

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
THROUGH VIDEO CONFERENCING

Original Application No. 060/00594/2020

THE HON'BLE MRS. MANJULA DAS, JUDICIAL MEMBER

Tushar Kanti Behera, IFS, aged 47 years S/o Sh. Ganeswar Behera, presently working as Chief Conservator of Forests Department of Forests and Wildlife Preservation, Government of Punjab Forest Complex, Sector 68, SAS Nagar (Mohali) – 140308 (Group-A)



.....Applicant

By advocate: Sri Aseem Rai

-VERSUS-

1. Union of India through Secretary to Government of India, Ministry of Environment, Forests and Climate Change, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi – 110003.
2. State of Punjab through the Additional Chief Secretary Department of Forests and Wildlife Preservation, Government

of Punjab, Mini Secretariat, Sector
9 Chandigarh – 160009.

3. Principal Chief Conservator of
Forests, Department of Forests
and Wildlife Preservation,
Government of Punjab, Forest
Complex, Sector 68 SAS Nagar
(Mohali) – 140308.

.....Respondents



By Advocate: Sri Sanjay Goel, Sr. C.G.S.C for R- 1 &
Ms. Anu Chatrath for R 2 & 3

Date of hearing: 20.01.2021 Date of order: 10.03.2021

ORDER

MANJULA DAS, JUDICIAL MEMBER:

The applicant Sri Tushar Kanti Behera, IFS, preferred the O.A. challenging the transfer order dated 24.08.2020 by which he has been transferred and posted from Chief Conservator of Forests (Plains) to Chief Conservator of Forests, Punjab Bureau of Investment Promotion (PBIP)

against vacant posts, on the following grounds amongst others:

(i) Service conditions regarding appointment of the applicant, being an IFS officer, are governed by IFS (Cadre) Rules 1966 and as per Rule 8 of the said Rules, the cadre officer can be posted only against the cadre post. Hence, the posting of the applicant against the non-existing/non-cadre posts, outside the department is utter violation of the Rules and Regulations framed by the Government of India from time to time, governing the service conditions.



(ii) As per rule 7(3) of the IFS (Cadre) Rules 1966 and as amended vide IFS (Cadre) Amendment Rules, 2014, a cadre officer appointed to any cadre post is required to hold the office for a minimum period of 2 years unless the

officer has been promoted, retired and sent on deputation outside the state or training exceeding two months.

2. The reference to a 3rd Member resulted as there was difference of opinion between Hon'ble Judicial Member and Hon'ble Administrative Member while delivering the judgement. The Hon'ble Judicial Member observed that State Government can normally create ex-cadre posts up to the permissible limit only as specified in the Regulations against the State Deputation Reserve. This number can be exceeded as per the second provision to Rule-2 of the IAS (Cadre) Rules for 2 years without permission of the Government of India and upto a maximum of 5 years with the prior approval of the Government of India. Accordingly, Hon'ble Judicial Member held that the post against which applicant has been posted was not in existence as five years period has already expired and no steps shown to have been taken



to include the post in regular cadre strength. Thus, the impugned order was against a non-existing post is not sustainable and therefore, it was quashed and set aside.



3. On the other hand, Hon'ble Administrative Member observed that the officer should have first taken over the charge at the new place of posting and then challenge the transfer order, if he so desired which is most expected from a member of All India Service who has to serve anywhere in India and from whom highest level of discipline is expected. Hon'ble Member observed that the senior member of All India Service had challenged his transfer when he continues to be in the same State with the same scale of pay and with almost same Headquarter (Mohali and Chandigarh being contiguous district and UT). Even after his transfer, the applicant will be assured of his pay and will continue to work at his present level of Chief Conservator of Forests. Hence, Hon'ble Administrative

Member had not seen how the applicant was adversely affected by the impugned transfer order and opined that there was no merit. Accordingly, O.A. was dismissed by the Hon'ble Administrative Member.



4. In view of the elaborate judgements passed by Hon'ble Members, the dispute can be adjudicated in small compass. Thus, question set out for adjudication by a 3rd Member, which was referred to Hon'ble Chairman under Section 26 of the Administrative Tribunal, Act with the following issues:

- “(I) Whether the post of Chief Conservator of Forests, Punjab Bureau of Investment Promotion (PBJP) is an ex-cadre post?
- (II) If answer is in affirmative, whether this post ceases to exist after five years on the date of transfer of the applicant and whether this post is in existence or not?
- (III) Whether the Member of All India Service can challenge his transfer before the Court of law or not?”

5. After going through the entire case records and arguments advanced by both the counsel, undisputed facts and governing laws are summarised as follows:



(i) The applicant is a member of Indian Forest Service (IFS) of 1999 Batch of Punjab Cadre. He was promoted from the rank of Conservator of Forest (CF) to CCF in pay matrix (level 14), Rs. 1,44,200-2,18,200 vide order dated 16.11.2018 and posted a cadre post of CCF (Plains) vide order dated 04.01.2019.

(ii) As per notification dated 16.09.2015 issued by the Government of India, Ministry of Personnel, Public Grievance and Pensions, Department of Personnel Training there are only 6(six) cadre post of CCF as transpired from the annexure A-3 which are as follows:

1	Chief Conservator of Forests (Hills)	1
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2	Chief Conservator of Forests (Plains)	1
3	Chief Conservator of Forests (Working Plan, Monitoring & Evaluation)	1
4	Chief Conservator of Forests (FC Act cum Nodal Officer)	1
5	Chief Conservator of Forests (IT & E governance)	1
6	Chief Conservator of Forests (Wildlife)	1



(iii) The grievance raised by the applicant is that hardly one years has elapsed since his last transfer and vide impugned order dated 24.08.2020 he has been transferred on deputation from the cadre post of CCF (Plains) to a non-existing/ex-cadre post in Punjab Bureau of Investment Promotion and in place of the applicant one Sh. Basanta Rajkumar has been given additional charge of post CCF(Plains).

6. The main grounds taken by the applicant are that the post where he has been transferred is an ex-cadre post for which his prior consent for posting on deputation is required which has not been done in this instant case.

Besides, he has pleaded that this post is a non-existing post, having been created on 06.12.2013 and maximum period for which such post can be created as per Rules and Regulations, is only five years and hence, the post has ceased to exist w.e.f. 06.12.2018.



7. The applicant pleaded that as per Rule 7(3) of IFS Cadre Amendment Rules, 2014 a minimum two years tenure is provided. However, the applicant has completed only one year.

8. The applicant further pleaded that as per Rule 7 (1) of the IFS (Cadre) Amendment Rules, 2014 all appointments of IFS officers can be made only on the recommendation of the Civil Services Board and it is an admitted position that no such Board has been constituted for the State of Punjab.

9. The applicant further pleaded that as per Rule 7(5) of the said Rules, the competent authority may transfer a cadre officer before the minimum specified period on the recommendation of the CSB.

10. To support his case, the applicant relied on a decision of the Hon'ble Apex Court in the case of T.R. Subramanian and others Vs. UOI ETC AIR 2014 SC 263.



11. The respondents have contested the case by claiming that the applicant was transferred by the under Secretary to the Government of Punjab, Forests and Wildlife Preservation Department (Forest Branch) vide order dated 24.08.2020 in the public interest and administrative grounds.

12. According to the respondent's counsel, the post in question had been duly created by the State Government of Punjab vide order dated 06.12.2013 to facilitate one

stop clearance of all the development projects in the State by taking officers of various departments to the PBIP.

13. For coming to the first issue framed due to difference of opinion between the Hon'ble Members in deciding the matter, I have gone through the Provisions and law as appears in annexure A-7 i.e. the Indian Forest Service (Cadre) Rules, 1966. The sub Rule 8 of the said Rules reads as hereunder:



"8. Cadre and ex-cadre posts to be filled by cadre officers-

8(1) Save as otherwise provide in these rules, every cadre post shall be filled by cadre officer.

8(2) A cadre shall not hold an ex-cadre post in excess of the number specified for the concerned State under item 5 of the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966.

8(3) The State Government may, with the prior approval of the Central Government, appoint a cadre officer to hold an ex-cadre post in excess of the number specified for the concerned State in item 5 of the schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966 and for so long as the approval of the Central Government remains in force, the said ex-cadre post shall be deemed to be an

addition to the number specified in item 3 of the said Schedule.”

The sub Rule 4(2) of the said Rules reads as hereunder:

“ 4(2) The Central Government shall, ordinarily at the interval of every five years, re-examine the strength and composition of each such cadre in consultation with the State Government concerned and may make such alterations therein as it deem fit

Provided that nothing in this sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any other time .



Provided further that the State Government concerned may add for a period not exceeding two years, and with the approval of the Central Government for a further period not exceeding three years to a State or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts.”

The sub Rule 2 of the IFS (Cadre) amendment Rules 2014 reads as hereunder:

“2. In the Indian Forest Service (Cadre) Rules, 1966,-

(a) for rule 7, the following shall be substituted, namely:-

7 postings.-(1) All appointments of cadre officers shall be made on the recommendation of the

Civil Services Board as specified in the Schedule annexed to these rules."



14. The Hon'ble Administrative Member considered and observed that purpose of Gazetted Notification dated 06.03.2013 published by the Government of Punjab whereby Government of Punjab was to provide for one stop clearance of proposals of new investments in the State. For this purpose, the Bureau has been established with its Board of Governors, Executive Committee and Chief Executive Officer. The constitution of the Board of Governors and the Executive Committee as well as their functions of Chief Executive Officer has been specified in the Notification. Para 6.4 of this Notification spells out that the posts created and officers appointed by the Bureau shall include.

"(a).....

(b).....

.....

(g) An officer not below the rank of Chief Conservator of forests in the Department of Forests
"

As such the post is created on a permanent basis, according to the Hon'ble Administrative Member.



15. The respondents' submission has been accepted by the Hon'ble Administrative Member that nowhere it is stated that the post had been created only for a limited period of say two years. Even the purpose of the Act and the whole reading of the Notification make it clear that the establishment of the Bureau is not a temporary arrangement and is meant to be a permanent arrangement.

16. On this aspect my firm view is that the Indian Forest Service (Cadre) Rules, 1966 and Indian Forest Service (Cadre) Amendment Rules, 2014 cannot be superseded

by the State Government by way of issuing the Gazetted Notification.

17. After going through the Rules and provisions cited by the applicant and respondents and on whose basis the judgements were pronounced by the Hon'ble Judicial Member and Hon'ble Administrative Member, it is my considered view that as per Rule 7 of the Cadre Rules, 1966 all appointments of cadre officers are to be done on the recommendations of the CSB. As per sub Rule (4) of these Rules tenure of posting of IFS is for at least two years. However, sub Rule (5) provides that the competent authority may transfer a cadre officer before the minimum specified period on the recommendation of the CSB. Para 7(c) (iii) of the Cadre Rules of 1966 provides that an officer may be transferred before the minimum prescribed tenure only on the recommendation of a committee on Minimum Tenure as specified in the Schedule annexed to these



rules. But the admitted position is that no CSB was constituted.

18. Further the respondents explained that there are 9 posts of State Deputation Reserve which includes the post of CCF (PBIP) where the applicant has been posted. However, it is not disputed that the State Government is well within its power and authority to create extra posts for a limited period only and in this case the post against which applicant has been posted was created for two years which could be extended for a further period of three years with approval of Central Government.



19. On similar issue the Co-ordinate Bench of Central Administrative Tribunal, Hyderabad Bench passed order dated 18.03.2009 in O.A. No. 307/2007 holding that ex-cadre post created by the State Government cannot be extended beyond two years without the approval of Central Government.

20. In the case of T.R. Subramanian (Supra), the Hon'ble Apex Court held as hereunder:

"Officers can be transferred and posted on the directions/approval of the Competent Authority, provided reasons are recorded therefor."

21. The Hon'ble Administrative Member took a view on the basis of the submission made by the respondents' counsel that due to the serious charges against the applicant that it was considered imperative to transfer him in the public interest.



Thus, it is explicit clear that the transfer of the applicant is in the nature of punishment which is not permissible under the law laid down by the Hon'ble Apex Court in the case of Somesh Tiwari vs. Union of India & Ors. (2009) 2 SCC 592 wherein it was held as hereunder:

"When an order of transfer is passed in lieu of punishment the same is liable to be set aside being wholly illegal."

22. In view of that, I am unable to appreciate the view taken by the Hon'ble Administrative Member.

23. The Hon'ble Judicial Member came into a conclusion on the basis of record that the post has been created by the State Government for one stop clearance of all the development projects in the State by taking officers of various department to the PBIP vide order dated 06.12.2013 (Annexure R-2 to the written statement filed by the respondents). First of all, this post could be in existence only for two years i.e. upto 05.12.2015 and with the approval of Central Government for a further period of 3 years i.e. upto 05.12.2018. Factually admitted position i.e. not disputed by the respondents that approval of Central Government is not available in the present case.



24. The Hon'ble Judicial Member further observed that even if it is assumed for the sake of argument only that

there was approval even then such post stood abolished automatically after 5.12.2018. In other words, it is a non-existence post after that date and posting of the applicant in 2020 against that post is apparently void ab initio.



25. At the time of hearing, the respondents or respondents' counsel failed to provide any documentary proof so as to establish that after two years of creation of post in PBIP equivalent to CCF, they had obtained approval for further period of three years from the Central Government. Even assuming but not admitting that approval of the Central Government was obtained, even then the said post became a non-existent post after 5 years i.e. after 05.12.2018.

Thus, it is candid clear that the post of CCF (PBIP) notified by the State Government was an ex-cadre post.

26. Accordingly I hold that posting at CCF (PBIP) where the applicant was transferred and posted was an ex-cadre post.

27. Consequently the second issue as per provisions of Rule 4(2) of IFS (Cadre) Rules 1966 the posting created vide order dated 06.12.2013 for two years upto 05.12.2012 and total 5 years the post ceased to exist. Hence, it is non-existence post.



28. For deciding the 3rd issue framed for logical conclusion where Administrative Member opined that the officer should have first taken over the charge at the new place and then challenge the transfer order if he so desired which is most expected from a member of All India Service who has to serve anywhere in India and from whom highest level of discipline is expected. In the instant case, a senior member of all India Service is challenging his

transfer when he continues to be in the same State with the same scale of pay and with almost same Headquarter.

29. On that aspect my considered view is that the applicant is an IFS officer under Government of India in the cadre of Punjab though having transfer liability but at the same time the respondent authorities ought to have followed the Rules and Provisions of law while issuing the transfer order. In the present case I have noted that while the applicant is transferred from CCF(Plains) to CCF(PBIP) no such provisions enumerated in the cadre Rules 1966 were followed which are explored and discussed herein above. I am of the considered view that an All India Service officer can very well challenge his/her transfer order if the same is passed dehors the rules. Hence all the three issues have been answered accordingly.



30. For the forgoing reasons, I concur with the decision of the Hon'ble Judicial Member and his view is

affirmed. Accordingly, in the light of majority view, the O.A. is allowed by setting aside the impugned transfer order dated 24.08.2020. Respondents are directed to comply with the order immediately.

**MANJULA DAS
MEMBER (J)**



/BD/