

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 431 / 2008

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

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

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

**S.Gopalakrishnan,
Forest Working Plan Officer,
Forest Complex, Mathottam,
Kozhikode-28.**Applicant

(By Advocate Mr MR Rajendran Nair, Senior with Mr MR Hariraj)

v.

1. **Union of India represented by
Secretary to Government of India,
Ministry of Environment & Forests,
New Delhi.**
2. **State of Kerala represented by
the Chief Secretary to Government of Kerala,
Trivandrum.**
3. **Principal Secretary to Government of Kerala,
Department of Forest & Wild Life,
Trivandrum.**
4. **Principal Chief Conservator of Forests,
Forest Head Quarters,
Trivandrum.**
5. **Rajan Sehgal,
Assistant Inspector General of Forests(Training),
Ministry of Environment & Forests,
Paryavaran Bhavan,
Lodhi Road, New Delhi.**Respondents

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

(By Advocate Mr R Premshankar, G.P for R.2,3 & 4)

(By Advocate Mr Viju Thomas & Meena John (for R.5)

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

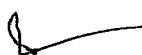
ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

Challenge in this O.A is to the observation recorded in the Annexure A-8 Minutes of the Screening Committee meeting dated 26.5.2008 for preparation of panel for promotion to the grade of Conservator of Forests to the effect that disciplinary action is contemplated against the applicant in File No.97638/Spl.C1/07/GAD and the consequent decision of the Committee to keep its finding on his suitability for promotion in sealed cover. According to the said minutes, suitability of the following Indian Forest Service Officers of 1991 batch including the applicant and the 1992 batch has been assessed for promotion to the grade of Conservator of Forests:

| | | |
|---------------------------|---|------------|
| i) Shri Noyal Thomas |] | |
| ii) Shri S Gopalakrishnan |] | |
| iii) Shri E Pradeep Kumar |] | 1991 batch |
| iv) Shri VV Mohanan |] | |
| v) Shri VV Shajimon |] | |
| vi) Shri Rajan Seghal |] | |
| vii) Shri Amit Mallick |] | 1992 batch |

The applicant's challenge is also on the recommendation of the Screening Committee with regard to his junior Mr Rajan Seghal of 1992 batch to the effect that he was found fit for promotion in the grade of Conservator of Forests. The applicant, has, therefore, prayed for quashing the Annexure A-8 to the extent of its decision to place his case in a sealed cover and for a direction to the respondents to consider the findings of the Selection Committee presently kept in sealed cover and to grant him promotion as Conservator of Forests in preference to his juniors with all consequential benefits including arrears of pay and allowances.

2. As an interim measure, he had sought a direction to stay all further actions on Annexure A-8 for promoting his juniors before promoting him as



Conservator of Forests. When this case was initially heard on 31.7.2008, on a *prima facie* consideration of the submissions made by the applicant, respondents were restrained from issuing the promotion order in respect of Shri Rajan Sehgal who belongs to the 1992 batch of IFS.

3. The back ground facts as stated by the applicant is as follows: The applicant is an Indian Forest Service officer of the Kerala cadre belonging to the 1991 year of allotment. His case for promotion to the next higher grade of Conservator of Forests was to be considered in terms of Annexure A-1 guidelines issued by the first respondent, viz, Ministry of Environment & Forest vide their letter dated 22.12.2000. According to para 11 of the said guidelines containing the Principles regarding promotion of members of the Indian Forest Service and composition of Departmental Promotion Committees, at the time of consideration of the cases of officers for promotion, details of such officers in the zone of consideration falling under the following categories should be specifically brought to the notice of the concerned Screening Committees:

- (a) Officers under suspension;
- (b) Officers in respect of whom a charge sheet has been issued and disciplinary proceedings are pending;
- (c) Officers in respect of whom prosecution for criminal charge is pending.

The Screening Committee has to assess the suitability of the aforementioned categories of officers along with other eligible candidates, without taking into consideration of the pending disciplinary case/criminal prosecution and its findings have to be kept in sealed cover till the disciplinary/criminal prosecution against them are concluded. Further, according to para 18.1 of the said guidelines, "if the proceedings of the Committee" for promotion contain findings in a sealed cover, on conclusion of the disciplinary case/criminal prosecution, the sealed cover or covers shall be opened. In case the officer is completely exonerated, the due date of his promotion will be determined with reference to



the findings of the Screening Committee kept in sealed cover/covers and the date of promotion of his next junior and he will be paid arrears of salary and allowances. The officer shall be promoted even if it requires reversion of the juniormost officiating person.

4. The applicant's contention is that he does not belong to any of the 3 categories mentioned above and therefore, the Screening Committee should not have, first of all, kept his case in sealed cover. In support of his aforesaid contention, he produced the Annexure A-2 letter dated 1.6.2007 issued to one Shri E Pradeep Kumar, IFS by the State Public Information Officer in response to his application under the Right to Information Act containing details of the disciplinary proceedings against the IFS Officers of 1990, 1991 and 1992 Batches and specific remarks that no disciplinary action was pending against the applicant. However, the observation about the 5th respondent, Shri Rajan Sehgal was that a memo dated 12.6.2002 was issued to him regarding non-conduct of re-auction of the Timber on time and Poles auction in Parambiyar and Vengoli Section of Parambikulam Range to which he replied but no charge memo was approved and issued against him so far. The applicant has also produced the Annexure A-4 Report on DFO, Chalakudy(Applicant) dated 16.10.2007 by the Secretary to Government of Kerala (Forest & Wild Life), according to which there was no allegation that he had suppressed any important information while furnishing the Statement of Facts in the W.P.(C) No.17767/07 filed by M/s Harrison Malayalam Plantations Limited which has led to the issuance of conflicting orders by the Hon'ble High Court of Kerala. Based on the aforesaid report, he has produced Annexure A-5 letter dated 7.4.2008 from the Principal Conservator of Forests to the Chief Secretary to Government of Kerala stating that he has not concealed any facts deliberately to help the Harrison Malayalam Limited in any manner and therefore, there was no material evidence to proceed



with disciplinary action against him as proposed by the Government. He has also produced the Annexure A-6 Note dated 25.4.2008 from the Joint Secretary to the Government of Kerala regarding promotion of IFS officers of 1991 and 1992 batches to the grade of Conservator of Forests according to which, the applicant and 7 others of 1991 and 1992 batch including Shri Rajan Sehgal were found eligible for promotion considering their length of service and recommended the names of one Shri Noyal Thomas, applicant and the 5th respondent, Shri Rajan Sehgal for consideration for promotion, as no charge sheets have been served on them so far, in any of the cases. The submission of the applicant is that he has never been issued with a charge memo and no charge memo was forwarded to the Government and therefore, no disciplinary action is said to be pending against him and the action of the Screening Committee placing his case in the sealed cover was unwarranted. He has also submitted that Shri Noyal Thomas and the 5th respondent were cleared and found fit by the Committee even though disciplinary cases were pending or under contemplation against them. He has also cited the cases of Smt Prakriti Srivastava against whom disciplinary action has been contemplated as stated in Annexure A-3 but she has been promoted on 10.4.2008 by Annexure A-9 order dated 10.4.2008.

5. The applicant has, therefore, contended that the impugned Annexure A-8 minutes dated 26.5.2008 is against the Annexure A-1 and also against the law laid down by the Apex Court in **Union of India v. Sangram Keshari Nayak** [(2007) 6 SCC 704] the relevant portion of which is as under:

"14. Thus, there was no bar in promoting the respondent during the period 14.1.1999 to 27.8.1999. No material was placed before the DPC to take recourse to the sealed cover procedure. in fact, none existed at the material time. Para 2 of the said circular specifically refers to submission of charge sheet as the cut-off date when a departmental proceeding can be said to have been initiated. Even otherwise such a meaning had been given thereto by this Court in K.V.Jankiraman [1993 SCC (L&S) 387] holding:



"16.The sealed cover procedure is to be resorted to only after the charge memo/charge sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge memo/charge sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment, etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge memo/charge sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure."

6. The second respondent in its reply statement filed on 25.8.2008 has submitted that the Government of Kerala had directed the 4th respondent to take action and to furnish the articles of charge and statement of imputations based on the enquiry report of the then Secretary (Forests & Wild Life). He has also submitted that the applicant cannot escape from the responsibility of correctly briefing the details to the Government Pleader concerned ensuring that the interest of Government is protected in the affidavit given by him to the High Court in the above Writ Petition. He has further submitted that serving of articles of charges to a delinquent officer is only a technical process and the Principal Chief Conservator of Forests has forwarded the articles of charges and statement of imputations and it is under process for serving. Therefore, the findings of the Screening Committee in respect of applicant to keep his case in the sealed cover is in order. As regards Shri Noyal Thomas and Shri Rajan Sehgal are concerned, the second respondent submitted that their names have been included in the promotion list as the Government has not received any

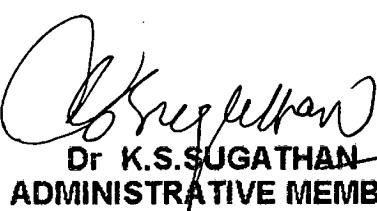
report from the 4th respondent for initiating disciplinary action against them.

7. The 5th respondent in his reply has submitted that he has completed 14 years of service in the IFS cadre. According to him, the apprehension of the applicant that there are only 2 posts and if promotion is given to him (5th respondent), it would adversely affect his (applicant's) promotional prospects is baseless. He has further submitted that he was presently on deputation in New Delhi for 4 years from 11.4.2008 and even if promotion is given to him, it will only be on notional basis and it will not in any way adversely affect the interest of the applicant. He has also contended that the Screening Committee has found him fit for promotion and therefore it is only just and proper that he is promoted. However, if the applicant is found eligible for promotion, he can be placed above him in the seniority list. He has also pointed out that one more vacancy would arise after 31.10.2008 when Shri N Sasidharan, Sl.No.35 in the Civil List of IFS Officers as on 1.1.2007 retires on that date and the applicant can be promoted against that vacancy even if the argument of the applicant that there are only two vacancies available in the cadre of Conservator of Forests is accepted as correct.

8. We have heard Mr MR Rajendran Nair, Senior counsel for applicant, Shri R Premshankar, G.P. for respondents 2, 3 & 4, Shri TPM Ibrahim Khan, SCGSC for respondent 1 and Mr Biju Thomas for respondent 5. It is very clear from para 11 of Annexure A-1 that Departmental Promotion Committee has to consider the cases for promotion of Officers under suspension; Officers in respect of whom a charge sheet has been issued and disciplinary proceedings are pending and Officers in respect of whom prosecution for criminal charge is pending and whose names are included in the zone of consideration. It is the official respondents' own submission that even as on 21.8.2008, the date on which they have filed the reply statement before this Tribunal, no charge sheet



has been issued to the applicant leave alone the date of the meeting of the Screening Committee, i.e. 26.5.2008. The Apex Court has considered the question as to when it can be said that disciplinary action is pending against a Government employee. In the case of **Union of India v. K.V.Jankiraman** [(1991) 4 SCC 109] it has been clearly held that the sealed cover procedure has to be resorted only after the charge memo/charge sheet has been issued. As rightly pointed out by the learned Senior counsel Shri M.R.Rajendran Nair, the Apex Court in its judgment in **Union of India v. Sangram Keshari Nayak** (supra) has again considered the very same issue and reiterated its earlier judgment. We, therefore, find that the action of the Screening Committee placing its findings regarding the applicant in sealed cover is against the law laid down by the Apex Court and also the principles being followed by the respondents themselves. We, therefore, quash the decision of the Screening Committee contained in Annexure A-8 minutes dated 2.5.2008 to the extent that it has placed the applicant's case in sealed cover. Consequently, we direct the Respondent No.2 to open the sealed cover and implement the findings of the Screening Committee with regard to the applicant forthwith. As regards the recommendation of the Screening Committee regarding the promotion of the 5th respondent is concerned, so long as it does not adversely affect the promotion of applicant, the same can be accepted and to that extent the interim order of this Tribunal dated 31.7.2008 is modified. With the aforesaid directions, the O.A is allowed. There shall be no order as to costs.



Dr. K.S. SUGATHAN
ADMINISTRATIVE MEMBER

trs



GEORGE PARACKEN
JUDICIAL MEMBER