

**Central Administrative Tribunal
Ernakulam Bench**

OA 438/2012

Tuesday, this the 12th day of January, 2016

CORAM

Hon'ble Mr.Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P.Gopinath, Administrative Member

M.S.Joy, 68 years

S/o Late Skariah

Deputy Conservator of Forest – Non Cadre (Retired)

JOSNA, 64/CSM Nagar

Edappazhanji, Trivandrum-10.

Applicant

(By Advocate: Mr.P.V.Mohanam)

Versus

1. Union of India
 represented by its Secretary
 Ministry of Environment and Forest
 CGO Complex, Lodhi Road
 New Delhi-110 001.
2. State of Kerala
 represented by Chief Secretary to Government
 Secretariat, Trivandrum -695 001.
3. The Selection Committee for selection to
 Indian Forest Service, represented by the Chairman
 Union Public Service Commission
 Shajahan Road, New Delhi-110 003.

Respondents

By Advocate :

Mr.N.Anil Kumar, Sr.PCGC for R1

Mr.M.Rajeev, GP for R2

Mr.Thomas Mathew Nellimottil for R3.

The Original Application having been heard on 23rd November, 2015,
 this Tribunal delivered the following order on 12th January 2016

ORDER

By P.Gopinath, Administrative Member

The applicant commenced service as Ranger in Kerala Forest Service on 30.1.1968. He was promoted as Assistant Conservator of Forests in the year 1981, sanctioned senior grade with effect from 1.4.1993 as Deputy Conservator of Forests. Memorandum of charges was issued on 23.4.1999. By proceeding dated 28.4.1999, one day prior to the date of superannuation, the applicant was dismissed from service on account of his conviction in CC No.15/1993 and 16/1994 respectively. The conviction and sentence was set aside by Hon'ble High Court of Kerala by judgment dated 29.8.2006 and 1.9.2006 respectively. Representation seeking review of order of termination and also for exoneration of charges was considered and by order dated 12.5.2011, the applicant was reinstated with effect from 29.4.1999 and allowed terminal benefit as if he was in service on the normal date of retirement. By proceeding dated 3.6.2011, his suspension period from 21.1.1987 to 12.12.1990 and from 24.12.1997 to 28.1.1998 was treated as duty for all purposes including pay and allowances.

Applicant seeks the following reliefs:

"To declare that the applicant is deemed to have been appointed to IFS (Kerala) cadre on promotion w.e.f. 1992-1993, or the date on which Sri Antony (Rank No.7 in the select list of 1992-1993 was appointed to IFS cadre with all consequential benefits including fixation of pay in senior time scale of pay as envisaged under IFS (Pay) Rules and the year of allotment taking note of the deemed appointment to IFS (Kerala) cadre and to re fix the pension and other terminal benefits in IFS (Kerala) cadre on attaining the age of 60 years with effect from the date on which his junior incumbent Sri Antony or P.Muraleedharan Nair was appointed to IFS cadre on promotion quota in the senior time scale of pay."



2. Respondents resist the claim of the applicant contending that the Vigilance and Anti-Corruption Bureau had registered two cases as CC 15/93 and 16/93 against the applicant for the irregularities in the construction of trek path in Schendurney Wildlife Sanctuary. He was sentenced to undergo simple imprisonment for one year with a fine of Rs.5000/- in the former case and simple imprisonment for one year with a fine of Rs.8000/- in the latter case as per the judgment of Inquiry Commissioner and Special Judge, Thiruvananthapuram. Against the sentence and conviction, the applicant filed Criminal Appeals No.109/96 and 110/96 before the High Court of Kerala. During pendency of the criminal appeals, departmental proceedings were initiated against the applicant for the irregularities committed. Consequently the applicant was dismissed from service as per Government Order dated 28.4.1999. By order dated 12.5.2011, the applicant was deemed to have been reinstated in service as Assistant Conservator of Forests with effect from 29.4.1999. His deemed reinstatement did not mean that he was fully exonerated from the charges levelled against him. Later, as per letter dated 14.6.2011, the Government dropped the disciplinary proceedings against the applicant. It is contended that the applicant's deemed reinstatement was purely on humanitarian grounds considering his ailments and old age. The applicant was not fully exonerated and hence the ruling of the Apex Court in O.S.Singh's case [1996 (6) SCC 236] had no application in his case. The applicant had not been found qualified for including his name in the Select List for appointment to the post of IFS at any point of time. Moreover, the applicant had not produced any records showing his inclusion in the select list for the year 1992-1993. It is



further contended that Sri Antony Joseph, junior incumbent was included in the select list of 1993-94 and not in the list of 1992-93 as claimed by the applicant. At the time of selection committee meeting, criminal cases were pending against the applicant and as such he was not eligible for being selected to IFS. He was exonerated from the charges in 2011, 18 years after the select list year (1992-93) Hence the claim made by the applicant, after 18 years, is devoid of merit and OA is liable to be dismissed, contend the respondents.

3. Heard the counsel for applicant and respondents and perused the written submissions made.

4. The applicant was considered by the third respondent for IFS Kerala Cadre while preparing the select list of 1992-93 but did not grade the applicant due to non-availability of ACR as applicant was under suspension during the period 1987-1990. Subsequently while preparing select list for period 1995-96 the applicant was considered but was given assessment of "unfit" by selection committee as the State Govt informed that applicant was dismissed from service on 28.4.1999. Hence in both the above instances the consideration and subsequent non-inclusion in the promotion list was due to his suspension/dismissal from service.

Vide Annexure A3, CRLA No.109/1006 filed by the applicant, the High Court of Kerala held:-

"In the above circumstances, I find that the accused cannot be held guilty of any of the offences alleged against them. Hence the conviction and sentence passed against the appellants under Section 5(2) read with section 5 (1)(c) and 5(1)(d) of P.C. Act, 1947 and Sections 409, 468, 471 and 477-A read with Section 34 of IPC are to be set aside and I do so. They are not found guilty of the offences alleged against them and they are set at liberty forthwith."



Vide Annexure A4 CRLA No.110/1996 appeal filed by applicant the High Court of Kerala held :

"Taking all these facts into consideration, I find that the prosecution failed to establish guilt against the accused by producing satisfactory evidence. The accused is, therefore, entitled for an acquittal. The conviction and sentence passed against them are set aside. They are found not guilty of offences under Section 5(2) r/w Section 5 (1)(c) and 5 (1)(d) of Prevention of Corruption Act, 1947 and Sections 409, 468, 471 and 477-A r/w Section 34 of Indian Penal Code and they are acquitted for the said offences. They are set at liberty forthwith."

The Govt of Kerala vide Annexure A6 order GO (R1) No.207/2011/F&WLD dated 12.5.2011 had ordered as follows:

"In the above circumstances Government are pleased to order that Sri M.S.Joy is deemed to have been reinstated in service as Assistant Conservator of Forests with effect from 29.9.1999. As such all terminal benefits will be granted to him as if he was in service on the normal date of retirement. Orders regarding regularization of his suspension period will be issued separately."

The Govt of Kerala vide another order Annexure A7 GO (R1) No.236/2011/F&WLD dated 3.6.2011 has ordered as follows:-

"Government examined the matter in detail. Since he was fully exonerated from the charges levelled against him vide Government order read as 8th paper above, Government are pleased to order that his suspension period from 21.01.1987 to 12.12.1990 and from 24.12.1997 to 28.1.1998 will be treated as duty for all purposes including pay and allowances as laid down in Rule 56 Part I KSR."

Vide Annexure A8 order dated 14.6.2011, the Govt of Kerala has dropped the disciplinary proceedings against the applicant.

5. Hence the applicant having been held not guilty of charges by the High Court in Annexure A3 in one case and guilt not established in Annexure A4 in the second case, the Govt of Kerala has reinstated the applicant and granted



him terminal benefits as if he was in service on normal date of retirement.

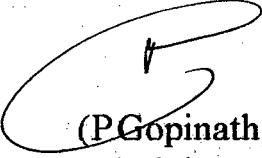
6. The counsel for respondents points out that applicant was considered by 3rd respondent but not promoted on both occasions. The cause of non promotion is the pendency of two criminal proceedings which has been now disposed as cited in pre-para and hence the cause of denying promotion no longer exists. The respondents brought the attention of the Bench to judgment delivered by the High Court of Kerala in WP(C) No.20313 of 2009 (S) in OA 628/2008 – S.Rajendran Vs. UOI and others, a similar case of non-selection to IFS due to non-issue of integrity certificate as applicant was facing trial before the Special Judge for offences involving corruption. He was acquitted of all charges. The Tribunal dismissed the OA observing that there is no sealed cover procedure for appointment to IFS and, therefore, the case cannot be examined after acquittal based on the decision contained in the sealed cover. An incumbent can be appointed to IFS if only an integrity certificate is issued by the State Government at the relevant time, within the prescribed time limit. High Court held that the government could not have issued integrity certificate when the incumbent was facing trial before a Criminal Court for corruption charges. The court also considered whether on acquittal the petitioner can claim integrity certificate with retrospective effect and came to the conclusion that the rules do not provide for such a procedure.

7. Going strictly by the rules, the applicant has no case. But the fact which remains to be considered is that whereas the High Court has held applicant not guilty in one case and acquitted as prosecution has failed to establish guilt against the accused in the second case, whether a lenient view can be taken in

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the matter without going into the merit of the guilt, not established by prosecution. The Selection Committee has considered applicant's case on two occasions – on one occasion did not grade applicant on account of non-availability of ACR and on second occasion did not include applicant in promotion list due to his suspension/dismissal from service. Whereas the former cannot be rectified, the latter position has undergone a change in view of setting aside of suspension and dismissal on account of acquittal by court. The age and medical condition of applicant also calls for a sympathetic consideration of the case.

8. The respondent is directed to notionally promote the applicant to IFS with effect from the date of promotion of his immediate junior and give notional fixation of pay and notional promotion to senior time scale without the benefit of arrears on the ground of "no work no pay". The pension of the applicant be fixed accordingly and other terminal benefits so drawn on the deemed date of retirement.


(P.Gopinath)
Administrative Member

aa.


(N.K.Balakrishnan)
Judicial Member