because he managed to take the Civil Service Examination, 1986 by suppressing factual position already of having/availed of three successive clear chances. Since the applicant has already been debarred for three consecutive years for appearing in any examination to be conducted by UPSC w.e.f. 16.2.87, the UPSC in its wisdom did not touch the result of 1985 IFS Examination as well as the supplementary list though UPSC was also the examining body for that year and recommending the name of the applicant for appointment to the IFS.

5. The contention of the learned counsel for the respondents is that the applicant being of questionable character, was not found suitable by the administration. Character in its wider sense, may cover act or omission though this too is not presumed as correct, yet when a person has already been suitably punished or an action against him has already been taken debarring him for three years from 1987 onwards till 1990, then the question of shady character for any misdemeanour does not arise.

6. We have considered this from another angle also.

State Forest Service  
If the applicant is in / and he is already serving in that and no action has been taken by the concerned department against him. At one

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point of time if everything goes well with the person and profession of the applicant and he is eligible for appointment to the IFS in the quota reserved for said service. If the action of the respondents is taken for granted, than for all time to come, he can never be promoted to IFS. A punishment cannot be perennial. The punishment is for a particular period and after that period exhausts in itself, the stigma attached stands passed on. Even in departmental promotion on the basis of 5 years earlier ACR any adverse report prior to that is not a hurdle normally for subsequent promotion. The offer of appointment appears to be of 1987. We are in the year 1994.

7. The respondents in their counter have not magnified the other aspect regarding unsuitability of the applicant and it was because of only misconduct of taking the Civil Service Examination, 1986. This, to our mind, is not a proper and just application of mind by the respondents.

8. Taking all these facts into account, the present application is partly allowed and the respondents are directed to issue an appointment to the applicant if he is otherwise fit and that appointment shall come into effect from the date the applicant joins his service and he will get his seniority in the IFS only from the date of appointment, not earlier to that. And accordingly this application is disposed of with these directions. No costs.

(B. K. Singh)  
Member (A)

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(J. P. Sharma)  
Member (J)