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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK


O.A No. 563 of 2011


Cuttack, this the 20th day of September, 2012

DINESH SINGH APPLICANT
Versus
UNION OF INDIA & ORS.RESPONDENTS

FOR INSTRUCTION

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(Judl)


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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A No. 563 of 2011

Cuttack, this the 20~~th~~ day of September, 2012

CORAM

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

AND

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

....

DINESH SINGH, aged about 59 years, S/o. Late Sudhisht Narayan Singh of Vill.-Sakia Bakia, PO-Mehnajpur, Dist. Azamgarh (U.P.) presently serving as Additional Principal Chief Conservator of Forest (Project Community & Agro Forestry), Office of the Principal Chief Conservator of Forests, Orissa, Bhubaneswar.

....Applicant

By legal practitioner: M/s. A.K.Mishra, J.Sengupta,
D.K.Panda, G.Sinha,
A.Mishra, Counsel

-Versus-

- (1) UNION OF INDIA represented through its Secretary to Government of India, Ministry of Forest & Environment, Paryavaran Bhavan, CGO Complex, Lodi Road, New Delhi-110 003.
- (2) STATE OF ORISSA represented through Principal Secretary to Government, Department of Forest and Environment, Secretariat, Bhubaneswar.
- (3) State of Orissa represented through Chief Secretary and Secretary to Government, General Administration Department, Bhubaneswar.
- (4) Janardan D.Sharma, Managing Director Orissa Forest Development Corporation Limited, Orissa, Bhubaneswar.

.....Respondents

By legal practitioner: Mr.G.C.Nayak, GA (State)
Mr.P.R.J.Dash, ASC.

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ORDER**C.R. MOHAPATRA, MEMBER(A):**

The Applicant is a 1978 Orissa Cadre Indian Forest Service Officer and is holding the post of Additional Principal Chief Conservator of Forests (Project Community & Agro Forestry), Office of the Principal Chief Conservator of Forests, Orissa, Bhubaneswar. He has filed this Original Application seeking the following reliefs:

“(a) In view of the facts stated in para 4 of the application the applicant prays that the Hon’ble Tribunal may graciously be pleased to quash the order of promotion made in order dated 10.08.11 (Annexure-A/12) so far as it relates to the respondent No.4;

(b) And further be pleased to direct the respondent nos.1 to 3 to consider the case of the applicant for promotion to the rank of Additional Principal Chief Conservator of Forests with effect from the date the respondent no.4 was promoted i.e. w.e.f. 10-11-09 and to antedate his promotion to the rank of Addl. Principal Chief Conservator of Forests to 10-11-09;

(c) And further be pleased to direct the respondent Nos. 1 to 3 to reconsider the case of the applicant for promotion to the rank of Principal Chief Conservator of Forests with effect from the date the Respondent No.4 was promoted i.e. w.e.f. 10.08.11 and promote him to the rank of Principal Chief Conservator of Forest w.e.f. 10.08.11.

(d) And further be pleased to direct the respondent Nos. 1 to 3 to pay all consequential service and financial benefits retrospectively.”

2. However, in view of the submission made by Mr. Jayadev Sengupta, Learned Counsel appearing for the Applicant, we confined our consideration in so far as the relief(s) sought by the Applicant at (a) & (d) are concerned.

3. Despite opportunity, after service of notice on all the Respondents, no counter was filed except by the Respondent No.3

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who by filing counter contests the case of the Applicant and prays that this OA being devoid of any merit is liable to be dismissed. Applicant has filed rejoinder more or less reiterating his stand taken in the OA.

4. Mr. Jayadev Sengupta, Learned Counsel for the Applicant contends that when finding of the Selection Committee is not based on any reason as to how and on what basis the applicant was not found suitable, injustice was caused to the applicant. The Tribunal may not interfere with the finding of the Selection Committee but certainly it has the competence to interfere with the decision/recommendation of the Selection Committee if it is not supported by any reason especially when paragraph 25 at page 22 of the General guidelines for promotion specifically provides for giving reason in case of supersession.

It was contended by the Learned Counsel for the Applicant that Departmental Proceeding was initiated against the Applicant on the allegation of not performing the tour and going on leave without permission. The same remark was recorded in his CCR for the year 2005-06. He made representation against the remark which was rejected on 03.08.07. In the Departmental Proceeding, he was exonerated from the charge vide order dated 22.05.09. After exoneration from the charge the remarks recorded in his CCR for the year 2005-06 would accordingly lose its stink. Therefore, the first

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Selection Committee which met in January, 2010 should not have found the Applicant unsuitable for promotion to the post of Addl. PCCF by taking into consideration the remarks in his CCRs for the year 2005-06 and CCR for the year 2008-2009 written on 24.01.11, as per Rule 5 of All India Services (Performance Appraisal Report) Rules, 2007. It was submitted by Mr. Sengupta, Learned Counsel for the Applicant that the Selection Committee which met for the second time in January, 2010 found the Applicant suitable for promotion to Additional PCCF. Hence, according to the Learned Counsel for the Applicant finding the applicant unsuitable by the Selection Committee for the post of PCCF is perverse being contrary to Rules and, as such, the Applicant is entitled to the relief sought in this OA.

5. On the other hand, Mr. G.C.Nayak, Learned Government Advocate appearing for the State of Odisha vehemently opposed the contention of the Learned Counsel for the Applicant. It was stated by him that that the Applicant cannot claim his promotion as a matter of right when he was not found suitable by the Selection Committee. He has contended that the case of the applicant was duly considered for promotion to PCCF by the Selection Committee held on 26.7.2011. The Committee evaluated the Annual Confidential Reports/Performance Appraisal Reports as a whole, other service records and general assessment of the work of the Applicant vis-à-vis Respondent No.4. But the Committee did not find the applicant fit for



promotion to the grade of PCCF. When a high level Committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion this Tribunal cannot sit over the assessment by the Selection Committee as an Appellate Authority. Further contention of Mr. Nayak, Learned GA is that how to categorize in the light of the relevant records and what norms to apply in making the assessment are exclusively the functions of the Selection Committee. The Tribunal being not the appellate authority over the decision of the Committee headed by experts should not interfere in the recommendation of the Committee constituted for the purpose. In this connection Mr. Nayak, Learned GA placed reliance on the decision of the Hon'ble Apex Court in the case of **UPSC Vrs H.L.Dev and others**, AIR 1988 SC 1069 and **Dalpat Abasaheb Solunke Vrs B.S.Mahajan**, AIR 1990 SC 434. In stating so, he has reiterated his prayer made in the counter that this OA being devoid of any merit is liable to be dismissed.

6. We have considered the rival submissions of the parties and perused the pleadings and documents relied in support thereof. We have also perused the Minutes of the Meeting of the Screening Committee held on 26.07.2011 for considering the cases of IFS Officers for promotion to the grade of Principal Chief Conservator of Forests.

7. We find that that as the Applicant was assessed as unfit, Respondent No.4, who was admittedly, junior to the applicant, on the recommendation of the Selection Committee was promoted to PCCF. According to the Selection Committee held on 26.07.2011, the Committee held the selection keeping in mind the guidelines issued by the Government of India, Ministry of Environment and Forests dated 22.12.2000. These guidelines inter alia lay down conditions for determining the eligible officers' suitability for different grades in the Service, crucial dates of promotion to various grades, composition and working of the DPCs, procedure to be adopted in cases of officers against whom disciplinary/court proceedings are pending or whose conduct is under investigation etc. Paragraph 7 of the said guidelines deals with regard to confidential reports in which it has been provided as under:

"7. CONFIDENTIAL REPORTS:

7.1. The Annual Confidential Reports are the basic inputs on the basis of which assessment is to be made by each Committee. The evaluation of ACRs should be fair, just and non-discriminatory. The Committee should consider ACRs for equal number of years in respect of all officers falling within the zone of consideration for assessing their suitability for promotion. Where one or more ACRs have not been written for any reason, the Committee should consider the available ACRs. If the Reviewing Authority or the Accepting Authority a the casemay be, has over ruled the Reporting Officer of the Reviewing Authority respectively, the remarks of the Accepting Authority should be taken as the final remarks for the purposes of assessment. While making the assessment, the Committee should not be guided merely by the overall grading that may be recorded in the ACRs but should

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make its own assessment on the basis of the overall entries made in the ACRs.

7.2. In the case of each officer, an overall grading should be given which will be either "fit" or "Unfit". There will be no benchmark for assessing suitability of officers for promotion.

7.3. Before making the overall grading, the Committee should take into account whether the officer has been awarded any major or minor penalty or whether any displeasure of any higher authority has been conveyed to him. Similarly, the Committee would also take note of the commendations received by the officer during his service career. The Committee would also give due regard to the remarks indicated against the column of integrity.

7.4. The list of candidates considered by the Committee and the overall grading thus assigned to each candidate would form the basis for preparation of the panel for promotion."

8. Para-25 (at page 22) of the said guidelines deals with regard to supersession of officers. It has been stated therein that if an officer has not been included in the panel for promotion to any of the grades, the detailed reasons for his supersession may be recorded in writing. It is the specific case of the Respondent No.3 (both in counter as also in course of hearing) that the applicant could not be promoted when his junior was promoted as he was found unfit by the Selection Committee. In this connection we called upon the Respondents' Counsel to produce the Minutes of the Selection Committee copy of which was produced by Learned GA. The finding of the Committee in regard to the Applicant is reproduced herein below:

"4. On evaluation of Annual Confidential Reports/Performance Appraisal Reports as a whole, other service records and general assessment of the work

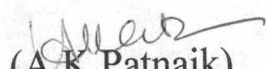
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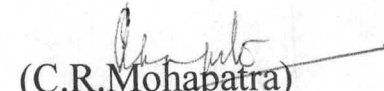
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the Committee found Shri Dinesh Singh, IFS (RR-78) 'unfit' for promotion to the grade of PCCF."

9. From the above, it reveals that the Selection Committee held the applicant as 'unfit' but without assigning any reason what to speak of any cogent reason as to why and on what ground the Committee did not find the Applicant fit while empanelling the Respondent No.4, who was admittedly junior to the Applicant for promotion to PCCF. Nothing is emanating from the Minutes of the Selection Committee in regard to the vacancy year; from which period to which period ACRs of the officers were taken into consideration and what are the other service records which had been taken into consideration by the Committee. No comparative assessment in respect of the Applicant and Respondent No.4 has been made by the Selection Committee except observing that "on evaluation of Annual Confidential Reports/Performance Appraisal Reports as a whole, other service records and general assessment of the work the Committee found Shri Dinesh Singh, IFS (RR-78) 'unfit' for promotion to the grade of PCCF." This observation gives an impression that as if the Committee took into consideration the entire records of the applicant starting from his date of induction to service. The supersession in the matter of promotion has far reaching consequences and as such as per the provision and practice the Selection Committee is bound to assign the reason/make comparative assessment in support of the recommendation. The

counter is also conspicuously silent on this aspect. In absence of details, procedural infirmity appears to have crept in the recommendation of the Selection Committee. Hence detailed reasons as to why the applicant was found unfit and Respondent No.4 was found fit need to be spelt out which the Respondent- Department shall have to do and communicate the same to the Applicant within a period of 90(ninety) days from the date of receipt of copy of this order.

With the aforesaid observation and direction this OA stands disposed of. No costs.


(A.R. Patnaik)
Member (Judl.)


(C.R. Mohapatra)
Member (Admn.)