

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 483 OF 2008

THURSDAY, this the 17th day of September, 2009.

CORAM:

HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Jupudi Prasad IFS,
Conservator of Forests (Waiting for Posting),
Office of the Chief Conservator of Forests,
Thiruvananthapuram ... Applicant.

(By Advocate Mr. Elvin Peter P J)

v e r s u s


1. Union of India,
Ministry of Environment and Forests,
Represented by its Secretary,
New Delhi.
2. State of Kerala, Represented by
The Chief Secretary to Government,
Central Administration (Special-C)
Department, Government Secretariat,
Thiruvananthapuram.
3. The Principal Secretary to Government,
Forests & Wildlife Department,
Government Secretariat,
Thiruvananthapuram.
4. The Principal Chief Conservator of Forests,
Forest Headquarters, Vazhuthacaud,
Thiruvananthapuram ... Respondents

(By Advocates Mr. TPM Ibrahim Khan for R1 and
Shri R. Prem Shanker, GP for R2-4)

The Original Application having been heard on 11.09.09, this
Tribunal on 17.09.09 delivered the following :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant entered the Indian Forest Service in 1983 and at present he has been functioning as Conservator of Forests since 1996. Sometimes in June 1999, he was served with a charge sheet, vide Annexure A-1 and the applicant filed his representation, denying the allegations levelled against him. Inquiry entailed and the Inquiry Officer furnished his report as early as on 01-12-2005, rendering his finding that none of the charges stood proved. However, copy of the inquiry report was not supplied to the applicant at that time and in 2006, when the Departmental Promotion Committee met for preparation of Select list for the next higher post of Chief Conservator of Forest, adopted the sealed cover procedure in accordance with paragraphs 11, 18 and 21 of Annexure A-2 guidelines. Promotion orders were passed upto the immediate senior to the applicant, vide Annexure A-3 order dated 06-04-2006. These officers were accommodated against newly created ex cadre post of Chief Conservator of Forest (Wildlife) and Chief Conservator of Forests (Working Plan & Research), which are declared to be equivalent in status and responsibilities to the cadre post of Chief Conservator of Forests(Wildlife) and Chief Conservator of Forests (Planning) respectively, under Rule 9 of the IFS (Pay) Rules 1968. The applicant requested for a copy of the inquiry report through the process of Right to Information Act 2005 but the same was refused by the authorities, vide Annexure A-5 stating that the same would be given by the concerned authorities at the appropriate stage of the disciplinary proceedings. Request for making available the details of the movement of the disciplinary proceedings records has also been turned down. Applicant preferred an appeal before the State Information Commission Kerala, and during the pendency of the same, on 01-02-2007, vide Annexure A-4 the disciplinary authority had exonerated the applicant holding that none of the charges against the applicant has been proved. Hence, he is



absolved of the charges and that the Disciplinary proceedings against him has been dropped. Vide Annexure A-6, the State Information Commission allowed the appeal and directed the Principal Information Officer to make available the documents applied for through the R.T.I. Act, 2005. Annexure A-7 is the notings of the authorities including that of the Minister of Forest and the Chief Minister.

2. Despite total exoneration of the applicant and dropping of the proceedings in February, 2007, the applicant was not made known about the result of the sealed cover procedure adopted. As in order dated 30th November, 2007 which contained transfer and postings of Conservator of Forests it was intimated that the posting orders in respect of the applicant would be issued separately (Annexure A 8), Annexure A-9 was filed by the applicant before the Chief Secretary requesting for implementation of the recommendations of the DPC. This was followed by Annexure A-10 and A-11 representations. As there was no response, the applicant has filed this OA, seeking the following reliefs:-


"i) Issue a direction to the respondents 2 to 4 to give retrospective promotion to the applicant as Chief Conservator of Forests with effect from 6.4.2006 and grant him all consequential benefits including arrears of salary, seniority and allowances;

(ii) declare that the applicant is entitled to be promoted as Chief Conservator of Forests with effect from 6.4.2006 by opening the sealed cover prepared by the Departmental Promotion Committee in the meeting held in January, 2006, notwithstanding the issuance of Annexure A15 memo of charges.

(iii) issue a direction to the respondents to forthwith disburse the salary of the applicant from March, 2008, alongwith 9% interest."

3. The preliminary reply to the OA the 2nd respondent had annexed order dated 30-08-2008 promoting the applicant to the grade of Chief Conservator of Forests (Rs 18400 -500-22400) and posted as Chief Conservator of Forests (Tribal Mission) Thiruvananthapuram, against the existing vacancy 'with immediate effect'. Annexure R-1 refers. Regarding retrospective promotion it has been stated in the preliminary reply, *"the applicant is not eligible for retrospective promotion as there is no vacancy in the cadre of CCS available in Forest Department. The question of retrospective promotion will arise only when the incumbent was denied his legitimate claim if there is a regular vacancy exists and also his immediate junior was given promotion in the cadre of CCF by over looking his seniority. This has not done in this case. So the request for giving retrospective promotion do not merit into consideration."*

4. The applicant filed his rejoinder to the above preliminary reply wherein he has given the details of the nine cadre strength of Chief Conservator of Forests in the department. Para 2 of rejoinder read with Annexure A-16 refers. Vide Annexure A-17 three 1977 batch IFS officers were promoted to the next higher grade by creation of ex cadre post. Of the three two were holding the post of Chief Conservator of Forests (Social Forestry) and Chief Conservator of Forests (Planning) till 8th May 2006, while the third one was holding the post of Managing Director, Kerala Forest Development Corporation, Kottayam. With the promotion of the above two officers holding the cadre strength posts, two vacancies from 08-05-2006 did exist. The applicant has further contended that vide Annexure A-18, the screening committee in its meeting found the applicant fit for inclusion in the panel for promotion to the grade of chief Conservator of forests, but for the disciplinary proceedings pending against him. In other words, had the proceedings been not initiated against the applicant he would have certainly



been promoted along with others who were promoted in April, 2006 itself vide Annexure A-3. The applicant has added to the rejoinder a copy of the notings that he could obtain through the process of R.T.I. Act, 2005.

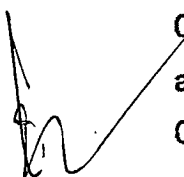
5. As recently as of 11th September 2009, the respondent No. 2 filed an additional reply to the rejoinder filed by the applicant and the following points have been mentioned therein:

(a) Even though 1982 and 1983 batch of IFS officers were promoted to Chief Conservator of Forests grade with effect from 06-04-2006, the applicant was not considered for promotion due to pendency of disciplinary action.

(b) The Hon'ble Chief Minister had ordered his promotion to Chief Conservator of Forests only on 25-06-2008 and the applicant was promoted as Chief Conservator of Forests Tribal Rehabilitation Commissioner, vide order dated 30-08-2008.

(c) As regards retrospective promotion, the clarification issued by the Government of India in its letter No. 11030/22/87-AIS II dated 07-09-1987 states, *"On conclusion of the disciplinary case/criminal prosecution, the sealed cover 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 the sealed cover and with reference to the date of promotion of his next immediate junior on the basis of such finding. He may be promoted notionally with reference to the date of promotion of his junior."* However, none of his juniors had been promoted as on the date of his promotion.

(d) There was no vacancy in the cadre to consider his claim for promotion to Chief Conservator of Forests Grade with effect from 06-04-2006. Post of Chief Conservator of Forests (Social Forestry) and Chief Conservator of Forests (planning) were vacant from 08-05-2006 to 11-04-2008.



6. The respondent NO. 2 has also annexed a copy of the order dated 23rd January 2009, wherein the period of compulsory waiting has been regularized inter alia the applicant from 23-12-2007 to 31-08-2008 as Chief Conservator of Forests in the scale of pay of Rs 37400 – 67000/-.

7. Counsel for the applicant has submitted that the matter is short and simple. Procedure exists for dealing with cases of promotion in respect of an officer against whom disciplinary proceedings were pending at the time of holding of DPC but who has been exonerated subsequently. Para 18. 1 of the guidelines at Annexure A-2 is the procedure. The respondents are under the misconception that as the effective date of promotion on the basis of sealed cover should be the date from which the junior was promoted, in the absence of any junior being promoted, the promotion as per recommendations contained in the sealed cover cannot be effected. In other words, according to the respondents, promotion of a junior is a condition precedent to afford promotion to the officer in whose case the sealed cover procedure has been adopted. The counsel further submitted that though initially the respondents contended that there was no vacancy, the existence of vacancies from 08-05-2006 had been confirmed in their Additional Reply. As such, the applicant is entitled to be promoted from the date his other batch mates were promoted w.e.f. 06-04-2006. The ill intention of the respondents would be very much manifest from the fact that in order to deny the promotion of the applicant from the above date, another charge sheet dated 25th July 2008 had been issued, alleging certain irregularities of 2003-3004, vide Annexure A-15. However, law is settled vide decision in the case of **Delhi Jal Board vs Mahinder Singh** (2000) 7 SCC 210 wherein it has been held -

The mere fact that by the time the disciplinary proceedings in

the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another departmental enquiry was started by the Department, would not, in our view, come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection.

8. Counsel for respondent No. 2 stated that the facts relating to the vacancy position are contained in the additional reply furnished.

9. Arguments were heard and documents perused. At the very outset it should be stated that in their issue of charge sheet in 25th July 2008, it cannot be presumed that the same is to frustrate the entitlement of the applicant to be promoted to the grade of Chief Conservator of forests. Had it been the intention of the respondents, they would not have promoted the applicant w.e.f. 30.08.2008. As regards the legal issue, para 18.1 of the guidelines reads as under:-

"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 with reference to the date of promotion of his next junior on the basis of such findings. The officer shall be promoted even if it requires to revert the junior most officiating person. Such promotion would be with reference to the date of promotion of his junior and in these cases, the officer will be paid arrears of salary and allowances."

10. The above means that in the case of an officer who has been subjected to certain disciplinary proceedings and in whose case the recommendations of the DPC have been kept in sealed cover, in the event of his being exonerated in the proceedings, the authorities shall act on the basis of the recommendations as contained in the sealed cover and the date of promotion shall be from the date the immediate junior got his promotion and if need be by reverting such junior.

This means that the promotion of the officer should at least be from the date his junior has been promoted. For, promotion of the junior would not have taken

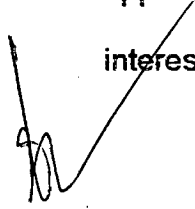
place had the sealed cover procedure been not adopted in respect of his immediate senior. The slot otherwise available to the officer who had been proceeded against, has been allotted to the junior and it is for this reason that if there be any necessity to revert the junior to promote the exonerated officer, the same should be adopted. The date when from such exonerated officer is to be given promotion has been provided for in the decision of the Apex Court in the case of *Union of India v. K.V. Jankiraman*, (1991) 4 SCC 109, wherein the apex court has held as under:-

"26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests."

11. In the instant case, even the seniors to the applicant were promoted against newly created (or upgraded) post of Chief Conservator of Forests. Had there not been the proceedings against the applicant, as stated in Annexure 18, the name of the applicant would have been included in the panel for promotion to the grade of Chief Conservator of Forests. The panel being 6-4-2006, the applicant ought to have been promoted from that date itself. Decision in *K.V. Jankiraman* supra does support the claim of the applicant.

12. However, one aspect has to be seen here. As stated earlier, even the senior to the applicant could be promoted only when posts were created. As such, in the absence of a post as on 6th April, 2006, the applicant could not have been promoted. The question is as to whether the applicant should be promoted against the next available vacancy and if so, when the said vacancy arose and what is the formality to be observed. The next vacancy did arise immediately w.e.f. 08-05-2006 and it continued as per the respondents upto 11-04-2008. Vide para 8.2 of the guidelines, for vacancies due to death, voluntary retirement, new creations etc., belonging to the category which could not be foreseen at the time of placing the facts and the matter before the Committee, another meeting of the Committee should be held for drawing up a panel for the vacancies thus arising. In the instant case, since the applicant stood cleared for promotion and the vacancy arose in the grade of Chief Conservator of Forests as a chain reaction due to creation of certain posts at the higher level the said post was available against which the applicant should have been accommodated. Then again, a minor technical hitch may occur as to how to regulate the promotion from 11-04-2008 till 31st August 2008. Remedy to this aspect is not far from possibility. The respondent could well cover the period by suitably modifying Annexure R-1 order dated 23rd January 2009.

13. In view of the above, the O.A. is allowed. It is declared that the applicant is entitled to be promoted to the grade of Chief Conservator of Forests from 08.05.2006 and his pay and allowances accordingly regulated. Arrears of pay should be made available to the applicant. Though the applicant has claimed interest, as there does not appear any malafide intention, but only wrong appreciation of the legal position, no order is passed in respect of awarding of interest.

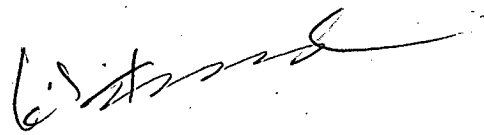


14. This order shall be complied with, within a period of two months from the date of communication.

15. Under the circumstances, there shall be no orders as to costs.

(Dated, the 17th September, 2009)


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr. K B S RAJAN
JUDICIAL MEMBER

CVT.