

13

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

THIS THE 5th DAY OF JANUARY, 2007

Original Application No. 731 of 2005

CORAM:

HON.MR.JUSTICE KHEM KARAN,V.C.
HON.MR.M.JAYARAMAN, MEMBER (A)

1. M.K.Tripathi, son of Ram Shankar
Tripathi posted as Divisional Director
Social forestry, Kushi nagar.
2. Ashoki Dixit, son of Shri G.N.Dixit
Posted as Divisional Director, Social
Forestry, Faizabaa.

.. Applicants.

(By Adv: Shri Anurag Pathak)

Versus

1. Union of India through Secretary
Ministry of Forest and Environment New Delhi.
2. State of U.P. through Secretary,
Ministry of Forest & Environment,
Lucknow.
3. Union Public Service Commission through
its Secretary, Dholpur House Shahjahan Road
New Delhi.
4. Mahendra Pal Singh, C/o Principal Chief
Conservator Uttaranchal, Dehradun.
5. Atibal Singh, C/o Principal Chief
Conservator, U.P. Lucknow.
6. S.K. Singh, C/o Principal Chief Conservator
Uttaranchal, Dehradun

.. Respondents.

By Advocates:

Shri S.Singh for Respondent No.1

Shri K.P. Singh for State of U.P., Respondent No.2

Shri Pankaj Srivastava, brief holder to
Shri Satish Chaturvedi for Respondent N0.3

Shri A.R. Masoodi for private Respondents No.4,5 &6.

ORDER

By Justice Khem Karan, V.C.

1. The matter relates to select list dated 10.9.04 (Annexure-4) published by the Government of India in exercise of its powers under, Indian Forest Service (Appointment by Promotion) Regulations, 1966.
2. The two applicants being senior members of State Forest Service, were eligible for being considered for promotion to Indian forest Service (for short I.F.S). It appears that for the vacancies of promotion quota for years 1985-86 to 1995-96, a consolidated select list was prepared in 1995-96, which this Tribunal at Allahabad, quashed vide its order dated 10.9.1997 (A-2) in O.As. No.982/96, 972/96 and 1120 of 1996, directing the respondents to prepare year-wise Select list, for vacancies of 1985 to 1996. Though the Government of Uttar Pradesh and some private persons took the matter to High Court, by way of filing writ petition Nos 2663, 2666, 2668, 3935 and 3938 of 1998, but the same were dismissed vide order dated 11.5.2001. Before the Review Selection Committee, could meet and do the needful so as to comply orders dated 10.9.1997 of this Tribunal, Atibal Singh and others filed one O.A. 539 of 2002, contending interalia that vacancies resulting from Triennial Cadre Review as notified on 31.8.1990 should be taken to be the vacancies for year 1990 and not for 1989. This Tribunal passed interim order dated 13.5.2002 directing the respondents to consider the claim in the light of proposal dated 31.3.2002. The Review Selection Committee met on 15th, 16th and 24th of May, 2002 and prepared the year wise select list. Because of the amendment in Regulations of 1966, the size of the select lists was to be redetermined and this exercise took some time. It transpires from pleadings of the parties that because of continual litigation, in one Forum or the other, further action on the recommendations of Review Selection Committee, was delayed and it was on 16.9.2004, that the Govt. could notify the said lists which are the subject matter of this O.A.

3. The applicants have raised the following three main objections against the select lists of 1990;

- (i) Shri Mahendra Pal Singh, was no more in service as he was compulsorily retired vide order dated 21.1.1990 of the Govt. and so the respondents committed grave error by placing him in the select list of 1990;
- (ii) that in the face of adverse remarks, for the respective years in between 1985 to 1987, in the service records of Shri Atibal Singh and Shri S.K. Singh the Committee could not have cleared them for being put in the select list of 1990;
- (ii) that if the Committee could take cognizance of expunction of remarks taking place in 1995, for preparing the select list of 1990, why it failed to anticipate 20 vacancies notified on 31.8.1990, in the vacancies for year 1989 and that reflects the Committee adopted arbitrary yardsticks, in preparing the select lists in question.

4. In para 9.3 of its reply, Union Public Service Commission (for short the Commission) has stated that as per the information given by State Govt., adverse entries awarded to Shri Atibal Singh in the year 1985-86, stood expunged vide order dated 4.8.1985 passed by U.P. Public Service Tribunal and like wise, adverse entries awarded to Shri S.K. Singh in the years, 84- 85, 85-86 and 86-87, stood expunged vide order dated 7.4.95 and 5.1.96 of the Tribunal and so, according to internal guidelines of the Commission and the instructions dated 1.10.98 of the Govt. of India, the Committee took cognizance of the orders expunging the adverse remarks and on overall assessment, Shri Atibal Singh was adjudged 'very good' and Shri S.K. Singh as 'good', for 1990 and both were included in the select list of 1990 at serial No.16 and 17 respectively. As regards the alleged wrong inclusion of Mahendra Pal Singh in the review select list of 1990, it is stated by the Commission in para 8.2. that the State Government informed that Shri Singh was reinstated in State Forest Service, vide order dated 21.6.01 and so there was nothing wrong in considering his candidature for inclusion in the select list of 1990. In regard to the applicant's contention that 20 vacancies (on account of triennial cadre review) should have been anticipated as vacancies

for 1989, the Commission stated in para 9.5 that since these vacancies were notified on 31.8.1990, so were neither available nor could be anticipated on the notional date of selection i.e. 31.12.1989. It also referred to interim order dated 13.5.02 so as to justify its stand in not anticipating those vacancies for the year 1989.

5. Replies of the Govt. of India and the Govt. of Uttar Pradesh are almost on the same lines. It is stated in para 5 (q) of the reply of State that Govt. of India has appointed 21 officers vide notification dated 8.7.05, out of the select list dated 10.9.04. It is also stated in para 16 that Govt. order dated 27.1.90 by which Shri M.P. Singh was compulsorily retired was quashed by the Govt. vide its order dated 20.6.91 and Shri M.P. Singh was reinstated in service.
6. In para 18 of the Rejoinder, applicants have tried to say that once an employee is screened out necessary inference has to be drawn that he is not fit to continue in service and it is surprising that such a person has been found fit for being put in the select list. Attempt has also been made to say in para 20 of the Rejoinder in reply to the Commission, that Shri Atibal Singh and Shri S.K. Singh could not have been found suitable to be put in the select list, as they had tainted service record.
7. The Tribunal has heard quite at length Shri Anurag Pathak appearing for the applicant, Shri K.P. Singh, Shri Saumitra Singh (Senior standing counsel for Union of India), Shri Prahlad Singh holding brief of Shri Satish Chaturvedi and Shri A.R. Masoodi for respective respondents.
8. The first submission of Shri Pathak is that the review selection committee was not justified in law in considering the candidature of Shri Mahendra Pal Singh and in putting him in the select list of 1990, as he had already been compulsorily retired from State Forest Service vide order dated 27.1.90 (Annexure-6) and even if this compulsory retirement had been recalled and Shri Singh reinstated in service, as claimed in the written reply, he could not have been adjudged "very good" so as to be found fit for being put in the select list of 1990. Shri Pathak says that an employee is

compulsorily retired in public interest, only when he is found to be a worthless fellow and if it is so, then how the review selection committee could adjudge him a "very good" for being brought in the select list. In reply to this argument of Shri Pathak, Shri K.P. Singh and Shri Masoodi have contended that firstly the orders of compulsory retirement were quashed by the State Government in the year 1991 itself and Shri Singh was reinstated in service and so, he was very much in the service and his candidature was rightly considered by the review selection committee for the vacancies of the year 1990. In regard to the contention of Shri Pathak that once Shri M.P. Singh was compulsorily retired on 27.1.90 in public interest, he could not have been adjudged good or very good for purposes of being put in the select list of the year 1990. Shri K.P. Singh and Shri Masoodi have submitted that this tribunal will not be justified in entering into the question as to whether a candidate should or should not have been adjudged good or very good or bad. According to them, the assessment made by review selection committee cannot be interfered with by the Tribunal or the court unless the person questioning such assessment is able to prove to the satisfaction of the court or Tribunal that the committee violated any mandatory rule or was biased against someone or disposed in favour of someone. They have tried to support this contention by referring to a Division Bench decision dated 30.6.05 of this Tribunal at Allahabad, in O.A. No.1072/04, 1255/04 and 939/04 and the decision dated 5.5.05 in OA 371 of 2004 K.P. Singh Vs. Union of India and Ors, where it has categorically been ruled that courts and Tribunals are not expected to play the role of appellate authority or umpire in the acts and proceedings of D.P.C unless the selection is vitiated by malafides or on the ground of arbitrariness. It has also been stated that the Tribunal cannot assume the power to assess the comparative merits of the candidates and consider the fitness or suitability for appointment. We think there is considerable force in the submission of Shri K.P. Singh and Shri Masoodi on the point that assessment made by review selection committee as regards the fitness or otherwise of a candidate, cannot be lightly interfered with. It is

never the submission of Shri Pathak that there was any arbitrariness on the part of the members of the review selection committee or they were having any bias in favour of Shri Singh. So, the first submission of Shri Pathak in regard to the inclusion of the name of Shri M.P. Singh in the select list of 1990, has to be rejected as it has no force.

9. The second contention of Shri Pathak is that the review selection committee ought to have included 20 vacancies notified in August 1990 as a result of triennial review, in calculating the vacancies of the promotion quota of 1989. He says that review selection committee, considered the matter in the year 2002-03, for preparing the select list for the year 1985-86 and onwards and so, there was no difficulty with it, in including those 20 vacancies, as anticipated vacancies for 1989. He says if committee could take cognizance of the expunction of the adverse remarks in the case of Atibal Singh and Shri S.K. Singh which took place in the year 1995 by the same yardstick those 20 vacancies could have been included in the vacancies of year 1989.

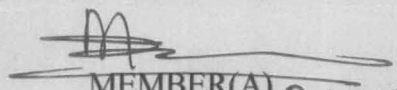
10. The learned counsel for the respondents have referred to para 23.1 of guidelines dated 22.12.2000, issued by ministry of Environment and Forest Govt. of India, which says if any adverse remarks relating to relevant period are toned down or expunged, the modified A.C.R should be considered as if the original remarks did not exist at all. This guideline is applicable to review committee meeting. They say that in view of this, the review selection committee was very well justified in taking cognizance of the expunction of the remarks in the case of Shri Atibal Singh and Shri S.K. Singh. We think there was nothing wrong on the part of review selection committee, in taking cognizance of the expunction of remarks in the case of Shri Atibal Singh and Shri S.K. Singh.

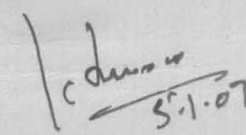
11. The next question is as to whether 20 vacancies that were notified in August, 90 as a result of triennial cadre review, could have been anticipated as vacancies of the year 1989. Reference to the order dated 13.5.02 of this Tribunal passed in O.A. No.539/02 has also been made by the Commission

so as to say that non inclusion of these vacancies in the year 1989 was also in compliance of interim orders dated 13.5.02 of this Tribunal. It is stated in para 6.13 of the reply of Commission that O.A.No.539/02 and O.A.536/03 were disposed of by the Tribunal, by a common order dated 3.9.03, providing that 20 vacancies created in the year 1990, cannot be clubbed with the vacancies of 1989. So, in view of this order there appears to be no basis for the argument that these 20 vacancies resulting from cadre review should have been included in the vacancies of the year 1989.

12. So, we are of the view that the allegation that the review selection committee adopted different standards in considering the matter, is not well founded.

13. In the result, the OA deserves to be dismissed and it is accordingly dismissed but with no order as to costs.


MEMBER(A) 5-1-07


VICE CHAIRMAN

Dated: January , 2006

Uv/