

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00194/2017

Wednesday, this the 20th day of October, 2021

CORAM:

Hon'ble Mr. P. Madhavan, Judicial Member
Hon'ble Mr. K.V. Eapen, Administrative Member

P P Cheriyankunju, S/o Paulose, aged 60 years,
 IFS (Retired), residing at Perumalil, Ruby Nagar,
 P.O. Changanacherry – 686 103. **Applicant**

(By Advocates : Mr. Viju Thomas & Ms. Rekha Vasudevan)

V e r s u s

1. Union of India, Represented by its Secretary,
 Ministry of Environment and Forests, Paryavaran
 Bhawan, CGO Complex, Lodhi Road, New Delhi-110 001.
2. State of Kerala represented by the Chief Secretary,
 General Administration Department, Thiruvananthapuram-695 001.
3. The Secretary, Department of Forest, Government of
 Kerala, Secretariat, Thiruvananthapuram- 695 001.
4. The Accountant General, Indian Audit and Accounts
 Department, Office of the Principal Accountant General (A&E),
 Kerala, MG Road, P.B.No.5607,
 Thiruvananthapuram-695 001. **Respondents**

**[By Advocates : Mr. M.K. Padmanabhan Nair, ACGSC (R1) &
 Mr. Imam Gregorios Karat, GP (R2-4)]**

This application having been heard on 08.10.2021, the Tribunal on
 20.10.2021 delivered the following:

O R D E R

Hon'ble Mr. P. Madhavan, Judicial Member –

This is an OA filed by the applicant seeking the following reliefs:

“a. *Call for the records connected with the above case.*

b. To direct the respondents to regularize the service of the applicant as duty for the period from 31.3.2011 to 8.10.2012 and to pay him the salary and consequent monetary benefits to the applicant for the said intervening period, i.e. from the date of retirement from SFS cadre and appointment to IFS cadre.

c. To quash Annexure A9 order No. 1013/04/2008-IFS-11, dated 12.9.2014 of the first respondent to the extent of limiting the weightage of the applicant to three years against four years stipulated as per Rule 3(3)(ii)(a) of Indian Forest Service (Regulation of Seniority) Rules 1997.

d. Quash Annexure A17 and A20 orders issued from the office of the 4th respondent declining the grant of fixation as given to Sri O Jayarajan IFS.

e. Declare that the applicant is entitled to be granted weightage of four years as per Rule 3(ii)(a) of Indian Forest Service (Regulation of Seniority) Rules 1997 and consequently to get his year of allotment fixed as 2005, since he was included in the Select list for 2009 and that he is entitled to be granted pay fixation in consequence of the re-fixation of his year of allotment to 2005.

f. Direct the respondent to grant the applicant weightage of four years as per Rule 3(3)(ii)(a) of Indian Forest Service (Regulation of Seniority) Rules, 1997 and consequently to re-fix his year of allotment as 2005 and to grant him the consequential pay fixation.

g. To direct the respondents to grant the applicant the Grade Pay of Rs. 8700/- and basic pay of Rs. 42120/- as given in the case of Sri O. Jayarajan.

h. To direct the respondents to refix the pension in tune with the refixation of his pay on granting of weightage of four years and counting of the period intervening his retirement from the SFS and his appointment to IFS.

i. To grant such other reliefs as may be prayed for and the court may deem fit to grant, and

j. Grant the cost of this Original Application.”

2. The applicant's case is that he was appointed to the Indian Forest Service on 8.10.2012 and according to him as per Rule 3(3)(ii)(a) of the Indian Forest Service (Regulation of Seniority) Rules, 1997 he is entitled to get 4 years weightage. But the respondents had granted only 3 years weightage and he got the year of allotment as 2006. If the respondents had granted 4 years weightage he would have got the year of allotment as 2005. According to him he was denied the pay fixation with effect from 31.3.2011

to 11.10.2012 – the period from the date of retirement to the date of joining in the service - IFS cadre. It was not considered by the respondents and he was not granted the financial benefits by regularization. The respondents are duty bound to consider the said period as duty for all purposes since the delay in convening the SCM was only due to the delay on the part of the Government.

3. Respondents appeared and denied the averments in the OA.

4. The applicant subsequently filed a rejoinder stating that the Government has already granted him the weightage as claimed in the OA as per order dated 5.12.2017. He was also granted the Junior Administrative Grade with effect from 1.1.2013. He was also granted the year of allotment as prayed for. He produced a copy of the said GO as Annexure A22. The counsel for the applicant submitted that his main grievance is non-grant of regularization of service of the applicant for the period from the date of retirement from State Forest Service to the date of appointment in the IFS cadre i.e. w.e.f. 31.3.2011 to 11.10.2012. He is also entitled to get consequential monetary benefits also. The applicant mainly relied upon a decision of the Hon'ble Supreme Court in ***Union Public Service Commission & Anr. v. A.K. Salim & Ors.*** (Civil Appeal No. 3648 of 2008) for claiming regularization and financial benefits.

5. The counsel for the respondents has submitted that the decision of the Hon'ble High Court of Kerala in ***State of Kerala v. M.V. Somasundaram & Ors.*** [WP(C) No. 24497 of 2009] squarely applies to the present case. According to him the decision in ***A.K. Salim***'s case (supra) was allowed on

the ground that the respondents had conceded the claim of the applicant therein and it was an order passed on the basis of consent. If we go through the decision of *Somasundaram*'s case (supra) it can be seen that the Hon'ble High Court had granted notional fixation of pay for the period from the date of retirement from State Forest Service to the date of appointment in the IFS cadre. This Tribunal has also decided a similar case in OA No180/1055/2014 and OA No. 180/276/2015. The applicant is also entitled to get the benefits of notional fixation of pay for the period from the date of retirement from State Forest Service till the date of his joining the IFS cadre.

6. Accordingly, we hereby order as follows:

The applicant is entitled to get the benefits of regularization of the above period w.e.f. 31.3.2011 to 11.10.2012 and to have notional fixation of pay and pensionary benefits arising out of the same.
The respondents are directed to pass an order within a period of three months from the date of receipt of a copy of this order.

7. The Original Application is disposed of as above. No order as to costs.

(K.V. EAPEN)
ADMINISTRATIVE MEMBER

“SA”

(P. MADHAVAN)
JUDICIAL MEMBER

Original Application No. 180/00194/2017

APPLICANT'S ANNEXURES

Annexure A1 - True copy of Notification No. 17013/4/2008-IFS.11 dated 08/10/12 issued by the 1st respondent.

Annexure A2 - True copy of the letter No.17013/31/2008-IFS.11 dated 11/02/09 issued by the 1st respondent.

Annexure A3 - True copy of the 'Minutes of the SCM held on 03/10/11.

Annexure A4 - True copy of 'Minutes' of the SCM held on 14/05/12.

Annexure A5 - True copy of the Judgment in Civil Appeal No.3648/08 which arose out of SLP © No.21416/07 of the Hon'ble Supreme Court.

Annexure A6 - True copy of the G.O. (Rt) No.3771/12/GAD dated 09/05/12 issued by the 2nd respondent.

Annexure A7 - True copy of the G.O (Rt) No.2165/15/GAD dated 25/03/15 issued by the 2nd respondent.

Annexure A8- True copy of the Indian Forest Service (Regulation of Seniority) Rules 1997.

Annexure A9- True copy of the order No.17013/04/08-IFS. 11 dated 12/09/14 issued by the 1st respondent.

Annexure A10- True copy of the representation dated 22.3.2015 submitted by the applicant to the Secretary, Ministry of Environment, Forest and Climate Change, Government of India.

Annexure A11- True copy of the reply dated 18.8.2015 issued by the 1st respondent.

Annexure A12- True copy of the representation dated 1.1.2016 submitted by the applicant to the Secretary, Ministry of Environment, Forest and Climate Change, Government of India.

Annexure A13- True copy of the representation dated 11.5.2016 to the 2nd respondent.

Annexure A14- True copy of the Pay Slip dated 12.01.2016 of the said Shri Jayarajan.

Annexure A15- True copy of the Pay Slip dated 12/06/14 issued in respect of the applicant.

Annexure A16- True copy of the representation dated 1.3.2016 to the Accountant General, (A&E), Thiruvanthapuram.

Annexure A17- True copy of the letter No. GE1/D/IFS/C4/3125 dated 16.3.2016 issued from the office of the 4th respondent.

Annexure A18- True copy of the DoPT No. 11030/4/2011-AIS-11, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training dated 11.1.2012.

Annexure A19- True copy of the appeal dated nil submitted before the Deputy Accountant General.

Annexure A20- True copy of the letter No. GE1/D/IFS/C-4/1126 dated 3.8.2016 issued from the office of the 4th respondent.

Annexure A21- True copy of the pay slip dated 14.7.2015 in respect of the said Sri Santhosh K. John.

Annexure A22- True copy of the G.O.(Rt) No.3519/2018/GAD dated 30.05.2018.

Annexure A23- True copy of the order dated 03.01.2011 in Civil Appeal No. 3648 of 2008 of the Honourable Supreme Court.

Annexure A24- True copy of the final order dated 20.12.2018 in OA 701 of 2016 of this Honourable Tribunal.

Annexure A25- True copy of the pay fixation details of Sri O Jayarajan on his appointment to IFS along with the forwarding letter No. DAG(A)/CCell/RTI/II-App1/2018/289 dated 5.6.2018.

Annexure A26- True copy of the pay fixation details of the applicant on his appointment to IFS along with the forwarding letter No. DAG (Adm)/C.Cell/RTI-140/2018-19/690 dated 23.10.2018.

Annexure A27- True copy of the relevant pages of the IFS Pay Rules 2007.

Annexure A28- True copy of the Indian Forest Service (Pay) Second Amendment Rules, 2008.

Annexure A28(a)- True copy of the IFS (Pay) Amendment Rules 2010.

Annexure A29- True copy of the relevant pages of the Fitment Tables under the CCS (RP) Rules 2008.

Annexure A30- True copy of the Letter No. DAG(Admn)/C.Cell/RTI-224/2017-18/740 dated 15.1.2018 issued by the Central Public Information Officer in the office of the 4th respondent.

Annexure A31- True copy of the Final order dated 14.06.2019 in O.A. No. 180/00332/2016 and connected cases of this Hon'ble Tribunal.

Annexure A32- True copy of the G.O.(P) No. 6657/2019/GAD dated 20.11.2019 issued by the Joint Secretary to Government in the office of the 2nd respondent.

Annexure A33- True copy of the G.O.(P) No.226/2009/F&WLD dated 11.05.2009 issued by the 3rd respondent.

Annexure A34- True copy of the G.O.(P) No.73/2010/F&WLD dated 21.10.2010 and SRO No. 986/2010 issued by the 3rd respondent.

RESPONDENTS' ANNEXURES

Annexure R2A – OM No. 22012/99/2009-AIS(I) dated 25.8.2010 of the Department of Personnel & Training.

Annexure R2B – Notification dated 18.4.2012 of Department of Personnel & Training.

Annexure R2C – Notification No. 17013/04/2008-IFS-II dated 5.12.2017, the Government of India, Ministry of Environment, Forest and Climate Changes.

Annexure R2D – Government letter No. 607384/SPL-C1/2016/GAD dated 3.6.2016.

Annexure R1 – Notification No. 17013/04/2008-IFS-II, dated 8.10.2012.