

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

O.A/351/1046/2021

Date of Order: 28.07.2021

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

Thomas Varghese, Son of late P.M. Varghese, Permanent resident of School Line, Currently posted as the Divisional Forest Officer, Nicobar Division, Divisional Forest Officer, Campbell Bay, O-Point, Campbell Bay. Great Nicobar Island, Andaman and Nicobar Islands, Pin Code : 744302.



...Applicant

VERSUS

1. Union of India in the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi-110001 serviced through the Director (Administration).
2. Union Public Service Commission, Service through the Chairman, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi – 110069.
3. Under Secretary (AP-3), Union Public Service Commission, Having his office at Dholpur House, Shahjahan Road, New Delhi-110069.
4. Lieutenant Governor, Andaman and Nicobar Administration, Raj Niwas, Port Blair, Andaman and Nicobar Islands, Pin – 744101.
5. Secretary, Department of Forests and Environment, Andaman and Nicobar Islands Administration, having his office at the Secretariat, VIP Road, Port Blair, Andaman and Nicobar Islands, Pin Code: 744101.
6. Principal Chief Conservator of Forests, Andaman and Nicobar Islands, Van Sadan, Haddo, Port Blair, Andaman and Nicobar Islands, Pin Code: 744102.
7. Conservator of Forests (Headquarters) Office of the Principal Chief Conservator of Forests, Andaman and Nicobar Islands, Van Sadan, Haddo, Port Blair, Andaman and Nicobar Islands, Pin Code: 744102.

...State Respondents

For The Applicant(s): Mr. P. C. Das, counsel

Ms. T. Maity, counsel

For The Respondent(s): Mr. R. Halder, counsel

O R D E R (O R A L)

Per: Ms. Bidisha Banerjee, Member (J):

Heard ld. counsel for both sides.

2. This application has been filed to seek the following reliefs:

"a) A direction upon the respondents to properly consider the representation of the applicant dated 15.03.2021 submitted before the respondent authorities through proper channels, and for a fresh decision to be taken by the respondent promoting authority being

the Lieutenant Governor, Andaman and Nicobar Administration, in accordance with the precepts of equity in law;

b) Appropriate Orders directing the respondents to otherwise deal with the impugned Order by giving retrospective effect to the promotion of the applicant which shall operate with effect from the date on which the vacancy arose in respect to the applicant, being 22.01.2014, for which he was eligible to be considered and promoted if otherwise suitable and eligible;

c) Appropriate Orders for immediate release of all monetary benefits to the applicant, to clear all dues based on retrospective promotion of the applicant to Selection Grade on and from 22.01.2014 till date, as per the pay and allowances applicable to an Assistant Conservator of Forest (Selection Grade) Group A which the applicant shall be entitled to on and from the date of notional seniority being given;

d) A direction on the respondent authorities to produce the records of the case before this Hon'ble Tribunal, so that this Hon'ble Tribunal may examine and certify the same and do conscientiable justice to the case.

e) Appropriate Direction(s)/Order(s) on the basis of the legal provisions mentioned hereinabove.

f) Costs of this application.

g) Any other relief or reliefs be given to the applicant as Your Lordships may deem fit and proper."

3. The facts of the case are as under:



The applicant is an officer of the Andaman and Nicobar Administration, under the Department of Environment & Forest. He is currently posted as the Divisional Forest Officer, Nicobar Division at Divisional Forest Office, Campbell Bay, O-Point, Great Nicobar Island.

Way back in 1989 the DoPT, Department of Personnel and Training issued an OM No. 22011/5/86-Estt.(D) inter alia communicating the Guidelines on Department Promotion Committees (DPC). By virtue of a clause in such office memorandum, it was mentioned that promotions will have only prospective effect even in cases where vacancies relate to earlier years. This was followed up in 1998 with another order being OM No. 22011/9/98-Estt.(D) issued by the Director (Establishment), Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training communicating the Guidelines on Department Promotion Committees, which specifically provided that there was a model calendar that must be adopted in respect of holding DPC's to ensure that the vacancies are duly filled up as they arose, and nor prejudice is caused to the incumbents in terms of loss of service by delayed administrative actions in holding DPC's and issuing the promotion orders.

In July 1991, Notification No. F.6.(SS) 6-91-11 was issued by the Andaman and Nicobar Administration, Department of Environment and Forests being the Andaman and Nicobar Islands Forest Service Rules,

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1991 which also notified the recruitment rules for the post of Assistant Conservator of Forests (Selection Grade).

Based on all these extant rules and guidelines, between February 1995 and December 2012, as many as five orders were passed (Order no. E/127 dated 17.02.1995, Order no. E/604 dated 18.07.2003, Order no. E/1496 dated 29.12.2011, Order no. E/1248 dated 04.12.2012, and Order no. E/54 dated 09.04.2015) by the competent authorities under the Andaman and Nicobar Administration notifying therein the promotion orders of the officers to the rank of Assistant conservator of Forests (Selection Grade), and on each of such occasions, the promotion of the officers concerned was given retrospective effect to the date on which the vacancy arose, and when the DPC ought to have been held to ensure timely promotion to eligible candidates without prejudice being created to them in respect of their service.



The applicant and three other officers, being Dr. S.H.K. Murti IFS, Dilip Kumar D'Souza and Ashok Kumar Paul IFS, joined the Department of Environment & Forest as Forest Rangers in 1986, 1987, 1987 and 1987 respectively. They rose through the ranks, until they were appointed to the grade of Assistant Conservator of Forests, Group B. From there, the next step of promotion is to the grade of Assistant Conservator of Forests (Selection Grade) Group A.

As it happens, vacancies began to arise against which the applicant and the three other ought to have been considered. In particular, the applicant was to be considered against a vacancy that arose on 22.01.2014 with the induction of one R. Ajay Kumar to the IFS on 22.01.2014. The same situation was there with the other three such officers, who were to be considered against vacancies which arose on 22.01.2014, 01.01.2015, 01.08.2015, and 01.12.2015 respectively.

Unfortunately, in respect of the applicant and those three other officers, the DPC which ought to be have been held in accordance with the model calendar as per the office memorandum of 1998, was held five years later, on 05.12.2019, wherein the DPC had made recommendations for their promotion, which was cleared by the UPSC and informed to the Andaman and Nicobar Administration on 06.12.2019 by the UPSC vide letter no. F.1/12(7)/2016-AP-3 of the Union Public Service Commission.

Unfortunately, this letter, while communicating the recommendations of the DPC dated 05.12.2019 and approval of the Commission thereon, directed that promotions will have only prospective effect even in cases where vacancies relate to earlier years.

On 25.06.2020, the applicant and three other officers were promoted vide Order No. E/71 issued by Conservator of Forests (Headquarters), Office of the Principal Chief Conservator of Forests, Van Sadan, Haddo, Andaman and Nicobar Islands, thereby communicating the order of the Lieutenant Governor, Andaman and Nicobar Islands for the promotion of 4 Assistant Conservators of Forests (Group B) to the post of Assistant Conservators of Forests Selection Grade (Grade A) namely the applicant Thomas Varghese, Dr. S.H.K. Murti, Dilip Kumar D'Souza, and A. K. Paul, but with immediate effect, rather than giving the retrospective effect to such promotions.



By virtue of such promotion, the applicant has been accorded the promotion that he was entitled to be considered for and granted 7 years ago. Due to the somnambulistic nature of the respondents in holding the DPC after a delay of 5 years, which has been done in a completely arbitrary and mala fide error, the applicant has suffered a serious prejudice in terms of his service life, his promotions his career advancement.

The applicant had reported for duty and joined in accordance with the impugned Order of promotion dated 25.06.2020, but had also submitted a representation dated 15.03.2021 praying inter alia for revision of the date from which promotion to Selection Grade was to be given effect to. This representation was duly forwarded to the concerned authorities via the proper channels, but no steps were even taken by the respondent authorities.

The applicant has alleged such action as patently arbitrary, unfair and violative of the guarantee of equal treatment before law to persons identically situated and circumstanced under Article 14 and of the guarantee to equal rights and treatment in the matter of public employment enshrined in Article 16 of the Constitution of India.

Hence the instant application before this Tribunal.

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4. At hearing, ld. counsel for the applicant would submit that he would be fairly satisfied if a direction is issued to the competent authority to consider his representation dated 15.03.2021 in the light of the DOPT OM dated 10.04.1989 (annexure A/1 to the O.A), the order dated 29.12.2011 (Annexure A-6 to the O.A), issued by the A&N Admn. Department of Environment and Forest, order dated 04.12.2012 (Annexure A-7 to the O.A), and in terms of the Seniority list of Assistant Conservator of Forest dated 01.01.2017 at page 52 to the O.A as well as order dated 19.04.2021 (page 59 to the O.A), with a direction to consider the same in a time bound manner.



5. Ld. counsel for the respondents does not have any objection if the same is issued to consider in accordance with law.

6. No adverse order is under challenge.

Since seeking identical relief as in the present O.A, the applicant has already preferred a representation dated 15.03.2021 to the Respondent No. 6 which is yet to be disposed of. As no fruitful purpose would be served by calling for a reply in this matter, unless the representation is decided by the competent authority, we dispose of the OA with a direction upon the concerned respondent or any other competent authority to consider the representation dated 15.03.2021 in the light of the DOPT OM dated 10.04.1989 (annexure A/1 to the O.A), the order dated 29.12.2011 (Annexure A-6 to the O.A), issued by the A&N Admn. Department of Environment and Forest, order dated 04.12.2012 (Annexure A-7 to the O.A), and in terms of the Seniority list of Assistant Conservator of Forest dated 01.01.2017 at page 52 to the O.A as well as order dated 19.04.2021 (page 59 to the O.A), decide the claim of the applicant and issue a

reasoned and speaking order in accordance with law within a period of 2 months from the date of receipt of copy of this order.

7. In the event the applicant is found entitled to the relief as prayed for, an appropriate order in accordance with law be issued within the said period.

It is made clear that we have not entered into the merit of this matter and, therefore, all points are kept open for consideration

8. The OA accordingly stands disposed of. No costs.



(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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