

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No.842 of 2010

Cuttack, this the 11th day of April, 2012

Ashutosh Chitranshi Applicant
-Versus-
Union of India & Ors Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? ✓
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? ✓


(A.K.PATNAIK)
Member (Judicial)


(C.R.MOHAPATRA)
Member (Admn.)

20

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

OA No.842 of 2010
Cuttack, this the 11th day of April, 2012

CORAM
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER, (ADMN.)
And
THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

.....
Ashutosh Chitranshi, aged about 59 years, Son of Late Premsankar Sribastav, Project Director, Policy Analysis & Strategic Planning Unit, O/o.PCCF, Aranya Bhawan, Chandrasekharpur, Bhubaneswar, Dist.Khurda.

....Applicant
By legal Practitioner -M/s.H.M.Dhal,B.Mohanty,
M.R.Dhal,B.B.Swain,
A.K.Patnaik, Counsel.

-Versus-

1. Union of India represented through its Secretary to Government, Ministry of Environment and Forest, Lodhi Road, New Delhi.
2. State of Orissa, represented through its Principal Secretary to Government, Forest & Environment Department, Secretariat Building, Bhubaneswar.
3. Chief Secretary, Government of Orissa, Secretariat Building, Bhubaneswar.

....Respondents
By Legal Practitioner - Mr.U.B.Mohapatra, SSC (Central)
Mr.G.C.Nayak,GA(State)

ORDER
C.R.MOHAPATRA, MEMBMER (ADMN.):

The case of the Applicant is that on 22.09.2001 he was promoted to the rank of Chief Conservator of Forests. The next promotion from the rank of CCF is to the rank of Additional PCCF and, thereafter, to the rank of Principal

P

Chief Conservator of Forests. The eligibility for promotion to the rank of Addl PCCF is that the incumbent should have completed 25 years of service. But for promotion to the rank of PCCF the eligibility is that the incumbent should have completed 30 years of service. He being a recruit of 1977 has completed more than 30 years of service and as such was eligible to be considered for promotion to the rank of PCCF.

2. According to the Applicant, a departmental proceeding was initiated against him vide Memorandum of charges dated 09-08-2006. The matter was enquired into and finally the proceeding ended with imposition of punishment of 'Censure' vide order dated 26.10.2010. During the pendency of the disciplinary proceedings, juniors of the applicants were promoted to the rank of PCCF. Although the case of the applicant was considered for such promotion, due to pendency of disciplinary proceedings, the case of the applicant was kept in a '**sealed cover**'. After the conclusion of the disciplinary proceedings, the sealed cover ought to have been opened which was not done despite representation

made by him. Thereafter, Respondents proposed to convene Screening Committee for considering for promotion to the rank of PCCF without including the name of the applicant. Aggrieved by the above action of the Respondents, the applicant has approached this Tribunal in the instant OA seeking the following reliefs:

- “(i) the action of the Respondents in not considering the case of the applicant for promotion to the rank of Addl. PCCF and then to the rank of PCCF be declared illegal, arbitrary and contrary to law;
- (ii) The Respondents be directed to consider the case of the applicant for promotion to the rank of Addl. PCCF and then to the rank of PCCF;
- (iii) The Respondents No.1& 2 be permanently restrained from holding the meeting of the screening committee scheduled to be held on 23.12.2010 for considering the case of promotion to the rank of PCCF.”

3. Despite service of notice and adequate opportunity no counter has been filed by Respondent Nos.1&2. However, counter has been filed by the Respondent No.3 in which it has been stated that the Screening Committee met on 07-01-2009 & 30-01-2010 for considering the case of eligible IFS Officers including the



applicant for promotion to the grade of Additional PCCF. As there was a disciplinary proceeding pending against him, the Committee decided to keep the findings regarding his suitability or otherwise for promotion to the grade of Additional PCCF in IFS in a sealed cover till the conclusion of the disciplinary proceeding as per promotion guidelines dated 22.12.2000. The Disciplinary Proceeding initiated against the applicant was disposed of by Forest & Environment Department vide their Office Order dated 26.10.2010 wherein a minor penalty of censure was imposed on him.

It has further been stated that as per para 18.2 of the promotion guidelines issued by the Government of India, MOEF if a penalty is imposed on the officer as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him the findings of the sealed cover/covers shall not be acted upon. His case for promotion is required to be considered by the next Screening

1

Committee in the normal course having regard to the penalty imposed on him.

According to Respondent No.3, meeting of the Screening Committee was convened on 23.12.2010 to consider the case of eligible IFS Officers for promotion to the rank of PCCF. As per the promotion guidelines dated 18.11.2002 issued by the Government of India, Ministry of Environment and Forest, the case of the applicant was required to be considered for promotion to the grade of PCCF as he has completed 30 years of service. But his case was not considered for promotion to the grade of PCCF as he was not in the grade of Addl.PCCF which is the feeder grade for promotion to the grade of PCCF at the relevant point of time. Although the applicant was the senior most CCF in the cadre his case was not considered in the Screening Committee Meeting held on 23.12.2010 for promotion to the grade of PCCF due to the aforesaid reason. Accordingly, Respondent No.3 has prayed that this OA being devoid of any merit is liable to be dismissed.

L

4. By filing rejoinder, the Applicant contested the stand of the Respondent No.3 that Addl.PCCF is the feeder grade of PCCF. According to him, as per the promotional guidelines (Annexure-A/4), even without being in the grade of Addl.PCCF an IFS Officer is eligible to be considered for promotion to the grade of PCCF on completion of 30 years of service. The applicant's contention is that the disciplinary proceeding was concluded on imposition of minor penalty of 'censure' vide order dated 26.10.2010. Therefore, the authority was duty bound to consider the case of the applicant for promotion to the rank of PCCF he being the senior most CCF in the cadre. Therefore, according to the Applicant non consideration of the case of the applicant for promotion to PCCF is absolutely untenable in the eye of law.

5. On being asked whether Addl.PCCF is the feeder cadre/grade of PCCF, Mr.G.C.Nayak, Learned Government Advocate for the State of Orissa filed a Memo dated 09-01-2012 enclosing thereto copy of the Notification dated 27th September, 2008 providing the manner of filling up of

various posts in the IFS cadre. Besides, in the Memo it has specifically been stated that although the promotion guideline dated 18.11.2002 is silent regarding eligibility of a feeder grade officer for promotion to the PCCF, as per practice only the officers in the grade of Addl.PCCF are considered for promotion to the PCCF grade. It has further been made clear that additional PCCFs are senior to CCFs and since adequate number of Addl.PCCFs are available, there is no question of considering CCFs for promotion to the grade of PCCF. There is no instance of promotion of CCF to PCCF without being promoted to the grade of Addl.PCCF.

6. It is the contention of Mr. Dhal, Learned Counsel appearing for the Applicant that there is no other proceeding initiated/pending against the applicant. The proceeding which was initiated against the applicant ultimately culminated in imposition of minor penalty of '**censure**' vide order dated 26-10-2010 and censure not being a bar for promotion, the Respondents ought to have convened review

Committee to consider the case of the applicant for promotion to the rank of Addl. PCCF soon after the order dated 26-10-2010. Had it been done then the case of the applicant would have been considered for promotion to PCCF. Because of such laches the applicant has not only been superseded by his gross juniors, he has been made to suffer at the fag end of his service career. He further pleads that even if no review DPC was held to promote the applicant to Addl. PCCF, the case of the applicant ought not to have been ignored while considering the cases of his juniors for promotion to PCCF as he fulfilled the requirement of completion of 30 years of service by the time Selection Committee met and recommended the case of his juniors. Therefore, by placing reliance on the decision of the Hon'ble Apex Court in the case of **Union of India and others Vrs A.N.Mohanan, (2007) 5 SCC 425** it was contended by him that non-consideration of the case of the applicant being bad in law he is entitled to the relief claimed in this OA.

L

7. The above assertion of Learned Counsel appearing for the Applicant was strongly opposed by Mr. U.B.Mohapatra, Learned Senior Standing Counsel appearing for the Union of India and Mr. G.C.Nayak, Learned Government appearing for the Respondent Nos.2&3. According to the Respondents' Counsel in view of the order of punishment dated 26-10-2010 the applicant cannot say that his service record is not blameworthy. Minor or major penalty does not matter when the applicant has been visited with the punishment of censure and as such he was not entitled to promotion to Addl. PCCF.

8. We have given our anxious thoughts to the rival contentions of the parties and perused the materials placed on record. We have also gone through the guidelines produced by both sides vis-à-vis the decision relied on by the Learned Counsel for the Applicant.

9. As a matter of fact, although the case of the applicant was considered along with others for promotion to Addl.PCCF, the recommendation of the Selection Committee

1

in so far as the applicant is considered, was kept in a **sealed cover** due to pendency of the disciplinary proceedings against him. The said disciplinary proceeding culminated in imposition of punishment of '**censure**' **vide order dated 26-10-2010** and the **applicant retired from service on 30-06-2011**. Had the Respondents convened the Screening Committee between 26.10.2010 to 30.06.2011 and considered the case of the applicant for his promotion to Addl. PCCF, he would not have any grievance in so far as his promotion to Addl. PCCF is concerned. No explanation is forthcoming as to why the Respondents did not convene the next Screening Committee Meeting during the aforesaid period to consider the case of the applicant. Therefore, the Respondents are hereby directed to consider the case of the applicant for his promotion to Addl. PCCF by holding Screening Committee Meeting within a period of thirty days from the date of receipt of copy of this order and act on the recommendation of the committee within a period of thirty days thereafter. In any event Respondents are directed to



communicate their decision in a well reasoned order to the Applicant within the aforesaid period.

10. Another facet of the prayer of the Applicant is that as he had completed more than 30 years of service as an IFS Officer notwithstanding his promotion to Addl. PCCF his case ought to have been considered by the Screening Committee for promotion to PCCF. The stand of the Respondents is that although promotion guideline dated 18.11.2002 is silent regarding eligibility of a feeder grade officer for promotion to the PCCF, as per practice only the officers in the grade of Addl. PCCF are considered for promotion to the PCCF grade. In this connection, we have perused the Indian Forest Service (Pay) Rules, 2008 copy of which was produced by the Respondents. As per IFS Service Rules, though the CCF and Addl. PCCF stood on the same Pay Band we find that the GP of Addl. PCCF is much more than the GP of CCF. The criteria for promotion to the post of PCCF from the feeder post of Addl PCCF has stood the test of time for a long period. Further, it is ridiculous to suggest

that any IFS Officer can march over the Addl. PCCF in the matter of promotion to PCCF only because he has completed 30 years of service. We do not find this type of contention cogent enough to be accepted and thus we are unable to hold that non-consideration of the case of the applicant for the post of PCCF on such a ground would vitiate the proceedings. We, therefore, reject this prayer of the applicant.

11. In the result, this OA is partly allowed to the extent stated above. There shall be no order as to costs.


(A.K.PATNAIK)
Member (Judicial)


(C.R.MOHAPATRA)
Member (Admn.)