

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 8th day of April 2002.

QUORUM : HON. MR. S. DAYAL, A.M.
HON. MR. RAFIQUDDIN, J.M.

O.A. No.1810 of 1993.

R.S. Mathur a/a 58 years s/o Sri Ram Sahai Mathur, Principal Chief Conservator of Forest (Retd.) r/o 35, Brij Vihar, HIG Duplex, P.O. Chandra Nagar, Ghaziabad.

..... Applicant.

Counsel for applicant : Sri D.C. Saxena & Sri P. Mathur.

Versus

1. The Union of India through the Secretary, Department of Environment & Forest, Govt. of India, Paryavaran Bhawan, CGO Complex, New Delhi.
2. The State of UP through the Secretary, Shri Mohinder Singh Principal Secretary, Department of Forest, Govt. of U.P., Vidhan Bhawan, Lucknow.
3. Shri Mohinder Singh, Principal Secretary, Department of Forest, Govt. of U.P., Vidhan Bhawan, Lucknow.

..... Respondents.

Counsel for respondents : Sri K.P. Singh.

O R D E R

BY HON. MR. S. DAYAL, A.M.

This O.A. has been filed with the prayer for by which the applicant has been charged ~~with~~ setting aside show cause notice dated 20.10.93 with non-preparation of time phase of social forestry scheme in time thereby depriving the state of getting external financial assistance, also with sanctioning death-cum-retirement gratuity to himself without getting the sanction of the State Government and lastly with appointment of Shri Gauri Shankar, Shri Harikrishna, Shri Ramchandra and Shri Ram Prakash Shukla on the post of Junior Clerks on ad-hoc basis and of Shri Bachiram Pandey as a peon on ad-hoc basis between

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April 1989 and July 1989 while he was in additional charge of the post and transfer of Sri Satish Chandra Srivastava, Sri Gulab Lal Srivastava and Sri Harivansh Sahay Srivastava who were Assistant Conservators of forest in hill areas on ad-hoc basis to the plain without obtaining the permission of the Government.

2. The applicant has alleged that the show cause notice was motivated by malice. He has impleaded Respondent No.3, who was Principal Secretary in the Department of Forest at that time, ny name. He has also given history of litigation which he was made to undertake on account of acts informed by malice on part of the respondents.

3. We have heard Sri D.C. Saxena for the applicant and Sri K.P. Singh for the respondents and perused the pleadings on record.

4. It is on record that the applicant worked as Chief Conservator of Forests, Social Forestry from 30.6.89 to 30.11.90 and as Principal Chief Conservator of Forests from 1.12.90 to 30.11.92. Both the periods of incumbency of the posts by the applicant were uneventful till 29.6.92 when the applicant received two orders dated 29.6.92. The first of these letters was regarding creation of an ex-cadre post of Principal Chief Conservator of Forests, Evaluation and Working Plan, which required the incumbent to prepare 10 year plan, review its progress and evaluate the schemes included in it. The next letter was addressed to the applicant transferring him to the ex-cadre post and asking him to take over the charge of the said post by 30.6.92 afternoon or else he would be treated as relieved and no pay shall be disbursed to him against the post of Principal Chief Conservator of Forests of the Department. The applicant joined and applied for voluntary retirement the very next day and applied for leave



from 2.7.92 to 29.9.92.

5. The applicant challenged of transfer by filing O.A. 312 of 1992 which was decided by a division bench of this tribunal by its order dated 10.9.92. The order of transfer was challenged on the ground that it was grossly arbitrary, patently illegal and malafide. The tribunal found that the post of Principal Chief Conservator of Forests, Evaluation and Working Plans was apparently created for the applicant five months before his retirement depriving him of his status, powers, functions and responsibilities apparently in order to make room for appointing Opposite Party No.3 in that O.A. who had been superseded at an earlier stage. The tribunal also found that the Indian Forest Service Association U.P. Branch had demanded a lower level post of Chief Conservator of Forests for Evaluation and Working Plans. The Tribunal also found that contrary to rules there was no declaration that the ex-cadre post was equivalent in status and responsibility to the cadre post held by the applicant. The Tribunal in its order observed that

"The post so created by no stretch of imagination be said to be equivalent in status and responsibility to that of Principal Chief Conservator of Forest. The work of which was hitherto under the supervision and control of Principal Chief Conservator of Forest. The defiance that it was as a result of demands of Office Association which made demand for several officers reflects only the colourable exercise of power and lack of good faith on the part of State Government in accepting one and that too not as demanded as per this post an officer of lower grade and pay scale was demanded besmears and clothes the action of the Government with arbitrariness and makes the impugned order wholly unsustainable also because it is patently illegal and manifestly unjust too"

The tribunal set aside the order of transfer and posting of the applicant on the ex-cadre post of Principal Chief Conservator of Forests, Evaluation and Working plans and the applicant was deemed to be continuing on the post of Principal Chief Conservator of Forests of U.P. The respondent No.3 thereafter issued a letter dated 24.9.92 (Annexure A-VII)

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to the O.A.) by which transfer order dated 29.6.92 was deemed to be non-existent and the applicant was deemed to have continued on the post of Principal Chief Conservator of Forests, Uttar Pradesh.

6. The respondents had in the meanwhile passed an order dated 16.7.92 allowing the applicant to retire with effect from 30.9.92. This order was challenged in O.A. 477/92 filed before Lucknow bench and the order dated 16.7.92 was stayed by interim order dated 17.9.92. The operation of order dated 16.7.92 was thereafter postponed by the respondent No.3 by their order dated 24.9.92. The applicant was again transferred to the post of Principal Chief Conservator of Forests, Evaluation and Working Plan by order dated 26.9.92 stating that the post had been declared equivalent to the post of Principal Chief Conservator of Forests, Uttar Pradesh and the applicant should hand-over the charge the same day or else he will be treated as retired and shall not be paid against the said post. This order was challenged in O.A. No.1380 of 1992 and was stayed by order dated 28.9.92. The respondents thereafter by order dated 30.11.92 cancelled the order dated 26.9.92 transferring the applicant to an ex-cadre post. The date of superannuation of the applicant was also 30.11.92.

7. Although the respondents have vigorously contended that the office memorandum dated 14.1.93 is totally unconnected with earlier orders of transfer of the applicant to ex-cadre post and the acceptance of his notice for voluntary retirement, the respondents in this particular case have clearly forfeited their right for their claim to be taken at its face value. The respondents have also claimed that they could not proceed with the enquiry because of interim order in this case. We find that the stay continued only till 16.1.97 and was not extended after that date. The

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facts show that the office memorandum dated 14.1.93 fits the pattern of inquisition of the applicant and is a new act in the same series. It is clear that the respondents had averred in their counter affidavit in O.A.312 of 1992 that the post of Principal Chief Conservator of Forests, Evaluation and Working Plan was created for the betterment of the Forest Department and the applicant was the best suited ^{officer} as he was the senior most and experienced. The respondents have not disputed the claim of the applicant that he discharged his duties honestly, efficiently and to the utmost satisfaction of all concerned. We find that the applicant felt compelled to seek voluntary retirement when he was made to take charge of the ex-cadre post and the respondents had sanctioned his request for voluntary retirement on 26.7.92. The respondents had very obviously nothing against the applicant till that date which warranted proceeding against him departmentally. The act of the respondents in slapping charges No.1 and 3 against the applicant is clearly a sequel to the unsustainable effort of the respondents to shift the applicant to an ex-cadre post and are clearly tainted by ill will towards the applicant. Paragraph 2 of the order dated 1.12.92 in O.A.1380 of 1992 is apt with regard to the act of the respondents in this case too. The paragraph is reproduced below :-

"In view of the fact that the order has been withdrawn after time was given to the learned counsel, pointing out that the order can be struck down on the ground that it suffers from non-application of mind and the order which gets the seal of Chief Minister who passed the final order can be said to be an arbitrary order in violation of the Constitutional provisions of the country which is governed by Rule of law."

8. As fas as charge No.2 is concerned, we had passed the following order on 27.7.2001 :-

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"Sri P. Mathur and Sri D.C. Saxena for the applicant and Sri K.P. Singh for the respondents. The learned counsel for the applicant states that he has served rejoinder on the learned counsel for the respondents today and seeks time to present this case for hearing. We would like to have the latest position regarding the enquiry against the applicant to be brought on record. We would also like to know as to whether the applicant has been given his retiral benefits or not. The learned counsel for the respondents may file a supplimentary counter to bring these facts on record. He is allowed three weeks time to file the same. The learned counsel for the applicant shall have one week to file rejoinder.

List this case for hearing on 31st August 2001.
Copy of the order may be given to the learned counsels."

9. The respondents thereafter filed a supplimentary counter affidavit dated 21.1.2002 in which with regard to charge No.2 they have furnished the following information :-

"That the vide Govt. letter no. 6013/14-1-93-300(64)/90 dt. 6.2.93, gratuity was sanctioned vide G.O. no. A-359/1-2-48 dt. 30-11-92 and 90% of G.P.F. was also paid vide letter no. A-358/1-2-48 dt. 30-11-92 and leave encashment was paid vide letter no. A-360/1-2-48 dt. 30-11-92. Thus all these payments have already been paid to the applicant."

10. It is clear from the supplementary counter affidavit that the Government have now put their seal of approval on the sanction given by the applicant for disbursement of the amount of subsidy by virtue of the powers conferred on him. Thus, there is no justification now for the respondents to proceed with this charge.

11. It may be mentioned that this charge also suffers from the same bias and same infirmity which have been discussed with regard to charge No.1 & 3 above.

12. We, therefore, find that the show cause notice dated 20.10.93 is unsustainable and set aside the said notice. If the applicant is yet to receive any arrears of retiral benefits, the same shall be given to him with interest at the rate of 15% from the date the arrears were due till the date of payment. The cost of application amounting to Rs. 650/= shall also be paid to the applicant.

Dattatreya
J.M.

Asthana/
5.4.02

Mangal
A.M.