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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.576/2008

this 28 th day of June,2010

CORAM:

**HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE MR.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

O.Jayarajan,
Deputy Conservator of Forest,
(Non Cadre) Retired
'Karthika' House No.1/D Generals Road,
Payyambalam P.O., Kannur-670001.

.. Applicant

By Advocate : Sri N.Nanda Kumara Menon, Sr.
Mr. P.K.Manoj Kumar

vs.

1. The Union of India, represented by its Secretary,
Ministry of Environment and Forests,
Paryavaran Bhavan, C.G.O. Complex,
Lodhi Road, New Delhi-110 003.
- 2.The State of Kerala, represented by the Chief Secretary,
Government of Kerala, Thiruvananthapuram.
3. The Principal Secretary,
Forests and Wildlife, Government of Kerala,
Secretariat, Thiruvananthapuram.
4. The Union Public Service Commission, represented
by its Secretary, Shajahan Road, New Delhi.
5. The Selection Committee for Selection to the Indian Forests
Service Constituted under Regulation 3 of the I.F.S.



(Appointment by Promotion) Regulations, 1966, represented by its Chairman, Union Public Service Commission, New Delhi.

6. The Principal Chief Conservator of Forest,
Forest Head Quarters, Vazhuthakad, Thiruvananthapuram-14.

7. A.R.Sasikumar, aged 54 years, S/o A.S.Ramakrishnan,
Divisional Forest Officer, Flying Squad Division, Palakkadu,
Residing at No.27, Usha Nivas, Kalapaka Gardens, Pookunnam,
Thrissur. ..Respondents

By Advocate : Sri Sunil Jacob Jose, SCGSC(R1)
Sri N.K.Thankachan, G.P.(R2, 3 & 6)
Mrs.Dhanya B for Mr.Thomas Mathew
Nellimoottil(R4&5)

The Application having been heard on 14.06.2010 the Tribunal on 28.06.10 delivered the following:-

ORDER

HON'BLE MR.JUSTICE K.THANKAPPAN,JUDICIAL MEMBER:

The applicant was holding the post of Senior Grade Deputy Conservator of Forests(Non Cadre) with effect from 1.10.2005. While so working, the applicant retired from service on 31.3.2008 on attaining the age of 55 years. The name of the applicant had been included in the proposal list drawn by the Govt. of Kerala for promotion to Indian Forest Service(I.F.S) under the Indian Forests Service (Appointment by Promotion)Regulations,1966, for 2007. Though he was included in the list of eligible candidates, his name was not included in the select list as the posts

sanctioned for the period of 2007 was only 4 and the non-inclusion in the select list of the name of the applicant was also on the basis of the grading assigned to him by the selection committee. Officers with better grading were selected and included in the select list. However, it is the case of the applicant that as the number of vacancies was limited to 4, his name could not have been included in the select list and if the triennial or quinquennial review of the Cadre Strength could have been done earlier, the total vacancies would have been increased and thereby the applicant also could have been selected. Hence the applicant has got a case that since both the Govt. of India as well as the Govt. of Kerala delayed for taking necessary steps for the Cadre Review in the I.F.S. Cadre of Kerala, the applicant was not selected by the selection committee. Hence the applicant filed an O.A. before this Tribunal as O.A.No.117/2008 and in that O.A. this Tribunal ordered on 29.7.2008 that even if the applicant has to retire on 31.3.2008, the retirement of the applicant may not be taken as a reason for non-consideration of his name for the selection to be made for the period 2008 on the basis of the additional posts sanctioned by the Central Govt. as per the Cadre Review ordered on 13.6.2008. On these grounds the applicant has filed this O.A. praying for the following multiple reliefs:-



"A. To direct the second respondent to forward the Integrity Certificate of the applicant to the 4th and 5th respondents forthwith at any rate before the 4th and 5th respondents finalizing the list of Officers fit for appointment by promotion to I.F.S for the year 2007.

B. To direct the respondents 4 and 5 to consider the Integrity Certificate of the applicant to be sent by the 2nd respondent before finalizing the list of Officers fit for appointment by promotion to the I.F.S. for the year 2007.

C. To direct the 6th respondent to place the Annual Confidential Reports of the applicant for the year 2006 before the Moderation Committee for its review and remarks and to send the same to the 4th and 5th respondents for its consideration.

D. To direct the 6th respondent to place the Annual Confidential Reports of all the officers who are included in the zone of consideration for appointment by promotion to the I.F.S. Before the Moderation Committee for its review and remarks and to send the same to respondents 4 and 5."

2. The O.A. has been admitted by this Tribunal and notice has been ordered. In pursuance of the notice ordered, all the official respondents as well as the contesting respondents filed their respective reply statements. In the reply statement filed on behalf of the second respondent, namely the State of Kerala, it is stated that as per Rule 4(2) of the IFS (Cadre) Rules, the strength and composition of the State Cadre has to be revised ordinarily at the interval of every 5 years. However, the cadre review in question has been ordered only on 13.06.2008 on the meeting of the Cadre Review Committee held on that date and if any post



is sanctioned, it has no retrospective operation. Hence the additional posts sanctioned are added to the promotion quota of the I.F.S. in the State Cadre for the period 2009, as the vacancies arose as on 1.1.2009. The reply statement filed on behalf of the Govt. of India, 4th and 5th respondents would show that the provisions regarding preparation of a list of suitable officers as laid down in the Indian Forest Service (Appointment by Promotion) Regulations, 1966, stipulate that the selection committee shall classify eligible officers as 'Outstanding', 'Very Good', 'Good' or 'Unfit' as the case may be. In the case of the applicant it was found by the selection committee that there were candidates having better grading than the applicant. Hence the name of the applicant was not included in the select list. Further it is stated that on the basis of the interim order passed by this Tribunal in O.A.No.117/2008 the Union Public Service Commission considered the case of the applicant along with the integrity certificate received from the Govt. of Kerala as per letter dated 17.10.2008 and the selection committee found that the name of the applicant at Sl.No.6 in the list of eligible officers in the selection committee meetings held on 9.7.2008 and 8.8.2008 for promotion to the IFS of Kerala cadre on an overall assessment of his service records immediately preceding the select list year and the Committee graded the applicant as 'Good'. However the candidates who have got better grading



were selected and included in the select list. Further it is stated in the reply statement that in ordinary cases[✓] for taking the quinquennial review there may not be any delay occurring on the part of the Govt. of India. In the case in hand as per the review committee meeting held on 13.06.2008, 2 more posts were sanctioned to the Kerala Cadre but that was declared by the Govt. of India only on 3.10.2008 and such sanctioning of the additional posts have no retrospective operation. The contesting respondents also filed their respective reply statements taking the stand that since the applicant was graded below the contesting respondents, his name has not been included in the select list.

3. We have heard the learned counsel appearing for the applicant Mr. N.Nanda Kumara Menon, Sr. with Mr. P.K. Manoj Kumar, Mr. Sunil Jacob Jose, SCGSC(R1), Mr. N.K. Thankachan, G.P.(R2,3 &6) and Mrs. Dhanya B. for Mr. Thomas Mathew Nellimoottil(R4 & 5).

4. In the light of the facts and the averments contained in the Original Application, the question to be decided is that whether the applicant is justified in approaching this Tribunal claiming the reliefs prayed thereunder or not. The counsel for the applicant submits that the quinquennial cadre review ought to have been done on completion of 5



years and in the present case the last quinquennial cadre review has been made in 1999 and if so, the quinquennial cadre review ought to have been completed during 2004. If the quinquennial cadre review has been completed within the specified time as per the rules, there would have been 2 more vacancies for which the promotion could have been effected. Hence the delay occurred on the part of the Union of India as well the State Govt. caused irreparable loss and injury to the applicant. If the quinquennial cadre review had been completed during 2004, 2 more posts ought to have been added to the existing strength of I.F.S. posts in the Kerala cadre. Whereas Annexure A/21 notification issued by the Govt. India was only on 3.10.2008. It is also the case of the counsel for the applicant that as the applicant was graded as 'Good' by the selection committee and if the vacancies are increased for the year 2007 the applicant being the 6th candidate in the proposal list made by the Govt. of Kerala, he could have been also selected. In the above circumstances, the applicant's counsel submits that it is only proper for this Tribunal to allow the Original Application and direct the 6th respondent to place the annual confidential reports of the applicant for the year 2006 before the selection committee and the 4th ad 5th respondents may be directed to consider the case of the applicant for promotion to the post of I.F.S. for the year 2007. The delay caused on the part of the Govt. of India as well



as the Govt. of Kerala should also be considered by this Tribunal for granting the reliefs claimed in the O.A. In support of his contentions the counsel for the applicant relies on a latest decision of the Apex Court reported in 2010(4)SCC 290: Union of India and another vs. Hemraj Singh Chauhan & others.


5. As we have already considered the contentions in the reply statement filed on behalf of the respondents especially respondents 1, 2, 4 and 5 and it is the case of the respondents that though the name of the applicant has been included in the provisional list or the proposal list made by the Govt. of Kerala as eligible candidate for consideration for promotion, his name was not included in the select list on the basis of the grading awarded to him and there were candidates having better grading eligible for promotion, whose names were included in the select list including that of the contesting respondents. In the light of the fact that the selection was made for the year 2007 and at the time of the selection or when the preliminary steps were taken for selection by the Govt. of Kerala, there were only 4 vacancies notified in the Kerala cadre and even though the name of the applicant was included in the zone of consideration, he could not have been selected because of the vacancy position. As far as the question of completing the process of cadre



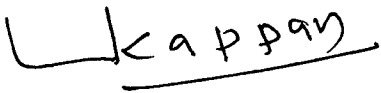
review, it is the case of the respondents that it cannot be done in a hasty manner. The cadre review requires more papers to be scrutinized and records to be verified on an all India basis and then only a review of the cadre strength could be ordered. Even though steps were taken by the Govt. of India alerting the State Govt. to take steps for cadre review and certain steps were taken certain steps for completing the cadre review, the cadre review committee met only on 13.6.2008 and on the basis of the review made by the cadre review committee 2 more posts were added to the Kerala cadre by Annexure A/21 notification and it is to be noted that as Annexure A/21 is dated 3.10.2008, if so, before the notification is issued by the Govt. of India, the applicant could not get any right for claiming the benefit of the cadre review. In the case in hand it is the specific case of the Govt. of Kerala that the 2 additional posts sanctioned as per Annexure A/21 has been added to the sanctioned strength for the period 2009. In the above circumstances the applicant cannot claim, as a matter of fact, to be considered for promotion for the posts to be filled up for the year 2007. That apart, we are of the view that even if the applicant's name appears in the earlier proposal list as Sl.No.6, that by itself will not be a reason for claiming the benefit of the additional posts sanctioned by the Govt. of India as per Annexure A/21 by the applicant. On an overall consideration of all the facts and



circumstances of the case and on the reasons contained in this order,
we are of the view that the O.A. fails and it stands dismissed. No order
as to costs.



(K. GEORGE JOSEPH)
MEMBER(A)



(JUSTICE K. THANKAPPAN)
MEMBER(J)

/njj/