

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

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HON. DR. JOSE P. VERGHESE, VICE-CHAIRMAN 'J'  
HON. SHRI R.K. AHOOJA, MEMBER 'A'

O.A. NO. 2313/1991

NEW DELHI, THIS 19th DAY OF MARCH 1997

SHRI Z.D. WANKHEDE  
presently working as  
Soil Conservation Officer  
O/o Dy. Conservator of Forests  
Delhi Admn., Delhi.

S/o Sh. D.S. Wankhede  
R/o C-302, Delhi Admn. Flats,  
Timarpur  
DELHI-7

..APPLICANT

'By Advocate - Shri Shyam Babu'

VERSUS

1. Delhi Administration, Delhi  
through its Chief Secretary  
5 Shamnath Marg  
DELHI-54
2. Development Commissioner,  
Delhi Administration  
5/9 Under Hill Road  
Civil Lines, DELHI
3. Deputy Conservator of Forests  
Delhi Administration,  
Kamla Nehru Ridge  
DELHI-7
4. Union of India, through  
The Secretary  
Ministry of Environment & Forests  
NEW DELHI

..RESPONDENTS

'By Advocate - Shri Vijay Pandita'

ORDER

R.K. AHOOJA, MEMBER 'A'

On being selected through UPSC, the applicant was  
appointed to the post of Soil Conservation Officer in the  
scale of Rs.650-1200 'pre-revised' w.e.f. 6.4.87 in the office

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of Development Commissioner, Delhi Administration, and was posted to the office of Deputy Director 'Horticulture'. Earlier, by an order dated 18.3.87 'Annexure J', the Administrator of Delhi set up a separate Department of Environment, Forests and Wild Life 'DEFWL' and the work relating to environment, forests and wild life previously being looked after by the Development Department was ordered to be dealt with in the new Department, viz., DEFWL. The applicant submits that the Delhi Administration, in exercise of the powers under Section 2(2) of the Indian Forest Act 1927 appointed the Soil Conservation Officer to be Forest Officer for the purposes of the Act. Another similar notification was issued on 13.12.1962 under sub-Section of Section 68 of the Forest Act. It is the claim of the applicant that from the very beginning of his appointment as Soil Conservation Officer, he was ~~selected~~ <sup>assigned</sup> to the newly created department DEFWL and in terms of the afore-mentioned notification acted as the Forest Officer for the U.T. of Delhi. He also points out that in pursuance of an initiative taken by the Union Minister for Agriculture, a post of Deputy Conservator of Forests was created to which he was the only entitled person to be appointed, but the respondents gave ad promotion to one Shri S.K. Puri, a Forest Officer, who was lower in rank to him as Soil Conservation Officer 'SCO', and even after the voluntary retirement of Shri Puri, the charge of Deputy Conservator of Forests was given to even a more junior officer. The applicant alleges that by the impugned order dated 31.7.91 'Annexure X', his services have been transferred from the office of Deputy Conservator of Forests 'DCF' and placed at the disposal of the Joint Director, Agriculture. He is aggrieved by this order since he has throughout been working on the forest side in the new department DEFWL and his wrong transfer to the agricultural side is not only illegal but prompted by malafide in order to deny him his rightful claim for promotion to the post of DCF and his inclusion in the cadre of Indian Forest Service.

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2. The respondents deny the above allegations and say that the applicant was appointed as SCO in the Development Department of Delhi Administration. There are specific Recruitment Rules for the post of Forest Officer and DCF and he does not come within the category of eligible officers for such promotion. Further more, at the time of his appointment itself, the advertisement issued by UPSC had clearly specified that he will be eligible for promotion to the post of Project Officer, ~~Agriculture~~, which after bifurcation has been allotted to the Agriculture side of the Development Department. The applicant thus has no claim to work only under the DCF on the Forest side nor for promotion to the post of DCF or in the alternative, as claimed by the applicant, to the upgradation of his post of SCO to the post of DCF.

3. We have <sup>heard</sup> the ld. counsel on both sides and have carefully gone through the record. Shri Shyam Babu, ld. counsel for the applicant, argues that from the very beginning of his appointment, the applicant has been working as Forest Officer in terms of the various notifications empowering the SCO to work as Forest Officer for the U.T. of Delhi. Further, the Development Department has been bifurcated in two by the creation of the DEFWL. The applicant, on the date of issue of the impugned order, was working with the DCF. Therefore, his transfer to the agricultural side is transfer of a post from one Department to another for which no orders have been issued by the respondents. The applicant also possesses all the requisite qualifications for being appointed as DCF and his long pending request for this adjustment has been under consideration with the respondents. His transfer through the impugned order to the Agriculture side would, according to the ld. counsel, adversely affect his prospects of promotion as well as inclusion in the U.T. cadre of Indian Forest Service. The ld. counsel

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for the respondents on the other hand points out that from the very initiation of the service of the applicant, his line of promotion lay for the post of Project Officer which is with the Agriculture Wing. The mere empowerment as Forest Officer for certain purposes of the Forest Act does not make him a Forest Officer for purposes of the cadre, designation and further promotion.

4. We have carefully considered the matter. We find that though a separate department, DEFWL, has been created, the matter of creating a separate cadre for that department is still under consideration and as a result, no allocation of posts nor of personnel to that department has taken place. For that reason, the applicant cannot claim that he can only be retained on the Forest side. The long standing conferment of certain powers under the Forest Act to whomsoever occupies the post of SCO also does not make him a member of the Forest Cadre. The Recruitment Rules for the posts of Forest Officer and DCF (annexed with the reply) also do not show that the SCO is one of the eligible categories for promotion to the post of DCF. Even if the applicant possesses the requisite educational qualifications for direct recruitment to the post of DCF, it creates no right for him to be promoted to that post if he does not belong to the specified feeder grades. Similarly, it is not for this Tribunal to adjudge as to whether the work and duties assigned to the post of SCO would justify its upgradation to the post of DCF. This is a matter which is in the domain of the Executive and it is for them to decide on the basis of various <sup>parameters</sup> ~~instruct-~~ ~~tions~~ such as the nature of work, level of coordination required, hierarchy of the organisation etc.

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5. It has been vehemently urged before us by the ld. counsel for the applicant that the transfer of the applicant from the office of DCF to that of Joint Director of Agriculture would adversely affect his prospects for absorption in the Forest cadre as and when the allocations take place. He argued that while admittedly the SCO is presently as per RRs in line for promotion to the post of Project Officer, the applicant, considering better prospects and his own inclination and his experience so far in the department, is ready to forego such a promotion and to take his chances on the Forest side. Admittedly, the applicant started his service with the Dy. Director (Horticulture) and was last working with the DCF. Even though no final allocation has taken place between the Department of Agriculture and the DEFWL, long standing postings to one department or the other do create a presumption that the work of SCO is more relevant to that of the DEFWL. The respondents in their reply have given no ground to indicate that the transfer of the applicant from the office of DCF to that of Joint Director of Agriculture is in public interest or keeping in view the exigencies of work. In these circumstances, we are also inclined to conclude that the respondents need to reconsider their impugned order.

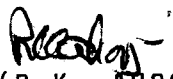
6. In the light of the above discussion, we dispose of this O.A. with a direction that the respondents will review the case of posting of the applicant and in case they do not find it possible to restore him to the office of DCF, they will pass a reasoned and speaking order stating the reasons for declining such reversion. In that event, the applicant would be at liberty to agitate the matter further,

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if so advised, in accordance with law. It is, however, made clear that this will confer no right on the applicant to either claim final allocation to the DEFWL as and when such allocation is effected or to claim promotion<sup>ry</sup> parity with any post of Forest Officer or DCF.

The O.A. is disposed of accordingly. No costs.

  
(R.K. AHOOJA)  
MEMBER (A)

  
(DR. JOSE A. VERGHESE)  
VICE-CHAIRMAN (J)

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