

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
NEW W.D. BENCH

O.A. No.
583

of

1987

TAX No.

DATE OF DECISION 20.8.1991

Mr. V.C. Desai

Petitioner

Mrs. D.N. Mehta

Advocate for the Petitioner(s)

Mr. Shailesh Brahmbhatt

Versus

Union of India & Ors.

Respondent

Mr. P.M. Raval

Advocate for the Respondent(s)

Mr. Anil Dave

Mr. D.K. Mehta

Mr. P.V. Hathi

CORAM :

The Hon'ble Mr. M.M. Singh

: Member (A)

The Hon'ble Mr. S. Santhana Krishnan

: Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(9)

Mr. V.C. Desai,
6, Rajnagar Society,
Behind GEB Colony,
VADODARA -390 015

: APPLICANT.

(Advocate: Mrs. D.N. Mehta and
Mr. Shailesh Brahmbhatt)

VS.

1. Union of India, through
The Ministry of Environment and
Forests,
Dept. of Environment,
Forest and Wild Life,
Parivarjan Bhavan,
New Delhi CGO Complex,
Phase II
Lodi Road,
NEW DELHI -110 003.
2. State of Gujarat, through
The Secretary,
Environment and Forests,
Block No. 14, 8th floor,
Sachivalaya,
GANDHINAGAR.
3. The Secretary,
Union Public Service Commission,
NEW DELI.
4. Shri J.R. Parmar, In Charge
Conservator of Forest,
Marine National Park,
JAMNAGAR.
5. Shri Y.R.C. Reddy, In charge
Conservator of Forest,
Kutch Circle,
BHUJ.
6. Shri M.L. Sharma,
Assistant Principal Chief
Conservator of Forests (Plan)
Kothi Building,
VADODARA.

: RESPONDENTS

(Advocate : Mr. P.M. Raval)
Mr. Anil Dave
Mr. D.K. Mehta
Mr. P.V. Hathi

CORAM : Hon'ble Mr. M.M. Singh

: Member (A)

Hon'ble Mr. S. Santhana Krishnan

: Member (J)

O R A L - O R D E R

O.A. No. 583 of 1987

Date : 20.8.1991.

Per : Hon'ble Mr. M.M. Singh

: Member (A)

... 3/-

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In this original application filed under Section 19 of the Administrative Tribunals Act, 1985, we had, on 22.7.1991 while allowing the miscellaneous application filed by the applicant for amendment, directed that the learned counsel for the applicant to carry out amendment within two weeks and serve the amended copies to the respondents. The applicant's counsel has not complied with this direction.

2. When the matter is listed today for final hearing, a leave note is shown to us, from the learned counsel for the the applicant, in which he has intimated that due to unavoidable circumstances he is not in a position to attend the Tribunal today.

3. Even if we consider his above request, the non-compliance of the above mentioned direction dated 22.7.1991 in the matter which was filed in 1987 cannot be ignored. In view of the fact that the direction was not carried out and the applicant and counsel not present today, we dismiss the application for default. There are no orders as to costs.

4. Mr. E. A. Samuel learned counsel for Mr. P. M. Raval learned counsel for respondent No. 1 & 3 appears. Mr. D. K. Mehta learned counsel for respondent No. 4 & 5 present.


(S. SANTHANA KRISHNAN)
Member (J)


(M. M. SINGH)
Member (A)

M.A./392/91

IN

O.A./583/87

ORDER

Date	Office Report	ORDER
24.2.1992		<p>Mr. Shailesh Brahmbhatt, learned advocate for the applicant submits that he is busy in some other matter in the second sitting and requests for time. Hence the matter is adjourned.</p> <p><i>Neru</i> <i>h</i></p> <p>(R.C. Bhatt) Member (J)</p> <p>(M.Y. Priolkar) Member (A)</p> <p>*Ani.</p>

(2)

Date	Office Report	ORDER
20.7.1992 (7)		Present: Mr. S. B. Brahmbhatt, Adv/Apt. Mr. P. V. Hathi, Adv/Res. No. 4 & 5. None for rest of the respondents.
		<p>The applicant has filed M.A.392/91 for restoring the application to file, we dismissed the application in default by the order dated 20.8.1991. The copy of the M.A. was served on the ^{Opposite} private parties. Respondent No. 1 to 3 have no particular objection to allowing the M.A. The learned counsel for the respondent No. 4 & 5 expressed his opposition to the M.A. because the grounds now given have already been considered in the original order dismissing the application in default.</p> <p>2. We notice that in the original order, is taken of the unavoidable circumstances preventing the applicant's counsel to attend the Tribunal. However, on the ground that it did not prevent the compliance of the order directing him to carry out the amendment and serve the copies to the respondents, the application was dismissed for default.</p> <p>3. In the M.A. there is also a new ground i.e. communication gap. The amendment could not be carried out by the advocate's clerk as he already wanted to ^{re-appear} seek more time.</p> <p>4. The learned counsel for respondent No. 4 & 5 submits that this is not a proper reason as in any case, he prays that in case this application is allowed cost be allowed to be</p>

Date	Office Report	ORDER
		<p>respondents No. 4 & 5.</p>
		<p>5. We are satisfied that there are adequate reasons for not carrying out the amendments. In the circumstances, we are inclined to allow this application.</p>
		<p>6. In the circumstances, we allow this application and also direct the applicant ^(Rs one hundred only) to pay the cost of Rs. 100/- each to respondents No. 4 & 5. The application is restored to file.</p>
		<p>xxx The application is xxxxxxxxx</p> <p>7. Call on 13th August, 1992 before xxx which date the applicant should carry out the amendments and served copy to the other parties.</p> <p><i>(Signature)</i></p> <p><i>N.V.K.</i> (R.C.Bhatt) Member (J)</p> <p><i>(Signature)</i> (N.V.Krishnan) Vice Chairman.</p>

(B)

Date	Office Report	CR 14/8/92
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(26)
14.8.92

Present: Mr. Shailesh Brahmbhatt, Adv/Apt.

Mr. Akil Kureshi, Adv/Res. No. 1 & 3

None for the other respondents.

The learned counsel for the applicant submits that as extensive amendment have been made. He may be permitted to file an amended application and served it on the respondents within four weeks. Allowed. Call on 14th September, 1992.

Neer
(R.C.Bhatt)
Member (J)

U
(N.V.Krishnan)
Vice Chairman

vtc.

(22)
14.9.92

Present: Mr. Shailesh Brahmbhatt, Adv/Apt.

Mr. Akil Kureshi, Adv/Res. No. 1 & 3.

None for the other respondents.

Reesp Sub
MA not filed
Amendment
Chrgd
20/9/92

The learned counsel for the applicant seeks some more time to either carry out the amendment in the original application or to file a fresh amended application. This is a 1987 matter. This should done within 15 days. Let this matter be listed for final hearing on 21st October, 1992. No further adjournment in this case.

Neer
(R.C.Bhatt)
Member (J)

U
(N.V.Krishnan)
Vice Chairman

vtc.

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Date	Office Report	ORDER
5 (04) 21/10/92		<p>Mr. Shailesh Brahmbhatt for the applicant.</p> <p>Mr. Brahmbhatt carry out the amendments in the Original Application and also served a copy of the amendments to the respondents.</p> <p>At the request of the parties, call on for final hearing, on 7th December, 1992.</p> <p>No further adjournment.</p> <p><i>Rs</i></p> <p>(R.C.BHATT) MEMBER (J)</p>
8 7/12/92	<p>Re Submitted,</p> <p>Page - 4 shows that amendment have been carried out on 20.10.92.</p> <p><i>On the 12th Dec 1992</i></p>	<p>Present: None for the applicant. Mr. Akil Kureshi, Adv/Res. 1&2 None for other respondents.</p> <p>This is 1987 matter. The applicant was directed to carry out amendment in the O.A. and served on the respondents. This has not done. In the interest of justice, opportunity is given. Let this matter be listed again on 16th December, 1992.</p> <p>No further adjournment to the applicant for this purpose.</p> <p><i>Rs</i></p> <p>(R.C.Bhatt) Member (J)</p> <p>vtc.</p> <p><i>Rs</i></p> <p>(N.V.Krishnan) Vice Chairman</p>

OA/583/87

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DATE	OFFICE REPORT	ORDERS
16-12-1992		<p>None for the applicant. Shri Akil Kureshi for the respondents no. 1 and 3. Shri Mehta for four and five. None for the other respondents. This is a 1987 matter relating to year of allotment in IFS. Shri Akil Kureshi states that he recollects that the State Government Counsel said that perhaps the similiary matter has been decided in the past by the Tribunal. The State Government counsel is therefore directed to produce the decision on the next hearing.</p> <p>Call on 6-1-1993.</p> <p><i>(Signature)</i></p> <p>(R.C.Bhatt) Member (J)</p> <p><i>(Signature)</i></p> <p>(N.V.Krishnan) Vice Chairman.</p>
6-1-1993		<p>*AS.</p> <p>The applicant has sent a leave note. Shri Akil Kureshi Advocate for respondents no.1 and 3 Other respondents not present.</p> <p>In view of the order on 16-12-1992, list on 11-1-1993 on which date the counsel for the State Government should state whether this matter can be disposed of on the basis of the earlier decision which is stated to have been rendered by the Tribunal. Call on 11-1-1993.</p> <p><i>(Signature)</i></p> <p>(B.S. Hegde) Member (J)</p> <p><i>(Signature)</i></p> <p>(N.V.Krishnan) Vice Chairman.</p>

DATE	OFFICE REPORT	
11.1.93 (2-A)		Call on 3.2.1993. File not available. <i>res</i> (R.C. Bhatt) Member (J) <i>re</i> (N.V. Krishnan) Vice Chairman
3.2.93		*K Mr. Harshad Brahmbhatt, for Mr. Shailesh Brahmbhatt, learned advocate for the applicant seeks adjournment. Mr. Akil Kureshi learned advocate for the respondents No. 1 and 3 is present. None present for the other respondents. This matter is very old matter. Hence, the matter is adjourned to 18th Feb. 93. No further date will be given. <i>re</i> (V. Radhakrishnan) Member (A) <i>res</i> (R.C. Bhatt) Member (J)
18.2.93		*K Mr. Brahmbhatt, learned advocate for the applicant seeks time to which Mr. Dave learned advocate for the respondents no. 2 has no objection. Call on 10th March, 1993. No further date will be given. <i>re</i> (V. Radhakrishnan) Member (A) <i>re</i> (R.C. Bhatt) Member (J)
		*K

DATE	OFFICE REPORT	ORDERS.
5-5-1993		<p>Reply is filed by the respondent no.2 today. Matter is fixed for final hearing on 7-6-1993. If the applicant wants to file rejoinder if any he may do so latest by 19th of this month.</p> <p>Call on 7-6-1993.</p> <p><i>Ad</i></p> <p>(V. Radhakrishnan) Member (A)</p> <p>(N.B Patel) Vice Chairman.</p>
7-06-1993.		<p>*AS.</p> <p>The applicant and his advocate are not present. Dismissed for default.</p> <p>After the above order is passed, Mr. Shailesh Brahmbhatt has arrived and requested for the order being set aside and the matter being restored. The dismissal order is set aside and the O.A. is restored to file and is fixed for final hearing. Mr. Shailesh Brahmbhatt undertakes to inform all the advocates. Call on 08.06.1993.</p> <p><i>Ad</i></p> <p>(V.Radhakrishnan) Member (A)</p> <p>(N.B.Patel) Vice Chairman</p> <p>AIT</p>

DATE	OFFICE REPORT	ORDERS
10-3-1993		<p>Mr. Brahmabhatt learned Advocate for the applicant is present and Mr. kureshi learned Advocate for the respondents 1 to 3 is present. None present for other respondents. In the interest of justice the matter is kept on 30-3-1993.</p> <p><i>Ar</i></p> <p>(V. Radhakrishnan)</p> <p>Member (A)</p>
		<p><i>res</i></p> <p>(R.C. Bhatt)</p> <p>Member (J)</p>
		<p>*AS.</p> <p>Parties' advocates present. At the request of applicants respondents advocate adjourned to 26/4/93.</p> <p><i>Ar</i></p> <p>(V. Radhakrishnan)</p> <p>Member (A)</p> <p><i>W. B. Patel</i> Vice Chairman</p>
05-05-1993.		<p>For want of time the matter is adjourned to 05-05-93.</p> <p><i>Ar</i></p> <p>(V. Radhakrishnan)</p> <p>Member (A)</p> <p><i>W. B. Patel</i> Vice Chairman</p>
05-05-1993.		<p>For want of time the matter is adjourned to 07-06-1993.</p> <p><i>Ar</i></p> <p>(V. Radhakrishnan)</p> <p>Member (A)</p> <p><i>W. B. Patel</i> Vice Chairman</p>

18

DATE	OFFICE REPORT	ORDERS
08/06/1993.		<p>At the request of Mr. Hathi learned counsel for the respondent no. 4 and 5, the matter is adjourned to 30.6.93, to enable him to file reply to the amended portion of the petition. The other respondents may file ^{also} reply to the amended portion of the petition if they do desire to file. The applicant may file rejoinder latest by 29th June, 1993. Matter may be placed for final hearing on 30.6.1993. Call on 30.6.93.</p> <p><i>DR</i></p> <p><i>DR</i></p> <p>(V. Radhakrishnan) Member (A)</p> <p>(N.B. Patel) Vice Chairman</p> <p>AIT</p>
30.6.1993.	<p><u>Res subi</u> <u>Reb to</u> <u>the</u> <u>amended</u> <u>portion</u> <u>o. A is</u> <u>not</u> <u>filed</u> <u>Arrravol</u> <u>23/6/93</u></p>	<p>Adjourned to 09.7.1993 for filing rejoinder as requested by Mr. Shailesh Shah Brahmabhatt.</p> <p>Call on 09.07.1993, for final hearing.</p> <p><i>DR</i></p> <p>(V. Radhakrishnan) Member (A)</p> <p>(N.B. Patel) Vice Chairman</p> <p>AIT</p>
	<p><u>Res subi</u> <u>Rejoinder</u> <u>not filed</u> <u>after Hon</u> <u>Court's order</u> <u>dt 30.6.93</u> <u>Arrravol</u> <u>8.7.93</u></p>	

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DATE	OFFICE REPORT	ORDERS
10/8/93		<p>As the learned Member of the Bench is not available, the matter is adjourned to 18/8/93</p> <p><i>Ab</i></p> <p>(V. Radhakrishnan) Member (A)</p> <p>19</p>
18/8/93		<p>At the Joint request of the parties advocates adjourned to 26/8/93</p> <p><i>Ab</i></p> <p>(V. Radhakrishnan) Member (A)</p> <p><i>AB</i> (B. Patel) Vice Chairman</p>
26/8/93		<p>For want of time the matter is adjourned to 1-9-93</p> <p><i>Ab</i></p> <p>(V. Radhakrishnan) Member (A)</p> <p><i>AB</i> (N. A. Patel) Vice Chairman</p>

DATE	OFFICE REPORT	ORDERS
9-7-93		<p>Reply filed by Mr. D.N. Mehta, on behalf of the respondent no.4, be taken on record subject to another copy of the reply being filed hereafter. Rejoinder filed by the applicant to the said reply be also taken on record.</p> <p>Adjourned to 23-7-1993. Respondent no.6 be informed about the date of the final hearing at the following address:</p> <p><i>Res-Subi</i> <i>Date is informed</i> <i>to Res No 6</i> <i>vide letter</i> <i>dt. 13-7-93</i> <i>Attn: [Signature]</i> <i>10-7-93</i></p>
		<p>Shri M.L. Sharma, IFS By. Inspector General of Forests, C.G.O Complex, Paryavaran Bhavan, New Delhi.</p> <p><i>SL</i></p> <p>(V. Radhakrishnan) Member (A)</p> <p><i>7</i> (N.B. Patel) Vice Chairman.</p>
23/7/93		<p>*AS.</p> <p>For want of time the matter is adjourned <u>to 4-8-93</u></p> <p><i>SL</i></p> <p>(V. Radhakrishnan) Member (A)</p> <p><i>7</i> (N.B. Patel) Vice Chairman</p>
10.08.1993.		<p>The Head Clerk from the Office of the Assistant Principal Chief Conservator of Forests, Vadodara is present and states that Mr. A.R. Dave has informed them that he would not represent the State Govt. in this case and therefore they have moved the State Govt. for engaging another advocate to represent them and it will take some more days to engage another lawyer to the State Govt. Adjourned to 10.8.1993. It is made clear that, even if by that time arrangements are not made for representing for the State Govt. by an advocate, the matter will be proceeded with.</p> <p><i>SL</i> Call on 10.8.1993.</p>

(V.Radhakrishnan)
Member (A)

(N.B. Patel)
Vice Chairman

DATE	OFFICE REPORT	ORDER
1-9-93		<p>It is true that the respondents have opposed the application on the ground of delay and latches. However, there is no reason why they should not have filed any reply as regards the averment that adverse remarks were communicated to the applicant in a bunch and at a belated stage and that they were considered while taking a decision whether the applicant should be considered or should not be considered for initial recruitment. There is also no reply to the averment that the applicant's representation against the adverse remarks was pending and that, despite the pendency of his said representation, adverse remarks were considered against him. Similarly, the respondents have also not contested the averment that the Special Selection Board had not recorded reasons for not including the applicant in the selection list and had thereby committed breach of the mandatory provisions of Regulation 5 of Indian Forest Services (Initial Recruitment) Regulations, 1966. The responsible officer of the respondent no.1, conversant with the facts of the case is therefore, directed to file a detailed affidavit meeting the averments on the aforesaid points latest by 17th September, 1993, with a copy being furnished to the applicant's learned Advocate Mr. Brahmbhatt two days in advance. It is made clear that the non-compliance of this order may entail drawing of adverse inferences and possibly other adverse consequences for the responde</p> <p>Call on 17-9-93.</p> <p><i>[Signature]</i></p> <p>(V. Radhakrishnan) Member (A)</p> <p><i>[Signature]</i></p> <p>(N.B. Patel) Vice Chairman.</p>

(2)

PAGE	OFFICE REPORT	ORDER
17/9/93	<p>Reply filed by Mr.Kureshi to the amended portion of the application be taken on record. At the request of Mr.Brambhatt, adjourned to 6/10/1993 for filing rejoinder.</p> <p><i>VR</i></p> <p>Rep Sub Rejoinder now find S/ 6/93</p>	<p>(V.Radhakrishnan) Member (A)</p> <p>(N.B.Patel) Vice Chairman</p>

DATE	OFFICE	REPORT	ORDER
6/10/93			<p>M.A. No. 522/93</p> <p>Notice to respondents No.1 and 3 returnable on 20.10.93. Mr.Kureshi waives service of the notice. Mr.Kureshi may keep ready with him the documents referred to in this application so that ⁴ the production as ordered ⁴ can be made without any delay. Mr.Brambhatt states that he will be able to file rejoinder to the affidavit filed on behalf of U.O.I. after the documents are produced.</p> <p>Rejoinder not filed.</p> <p>19/10</p>
20-10-93			<p>(V.Radhakrishnan) Member (A)</p> <p>(N.B.Patel) Vice Chairman</p> <p>a.a.b.</p> <p>At the request of Mr. Kureshi adjourned to 1-11-93 to enable the respondent to comply with the order dated 6-10-93.</p> <p>(V. Radhakrishnan) Member (A)</p> <p>(N.B. Patel) Vice-Chairman</p>

O.A./583/87

with

MA/522/93

1/11/93

At the joint request of the learned
advocates, adjourned to 2.11.1993.


(V. Radhakrishnan)
Member (A)


(N.B. Patel)
Vice Chairman

a.a.b.

2-11-1993

M.A.522/93

Rejoinder filed by the applicant in M.A. may be
taken on record. In view of the M.A. filed by the
applicant, Mr. Kureshi produces proceedings of
the Special Selection Board meetings held on
5th Oct. 1979 and 6th October 1979. The said proceedings be
taken on record as R-1.

Heard Mr. Brahmbhatt and Mr. Kureshi. The respondents
have already produced minutes of the meetings dated
5-10-1979 and 6-11-1979 and they are taken on record
as R-1. So far as items no. 1, 2, & 3 are concerned
production thereof is not ordered at this stage but
if, at any stage of the hearing hereafter, we find that
the documents mentioned at items no. 1, 2, & 3 are also
relevant and have bearing on the questions arising
in the application and we find that there is no bar
against the production of those documents, we will
order production of the said documents at such stage
in future. With these observations, M.A. 522/93 stands
disposed of.

At the request of Mr. Brahmbhatt adjourned to 26-11-93
as he wants to file additional affidavit regarding

O. A. 583187

(23)

Date	Office Report	Order
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24-12-93

other
As the learned Member of
the Sabha is not available, in the
afternoon, the matter is adjourned
to 30-12-93

2

K. RAMAMOORTHY
MEMBER [A]

2M

Date	Office Report	Order
23-12-93		<p>At this stage, Sh. Brahmhat, for the applicant, seeks leave to produce three documents which, according to him, would show that the applicant was not guilty of delay in approaching the Tribunal. Sh. Kureshi stoutly opposes grant of leave to the applicant on the ground that leave for production is sought at a very late stage when the arguments on behalf of the applicant are about to conclude and that, if production is allowed at this stage, the respondents will have no opportunity to explain the context in which the applicant was given reply regarding his subsequent representation and will also have no opportunity to tender other explanation, if any, about the contents of the reply. There is no doubt about the fact that the applicant has sought permission for the production of new evidence at an extremely late stage of hearing. However, we are not inclined to shut out the evidence, as we are still seized of the matter and will bear in mind the factor that the respondents should not be prejudiced by late production. Leave is, therefore, granted. The three documents may be marked as A/35, 36 and 37. The respondents may file documentary evidence in the form of affidavit, containing explanation, if any, which they might like to give about the context or the contents</p>

contd..../-

Date	Office Report	Order
24-12-1993	After hearing the documents, arguments continued to be heard. Adjourned to 4-1-1994 for filing affidavit by Respondents and adjourned to 24-12-93 for further arguments.	(K. Ramamoorthy) Member(A) (N.B. Patel) Vice-Chairman
24-12-1993	Further arguments heard. Arguments incomplete. Adjourned to 30-12-93 for further arguments.	(K. Ramamoorthy) Member(A) (N.B. Patel) Vice-Chairman
30-12-1993	Arguments of both the learned advocates concluded except on the new documents produced by the applicant as Annexures A/35, 36 and 37. Adjourned to 4-1-1994.	Sealed cover tendered by Mr. Kureshi for perusal to be kept in safe custody by D.R.(A) till required to produce the same. Call on 4-1-1994.
		(K. Ramamoorthy) Member(A) (N.B. Patel) Vice-Chairman

(pkk)

(23)

Date	Office Report	Order
23-12-93		<p>At this stage, Sh. Brahmbhat, for the applicant, seeks leave to produce three documents, which, according to him, would show that the applicant was not guilty of delay in approaching the Tribunal. Sh. Kureshi stoutly opposes grant of leave to the applicant on the ground that leave for production is sought at a very late stage when the arguments on behalf of the applicant are about to conclude and that, if production is allowed at this stage, the respondents will have no opportunity to explain the context in which the applicant was given reply regarding his subsequent representation and will also have no opportunity to tender other explanation, if any, about the contents of the reply. There is no doubt about the fact that the applicant has sought permission for the production of new evidence at an extremely late stage of hearing. However, we are not inclined to shut out the evidence, as we are still seized of the matter and will bear in mind the factor that the respondents should not be prejudiced by late production. Leave is, therefore, granted. The three documents may be marked as A/35, 36 and 37. The respondents may file documentary evidence in the form of affidavit, containing explanation, if any, which they might like to give about the context or the contents</p>

contd..../-

Date	Office Report	Order
		of the documents. Arguments continued to be heard. Adjourned to 4-1-1994 for filing affidavit by Respondents and adjourned to 24-12-93 for further arguments.
		(K. Ramamoorthy) Member(A) (N.B. Patel) Vice-Chairman
24-12-1993		Further arguments heard. Arguments incomplete. Adjourned to 30-12-93 for further arguments.
		(K. Ramamoorthy) Member(A) (N.B. Patel) Vice-Chairman.
30-12-93		Arguments of both the learned advocates concluded except on the new documents produced by the applicant as Annexures A/35, 36 and 37. Adjourned to 4-1-1994.
		Sealed cover tendered by Mr. Kureshi for perusal to be kept in safe custody by D.R. (A) till required to produce the same. Call on 4-1-1994.
		(K. Ramamoorthy) Member(A) (N.B. Patel) Vice-Chairman
		kk*

Date	Office Report	Order
4-1-1994		<p>Mr. Kureshi states that he has no instructions to state anything in explanation of the documents A-35, A-36 and A-37. Mr. Kureshi concludes his arguments. Heard Mr. Brahmbhatt in reply.</p> <p>Mr. Brahmbhatt files pursis bearing the applicant's signature seeking permission not to press the relief relating to year of allotment, Mr. Kureshi to state his reaction to the pursis tomorrow.</p> <p>The documents produced in sealed cover by Mr. Kureshi are perused by us and returned to Mr. Kureshi. Arguments concluded. Reserved for judgement.</p>
05.01.1994.		<p>Shri Shailesh Brahmbhatt states that the applicant, by filing this pursis, seeks permission to press only the reliefs claimed in para-9 (A) (i), (ii) and (iii), with a clear understanding that the relief claimed in sub-para (iii) is claimed with reference to the applicant's prayer for inclusion as a initial recruit. He states that the applicant seeks permission to withdraw the O.A. in respect of the other prayers mentioned in paragraph-9 of the application which are prayers relating to year of allotment on the basis of his subsequent promotion. Mr. Shailesh Brahmbhatt states that if the applicant succeeds in getting relief of induction as initial recruit, there would be no occasion for him to seek any relief regarding year of allotment as a subsequent</p>

Date	Office Report	Order
		<p>promotee. He, however, states that if the applicant does not succeed in getting relief of induction as initial recruitee, he may have to pursue remedy for getting the relief claimed in the paragraphs other than para-9-A of the O.A. He, therefore, seeks liberty while withdrawing the application in respect of para-9 (by way of reliefs contained in para-9-(a) to (e) of the O.A.), to file a fresh O.A. for claiming the said reliefs if the applicant finds it necessary to do so in future. Permission is granted to the applicant accordingly to withdraw the application so far as it relates to the reliefs in para-9 (a) to (e) with liberty to file a fresh application for claiming the said reliefs if it is found necessary by him to do so.</p> <p>Reserved for judgment.</p> <p style="text-align: center;">AIT</p> <p>(K.Ramamoorthy) Member (A)</p> <p>(N.B.Patel) Vice Chairman</p>

(27)

Date	Office Report	Order
18.1.94	<p>Sealed cover containing file is returned to Adv. Shri Akil Kureshi as per order of Hon'ble Court passed separately on 18.1.94 on pursuance of which Pursuance is kept in Register.</p> <p>Parlor 18.1.94 DR (7)</p>	<p>As per the order passed on the pursuance separately, the documents are returned to Mr. Akil Kureshi.</p> <p>✓ (K. Ramamoorthy) Member (A)</p>
7.6.94		<p>✓ (N. B. Patel) Vice Chairman</p>
	<p>Judgement pronounced in open court on 7.6.94</p> <p>✓ (K. Ramamoorthy) Member (A)</p>	<p>✓ (N. B. Patel) (Vice Chairman)</p>

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

(28)

O.A. No. 583 of 1987
T.A. No. X

DATE OF DECISION 07 th April, 1994.

Shri V.C.Desai _____ Petitioner

Shri Shailesh Brahmbhatt _____ Advocate for the Petitioner(s)

Versus

Union of India and others _____ Respondent

Advocates : Mr.Akil Kureshi for Advocate for the Respondent(s)
resp.No.1 & 3,
Mr.Anil Dave for Resp.No.2 and
Mr.P.V.Hathi & Mr.D.N.Mehta for
Resp.No.4 & 6, Resp.No.5 served.

CORAM :

The Hon'ble Mr. N.B.Patel : Vice Chairman

The Hon'ble Mr.K.Ramamoorthy : Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Y8

V.C. Desai,
6, Rajnagar Society,
Behind GEB Colony,
Vadodara - 390 015.

.... Applicant.

(Advocate: Mr. Shailesh Brahmbhatt)

. Versus.

1. Union of India

(Notice to be served through
the Ministry of Environment
and Forests, Department of
Environment, Forests and Wild
Life, Paryavaran Bhavan,
New Delhi) CGO Complex,
Phase II, Lodi Road,
New Delhi - 110 003.

2. State of Gujarat

(Notice to be served through
the Secretary, Environment and
Forests, Block No.14, 8th Floor,
Sachivalaya, Gandhinagar)

3. The Secretary

Union Public Service Commission,
New Delhi.

4. Shri J.R. Parmar,

In charge Conservator of Forest,
Marine National Park,
Jamnagar.

5. Shri Y.R.C. Reddy,

In charge Conservator of Forest,
Kutch Circle,
Bhuj.

6. Shri M.L. Sharma,

Assistant Principal Chief
Conservator of Forests (Plan)
Kothi Building, Vadodara.

.... Respondents.

(Advocates: Mr. Akil Kureshi for
Resp.No.1 & 3, Mr. Anil Dave for
Resp.No. 2 and Mr. P.V. Hathi &
Mr. D.N. Mehta for Resp.No.4 & 6
Respondent No. 5 served.)

J U D G M E N T

O.A.No. 583 OF 1987

Date: 7th April, 1994.

Per: Hon'ble Mr. K. Ramamoorthy, Admn. Member.

..... 3/-

1. The applicant is a member of the Indian Forest Service of Gujarat Cadre whose name was included as per Regulation 8 (1) of the Indian Forest Service (Appointment by Promotion) Regulation 1966. Initially the applicant had come with his petition No. 583 of 1987 dated 18th November, 1987, seeking relief by way of a change in his assigned year of allotment and consequential revision of his seniority. However, he later amended the petition to contest the initial constitution of the Cadre itself seeking direction for his case being considered by the Selection Committee for inclusion in the initial constitution of IFS. For this purpose, he filed a M.A.543/91 on 26.11.1993. The main argument adduced in this application is that at the time of the initial constitution itself his name had been left out without recording of proper reasons - a statutory requirement under Section 5-2-(b) of the Rules. He further contended that his case was exactly and similarly situated to the case of one Shri Oza, in whose case this very Tribunal had granted similar benefit as is sought for by the applicant vide its judgment dated 25-2-1988 in T.A.No.1393/86. By virtue of the statement for the counsel for the applicant, on 5.1.1994, the applicant was allowed permission to withdraw the O.A in respect of the

prayers regarding change in the year of allotment and consequent benefits. He further restricted his prayer to get relief of induction as initial recruitee, vide his application of 3.1.1994. This Tribunal allowed the withdrawal of the application with liberty to file a fresh O.A for claiming the forgone reliefs if the applicant found it necessary to do so in future. In this verdict the Tribunal is concerned with the limited question as to whether the applicant's name should be considered for inclusion in the initial constitution of India Forest Service of Gujarat **Cadre**.

2. It is pertinent to note that consequent on the Tribunal's judgment in the case of Mr.Oza, referred to in the earlier para the applicant did approach the respondents for reconsideration of the case. However, the Government chose to reject his representation vide its letter dated 29.1.1990, stating that the applicant's case could not be considered on merits, "at this belated stage on account of grave and unexplained laches and delay". It is true that the applicant chose to take nearly another 15 months in approaching this Tribunal for declaring the applicant's case to be at par with that of Mr. Oza, deserving similar treatment.

3. As stated earlier the counsel for the applicant has now wholly concentrated his case on the plea regarding non-observance of the statutory requirement of proper recording of reasons as required in the Indian Forest Regulations, 1966, Regulation (5). In the M.A. 649/93 of 26.11.1993, this applicant has stated that the reasoning given by the Special Selection Board was "no reasoning at all in the eye of law". On the matter of delay and laches the counsel for the applicant has chosen to take the plea that he had continued to petition the Government for reconsideration of his case on the basis of Oza's case. On 23.12.1993, the counsel for the applicant produced further documents to show that the matter was in correspondence, with the Government of India even as late as November, 1990, when also he had received a communication from the Government of India that the case could not be considered on merits. This particular communication was conveyed to him on 21.1.1991. There was thus no question of any delay since the applicant had used the time to exhaust available administrative remedies.

4. The respondents opposed the present contention of the applicant on the grounds of delay laches, misjoinder of causes and on the grounds that

the case of the applicant was not identical with the case of Mr. Oza, and also on merits. On the question of delay and laches, the respondents have contended that the matter of initial constitution is a matter which had been settled finally in the year 1979, after reconsidering two earlier lists and the applicant had come before this Tribunal to change the list prepared about 12 years after the meeting of the Special Selection Board. Even in respect of the request of the applicant for being reconsidered as in the case of Shri Oza, Government of India has rejected its request vide letter dated 29.1.1990, which had been conveyed to him on 3.9.1990. The applicant took another 14 months to approach this Tribunal question this decision. The respondents also opposed the application on the ground of misjoinder of the causes since the applicant had combined reliefs both the way of being considered as a initial recruitee as also for revision of year of allotment as a promotee. However, by virtue of his application dated 3.1.1994, and in view of the order of this Tribunal of 5.1.1994, this particular objection regarding misjoinder of causes does not survive. The respondents have also stated that the applicant's case could not automatically be said to be at par with the case of Mr. Oza, where the Tribunal had ordered

reconsideration. In the written reply dated 19.12.1993, it was submitted that the judgment of the Tribunal in the case of Shri Oza was in a case where "the respondents" sought privilege which was not granted by the Hon'ble Tribunal and upon the non-production of documents adverse inference was drawn". The counsel for the respondents has also opposed the case on merits since in the opinion of the counsel for the respondents the Special Selection Board has specifically met in November, 1979, pursuant to the High Court's and Supreme Court's judgment and thereafter the Selection Board has decided that the applicant's case was not fit for inclusion as a initial constituent. The respondents further stated that the documentation made in this case was sufficient for meeting with the Section 5-2-(b).

5. Ultimately therefore, the case has to be decided on the following two issues:

(i) Whether the case was barred by the law of limitation and whether the resultant delay and laches justified non-consideration of the case at this stage.

(ii) Whether the documentation on initial constitution by way of recording of the reasons for non-inclusion of the applicant suffered from a legal infirmity inasmuch as it did not meet with the specific requirement of having a specific record "of all other eligible officers of the State Forest Service

who are not adjudged suitable for inclusion in the list, together with the reason as recorded by the Board for their non-inclusion in the list."

6. At this stage it is necessary to record the fact that the whole case of initial constitution of the IFS Cadre itself has been a subject matter of prolonged litigation. The cases of Kraipak, Parvez Aadil and Chothia, are the three prominent cases which need mention, and the controversy raised in this and similar cases have been recapitulated in Supreme Court case reported page 535 of AIR 1988 in the case of K. Prasad and others Vs. Union of India and Ors., The list of initial constituents of the Cadre in Gujarat itself was drawn and redrawn in 1967, 1971 and finally in 1979, by virtue of the order of the Hon'ble High Court of 1977 in Chothia's case in Special Civil Application No.1080/72 since upheld by the Supreme Court. In 1979, the Selection Board was reconstituted to draw the initial constitution of IFS and a revised list of 33 officers was notified on 15.11.1979. In all the three lists the name of the applicant did not find mention. It is significant to note that in the case of Chothia the point established was the mandatory nature of recording of reasons for non inclusion. In the words of Supreme Court, :-

"In these circumstances we are satisfied that the provisions for giving reasons by Regulation 5(2)(b) are mandatory and must be complied with. It is not disputed in the present case that the Board had not complied with the provision of Regulation 5 and this was sufficient to vitiate the selection made by the Board."

It goes without saying that the Special Selection Board which met on 5th October, and 6th November, 1979 was a specially constituted Board to make a fresh selection in the light of the judgment delivered in the case of Shri S.P. Chothia to over come this infirmity. In para-6 of the proceeding, the Special Board makes this point very clear :

"6. The Government filed Civil Appeal Nos. 1329 and 1330 of 1977 against the judgment of the Gujarat High Court. The Supreme Court upheld the judgments of the Gujarat High Court primarily on the ground that the provisions of regulation 5(2)(b) of the Indian Forest Service (Initial Recruitment) Regulations, 1966 regarding recording of reasons for non-inclusion in the list prepared by the Special Selection Board were mandatory and these were not complied with. Accordingly, a notification was issued vide Ministry of Home Affairs, Department of Personnel & AR, No. 17023/5/78-AIS(IV) dated the 6th November, 1978 rendering the appointments made to the Gujarat Cadre of the Indian Forest Service at its initial constitution vide notification No.3/10/71-AIS(IV) dated the 7th January, 1972, ab initio void. Consequently, the Central Government proposed to take further steps to make fresh recruitment to the Gujarat Cadre

of the Indian Forest Service under Sub rule (i) of Rule (4) of the Indian Forest Service (Recruitment) Rules, 1966".

7. Even after this selection, another applicant, one Mr. Oza moved the Central Administrative Tribunal alleging that even the subsequent selection was flawed "the principal challenges of the petitioner rests upon the requirement of the Special Selection Board to record its reasons for adjudging him as unsuitable". On this application this very Bench decided to allow the petition and directed that the petition should be again placed before the Special Selection Board against Indian Forest Service (Recruitment) Rules ; stated that :

"The Selection Board must record reasons which must disclose, how the record of each officer stood, how mind was applied to the subject matter of adjudgment of suitability and they must reveal rational nexus between the facts considered and the conclusion reached."

8. It is however, pertinent to note that this Tribunal's judgment as such is based on an adverse inference. In the words of the Tribunal :

"It was decided that if the respondents object to the documents being furnished to the petitioner, adverse inference for non-production of documents by the

respondents can be drawn and hearing could be proceeded with. In the light of these orders during the hearing we have only the averment of the respondents that the Special Selection Board recorded specific reasons for adjudging the petitioner as unsuitable but no support has been afforded by any evidence. The refusal to give copies of the relevant documents to the petitioner makes it necessary for adverse inference to be drawn. We must presume that the Special Selection Board did not record reasons or did so perfunctorily."

9. The case of Shri Oza was reconsidered by the Government. It is another matter that Shri oza did not find a place even thereafter.

10. As stated earlier, Selection Committee in 1979, was reconstituted specifically to over come the infirmity detected in Chothia's case. Incidentally, this is an infirmity which had affected the initial constitution of IFS Cadre in more than one state as can be seen from the spate of litigation on the subject. The reconstituted Board which consisted of a representation of U.P.S.C. and the Union Government was fully aware of this direction as is also seen from the minutes of the DPC reproduced earlier.

11. The respondents have in this case made available the proceedings of the DPC (Annexure A/2) as related to the applicant himself. This was furnished as a part of the written reply on behalf of respondent No.1

filed on 1.11.1993. In this proceeding a specific recording has been made as under:

"After ignoring the adverse remarks in his ACRs for the years 1963-64, 1964-65 and 1965-66 communicated to him by the State Government in July, 1967 and also the other adverse remarks in his ACRs not communicated to him, his performance cannot be considered as good enough to justify his selection. Hence not adjudged suitable for inclusion in the above list".

12. In the narration of the case as above there is considerable strength in the argument that the applicant's case cannot be treated as being on all fours with the case of Shri Oza. The Tribunal has in the case of Shri Oza recorded its verdict on a adverse inference drawn by the Tribunal since the documents were not produced for general perusal claiming privilege and not in the light of any specific recording seen by the Tribunal. It is possible that if the specific recording even as shown in the present case, had been produced, the Tribunal might have taken a different view. To state that the Tribunal would have arrived at the same conclusion if the recording as in the present case was made available would be in the realm of conjecture only. The counsel for the applicant stated that the Tribunal had in its judgment of Mr. Oza, specifically spelt out the nature of required recording such as revealing a

"rational nexus between the facts considered and the conclusion reached". In our opinion the remarks of the Tribunal are more by way of an obiter, in the absence of specific records being made available.

13. We cannot help remarking that the post - Chothia scenario as represented by the DPC proceeding of 1979, is quite different from the pre-chothia proceeding, where the respondents had conceded the point of non-recording of the reasons. To imply that there has been no difference in the two proceedings is not borne by the documents produced before us. The Selection Board had met in 1979, specifically to overcome the infirmity as shown up in Chothia's case. Para 6 of the proceeding makes this point abundantly clear and the question of recording of mandatory reason was very much in the mind of the DPC. In the DPC proceeding specific remarks have been made against individual names not considered suitable. The respondents have made available to the Tribunal the remarks as recorded in the case of the present applicant. It is true that it is an one line remark ~~xx~~ that his performance cannot be considered as good enough "to justify his selection". This is followed by "hence" to reach the conclusion of non-suitability of inclusion. It is also seen that after this DPC

proceeding new names had been added and a total list of 33 candidates was notified. In view of the specific record before this Tribunal it is difficult to accept the facts that the judgment in the case of Mr. Oza ipso facto applied to the present applicant's case.

14. The applicant himself had chosen to submit along with his first rejoinder in July, 1993, a resume of facts from which it can be seen that the applicant was superseded in a Selection Committee Meeting of 1974 also and could find a place only in 1977 selection. It was urged before the Tribunal that the case of selection under Rule-8 for promotion quota from the State Forest Officers Cadre is a different channel of selection and therefore, the fact of supercession in 1974 should not affect his case of initial recruitment. While the fact of the selection channel being different is accepted, it cannot be denied that the fact of non-selection is also a reflection on the suitability of the person in question which is very much a factor while determining the initial constitution like IFS. The recording of the evidence of the selection committee therefore, has to be seen in this context. We might agree that the wording is meagre and not sufficiently articulate. However, looking to the history of this case, this infirmity should not be

considered of serious nature as to vitiate the whole proceeding.

15. Apart from the merits of the case as above, the fact of delay and laches is also a matter which cannot be over looked in this case.

16. What the applicant has chosen to ask is to reconstruct the position as would have obtained in the year 1966, when the Indian Forest Service was constituted. The result of the exercise sought by the applicant would also mean reconsideration of the inter-se seniority of the officers who have enjoyed a definite position above the applicant and whose position had been accepted by the applicant for a considerable period of time. The reconstitution exercise in respect of the initial list of IFS Officers had been finally over by 1979. The applicant had accepted the initial constitution and chosen to thereafter appear before the Selection Board in the year 1974- and again in 1979. The applicant has not chosen to contest the position along with Mr. Oza either. After the case of Mr. Oza was decided upon, also the applicant has not chosen to approach the Tribunal within time. The argument that he was still in correspondence with Government of India till June, 1991, is an after thought since the applicant did choose to come before the

Tribunal, in April, 1991 vide M.A./141/91. As decided by Central Administrative Tribunal, Hyderabad Bench in its case decided on 26.2.1993, repeated applications do not extend the period of limitation and judgment obtained in O.A. of a similarly placed applicant cannot revive the remedy that had become time barred already. As has also been observed by the Central Administrative Tribunal (Jaipur) in its case decided on 24.3.1993, "Cases.....can be rejected on the ground of delay or laches as there is possibility for infringement of the right of the third person and". A liberal view on limitation can be taken only if no third person is likely to be affected.

17. The application also, therefore, suffers from serious draw-back by way of delay and laches and, therefore, one cannot find fault with the reply given by the Government of India.

18. The counsel for the applicants specifically urged before the Tribunal that the recorded judgments in similar cases favoured the case of the applicant and he cited the following cases :

1. K.Prasad & others Vs. Union of India and ors. AIR 1988 SC.P.535, on the point of delay and laches and on the point of recording of reasons etc.
2. Union of India Vs.M.L.Coopor, AIR. 1974 SC P.87. On the point of analogy of reasons. "Unsuitability on overall service record" is declared not to be a reason.
3. B.Shantharama Adappa & 4 others Vs. Union of India & Ors. Judgment of Karnataka High Court in case of Indian Forest Services Judgment in writ petition No.4418 and 7085 of 1977."

19. We have studied the three cases mentioned above, by the counsel for the applicants. However, we cannot help remarking that these cases do not fully cover the case of the applicant. In the first case the question related to certain officers who had not been considered at all on the ground of an omnibus observation that others were found suitable and because it involved complicated question, the court had considered that their cases should be adjudged on merits. Quote : In this case, "the position as it is now emerged is that all 82 eligible officers as 1986 should be considered and not merely some of them." It is not the present applicant's case that has case had not been considered at all. The second case also does not bear comparison since in the second case a question of preference was involved. In Para-28 of its judgment it is

clearly stated "it is incumbent on the Selection Committee to state reasons in a manner which would disclose how the record of each superseded officer stood in relation to records of others who were to be preferred." The applicant himself has stated that in the case of initial constitution, the question was not one of preference but one of suitability only and, therefore, detailed reasoning for choosing one over the other was not necessary. Even concise reasoning would not be out of place. In the third case, cited, though there is a certain resemblance, it is seen from the the judgment that what had been produced before the High Court was a mere general statement to the effect that having regard to the recorded service of the petitioners they have not been included in the selection of the candidates." In declaring the reconsideration of the case, on the question of delay, the High Court has specifically remarked that "if the list of non-selected candidates was communicated to the petitioners (in Jan.1971), they would have been in a position to decide for themselves as to whether they should seek redressal at the hands of the Court. The fact that the said list was not notified is also a factum taken to be into consideration." In the present case there is no similar feature of non-communication, or lack of knowledge on the part of the applicant.

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20. The counsel for the applicant has also cited rulings to show that mere time lapse should not prevent justice being given to similarly placed officers and has quoted the case of -

"1. Amritlal Bari Vs. Collector of Central Excise, New Delhi & Ors. 1975 (1) SLR. Pg. 153.

On the point that the judgment of the Supreme Court declaring law, department ~~as~~ is duty bound to give effect to the law declared by Supreme Court, not ~~to~~ be confined parties before the Court.

2. Chief Secretary to Govt. of Andhra Pradesh & Ors. Vs. V.J. Cornebius, A.I.R., 1981 SC 1099. On the point that the Government should respect the judgment of the High Court and to give effect to all the similarly situated employees.

3. Dilbagh Rai Jerri Vs. Union of India and Ors. A.I.R. 1974, SC.130. On the point the Government should be of a virtuous litigant and why Govt. should not enter into frivolous litigation.

4. AIR 1986 (2) CAT 250. On the point of limitation and delay."

21. However, as argued above, the fact of the case being one of "similarly placed officer" is not established and the delay in seeking redress is such as to result in serious administrative difficulties if a frequent reconsiderations were to be made every now and then in

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an All India Service Constitution. In the circumstances,
the case of the applicant for this Tribunal to issue
directions for considering the case of the applicant
as a initial recruitee ala the case of Shri Oza decided
by this Tribunal's judgment, does not arise.

The application stands disposed of accordingly.

No order as to costs.



(K. Ramamoorthy)

MEMBER (A)



(N.B. Patel)

VICE CHAIRMAN

AIT.