

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 46 / 06

Tuesday, this the 8th day of January, 2008.

CORAM

HON'BLE MRS SATHI NAIR, VICE CHAIRMAN

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

R. Rajendran
Deputy conservator of Forests(Non Cadre),
Asthuvanam Biological Park (SIP),
Forest Headquarters, Trivandrum-14.
Residing at
'SARAS' No.TC 75/142, Anayara P.O.,
Trivandrum – 29.

... Applicant.

By Advocate Mr.T.C.G.Swamy

V/s.

- 1 Union of India, represented by
The Secretary to the Government of India,
Ministry of Forest and Environment,
New Delhi.
- 2 State of Kerala represented by
The Chief Secretary to the
Government of Kerala,
State Secretariat, Trivandrum.
- 3 The Principal Secretary,
Forest & Wild Life Department,
Trivandrum – 4. ... Respondents.

By Advocate Mr.TPM I Khan SCGSC (R-1)
By Advocate Mr.R.Premankar G.P. (R 2&3)

This application having been finally heard on 28.11.2007, the Tribunal on
8.1.2007 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant in this case is a directly recruited Assistant Conservator of
Forests eligible to be considered for appointment by promotion to Indian Forest
Service with effect from 1.1.1994. His case could not be considered by the



UPSC at the appropriate time as there was some dispute regarding the interse seniority between the applicant and some others which have been pending before the Hon'ble High Court of Kerala. The said dispute was resolved finally only in 1999. Thereafter, the Review Selection Committee was held by the UPSC on 17.1.2000 and included his name as Sl.No.5 in the select list of 1994-95 subject to the clearance of disciplinary proceedings pending against him. The Commission could not recommend his name for appointment from the select list for the said period as the State Government did not give any unconditional recommendation for inclusion of his name on account of the pendency of several vigilance cases pending against him. He has, therefore, approached this Tribunal vide O.A.843/2002 for a declaration that the recommendation of the State Government for inclusion of his name in the select list for appointment by promotion to IFS has become unconditional consequent upon the vigilance clearance given by the State of Kerala stating that no disciplinary/vigilance case was pending against him. The applicant has also submitted that out of 9 criminal cases pending against him, 7 have been found to be devoid of any merits and he was exonerated or absolved from charges and only 2 cases are pending, out of which charge sheet was issued only in one case. After hearing the parties, this Tribunal was convinced that the State Government's decision to withhold the integrity certificate in respect of the applicant was correct, proper and well justified. Thereafter, the applicant approached the Hon'ble High Court of Kerala vide Writ Petition © No.9442/2005 and the same was disposed of with a direction to the respondents to take a final decision on the applicant's pending representation dated 26.2.2004 in this regard.. However, the State Government vide Annexure A-2 order dated 27.7.2005, informed the applicant that though FIRs in VC.16/94/SIU, 17/94/SIU, 19/94/SIU and 20/94/SIU were quashed by the Hon'ble High Court, the Government has filed Criminal M.P No.9299-9302/2004 in SLP No.4938-4941 of 2004 pending before the Hon'ble Supreme Court but it



was dismissed on 16.9.2005 on the ground of delay (Annexure A-3 and A-4). Thereafter, the applicant submitted the Annexure A-5 representation dated 4.10.2005 to the Chief Minister of Kerala requesting to drop further action in VC 18/94/SIU on the basis of equity and consideration of social justice. This was followed by Annexure A-6 representation to the Principal Secretary, Forest & Wild Life Department, Trivandrum dated 2.1.2006 and the Annexure A-7 representation dated 2.1.2006 to the Chief Secretary, Government of Kerala stating that the Government had already taken a decision to withdraw the only pending case against him as CC 30/02 (VC 18/94/SIU) filed before the Enquiry Commissioner and Sub Judge, Trivandrum. The contention of the applicant is that in the above facts and circumstances of the case, the non-feasance on the part of the 2nd respondent in forwarding the Integrity Certificate to the UPSC is arbitrary, discriminatory and violative of the constitutional guarantees enshrined under Articles 14 and 16.

2. The Union of India represented by the Secretary to Government of India, Ministry of forest and Environment (1st respondent) in their reply statement submitted that in view of the first proviso to Rule 5(4) of the IFS (Appointment by Promotion) Regulations, 1966, the applicant cannot be promoted to the IFS. The said proviso reads as under:

"Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal, are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government."

3. Respondents 2&3 (State Government) in their reply have stated that the

applicant is the first accused the case No.VC/2/2000 SCTwhich is registered on the basis of the vigilance enquiry conducted by the Vigilance and Anti Corruption Bureau into the allegation of irregularities in the transportation of sand from forest areas. Thus case No.VC 18/94/SIU (CC/30/02) is the only case pending against him and the Government have examined this case in detail and considering the various aspects, it has given direction to the Directorate of Vigilance and Anti Corruption Bureau in December 2005 to withdraw the same under Section 321 of Criminal Procedure Code with the leave of the High Court. However, the Directorate of Vigilance and Anti Corruption Bureau has requested the Government to review the decision in the light of the judgment of the Apex Court in the case reported in 2005 SCC (Crl), 506 wherein it has been held that the withdrawal of the prosecution can be allowed by the Hon'ble High Court only by valid reasons are made out for the same. The Government has again reconsidered the matter and asked the Director, Vigilance and Anti Corruption Bureau, to move the Enquiry Commissioner and Sub Judge, Trivandrum for the withdrawal of the case.

4. In the latest affidavit filed by the State Government it was submitted that there are six accused in VC/18/91 SIU (CC 30/02). During the pendency, there were 7 postings of the case in 2003, 9 postings in 2004, 8 postings in 2005 and 9 postings in 2006 and 3 postings in 2007. Meanwhile, the applicant had approached the Hon'ble High Court vide W.P.(C) No.12223/06 praying for a direction to the Vigilance Director to take immediate steps to enable the legal advisor to move appropriate application to withdraw the case. The case is lastly posted on 11.10.2007 for hearing and framing of charge by the Enquiry Commissioner and Sub Judge Court, Trivandrum. The State Government has also submitted that there was no deliberate attempt on their part to delay the prosecution in the aforesaid case.



5. We have heard the learned counsel on both sides. The fact of the matter is that the case No.VC/18/SIU (CC 30/02) is still pending against the applicant and the same has not been withdrawn or disposed of. The applicant has already retired from service on 30.4.2006 and his selection to IFS cadre had to fructify before he attains the age of 60 in 2011. In our considered opinion, there has been considerable and undue delay in conducting the case from 2002 onwards thereby the chances of consideration of the applicant to IFS has been adversely affected. The State Government was aware that the applicant was due for his retirement on 30.4.2006 and his name has already been included in the provisional select list for the year 1994-95. In the above circumstances, the respondents 2 & 3 shall take expeditious steps to bring the case pending against the applicant for its logical conclusion, so that his case for membership in the Indian Forest Service by the respondent No.1 is not delayed any further. With the above direction, the O.A is disposed of. No costs.

Dated, the 8th January, 2008.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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