

(47)
CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 418 / 2007

Thursday, this the 23rd day of October, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

N. Shamsul Huda,
Deputy Conservator of Forest (Non-cadre),
Social Forestry Extension,
'Vanasree', Mathottam,
Kozhikode, residing at
22/382 B, Bye-pass Junction,
Thiruvannoor,
Kozhikode-673 029.Applicant

(By Advocate Mr OV Radhakrishnan Senior with Mr Antony Mukkath.)

v.

1. Union of India represented by
its Secretary,
Ministry of Environment & Forests,
Pariavaran Bhavan, CGO Complex,
Lodhi Road,
New Delhi-110 003.
2. Union Public Service Commission,
represented by its Chairman,
Dholpur House,
Shajahan Road,
New Delhi-110 069.
3. Selection Committee set up in
accordance with Regulation 3 of the IFS
(Appointment by promotion) Regulations 1966,
represented by the Chairman of the
Commission, Dholpur House,
Shajahan Road, New Delhi-110 069.
4. State of Kerala represented by
its Chief Secretary,
Secretariat,
Thiruvananthapuram-695 001.
5. Principal Secretary,
Forests & Wild Life Department,
Secretariat,
Thiruvananthapuram-695 001.Respondents

(By Advocate Mr TPM Ibrahim Khan, SCGSC for R.1 to 3)

(By Advocate Mr R Prem Shankar, G.P. For R. 4 & 5)

This application having been finally heard on 22.9.2008, the Tribunal on 23.10.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is an officer in the Kerala Subordinate Forest Service. He was directly recruited as a Ranger in 1976. He was promoted as Assistant Conservator of Forests (ACF for short) on 21.8.1995. He was on probation for a period of 2 years which he had completed satisfactorily. Though he had completed 8 years of service in the cadre of ACF by 28.3.2003 yet he was not confirmed in the said post. He has, therefore, approached the Hon'ble High Court of Kerala vide W.P.(C) No.27765/2005 seeking a declaration that he was eligible and entitled to be considered for appointment by promotion to IFS against the vacancies of the years 2005 to 2007 and for directing the respondents therein to declare his probation and to appoint him substantively in the cadre of ACF by issuing necessary orders. The said Writ Petition was allowed on 9.2.2007 (Annexure A-3) directing the State of Kerala to issue orders declaring his probation in the category of ACF and also confirming him from the date of his entitlement. Still, his name was not included in the eligible list for consideration for promotion to the IFS for the very same reason that his probation has not been declared so far. The applicant has stated that since there were 2 vacancies for the year 2006 for appointment by promotion to IFS and he was placed at Sl.No.12 in the Annexure A-4 provisional seniority list of State Service Forest Officers as on 1.5.2005, he was entitled to be considered for promotion against the vacancies of the said year. However, the Selection



Committee for preparation of the Select List for the year 2006 for appointment by promotion to IFS from State Forest Officers has not been convened. According to him, had the selection been made in the year 2006 itself for preparing the Select List of State Forest Officers for appointment by promotion to IFS as mandated by Regulation 5(1) of the Indian Forest Service (Appointment by Promotion) Regulations, 1955, he would have been considered for selection for that year, prior to his retirement from State Service on attaining the age of 55 years on 30.6.2006. He has also submitted that the failure on the part of the Selection Committee to meet during a particular year for any reason would not by itself dispense with the requirement of preparing the year wise Select List. When the selection committee meets next, it should, while making the selection, prepare a separate list for each year keeping in view the number of vacancies in that year after considering the State Forest Officers who were eligible and who were within the zone of consideration in that year. He has, therefore, sought the following reliefs in this O.A:

- (i) To declare that the applicant is fully eligible and qualified for appointment by promotion to Indian Forest Service against the vacancies of the years 2006 and 2007 even going by the seniority and rank assigned to him Annexure A-4 provisional seniority list notwithstanding his retirement from State Forest Service on 20.6.2007.
- (ii) To issue appropriate direction or order directing the respondents to arrange to hold the Selection Committee meeting for preparation of the select List for the years 2006 and 2007 of State Forest Officers fit for appointment by promotion to IFS immediately and at any rate, within a time frame that may be fixed by this Tribunal.
- (iii) To issue appropriate directions or order directing the respondents to include the applicant in the eligibility list of State Forest Officers and to consider him for selection for appointment by promotion to IFS against the vacancies of the year 2006 and 2007 and in case he is placed in the Select List to appoint him to IFS in the order of his merit in the Select List with all consequential benefits without

4

regard to his retirement from state Forest Service on attaining the age of 55 years on 30.6.2007.

He has also sought an interim order to declare that his retirement from the State Forest Service on 30.6.2007 shall not affect his entitlement for appointment by promotion to IFS from the Select List of the year 2006 or 2007 and to direct the respondents to consider him accordingly.

2. In support of the aforesaid reliefs sought by the applicant, Shri O.V.Radhakrishnan, Senior counsel appearing for the applicant relied upon paras 11, 12 & 13 the judgment of the Apex Court in **Union of India & others v. Vipinchandra Hiralal Shah** [(1996) 6 SCC 721] which are as under:

"11. It must, therefore, be held that in view of the provisions contained in Regulation 5, unless there is a good reason for not doing so, the Selection Committee is required to meet every year for the purpose of making the selection from amongst the State Civil Service officers who fulfil the conditions regarding eligibility on the first day of January of the year in prescribed in clause (2) of Regulation 5. The failure on the part of the Selection committee to meet during a particular year would not dispense with the requirement of preparing the Select List for that year. If for any reason the Selection Committee is not able to meet during a particular year, the Committee when it meets next, should, while making the selection, prepare a separate list for each year keeping in view the number of vacancies in that year after considering the State Civil Service officers who were eligible and fell within the zone of consideration for selection in that year.

12. In the present case, the Selection Committee did not meet during the years 1980 to 1985 and it met in December 1986/January 1987 and a Consolidated Select List was prepared for the vacancies of the years 1980 to 1986. There was thus a failure to comply with the mandatory requirement of Regulation 5 of the Regulations. In Syed Khaladi Rizvi's case select lists had not been prepared for the years 1971, 1975, 1976, 1979 and 1980. During the pendency of the appeal in this Court the State Government was directed to prepare the select list on notional basis for the said years and select lists were then prepared. In the instant case, State Civil Service officers who were selected in the select list prepared in December 1986/January 1987 have not been impleaded as parties and, therefore, their appointment to the Service cannot be upset. In his application before the Tribunal the respondent sought a direction for consideration of his case afresh for the purpose of inclusion in the select list. The respondent can seek such consideration only in a way that it does not disturb the appointment of other State civil

Service officers who have been appointed to the Service on the basis of the Select List of December 1986/January 1987. For that purpose out of the said officers whose appointment is not to be disturbed those who were senior to the respondent in the State Civil Service will have to be adjusted against the vacancies for the years 1980-1986. If, as a result of such adjustment the vacancies of a particular year/years are completely filled, then no further action is to be taken in respect of the vacancies for that/those year/years. If after such adjustment the vacancies of a particular year/years are not completely filled, steps will have to be taken to prepare notional select List/Lists for the vacancies of that/those year/years separately from amongst State Civil Service officers who are eligible and fall within the zone of consideration for selection in respect of the vacancies of the particular year. If the name of the respondent is included in the notional Select List/Lists so prepared or any particular year/years during the period 1980 to 1986 and is so placed in the order of merit so as to have been entitled to be appointed against a vacancy of that particular year, he can justifiably claim to be appointed to the Service against that vacancy of that year. But that appointment would not affect the appointment of other State Civil Service officers, though junior to the respondent, made on the basis of the Select List of December 1986/January 1987 and the vacancy against which the appointment of the respondent would be made will have to be adjusted against the subsequent vacancies falling within the promotion quota prescribed for State Civil Service officers.

13. Therefore, while upholding the judgment of the Tribunal that the respondent is entitled to seek fresh consideration on the basis that the selection should be made for vacancies occurring in each year separately, but in substitution of the directions given by the Tribunal in that regard, the following directions are given:

- (1) The number of vacancies falling in the quota prescribed for promotion of State Civil Service officers to the Service shall be determined separately for each year in respect of the period from 1980 to 1986.
- (2) The State Civil Service officers who have been appointed to the Service on the basis of the impugned Select List of December 1986/January 1987 and were senior to the respondent in the State Civil Service shall be adjusted against the vacancies so determined on yearwise basis.
- (3) After such adjustment if all the vacancies in a particular year or years are filled by the officers referred to in para (2), no further action need be taken in respect of those vacancies for the said year/years.
- (4) But, if after such adjustment vacancy/vacancies remain in a particular year/years during the period from 1980 to 1986, notional Select List/Lists shall be prepared separately for that year/years on a consideration of all eligible officers falling within the zone of consideration determined on the basis of the vacancies of the particular year.
- (5) If the name of the respondent is included in the notional select List/Lists prepared for any particular year/years during the period 1980 to 1986 and if he is so placed in the order of merit so as to have been entitled to be appointed against a vacancy of that particular year, he be appointed to

the Service against that vacancy of that year with all consequential benefits.

(6) The vacancy against which the respondent is so appointed would be adjusted against the subsequent vacancies falling in the promotion quota prescribed for the State Civil Service officers.

(7) Such appointment of the respondent would not affect the appointments that have already been made on the basis of the impugned Select List of December 1986/January 1987.

14. The appeal is disposed of accordingly. No order as to costs."

3. When this Original Application was initially heard on 27.6.2007, on a prima facie consideration of the matter, this Tribunal has allowed the interim relief sought by the applicant and directed the respondents that his retirement from the State Forest Service on 30.6.2007 shall not affect his entitlement for consideration and appointment by promotion to IFS from the Select List of the years 2006 and 2007.

4. The 4th respondent, viz, State of Kerala in their reply has not disputed any of the facts mentioned by the applicant. However, they have submitted that the applicant has since been confirmed in the State Forest Service and he has thus become eligible to be included in the zone of consideration for the year 2006 but the proposals for the years 2006 and 2007 are yet to be finalised.

5. In the reply filed on behalf of the respondents 2 & 3 (Union of India through Secretary, Ministry of Environment & Forests and UPSC respectively), it was submitted that there was delay in convening the Selection Committee meeting to prepare the year wise select list of the years 2003 to 2005 and it was held only on 22.12.2006, got approved on 30.3.2007 and necessary notification was issued on 24.7.2007. As regards the year 2006 was concerned, initially only one vacancy was determined and in terms of the directions of this Tribunal dated 9.3.2007 in O.A.26/2007 filed by A.K.Salim, they were required to hold the



Selection Committee meeting for preparing the select list for the said year before 31.5.2007. Accordingly, the Selection Committee meeting was scheduled for 27.5.2007 and 30.5.2007 but it had to be postponed because of the inconvenience expressed by the State Government. Later, the Government has re-determined the number of vacancies for the year 2006 as 3 and 7 for the year 2007. Thereafter, the Commission has called for the revised proposal from the State Government but the same is yet to be received. They have also submitted that the Selection Committee will now be convened after the receipt of the proposal which include the seniority list, eligibility list, integrity certificate, certificates regarding pending disciplinary/criminal proceedings, penalties imposed on the officers during the last 10 years, certificates regarding representations received against adverse remarks etc. from the State Government and the applicant's case will also be considered in terms of Regulation 5(2) and 5(3) of IFS Promotion Regulations which are as under:

"Regulation 5(2): The Committee shall consider, for inclusion in the said list, the cases of members of the State Forest Service, in the order of seniority in that service of a number which is equal to three times the number referred to in sub regulation(1).

Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three times the maximum permissible size of the Select List and in such a case the Committee shall consider all the eligible officers;

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in sub regulation(3) shall be excluded;

Provided also that the Committee shall not consider the case of a member of the State Forest Service unless on the first day of January of the year for which the Select List is prepared he is substantive in the State Forest Service and has completed not less than eight years of continuous service (whether officiating or substantive) in posts included in the State Forest Service.

Regulation 5(3): The Committee shall not consider the cases of the members of the State Police Service who have attained the age of 54 years on the first day of January of the year for which

the Select List is prepared:

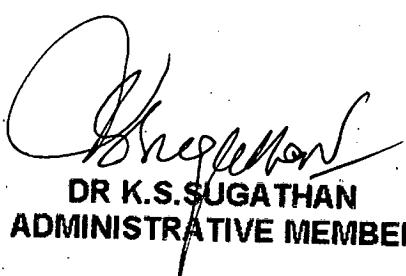
Provided that a member of the State Forest Service whose name appears in the select list in force immediately before the date of the meeting of the Committee and who has not been appointed to the service only because he was included provisionally in the Select List shall be considered for inclusion in the fresh list to be prepared by the Committee, even if he has in the meanwhile, attained the age of fifty four years.

Provided further that member of the State Forest Service who has attained the age of 54 years on the 1st day of January of the year for which the Select List is prepared shall be considered by the Committee, if he was eligible for consideration on the 1st day of January of the year or any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year or years under item (b) of the proviso to such regulation(1)".

6. We have heard Shri O.V.Radhakrishnan, Senior counsel for the applicant and Smt Jisha representing Shri TPM Ibrahim Khan, SCGSC for respondents 1 to 3 and Shri R Prem Shankar, G.P. for respondents 4 & 5. It is seen that the State Government has already confirmed the applicant in the State Forest Service during the pendency of this O.A and they themselves have admitted that he has become eligible to be included in the zone of consideration for the year 2006. In view of the above submission of the State Government, the first relief sought by the applicant has become infructuous. As regards holding the Selection committee meeting is concerned, we find from the affidavit filed by the respondents 1 to 3 that it was scheduled to be held on 27.5.2007 and 30.5.2007, but the same could not be held due to the inconvenience expressed by the State Government. Meanwhile, the vacancy positions of the years 2006 and 2007 have also undergone change. Now there are 3 vacancies as against 1 which was reported earlier. There are also 4 additional vacancies for the year 2007. We, therefore, direct the respondents to hold the Selection Committee meeting for the preparation of the year wise selection for the year 2006 and 2007 of the State Forest Service officers fit for appointment by promotion immediately, in

OA 418/07

any case, latest by 31.12.2008 and consider the applicant for selection and appointment to IFS in accordance with the rules. In case he is placed in the select list, he shall be appointed to IFS with all consequential benefits without regard to his retirement from the State Forest Service on 30.6.2007 on attaining the age of 55 years. With the aforesaid direction the O.A is allowed. There shall be no order as to costs.



DR K.S. SUGATHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

trs