

(A/9)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH.

Transfer Application No. 635 of 1987

Shri Chandra BhushanApplicant

Versus

The State of U.P. and Others..... Respondents

Hon.Mr. Justice U.C.Srivastava, V.C.

Hon. Mr. A.B.Gorthi, Member (A)

(By Hon. Mr. Justice U.C.Srivastava, V.C.)

In this Writ Petition which has been transferred to this Tribunal by operation of law, the applicant has raised the grievance against his supersession and non promotion of the cadre of Indian Forest Service. No reasons having been given by the Selection Committee for rejection of the applicant. The only reason for the applicant's supersession according to him could be the adverse remarks for the year 1976-77. Infact on account of the aforesaid adverse remarks, the applicant was also prejudiced in the subsequent selections which were held in 1978, 1979, 1980 when persons still more junior to him were selected and appointed to Indian Forest Service.

2. The applicant was recruited in the year 1965 to the U.P. State Forest Service and was subrequeently appointed as Assistant Conservator of Forests in 1967 and he was promoted as Deputy Conservator of Forests in the Indian Forest Service w.e.f. 19.3.76. An adverse entry was communicated to the applicant in respect of the period between 1.11.76 to 31.3.77 which was given by Shri S.K.

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Agnihotri, Conservator and Shri B.P.Srivastava, Chief Conservator. The Selection Committee for promotion met on 2.7.77 and selected 18 members but the list was not approved by the U.P.S.C. because some members of the Selection Committee were closely related to some of the selected candidates. The Selection Committee thereafter met on 20.12.77. Shri B.P.Srivastava, the said Chief Conservator was also member of the same in the ^eSelect list dated 5.8.78.

3. The Select list dated 20.12.77 approved 18 officers but the applicant was not included in the same. Sl.No. 11 to 18 who were junior to the applicant were included and according to the applicant the only reason for not including the applicant was the adverse entry for the year 1976-77 which was taken into account and evaluated even though the same till then was not communicated to him and he had no opportunity to make representation against the same.

4. Apparently the ~~of~~ dominating factor for the applicant's supersession could be the adverse remarks for the year 1976-77, i.e. for the period 1.4.76 to 31.3.77 which were communicated to him vide letter no. 3249/16-16 dated 1.7.77 by the Addl. Chief Conservator of Forests Kumaun i.e. after the selections. In the adverse remarks, it was interalia, mentioned by Sri B.P.Srivastava, the then Chief Conservator of Forests that the applicant was not yet considered fit to be promoted to the Indian Forest Service.

5. The applicant submitted his representation against the aforesaid remarks and they were expunged by the State

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Government as communicated to the applicant by the Chief Conservator of Forests in his letter No. 85 1-TC/10-4 (Chandra Bhushan), dated 19/27.12.79 and by the Director Social Forestries in his letter dated 4.1.80. The applicant thereafter awaited for his case being considered and for inclusion of his name in the select list of 1977 and for his appointment in the IFS, but when this was not done, the applicant submitted yet another representation on 31.7.80.

6. The Selection Committee again met in the month of February 1980. The said Sri B.P. Srivastava was the member of the Selection Committee. This time too the applicants name was not included in the select list. The applicant has alleged in para 16 of the Writ Petition that his name was not included because of adverse entry of 1976-77 and because also of antagonistic attitude towards him of the said Sri B.P. Srivastav. The applicant again made a representation on 31.7.80 for consideration of inclusion of his name in the Select list and the reason for which being the adverse entry of 1976-77 which had been quashed in 1979 on his representation. No select list was prepared. Thereafter in December 1981 the applicant filed a representation. In the year 1983 Vigilance Commission reported a matter for enquiry before Administrative Tribunal in regard to a complaint of some contractors that there had been excess collection of Tendu leaves with the connivance of officials of Forest Department. The applicant contested the matter and ~~xx~~ filed writ petition for quashing the proceeding of the said enquiry. In the writ petition (no.11562 of 1985) an interim order was passed to the effect that if any promotion is held during the pendency of the writ petition. It was made

clear that the case of the applicants shall also be considered in accordance with G.O. dated 26.9.72 and meanwhile further proceedings against the applicant pending before the Administrative Tribunal shall remain stayed. Although there was some interim order dated 18.5.87 that the Administrative Tribunal was allowed to go ahead with the proceeding of the order and a direction was given that if any promotion is likely to be made in accordance with the G.O. dated 29.6.72 and 18.1.88 the earlier interim order was further modified to the effect that the applicant may be considered for promotion to the Indian Forest Service after excluding the charges which were being enquired into by the Tribunal, However,, the result of consideration for promotion to the Indian Forest Service shall be kept in a sealed cover and shall not be given effect to until further order or till the applicant is exonerated by the Tribunal of the charges levelled against him whichever is earlier.

7. The applicant's additional grievance is that one Sri S.H.A. Rizvi who had been selected even though there was an adverse entry in his character roll to the effect that he was not fit for selection to the Indian Forest Service and the said adverse entry were expunged much later i.e. in the month of January 1980, whereas the selections took place in 1977 but the applicant was not selected. The applicant has also challenged the grade which could not have been made applicable in his case as amendments were made later and no reasons have been given by the respondents as to why the applicant's name has been placed in the lower category.

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8. The applicant has also pointed out the inconsistent stand taken by the respondents earlier, although they have considered the case of Sri R.P. Joshi and allowed him promotion with retrospective effect.

9. We have heard Sri Sunil Gupta, learned counsel for the applicant and Sri N.P. Srivastava learned counsel for the respondents. It is not necessary to make reference of various rules and regulations of Indian Forest Service. The legal position regarding consideration of uncommunicated adverse remarks is quite clear. In Gurdial Singh Fizzi Vs. State of Punjab (1979) 2 SCC 368 the applicant was derived promotion to I.A.S cadre on account of certain adverse entries and his representation against the same was still pending it was observed "The Principle is well settled that in accordance with the rules of natural justice an adverse report in a Confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality its object partially being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether the adverse report is justified. Unfortunately for some reason or another not arising out of any fault on the part of the applicant, though the adverse report was communicated to him the Government has not been able to consider and decide whether the report was justified".

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10. In Amar Kant Chaudhary Vs. State of Bihar (1984) 1 SCC 694 the court again emphasized that adverse report in confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has opportunity to improve his work and conduct and explain the circumstances leading to the report.

11. In Brij Mohan Singh Chopra Vs. State of Punjab (1987) 2 SCC 188 same view was taken and above mentioned cases were referred to. In Union Public Service Commission Vs. Hiranyalal Dev and others (1988) 2 SCC 242 which was case of promotion in I.P.S. cadre it was held that Selection Committee erred in considering adverse entries which were not communicated to the candidate till meeting of Committee and later when communicated were expunged on the basis of representation. Such remarks would become non-est therefore non selection of the candidate on such consideration is bad. In U.P. State Electricity Board and another Vs. Kharak Singh and another (1990)(Supp) S.C.C 4 the respondent who was a junior Engineer was considered for promotion in selection grade thrice during 1977-79 but left out due to adverse entries of 1972-73 which promotion was given to his junior the adverse entries were expunged in 1979. It was held that respondent was entitled to promotion in selection grade and thereafter as Assistant Engineer from date when his juniors were so promoted.

12. From the facts stated above, it is, thus clear that the entries for 1976-77 were communicated to the

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applicant vide letter dated 1.7.77 and the Committee which made selection, as a result of the deliberations of which the selected list was initially made on 2.7.77, had before it the adverse remarks, communication of which reached applicant subsequent to the meeting of the Selection Committee. The Selection was not approved on the ground that some of the members of the Selection Committee were related to the candidate who appeared before the Selection Committee. Against on 20.12.77 the selection was held and the applicant's adverse entries were before the Members of the Selection Committee and his representation was not decided and it is not the case of the respondents that the representation was sent to the Selection Committee, meaning thereby that the Selection Committee, not only looked into the adverse remarks but also the representation which was ultimately allowed. The meeting of 20.12.77 was rather in continuation of the previous meeting, as previous selection was set aside on a particular ground. That was the selection in respect of candidates whose name was included in the list for consideration for which the meeting took place on 2.7.77. The Committee met in the year 1976-77 and in the year 1979 the applicant's remarks were expunged but no attempt was made to include his name again which was excluded because of ^{the} said adverse entry.

13. In view of the position stated above, the adverse remarks were ^{not}est and the applicant was passed over again in 78-79 and because of the adverse remarks, his supersession was not legal, valid or justifiable and application deserves to be allowed on this ground itself. The non inclusion of his ~~his~~ name in the select list of 1977 was ^{thus} ~~these~~ not legal.

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14. Indian Forest Service (Appointment by Promotion) Regulation 1966 (For Short Regulation) deals with the Constitution of Selection Committee to prepare Select List etc. Sub Regulation 3(a) was amended vide Notification dated 3.6.77 prior to this amendment regulation 3(a) provided that where the merit of two or more officers is found equal, seniority shall be taken into account. It amended regulation provides for grading and it reads as follows :

" (3A) The Selection Committee shall classify the eligible officers as 'Outstanding', 'Very Good', 'Good', or 'Unfit', as the case may be on overall relative assessment of their service records".

15. The Selection Committee which met on 2.7.77, was constituted prior to coming in force of the amendment. The vacancies in respect of which selection was made occurred while unamended regulation was in force and entire proceeding including convening of meeting of selection committee took place before amendment came into force and as such the Selection was to be made in accordance with the unamended regulation, meaning thereby merit and in case of equality services etc. should have been the criteria. The applicant was wrongly superseded and passed over due to adverse remarks due to which he was placed on leave till gratiation resulting his supersession is that year and subsequent year. The applicant being eligible he was to be considered along with other eligible candidates of that year or even subsequent year as concluding was and is not permissible and ~~against~~ against specific directions ^{having} ~~hearing~~ force of law. There being nothing against applicant and every thing having been worked out he was ^{completed entitled} ~~entitled~~ for promotion.

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in the very first year in accordance with earlier regulations. As the application deserves to be allowed on this ground it is not necessary to consider above grounds.

16. The application is allowed and the ^{superior} ~~suspension~~ of applicant is declared illegal, respondents are directed to convene review selection committee and consider the case of the applicant along with the cases of candidate selected in the year 1977 excluding all together the adverse remarks which were expunged subsequently and in case the applicant is selected, he will be given promotion on notional basis w.e.f. the date his next junior was promoted. In case the applicant is not found fit to be selected in that year the selection committee shall consider him similarly for next year and so on in the like manner and promotion too will be given to him accordingly. Let the Selection Committee meeting complete all the formalities within a period of 2 months from the date of communication of this order. No order as to costs.

transcript
A.M.

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VICE CHAIRMAN

Dated : 18th Aug 1992