

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.167 OF 2008

Cuttack this the 23rd day of March, 2011

A.C.Dinakar...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be referred to C.A.T., PB or not ?

(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER

(A.K.PATNAIKA)
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.167 OF 2008

Cuttack this the 23rd day of March, 2011

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

AND

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

A.C.Dinakar, 49 years, S/o. Chikkavasabaiah, Door No.29/24, First Main, 5th Cross, Saraswatipuram, Mysore – at present serving as Dy. Project Director, Orissa Forestry Development (hereinafter called OFDP) Ghatakia, STFRI Campus, Bhubaneswar

...Applicant

By the Advocates: M/s.A.K.Mishra, J.Sengupta, D.K.Panda, G.Sinha,
A.Mishra & S.Mishra

-VERSUS-

1. Union of India represented through its Secretary, Ministry of Forest & Environment, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi
2. State of Orissa represented through Secretary to Government of Orissa, General Administration Department, Bhubaneswar
3. State of Orissa represented through Secretary to Government of Orissa, Forest and Environment Department, Bhubaneswar
4. Sri Prafulla Kumar Sahu, Divisional Forest Officer, K.L., Rourkela, Dist-Sundargarh

...Respondents

By the Advocates: Mr.S.B.Jena, ASC & Mr.A.K.Bose(Res.2 & 3)

...
ORDER

SHRI A.K.PATNAIK, HON'BLE JUDICIAL MEMBER:

1. Applicant is a Member of Indian Forest Service. He has moved this Tribunal in the present Original Application seeking the following relief:

“...to quash the order of promotion granted in favour of OP No.4 dated 11.3.08 (Annexure-A/6) and further to direct the OPs more particularly OPs 2 and 3 to consider the case of the petitioner for promotion to the post of Conservator of Forests retrospectively w.e.f. 11.3.08 when OP No.4 was given promotion and further to hold that the petitioner is entitled to all service and financial benefits retrospectively”.

Ala

2. The short fact leading to filing of this Original Application is that in the year 2002, the applicant while working as the D.F.O Boudh Forest Division was proceeded against on account of certain irregularities, which, after a departmental proceeding culminated with a caution vide order dated 5.2.2007(Annexure-A/1) issued by the Government of Orissa. Since during currency of the disciplinary proceedings, the meeting of the Screening Committee was held on 6.11.2004 for considering appointment of eligible IFS officers including the applicant to Selection Grade, the findings of the Screening Committee in so far as applicant is concerned had been kept in the sealed cover. After issuance of Annexure-A/1 dated 5.2.2007 disposing of the disciplinary proceedings with a caution, the sealed cover was opened & as per the recommendation of the screening committee the applicant was promoted to the Selection Grade in IFS with retrospective effect, i.e., from 1.12.2004 vide Annexure-A/3 dated 22.9.2007. While the matter stood thus, vide Notification dated 11.3.3008 (Annexure-A/6), Private Respondent No.4, viz., Shri Prafulla Kumar Sahoo, IFS was promoted to the grade of Conservator of Forests for which the applicant ventilated his grievance before Respondent No.3 alleging that as the respondent no. 4 is junior to him, he should also be promoted with effect from the date his junior (Res.4) was so promoted. Applicant having received no response has moved this Tribunal seeking the relief as mentioned above.

3. Respondent Nos. 2 and 3 have filed their counter affidavit to which applicant has also filed rejoinder. Though the private respondent No.4 was noticed and adequate opportunity granted, yet, has neither appeared nor filed any objection/counter-reply.

4. We have heard Shri A.K.Mishra, learned Senior Counsel for the applicant, Shri S.B.Jena, learned Addl. Standing Counsel for Respondent No.1 and Shri

Due

A.K.Bose, learned Govt. Advocate for the State of Orissa (Res. 2 and 3) and perused the materials on record.

5. The facts stated above have not been disputed by the Respondent Nos.2 and 3. According to them, as per Promotion Guidelines dated 18.11.2002 issued by the Government of India, Ministry of Environment & Forests, the eligible officers working in the Selection Grade and having completed 14 years of service shall be considered for appointment to the grade of Conservator of Forests subject to availability of vacancies in that grade. However, at the time of holding the Screening Committee Meeting, the applicant was not in the Selection Grade, although he had completed 14 years of service at that time. It has been submitted further that the applicant was not considered in the Screening Committee Meeting held on 11.9.2007 as he was not eligible and was not within the zone of consideration at that point of time as per the promotion guidelines. Respondent Nos. 2 and 3 have also admitted that Private Respondent No. 4 is junior to the applicant, who has since been promoted to the grade of Conservator of Forests. According to Respondents, there being no provision in the promotion guidelines to consider the officer who was subsequently eligible after the Screening Committee Meeting is held and when a panel for promotion recommended by the Committee is in force, the O.A. sans merit and therefore, the same is liable to be dismissed.

6. We have considered the rival submissions and given our anxious considerations to the arguments so advanced.

7. For the purpose of arriving at a just decision, the following point needs to be adjudicated.

i)

Whether the applicant did have a right for being considered for promotion to the grade of Conservator of Forests by the Screening Committee Meeting held on 11.9.2007, having come within the zone of

WAL

consideration and if so, whether this right of the applicant has been infringed by the Respondent-Department.

8. In order to determine the point in issue as aforementioned, it would be a matter of vital importance to examine the deemed date of attainment of Selection Grade by the applicant.
9. Undoubtedly, the disciplinary proceedings initiated against the applicant culminated with a caution on 5.2.2007, in consequence of which, vide order dated 22.9.2007(Annexure-A/3), the applicant was appointed to the Selection Grade in IFS with effect from 1.12.2004. The plea taken by the Respondent Nos. 2 and 3 that by the time the Screening Committee meeting held on 11.9.2007 for considering promotion to Conservator of Forests, the applicant having not been appointed to Selection Grade as on that date was not eligible for being considered for promotion to the grade of Conservator of Forests is nothing but a pretended ignorance inasmuch as the Respondents have not stated anything as to what prevented them from appointing the applicant to Selection Grade in juxtaposition with the issuance of Annexure-A/1 dated 5.2.2007 whereby the disciplinary proceedings against the applicant culminated with caution and in the circumstances, the applicant is deemed to have been appointed to Selection Grade with effect from 1.12.2004 with the simultaneous issuance of Annexure-A/1 dated 5.2.2007 and this having not been done by the Respondents for unwanted reasons, the applicant should not be made to suffer for no fault of his. In this context, we would like to pace a little further to say that from the day forth Annexure-A/1 dated 5.2.1007 came to be issued, right to appointment to Selection Grade accrued on the applicant as in the time between junior to applicant had already been appointed to Selection Grade.
10. In view of our findings as above, we answer the point in issue as under:

Alle

The applicant did have a right for being considered for promotion to the grade of Conservator of Forests by the Screening Committee Meeting held on 11.9.2007, having come within the zone of consideration and this right of the applicant has been infringed due to callous attitude by the Respondent-Department and on that score only, the applicant cannot be made to suffer for no fault of his.

11. For the reasons discussed above, we direct as under:

- i) Respondent Nos. 2 and 3 to convene a review meeting of the Screening Committee with a view to consider promoting the applicant to the grade of Conservator of Forests with effect from the date his junior, Respondent No.4 was so promoted.
- ii) In case there is no vacancy in the post of Conservator of Forests, the Respondent Nos. 2 and 3 after complying with the principles of natural justice shall notice to Respondent No.4 asking him to show cause within a stipulated period as to why his promotion over the head of his senior to the grade of Conservator of Forests should not be rescinded in the interest of administration of justice.
- iii) On receipt of show cause from Respondent No.4, if any, within the time so stipulated, the Respondent Nos. 2 and 3 shall promote and appoint the applicant to the grade of Conservator of Forests against the vacancy to be caused by Res. No.4.
- iv) The applicant shall be entitled to consequential service benefits.

12. With the aforesaid observations and directions, this Original Application is allowed. No costs.

13. 
(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K. PATNAIK)
JUDICIAL MEMBER

BKS