

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.51/2004.

Thursday this the 29th day of April 2004.

CORAM:

HON'BLE MR. A. V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H. P. DAS, ADMINISTRATIVE MEMBER

A.Sharafudeenkutty,
Deputy Conservator of Forests (non-cadre)(Retired),
residing at 'Master Gardens', Chemmanthur,
Punalur, Kollam-691305. Applicant

(By Advocate Shri O.V.Radhakrishnan)

V_S.

1. Union of India, represented by its Secretary, Ministry of Environment and Forests, Pariavaran Bhavan, CGO Complex, Lodhi Road, New Delhi-110003.
2. State of Kerala, represented by its Chief Secretary, Secretariat, Thiruvananthapuram-695 001. Respondents

(By Advocate Mr. George Joseph, ACGSC(R1))
(By Advocate Smt. Lalitha Nair, Sr. GP (R2))

The application having been heard on 29.4.2004, the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant was a State Forest Service Officer holding a post of Deputy Conservator of Forests. He retired on superannuation from the State Forest Service on 31.5.2002. His name was not considered for induction into the Indian Forest Service for the reason that the order of confirmation had not been issued. The applicant approached the Hon'ble High Court of Kerala in O.P.9476/2002 for a direction to the State of Kerala to issue orders on confirmation. During the pendency of the above O.P. the order (A1) confirming the applicant as Deputy Conservator of Forests was issued. In CMP No.22739/2002 in

O.P.9476/02, the Hon'ble High Court of Kerala declared that the delay on the part of the State Government of Kerala in issuing order of confirmation till the retirement of the applicant in the State Forest Service would not stand in the way of the applicant being considered for appointment to the Indian Forest Service(IFS for short). The applicant retired from State Forest Service on 31.5.2002. After A-1 order of confirmation of the applicant as Deputy Conservator of Forests was issued the applicant's name was also considered for inclusion in the Select List against four vacancies in IFS for the year 1999(A3), The applicant's name figures at No.3 in the Select List. No.1 in the Select List is V.Sasidharan. In addition to serial numbers 1 to 4 against four vacancies the name of R.Rajendran whose name was included in the List was also included as Sl.No.1A provisionally No.2 in the list has been included provisionally subject to vigilance clearance and integrity certificate. Although serial number one has been appointed and the applicant's willingness has already been obtained on 7.11.2003, the respondents have not issued order of appointment of the applicant to the I.F.S. Aggrieved by that the applicant has filed this application seeking the following reliefs:

- i. to issue appropriate direction or order directing the respondents 1 and 2 to make appointment of the applicant from Annexure A-3 Select List of the year 1999 to Indian Forest Service from date of his entitlement with all consequential benefits including arrears of pay and allowances with interest forthwith and at any rate within a time-frame that may be fixed by this Hon'ble Tribunal;
- ii. to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case;
- iii. to award costs to the applicant.

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2. The 2nd respondent, State of Kerala has filed a reply statement. The only contention raised is that the applicant not being an officer of the State Forest Service but only a retiree, he cannot be appointed to Indian Forest Service according to the Regulation. Although Shri George Joseph, ACGSC appeared for the Ist respondent, he did not file any reply statement. Learned counsel stated that despite several letters written by him to the Ist respondent seeking instructions in the matter enabling him to file a reply statement if necessary, he did not get any response and therefore he was not able to say anything in the matter.

3. We have carefully perused the material placed on record and have heard Shri O.V.Radhakrishnan, learned counsel appearing for the applicant and Smt.Lalitha Nair, learned Senior Government Pleader who appeared for the State of Kerala. The facts are undisputed. The applicant was a State Forest Service Officer and was eligible for consideration for induction to IFS. He could not be considered for induction before his retirement for the reason that the Annexure A-1 order confirming him as Deputy Conservator of Forests was issued only after his superannuation. However, no selection for preparation of Select List for the vacancies of the year 1995-96 onwards was made till the applicant's retirement. Further, the Hon'ble High Court of Kerala had in its order in A-1 in C.M.P.No.22739/2002 in O.P.No.9476/2002 C declared as follows:

"Therefore, it is declared that if owing to the delay on the part of the respondents to act in time and as a result his claim cannot be taken up for consideration before his retirement, his retirement from service will not affect his rights to which he was otherwise eligible, but for his retirement".

Qn

Taking note of this declaration the applicant was considered by the respondents for inclusion in the Select List and his name was included in the list for the vacancies of the year 1999. The unconditional willingness of the applicant for appointment to the Indian Forest Service has been obtained on 7.11.03. These are facts undisputed. Having considered the applicant for appointment by promotion to IFS under Regulation 5 of IFS(Appointment by Promotion) Regulations 1966, having placed his name in the Select List and having obtained his unconditional willingness, the respondents cannot say that the applicant cannot be appointed to the IFS for the reason that he retired from State Forest Service on 31.5.2002 especially in the face of a declaration in the judgement of the Hon'ble High Court of Kerala regarding his entitlement. Further, the learned counsel of the applicant states that Shri Patric Gomez whose name was included in the Select List for the year 2002 who had retired from service in 2003 has been appointed to I.F.S. This is not disputed by the counsel appearing for the respondents. The contention that the applicant cannot be appointed because he had retired from service on 31.5.2002, therefore, is untenable. There is no other contention raised. Since integrity certificate to serial Number 2 has not been issued thus appears to be no reason why the order of appointment of the applicant should not be issued. No Other grounds for not issuing order of appointment of the applicant whose willingness has been obtained within a month from obtaining such willingness has been taken by the respondents.

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In the result, the application is disposed of directing the respondents to issue order regarding appointment of the applicant to the I.F.S. on the basis of his placement at serial No.3 in the Select List for the year 1999 with consequential benefits as expeditiously as possible ,at any rate within three weeks from today. No costs.

Dated the 29th April 2004.

H. P. DAS

ADMINISTRATIVE MEMBER

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A.V. HARIDASAN

VICE CHAIRMAN