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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.880 of 2012

Cuttack this the 7th day of July, 2015

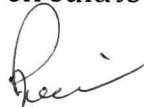
Dinesh Singh...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? Yes
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? Yes



(R.C.MISRA)
MEMBER(A)



(A.K.PATNAIK)
MEMBER(J)

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CORAM

HON'BLE SHRI A.K.PATNAIM, MEMBER(J)

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Dinesh Singh, I.F.S.
Aged about 60 years
S/o. late Sudisht Narayan Singh
Vill-SakiaBakia
PO-Mehnajpur,
Dist-Azamagarh (UP)
Director Environemnt-cum-Special Secretary (Retd.)
Govt. of Odisha,
Forest & Environment Department
Bhubaneswar

...Applicant

By the Advocate(s)-M/s.K.C.Kanungo
H.V.B.R.K.Dora
Ms.C.Padhi

-VERSUS-

Union of India represented through

1. The Secretary to Government of India
Ministry of Environment & Forest
ParayavaranBhawan, CGO Complex
Lodi Road
New Delhi-110 003
2. State of Odisha represented through
The Chief Secretary & Secretary to Government
General Administration Department
Odisha Secretariat
Bhubaneswar
Dist-Khurda
Odisha



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3. Principal Secretary to Government of Odisha
Department of Forest & Environment
Odisha Secretariat
Bhubaneswar
Dist-Khurda, Odisha
4. Mr.Vinod Kumar, IFS
Project Director
Odisha Forestry Sector Development Project
SFTRI Campus,
At/PO-Ghatikia
Bhubaneswar-751 003
Dist-Khurda
Odisha
5. Sri Janardhan D.Sharma, IFS,
Principal Chief Conservator of Forests (Wild Life),
Prakruti Bhawan
Nilakantha Nagar
Unit - 8,
Bhubaneswar-752 012
Dist-Khurda
Odisha

...Respondents

By the Advocate(s)-Mr.U.B.Mohapatra (Rs.1)
Mr.G.C.Nayak (Res. 2 & 3)
Mr.S.K.Patra (Rs.5)

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

Applicant is a Member of Indian Forest Service (IFS).

While working as Director, Environment cum Special Secretary, Forest & Environment Department, Government of Odisha, he retired from service with effect from 31.07.2012 on attaining the age of superannuation. His grievance is directed against non-accordance of promotion to the grade of Principal Chief



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Conservator of Forests (in short PCCF) with effect from 10.08.2011.

2. Undraped facts of the matter are that applicant, while working as Additional Principal Chief Conservator of Forests, had earlier moved this Tribunal in O.A.No. 563 of 2011, seeking the following relief.

- (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 10.08.2011 (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;
- © 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 Forests 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".

3. While the matter was taken up for hearing, on the prayer made by the learned counsel that the applicant would like to confine his relief sought against (a) & (d) as quoted above, the



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Tribunal restricted its consideration to that extent only and disposed of the matter vide order dated 20.09.2012 in the following manner.

"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 of 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 been 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



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within a period of 90(ninety) days from the date of receipt of this order”.

4. In complying to the above direction of the Tribunal, the State Government of Odisha in the General Administration Department (Res.No.2) issued a communication dated 30.12.2012(A/7) to the applicant and the outcome thereof not being palatable, applicant has again invoked the jurisdiction of this Tribunal in the instant O.A under Section 19 of the A.T.Act., wherein he has sought for the following relief.

“...to quash Annexure-A/3 and A/7 for the ends of justice; and

...to quash Annexure-A/8 and direct Respondents to hold Review Screening Committee Meeting to assess and consider the applicant for promotion to the grade of Principal Chief Conservator of Forests along with other eligible officers for the ends of justice; and

...to hold that the applicant is entitled to be considered for promotion to the grade of Principal Chief Conservator of Forests w.e.f. 10.08.2011 for the ends of justice; and

...to hold that the applicant is entitled to all the benefits including pay fixation and other entitlements from 10.08.2011 till his retirement, i.e. 31.07.2012 with interest till the actual payment is made for the ends of justice; and

...to direct Respondent No. 2 and 3 for payment of all arrears on pay fixation on promotion to the grade of Principal Chief Conservator of Forests and other benefits and entitlements as due and admissible w.e.f. 10.08.2011 till his retirement, i.e., 31.07.2012 with interest till the actual payment is made for the ends of justice; and



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...to issue any other further order(s) or direction(s) as deemed fit and proper in the circumstances of the case”.

5. In this Original Application, applicant has assailed the Notification dated 10.8.2011(A/3) issued by the G.A. Department, Government of Odisha, whereby and whereunder, S/Shri Vinod Kumar, IFS(RR-1978) and Janardhan D.Sharma, IFS(RR-1978) (Private Respondent Nos. 4 & 5) respectively, have been promoted to the grade of PCCF. At the same time, he has also called in question the legality and validity of communication dated 30.12.2012 (A/7) issued by the G.A.Department, Govt. of Odisha, as a measure of compliance of the orders of this Tribunal in O.A.No.563 of 2011 as well as the minutes drawn up by the Screening Committee in its meeting held on 26.7.2011 for considering the cases of IFS officers for promotion to the grade of PCCF vide A/8.

6. At the outset, applicant has drawn attention of the Tribunal to Paragraph-3 of the reply received by him through RTI Act (A/9), in which it has been mentioned by the G.A. Department that *“the ACR/PAR assessment for the period from 2002-03 to 2008-09 were considered in the Screening Committee meeting held on 26.07.2011”* and in the same breath in the very same A/9, it has been indicated that *“your representation dated 22.03.2011 to GA(SE)Department on disclosure of PAR for the period 2008-09, the relevant PARs have been sent to the Reporting Authority, Shri Suresh Chandra Mohanty, IFS, Ex-PCCF,*

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Orissa now Chairman, OSSC for his substantial view vide this Department D.O.No.2694/SC dated 16.07.2011, but no reply has been received from him till date. As such, this Department have not taken any final view on the said representation”.

7. Based on the above disclosure, it is the contention of the applicant that his ACR for the year 2008-09 was not legally conclusive on 26.07.2011 because of pendency of representation with the authorities, when the Screening Committee met for considering the promotion of IFS officers to the rank of PCCF. According to applicant, submission of the Respondents that the Screening Committee had taken into account ACR for the year 2008-09 is manifestly the travesty of truth.

8. Applicant has submitted that Paragraph-25 of Indian Forest Service – Promotion to various grades – Guidelines (in short Guidelines) (A/10) dated 22.12.2000 provides that **“if an officer has not been included in the panel for promotion to any of the grades, the detailed reason for his supersession may be recorded”** whereas in the minutes of the Screening Committee meeting (A/8), for the reasons best known^{to authorities}, no detailed reason has been recorded notwithstanding the fact that applicant had been superseded. In this regard, learned counsel for the applicant has stressed on the relevant observations and the directions issued by this Tribunal in O.A.No.563 of 2011 to the Respondents to communicate the

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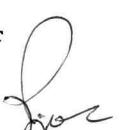
detailed reasons as to why applicant was found **unfit** and Respondent No.4 was found **fit** for promotion to PCCF. It has been urged by the learned counsel for the applicant that A/8 abundantly exposes grave error in the decision making process and thereby offends Clause-23.1 of Guidelines (A/10), which ***prescribes the necessity of review of proceedings of the Screening Committee when proceedings of the Committee had not taken all materials into consideration or if material facts were not brought to their notice or if there were grave errors in the procedure followed by them.*** It has been submitted that as per the settled principles of law, an authority must give his reasons while discharging his statutory duties and that he cannot be allowed to subsequently explain what he meant, or what was in his mind or what he intended to do. According to applicant, A/7 and A/8 having no legal sanctity, the same being the outcome of illegal and arbitrary consideration, are liable to be quashed and in effect, the applicant should be granted relief as sought by him in this O.A.

9. General Administration Department, Government of Odisha (Res.2) has filed a detailed counter contesting the claims laid by the applicant. It has been submitted that as per the promotion guidelines dated 18.11.2002 issued by the Government of India, Ministry of Environment & Forests, Screening Committee which met on 26.7.2011 for considering the promotion of IFS officers to the grade of PCCF was duly



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constituted. In the meeting, applicant along with Respondent Nos. 4 and 5 were considered and although applicant was senior to Respondent No.5, but the Screening Committee found the applicant unfit for promotion to the grade of PCCF on evaluation of his ACRs/PARs as a whole, other service records and general assessment of work and as such, he cannot claim promotion according to his seniority. It has been submitted that applicant and Res.No.5 are of the same batch and applicant being senior, his name was placed above Res.No.5 in the Disposition List issued by the G.A. Department, Government of Odisha. However, as per the recommendations of the Screening Committee, Respondent No.5 was promoted to the rank of PCCF vide G.A. Department Notification dated 10.8.2011. It has been submitted that in compliance of the orders of this Tribunal in O.A.No.563 of 2011, applicant was intimated that according to Para-6 of the guidelines, ***each Committee should decide its own method and procedure for objective assessment of the suitability of the candidates. While merit has to be recognized and rewarded, advancement in an officer's career should not be regarded as a matter of course. It should be earned by dint of hard work, good conduct and result oriented performance as reflected in the Annual Confidential Reports and based on strict and rigorous selection process.*** In the circumstances, the Committee assessed the other service records and general assessment of



work from the ACR/PAR folder, keeping in view the report of the accepting and reviewing officers. ***So, the reason why the applicant was found unfit, has not been recorded in the minutes.*** It has been submitted that PAR of the applicant for the period from 1.4.2008 to 31.03.2009 was assessed as Grade-5. As per Rule - 9(1) of All India Services (PAR) Rules, 2007, applicant was called upon to offer his comments on the observations made in the PAR, to which applicant submitted his representation on 22.3.011. On receipt of the same, views of the reporting officer were sought vide this Department letter No.2694 dated 16.07.2011, whereupon the reporting officer furnished his views/comments on 20.08.2011. Taking into consideration the representation of the applicant and the views of the reporting authority, ***it was held that there was no adequate ground for modification of the remarks in the PAR of the applicant for the period from 1.4.2008 to 31.3.2009. Accordingly, representation of the applicant has been disposed of and communication made to him vide letter No.3426 dated 14.11.2011.***

10. In the end, it has been pleaded that the Screening Committee duly constituted have rightly evaluated ACRs/PARs of the applicant while giving its recommendations. Therefore, according to Res.No.2 applicant is not entitled to any relief as claimed in this O.A.

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11. In the rejoinder to the counter of Res.No.2, applicant has submitted that in the matter of promotion to the grade of PCCF, promotion guidelines (A/10) were not scrupulously followed. According to applicant, he having been superseded, cogent reason for such supersession ought to have been assigned by the Screening Committee as per Clause-25 of the promotion guidelines. Applicant has submitted that while his representation against the ACR for the period 2008-2009 was pending consideration of the competent authority, the Screening Committee met and considered the cases of promotion, as a result of which he stood superseded. This according to the applicant is an incurable legal lapse.

12. In the rejoinder the applicant submits that in the proceedings of the Screening Committee, it is stated that ACRs/PARs as a whole, other service records and general assessment of work had been evaluated by the Screening Committee. But information provided under R.T.I.Ac,2005 as at Annexure-A/9 reveals that the Screening Committee considered ACRs/PARs for the period 2002-03 to 2008-09. There is factual contradiction in these submissions.

13. Sri Janardhan D.Sharma (Private Respondent No.5) has also filed his counter-affidavit in which he has submitted that promotion to the post of PCCF was based on merit and not on the basis of seniority alone. He also submits that the applicant had adverse remarks in the ACRs for the year 2005-06. The



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applicant was communicated warning in the years 2002² and 2009, and these facts do not give any positive picture of the applicant in respect of his service record. Another contention of the respondent No.5 is that even if the minutes of the DPC do not spell^{out} the other service records and general assessment in so many words, yet the Committee does possess a good deal of information and impression about the officers. The respondent no.5 pleads that his promotion on the basis of the recommendations of the Committee to the rank of PCCF is based on merit. It is clarified by respondent no.5 that he got the documents like ACR/PAR of the applicant from the copy of O.A.No.563 of 2011 which he received from the applicant.

14. The applicant has also filed a rejoinder to the counter filed by respondent No.5. In the rejoinder, the applicant has alleged that the Respondent No.5 has blown his own trumpet, and indulged in vilification of the service record of the applicant. Moreover, it has been submitted that consideration of the adverse ACR for 2008-09 in respect of the applicant when a representation against the adverse entry was pending has vitiated the proceedings of the Screening Committee, and that respondent No.5 has no business to be the spokesman of the Screening Committee.

15. Private Respondent No.4 (Shri Vinod Kumar) though duly noticed has neither appeared nor filed any counter.



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16. We have perused the pleadings and heard the arguments advanced by the learned counsels appearing on behalf of the respective parties. We have also gone through the written notes of submissions filed by the parties.

17. Before considering the matter on merit, we feel it proper to note some of the admitted positions, which are as under.

- i) The Screening Committee which met on 26.07.2011 for considering the promotion of IFS officers to the grade of PCCF, had taken into account the ACRs/APRs for the period from 2002-03 to 2008-09, as revealed from the RTI information dated 29.8.2011 given to the applicant. However, the minutes of the Screening Committee without mentioning specific years has mentioned about ACRs/PARs as a whole, other service records and general assessment of work.
- ii) Against the observations made in the PAR for the period 2008-09, applicant having been called upon to submit his representation had so submitted on 22.3.2011 and on receipt of the same views of the reporting officer were sought vide respondent's letter No.2694 dated 16.07.2011 to which, the latter furnished his views/comments on 20.8.2011.
- iii) Having regard to the representation of the applicant and views of the reporting authority, it was held by the Respondent No.2 that there was no adequate ground for modification of the remarks in the PAR for the period from 01.04.2008 to 31.03.2009 and accordingly, representation of the applicant was disposed of and result thereof communicated to the applicant vide letter No.3426 dated 14.11.2011.
- iv) According to RTI information dated 29.8.2011, however, no reply was received from the reporting authority till that date and the Department had not taken a final view on the representation. It is therefore, adequately clear that on the date of holding of the

Screening Committee meeting, i.e., 26.7.2011, the representation was still pending.

- v) Applicant is senior to Shri Janardhan D.Sharma (Res.No.5), although they belong to same batch.
- vi) Shri Janardhan D.Sharma (Res.No.5) being junior to the applicant has been promoted to the grade of PCCF vide Notification dated 10.08.2011(A/3) issued by the General Administration Department, State Government of Odisha.
- vii) In the said Notification Shri Vinod Kumar, who is senior to the applicant has been promoted to the grade of PCCF.

18. Upon perusal of pleadings of the parties, the issues for consideration are whether the Screening Committee which met on 26.07.2011 for considering promotion to the grade of PCCF had acted in accordance with the Guidelines issued by the Government of India, Ministry of Environment & Forests dated 22.12.2000(A/10) and whether the case of the applicant was properly considered in the Screening Committee before he was found '**unfit**' for promotion to the rank of PCCF..

19. To answer this issue, it is appropriate to quote the relevant provisions of the Guidelines, which are as under.

4. **PAPERS TO BE PUT UP FOR CONSIDERATION BY COMMITTEES**

- 4.1 The proposals should be complete and submitted to the Committee well in time. No proposal for holding a Committee meeting should be sent until and unless at least 90% of the up-to-date and complete ACRs are available. ***Every effort should be made to keep the ACR dossiers up-to-date lest this aspect is advanced as the reasons for not***

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holding the Committee meetings in time.

The officer referred in para 2 above would be responsible for monitoring and the completion of the ACR dossiers as per the existing instructions in this regard. In respect of cases relating to confirmation and assessment of the work and conduct of probationers, they would ensure the timely submission of the Assessment Reports etc.

- 4.2 ***The folder of ACRs/Assessment Reports should be checked to verify whether the ACRs for individual years/relevant periods are available. If the ACR for a particular year/particular period is not available and for valid/justifiable reasons it cannot be made available, a certificate should be recorded to that effect and placed in the folder.***

- 4.3 The integrity certificate on the lines indicated below should be furnished to the Committees constituted to consider cases for promotion or confirmation:

"The records of service for the following officers who are to be considered for promotion/confirmation in the grade have been carefully scrutinized and it is certified that there is no doubt about their integrity."

6. ***Procedure to be observed by Committee:***

Each Committee should decide its own method and procedure for objective assessment of the suitability of the candidates. While merit has to be recognized and rewarded, advancement in an officer's career should not be regarded as a matter of course. It should be earned by dint of hard work, good conduct and result oriented performance as reflected in the annual confidential report and based on strict and rigorous selection process. While "Average" may not be taken as adverse remark in respect of an officer, it cannot also be regarded as complimentary to the officer.



Such performance should be regarded as routine and undistinguished. Nothing short of above average and noteworthy performance should entitle an officer to recognition and suitable reward in terms of career progression".

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 reasons, the Committee should consider the available ACRs. If the Reviewing Authority or the Accepting Authority as the case may be, has overruled the Reporting Officer or 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 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 promotions.

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. 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.

25. Supersession of Officers

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. Such officers would be eligible for reconsideration after earning two more reports, except in the case of promotion in the grade of Principal Chief Conservator of Forests, in which case an officer would be eligible for reconsideration after earning only one more report.

20. Perusal of the above guidelines makes it clear that 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.*** It is the case of the Respondent No.2 that the Screening Committee had taken into consideration the Annual Confidential Reports for the period from 2002-03 to 2008-09 in respect of the Respondent Nos. 4 and 5 including that of the applicant for promotion to the post of PCCF whereas, the case of the applicant is to the contrary. According to him, the ACR for the period 2008-09 had not attained its finality on 26.7.2011, when the Screening Committee had held its meeting. As indicated above, the applicant on being asked to submit his representation against the observations made in the ACR for the period 2008-09, he made a representation on 22.3.2011. The views/comments of the reporting officer were received on 20.8.2011 and accordingly, the decision of the accepting

authority was communicated to the applicant vide letter dated 14.11.2011 holding that there was no ground for modification of the remarks in the ACRs/PARs.

21. From the above recital of facts, it is quite evident that by the time the views/comments of the reporting officer on the ACR of the applicant for the period 2008-09 ^{were} ~~was~~ received on 20.8.2011 and final result communicated on 14.11.2011, the Screening Committee meeting had already taken place on 26.7.2011. Therefore, the final assessment in the ACR for the period 2008-09 was not available before the Screening Committee for consideration for promotion to PCCF in so far as applicant is concerned. To make the matter more conspicuous, we would like to quote hereunder the relevant paragraphs of the minutes of the meeting of the Screening Committee held on 26.7.2011.

4. *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.*

5. *On evaluation of Annual Confidential Reports/Performance Appraisal Reports as a whole, other service records and general assessment of the work, the Committee found the following officers 'fit' for promotion to the grade of Principal Chief Conservator of Forests*

X X X X X

22. Perusal of the findings of the Screening Committee as quoted above, does not make it expressly or impliedly clear that



the Screening Committee in its meeting held on 26.7.2011 had evaluated ACRs for the period from 2002-03 to 2008-09 of the officers in the zone of consideration for promotion to PCCF. Whereas Respondent No.2 in the counter reply has stated that ACRs for the period from 2002-03 to 2008-09 had been taken into consideration by the Screening Committee for considering promotion of the applicant including Res. Nos. 4 and 5, there is no mention in the minutes as to the period of ACRs that had been taken into consideration by the Screening Committee. The averments made in the counter of Respondent No.2 that the Screening Committee in its meeting held on 26.7.2011 had evaluated ACRs for the period from 2002-03 to 2008-09 of the officers in the zone of consideration for promotion to PCCF being unsubstantiated and uncorroborated are not reliable. We have to go by the original records of the Screening Committee, and not by any submissions in the counter affidavit.

23. In para 4 of the proceedings, the Screening Committee has recorded following views

“On evaluation of ACR/PCAR’s as a whole, other service records and general assessment of the work the committee found Sri Dinesh Singh, IFS (RR-78) ‘unfit’ for promotion to the grade of PCCF”.

In para 5 it is recorded that Respondents 4 to 5 were found ‘Fit’ on the basis of similar evaluation as recorded in para

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Admittedly, the applicant is senior to Respondent No.5 in the gradation list of the Indian Forest Service. The Screening committee therefore decided to supersede the applicant in the matter of promotion. The promotion guidelines vide para 25 stipulates^R that in case of supersession, the reasons for the same must be recorded in writing. The screening committee proceedings, are, however, silent regarding this vital aspect. No reasons are recorded for this supersession which constitutes a violation of the guidelines.

24. In the earlier OA bearing No.563/2011, the Tribunal had examined the grievance of the applicant, and the findings of the Screening Committee in the light of Promotion Guidelines. Specific reliance was placed on para 25 of the Guidelines which stipulates that the detailed reasons for supersession may be recorded in writing. The Tribunal in their order dt. 20.9.2012 observed 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 (respondent No.5 in the present OA), who was admittedly junior to the applicant for promotion to the rank of PCCF. There was an observation that nothing was emanating from the minutes 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



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had been taken into consideration by the Committee. The following observation of the Tribunal is highly pertinent.

“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 been 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 Respondent-Department shall have to do and communicate to the applicant within a period of 90 days from the date of receipt of the order.”

25. It is relevant to note that a Division Bench of the Tribunal has already examined the matter in detail in the earlier round of litigation. The Respondent No.2 complied with the orders of the Tribunal by communicating the reasons for supersession to the applicant vide letter dt. 30.10.2012 placed at A/7, which has been challenged in this OA. In the fitness of things, therefore, the communication dt. 30.10.2012 requires specific and indepth examination, before reaching any conclusion in this O.A.

26. In this communication the role of the Screening Committee as per the Promotion guidelines dt. 22.12.2000 has been quoted along with para 6 of the Guidelines which set out standards for the objective assessment of the service records of an officer for adjudging his suitability for promotion. This part of the communication is only routine in nature. In the last para,



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it is mentioned that the Committee assesses the service records and general assessment of the work from the ACR/PAR , folder, keeping in view the report of the accepting and reviewing officer. Further, it is mentioned that the reason why the applicant is unfit has not been recorded in the minutes. The last line of the letter reads as follows, 'The Screening Committee has acted according to the promotion guidelines issued by the Govt. of India, Ministry of Environment & Forests which cannot be challenged. The expression that the decision/recommendation of the Screening Committee can not be challenged' is a contemptuous remark.

27. The respondents have relied upon the Promotion Guidelines dt. 22.12.2000, as per their statements and submissions. But they probably have forgotten that Para 25 of the Guidelines stipulates that "the detailed reasons for his supersession may be recorded in writing". In case of promotion to the grade of Principal Chief Conservator of Forests, a superseded officer will be eligible for reconsideration, after earning one more report. Therefore, there is a glaring omission by the Screening Committee in not recording detailed reasons for superseding the applicant vis-à-vis to respondent No.5 who is admittedly his junior in the cadre. A perusal of the minutes of Screening Committee clearly reveals that the detailed reasons have not been recorded in writing. It can be understood why the letter dt. 30.10.2012 could not communicate any reasons as



per orders of the Tribunal, because such reasons were actually not recorded by the Screening committee. The defence of this lapse of the Screening committee as put up in that communication appears extremely weak. Equally unsustainable is the submission that the Screening committee has strictly followed the Promotion Guidelines, atleast insofar as the decision of the Screening committee relating to supersession of the applicant is concerned. The communication sent to the applicant dt. 30.10.2012 in compliance of the Tribunal's order in the previous OA is, therefore, unsustainable on the grounds as stated above.

28. We consider it pertinent here to discuss some of the judgments of the Hon'ble Apex Court relied upon by the parties. The Respondents have relied upon the judgment in the matter of ***R.S.Dass vs. Union of India and others reported in 1986 (Supp) Supreme Court Cases 617*** in which the following observation was made by the Hon'ble Supreme Court.

"18.Where selection is made on merit alone for promotion to a higher service, selection of an officer though junior in service in preference to his senior does not strictly amount to supersession. Where promotion is made on the basis of seniority, the senior has preferential right to promotion against his juniors but where promotion is made on merit alone, senior officer has no legal right to promotion and if juniors to him are selected for promotion on merit the senior officer is not legally superseded....."



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In AIR 1990 SC 434 (Dalpat Abasaheb Solunke vs Dr.B.S.Mahajan) the Hon'ble Supreme Court has held as under.

"... the decision of the Selection Committee is final. It is not the function of the Courts or Tribunals to hear appeal over the decision of the Selection Committee and to scrutinize the relative merit of the candidates. Whether a person is fit for a particular post or not has to be decided by the Selection Committee".

The Ld. Counsel for the applicant has drawn our attention to the judgment of the Supreme Court in Commissioner of Income Tax vs M/s Suh Engineering Works (P) Ltd reported in AIR 1993 Supreme Court 43, with regard to the application of law laid down by the Hon'ble Supreme Court to individual cases, which is quoted below.

"39. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Supreme Court, divorced from the context of the question under consideration and treat it to be the complete law declared by the Supreme Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Court....."

29. There is no doubt about the fact that the applicant had no inherent right to be promoted as PCCF, just because he was senior to Respondent No.5. An officer has no right to promotion, he has only a right to be considered for promotion. The Tribunal would only see whether the case of the applicant was given due consideration in accordance with the promotion



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guidelines. The guidelines applicable in this case are admittedly contained in letter No. 20019/01/2000-IFS.II Ministry of Environment & Forests of the Govt. of India, dated 22.12.2000. The respondents claim that the Screening Committee considered the cases for promotion as PCCF in accordance with the above guidelines. Clause 25 of the same guidelines under the heading "Supersession of Officers" is quoted below.

"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. Such officers would be eligible for reconsideration after earning two more reports, except in the case of promotion in the grade of Principal Chief Conservator of Forests, in which case an officer would be eligible for reconsideration after earning only one more report."

30. The case is admitted to be case of supersession since the applicant having been denied promotion, his junior, respondent No.5 has been promoted as PCCF. When the Guidelines make a specific provision in the cases of supersession, this provision must be followed by the Screening Committee. Whereas it was laid down that detailed reasons for supersession may be recorded in writing, we find that no such detailed reasons were recorded. It may be noted that the detailed reasons are to be 'recorded' as per the guidelines; there is no provision for communication of such reasons, and the applicant has no inherent right for getting such communication. However, in the present case, the communication has been made under the



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directions of the Tribunal in the previous OA. Be that as it may, the Screening Committee has not strictly gone by the guidelines by failing to record detailed reasons as to why the applicant was superseded in the matter of promotion. We would also clarify here that we are not commenting on the relative merits of the officers as evaluated by the Screening Committee. We are only pointing out the procedural infirmities involved in the consideration.

31. The infirmities in the consideration of the applicant in the Screening Committee have already been discussed. There is no recording of the detailed reasons for supersession of the applicant by the Screening Committee. There is no specific mention of the periods of ACRs/PARs which were taken into consideration by the Screening Committee. Only in the information supplied to applicant by the Respondent No.2 under RTI Act, it is conveyed that ACR/PAR for the period from 2002-2003 to 2008-09 were considered. It has also been admitted that the representation of the applicant against adverse entries in the ACR for the year 2008-09 was still under consideration, when the Screening Committee met. Therefore, as on the date of meeting of Screening Committee, the ACRs of the applicant for the year 2008-09 had not attained finality. The representation was subsequently disposed of, and the authorities decided that there was no ground to modify the entries. This turns out to be a serious lacunae in the



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consideration of the case of the applicant. The concerned authorities could have waited for the decision of the Accepting Authority on the representation before convening the meeting of the Screening Committee. It is however, clear that the ACR of the applicant for the year 2008-09 had not reached its finality when the Screening Committee met, on account of pendency of his representation.

32. We would also like to point out that Clause 4.2 of the Guidelines provides that 'if the ACR for a particular year/particular period is not available and for valid/justifiable reasons it can not be made available, a certificate should be recorded to that effect and placed in the folder'. Further sub clause 7.1 of the Guidelines states that "where one or more ACRs have not been written for any reasons, the committee should consider the available ACRs." However, it is difficult to comment on whether all these provisions were followed or not, in the absence of any detailed records in the minutes of the Screening Committee.

33. Based upon the foregoing analysis, we are of the view that the case of promotion of the applicant needs to be reconsidered in the light of Guidelines for promotion dated 22.12.2000, and specifically clause 25 regarding 'Supersession of Officers'. On the day of holding of the Screening Committee meeting, the ACRs of the applicant for the year 2008-09 had not reached finality since his representation against adverse



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remarks for this year was not decided. The respondents have in the meantime disposed of the representation, and decided that there was no adequate ground to modify the remarks in the PAR of the applicant. This decision was communicated to the applicant by a letter dated 14.11.2011. However, we hold the view that ACRs/PARs of the applicant for the year 2008-09 which were considered by the Screening Committee on 26.07.2011 would be held as 'non-est', because these remarks had not reached their finality. Therefore, the respondents have to convene a Review DPC meeting to consider the case of the applicant for promotion to the rank of PCCF, and while considering the ACRs/PARs, the respondents are directed to consider the next available ACR/PAR of the applicant to meet the ends of justice.

34 The applicant has in the meantime, retired on reaching the age of superannuation. We are, therefore, not inclined to scrap the minutes of the Screening Committee held on 26.07.2011, and the consequential follow up action taken by respondent No.2 in that behalf, as it would upset the promotions already granted to Private respondents No.4 and No.5, who were adjudged 'Fit' by the Screening Committee. In our considered view, the ends of justice would be met, if we direct Respondents, particularly Respondent No.2 to convene review meeting of the Screening Committee with regard to case of applicant having regard to the observations made by us and

51/ take follow-up action accordingly. If the applicant is found suitable for promotion on the basis of consideration in the Review Screening Committee meeting, he shall be accordingly allowed consequential financial as well as retirement benefits from the date on which his junior was granted promotion to the rank of PCCF.

With the above observations the O.A. is allowed to the extent as stated above with no order as to costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

BKS