

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 419 of 1989

Date of Decision : 27 - 5 - 1992.

Udaya Nath Sarangi ... Applicant

Versus

Union of India & Others ... Respondents

For the applicant ... M/s. Aswini Kumar Mishra,
S.K. Das, S.B. Jena,
Advocates

For the Respondents 1 & 2 ... Mr. A.B. Mishra,
Senior Counsel

For the Respondent No. 3 ... Mr. K.C. Mohanty
Government Advocate (State)

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C O R A M

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MR. C. S. PANDEY, MEMBER (ADMINISTRATIVE)

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? *Yes*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

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J U D G M E N T

K. P. ACHARYA, V. C., In this application under section 19 of the Administrative Tribunals Act, the applicant prays to direct Respondents 1 and 2 to consider the case of the applicant for promotion retrospectively with effect from 1.7.1984 for the post of Inspector General of Forests and furthermore to give a direction for giving promotion applicant to the said post.

2. Shortly stated, the case of the applicant is that he had initially joined the Orissa Forest Service Class II in April, 1950 and in the year 1958 the applicant

was promoted to the Grade of Orissa Forest Service,

Class I. The applicant was then promoted to the cadre of Indian Forest Service with effect from 1.10.1966 and the year of allotment of the applicant related back to 1954. Subsequently, the applicant was promoted to the post of Conservator of Forests and then to the post of Chief Conservator of Forests from which post he retired on superannuation with effect from 31.10.1986. Further case of the applicant is that the post of Inspector General of Posts and ex-officio Additional Secretary to Government of India fell vacant with effect from 1.7.1984. Respondent No.4, Shri L.H.A.Rego, who was then a member of the Indian Forest Service in the State of Maharashtra, was appointed to the post of Inspector General of Forests though the year of allotment of Shri Rego was 1955 and the applicant was senior to Shri Rego. According to the applicant, grave injustice was done to the applicant due to non-consideration of his case and therefore, the applicant had made several representations both to the Government of Orissa and to the Government of India but no final reply was received from either of the Governments and therefore, this application has been filed with the aforesaid prayer.

3. Respondent No.1 is the Union of India represented through its Secretary, Ministry of Personnel, Public Grievances and Pensions, Respondent No.2 is the Union of India represented through its Secretary, Ministry of Environment and Forest, Respondent No.3 is the State of Orissa represented through its Secretary, General Admini-

station Department and Respondent No.4 is Mr. Rego. No counter has been filed on behalf of Respondents 1 and 2. In the counter submitted on behalf of the State of Orissa, it is mentioned that matters relating to the Forest Officers are dealt by the Government of Orissa in Forest Department which only collects the Confidential Character Rolls of such Officers maintained in the General Administration Department and besides complying with the requisitions for sending the service reports to the Forest Department, the General Administration Department has no role to play in the matter. The Forest Department could give the reasons for which the name of the applicant was not recommended and the eligibility criteria for considering the case of a particular incumbent to the post of Inspector General of Forests. The Forest Department not having been made a party in this case, it necessarily suffers from the infirmity of non-joinder of necessary party. It is there maintained that the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. Aswini Kumar Misra, learned counsel for the applicant, Mr. A. B. Misra, learned Senior Counsel for the Respondents 1 and 2 and Mr. K. C. Mohanty, learned Government Advocate (State) appearing for Respondent No.

5. Law is well settled that a particular incumbent is not entitled to claim promotion as a matter of right. But he has a right to say that his case must be considered. For the purpose of adjudicating the grievance of a

particular incumbent for non-consideration of his case, the Court has a duty to look into the Rules which would have prescribed the eligibility criteria for bringing one within the consideration zone for considering his case for promotion to a selection post. In such circumstance, heavy onus lies on the party aggrieved to satisfy the Court the rules prescribed on the subject, which entitles the party aggrieved for being considered. No such rule was filed before the Court . In paragraph 4 of the petition it is stated as follows;

" That the earlier recruitment procedure for the post of Inspector General of Forest was that the Chief Conservator of Forests with 4 years service in that grade or the President of Forest, Research Institute and College with 2 years service would be eligible for the post of Inspector General of Forests. Such rule was subsequently amended since the seniority based on the ' year of allotment ' due to varying promotional avenue in different States were not taken into consideration and as such, in the year 1981, the petitioner reliably believes that some amendments were made providing that Additional Chief Conservator of Forest or Chief Conservator of Forests at least 2 years of service left for superannuation will be eligible for consideration for the above post. "

Conceding for the sake of argument that the assertions made by the applicant in paragraph 4 of the petition that a Chief Conservator of Forests with 4 years of service in that grade could be eligible for the post of Inspector General of Forests has no application to the present application because according to the applicant (at para 1 of the petition) in July, 1983 the applicant was promoted to the post of Additional Chief Conservator of Forest. On 20.1.1984 he was promoted to the post of Chief Conservator of Forests and retired on superannuation with effect from 31.8.1986,

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thereby having experience in the post of Chief Conservator of Forests for only two years and 7 months.

6. Next coming to the question as to whether the amendment to this rule, in the year 1981 as asserted by the applicant in paragraph 4 of the petition it is stated as follows:

" Such rule was subsequently amended since the seniority based on the ' year of allotment ' due to varying promotional avenue in different States were not taken into consideration and as such, in the year 1981, the petitioner reliably believes that some amendments were made providing that an additional Chief Conservator of Forest or Chief Conservator of Forests at least 2 years of service left for superannuation will be eligible for consideration for the above post."

From the above quoted averments it is very clear that the applicant is not sure of the exact amendments adopted.

At the cost of ^{repetition} ~~applicant's~~ we may say that he ' reliably believes ' that some amendments were provided and such was the amendment as quoted above. On the reliable believe of the applicant we cannot accept the statement made in the petition as correct even though there is no contradiction made on behalf of the Government of India and the Government of in Forest Department which is not a party before us. In case the Rules were amended, not only such rules would have been published in the official gazette but it must have been ~~xx~~ circulated to different departments under the Government of India. The applicant did not choose to file a copy of the rules to discharge the heavy onus that lies on him to prove to the satisfaction of the Court that Rules have been violated. The initial onus which lies on

the applicant not having been discharged by him, (farless, to speak of satisfactory) we cannot hold the respondents are guilty of withholding any material facts.

7. That apart, the seniority of the members of the Indian Forest Service is confined to the seniority position in the particular State in which the incumbent is serving, and therefore, one cannot claim seniority. In the absence of Rules being pointed out tous we feel reluctant to hold that the non-consideration of the case of the applicant for the post of Inspector General of Forests was unjustified or illegal.

8. Thus, this application stands dismissed leaving the parties to bear their own costs.

[Signature]
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MEMBER (ADMINISTRATIVE)

[Signature]
27.2.92
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VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
May 27, 1992 / Sarang

