

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No. 589 & 595 of 2006Wednesday, this the 23rd day of July, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

O.A.589/2006

A.Sharafudeenkutty,
Deputy Conservator of Forests (Co-ordination),
Forest Head Quarters,
Vazhuthacaud,
Thiruvananthapuram.Applicant

(By Advocate Mr OV Radhakrishnan, Senior with Mr Antony Mukkath)

V.

1. State of Kerala represented by its
Chief Secretary,
Government Secretariat,
Thiruvananthapuram.
2. Principal Secretary,
Forest & Wild Life Department,
Government Secretariat,
Thiruvananthapuram.
3. Secretary,
Ministry of Environment & forests,
Government of India,
Paryavaran Bhavan,
4th Floor, CGO Complex, Lodi Road,
New Delhi—10 003.
4. Union of India represented by its
Secretary,
Ministry of Environment & forests,
Paryavaran Bhavan,
4th Floor, CGO Complex, Lodi Road,
New Delhi—10 003.
5. Accountant General (A&E),
Kerala, Thiruvananthapuram-695 039.Respondents

(By Advocate Mr TPM Ibrahim Khan, SCGSC for R. 3& 4)

(By Advocate Mr R Prem Shanker, GP for R.1, 2 & 5)

O.A.No.595/2006

P.Muraleedharan Nair, IFS,
Deputy Conservator of Forests(Retired),
Social Forestry, Forest Head Quarters,
Vazhuthakkadu, Thiruvananthapuram-14,
(TC 9/2469/1, Mayookha,
Sreerangan Lane, Sasthamangalam,
Thiruvananthapuram-10. - **Applicant**

(By Advocate Mr OV Radhakrishnan, Senior with Mr Antony Mukkath)

4

1. State of Kerala represented by its Chief Secretary, Government Secretariat, Thiruvananthapuram.
2. Principal Secretary, Forest & Wild Life Department, Government Secretariat, Thiruvananthapuram.
3. Secretary, Ministry of Environment & forests, Government of India, Paryavaran Bhavan, 4th Floor, CGO Complex, Lodi Road, New Delhi—10 003.
4. Union of India represented by its Secretary, Ministry of Environment & forests, Paryavaran Bhavan, 4th Floor, CGO Complex, Lodi Road, New Delhi—10 003.
5. Accountant General (A&E), Kerala, Thiruvananthapuram-695 039.Respondents

(By Advocate Mr TPM Ibrahim Khan, SCGSC for R. 3 & 4)
(By Advocate Mr R Prem Shanker, GP for R.1, 2 & 5)

This application having been finally heard on 26.6.2008, the Tribunal on 23.7.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The issue involved in these two cases are the same and, therefore, they are being disposed of by this common order.

2. Facts in O.A.589/2006 Applicant belongs to the Kerala State Forest Service (SFS for short). He was entitled to be appointed on promotion to the Indian Forest Service (IFS for short) before his retirement from the SFS on attaining the age of 55 years on 31.5.2002. He had filed O.P.9476/2002 before the Hon'ble High Court of Kerala complaining about the inordinate delay in issuing confirmation orders in the cadre of Assistant Conservator of Forests and seeking a direction to the 2nd respondent to issue orders confirming him in the cadre of SFS with effect from 1.5.1995 as proposed in the letter dated 16.4.2001 of the Chief Conservator of Forest (Administration) and also for a direction to respondents to consider him for appointment by promotion to IFS against the vacancies of the year 1996 or succeeding years in his turn without regard to his impending retirement from the SFS on attaining the age of 55 years and to grant him all consequential benefits including arrears of pay and allowances. In the said O.P, he had filed C.M.P. No.22739/2002 praying for an interim order directing the respondents to consider him for selection for appointment to IFS. On the above C.M.P, the Hon'ble High court passed an interim order dated 30.5.2002 declaring 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. The aforesaid order (Anenxure A-1) reads as follows:

"Heard both sides. The petitioner prays for a direction to the respondents to consider his claim for appointment by promotion to

IFS cadre in the Selection committee meeting which is going to be held for preparing the select list for the year 1995 and subsequent years. But the petitioner has not so far been confirmed in the cadre of Assistant Conservator of Forests. Therefore, in the absence of any such confirmation, he is not entitled to be considered and this court cannot issue any direction to consider his claim as prayed for. Apart from that, the dispute regarding appointment to IFS Cadre is a matter exclusively within the jurisdiction of the Central Administrative Tribunal. For this reason, also, this court is not justified in issuing a direction as prayed for. But, in the case of the petitioner, the time is running out. He is retiring on 31.6.2002. 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."

2.1. The applicant retired from SFS on 31.5.2002 and was relieved of the charge of the post of Deputy Conservator of Forests which he was holding then. However, the State Government vide Annexure A-2 order dated 31.10.2002 confirmed him in SFS with effect from 1.5.1998 against the cadre post. Consequently, the Selection Committee which met on 11.8.2003 included his name at Sl.No.3 in the select list for the year 1999(Annexure A-3). When there was again delay in his appointment to IFS, he approached this Tribunal vide O.A.51/2004 seeking a direction to the respondents to appoint him from the select list for the year 1999 to IFS from the date of his entitlement with all consequential benefits including arrears of pay and allowances with interest. The above O.A was disposed of by this Tribunal by order dated 29.4.2004 directing the respondents to issue orders regarding appointment of the applicant to IFS on the basis of his placement at Sl.No.3 in the select list of the year 1999 with consequential benefits as expeditiously as possible. The operative part of that order is as under:

"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 issue 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."

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 7.11.2003. 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 judgment 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 IFS. 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 No.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.

In the result, the application is disposed of directing the respondents to issue order regarding appointment of the applicant to the IFS on the basis of his placement at Sl.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."

2.2 Since the respondents did not comply with the aforesaid directions, the applicant filed Contempt Petition (C) No.44/2004 against the respondents. Meanwhile, the respondents approached the Hon'ble High Court of Kerala in W.P.(C)No.18423/2004 challenging the order of this Tribunal in O.A.51/2004. The Hon'ble High Court dismissed the said Writ Petition by judgment dated

20.7.2004, and its operative part is as under:

"2. Hence, following the principles and reasoning contained in the judgment dated 1.4.2004 in W.P.(C) No.10707 of 2004, we hold that there is no merit in this writ petition. Accordingly this writ petition is dismissed.

3. Learned Special Government Pleader submits that the order of the Central Administrative Tribunal was not implemented in view of the decision to file this writ petition and that notice has been received by the Chief Secretary in a petition filed by the 1st respondent before the Central Administrative Tribunal under the provisions of the Contempt of Courts Act. Learned Special Government Pleader submits that further time may be granted to implement the order of the Tribunal and further proceedings in the Contempt of Court case may be kept in abeyance in the meanwhile. In our view this request should be made before the Tribunal itself and we have no reason to assume that if such a request is made it will not be considered by the Tribunal in accordance with law."

2.3 On the same day, the High Court has dismissed O.P.No.9476/2002 (supra) pending before it confirming its earlier order dated 30.5.2002 in CMP No.22739/2002(supra) and its operative part is reproduced as under:

"4. Learned counsel for the petitioner submits that on the basis of the petitioner's inclusion in the select list for the year 1999 and the order dated 29.4.2004 of the Central Administrative Tribunal in O.A.51/2004, the State Government has obtained the willingness of the petitioner for appointment to the IFS and the willingness has been forwarded to the Central Government. The Central Government has to now issue formal orders appointing the petitioner to the IFS.

5. In the light of the above facts learned counsel for the petitioner submits that no further orders are required in this writ petition except confirming the order dated 30.5.2002 in CMP 22739 of 2002. Learned counsel also submits that in view of the order of the Tribunal in O.A.No.51 of 2004 directing the respondents to appoint the petitioner to the IFS with consequential benefits it is also not necessary for this court to consider the prayer for consequential benefits.

6. Hence the writ petition is closed confirming the order dated 30.5.2002 in CMP No.22739 of 2002."

2.4 Thereafter, during the pendency of the aforesaid Contempt Petition itself, the first respondent issued Annexure A-7 notification dated 4.10.2004 appointing the applicant to IFS on the basis of the select list of 1999 and allocated him to Kerala cadre of IFS under Sub rule (1) of Rule 5 of Indian Forest Service (Cadre)

✓

Rules. Subsequently, the State Government also has issued order Annexure A-8 dated 25.10.2004 appointing him as Deputy Conservator of Forests (Coordination), Thiruvananthapuram in an existing vacancy.

2.5 Thereafter, vide Annexure A-10 representation dated 28.3.2005 to the State Government, the applicant sought to issue a revised notification from the respondents appointing him to the IFS from 1.1.1999 i.e. from the date of select list for the year 1999 with all consequential benefits including pay and allowances and also to regularise the period from 1.6.2002 to 25.10.2004 as duty eligible for pay and allowances and pensionary benefits. Since there was no response from the State government, he followed it up with Annexure A-12 representation dated 5.7.2006 and Annexure A-13 representation dated 6.7.2006. On the other hand, the Accounts Officer of the respondent-department vide Annexure A-15 letter dated 22.11.2006 informed the applicant that his request to reckon the period from 1.6.2002 to 25.10.2004 as qualifying service for the purpose of computing the pensionary benefits has been referred to the Ministry of Environment and Forest for their remarks, but his pay during the break in service was already regularised notionally by fixing his pay at Rs.16500/- as on 1.12.2006 and the total emoluments at Rs.33,328/- by Annexure A-16 pay slip dated 20.11.2006. Respondents have also vide Annexure A-17 letter dated 10.1.2007 admitted his qualifying service as 38 years limiting the 33 years for pensionary benefits and determined his monthly pension as Rs.12,263/- and the DCRG of Rs.3,50,000/-.

2.6 The applicant submitted that no disciplinary/criminal proceedings were pending against him and he was entitled to be appointed in terms of the Government of India, Ministry of Environment & Forest revised guidelines regarding promotion to various grades of IFS issued by Annexure A-14 letter



No.20019/01/2000-IFS II dated 18.11.2002. The relevant part of the said letter is as under:

“II. Appointment to the Junior Administrative Grade

An officer is eligible for appointment in the junior Administrative Grade on completing 9 years of service. This grade is non-functional and shall be admissible without any screening, as a matter of course, to all the officers of the Senior Time Scale from 1st January of the relevant year, except in cases where any disciplinary/criminal proceedings are pending against the officer.”

He has also submitted that he was due to retire on superannuation on attaining the age of 60 years on 31.5.2007 and any further delay in revising the date of his appointment to IFS by assigning the date of entitlement, viz, 1.9.1999, will put him under grave disadvantage and loss.

2.7 Finally, the Union Government (respondent No.3) vide its letter dated 9.11.2006 (Annexure A-19) informed the State Government that:

“..the request of the applicant and similarly placed persons to grant them retrospective appointment to IFS (i.e. w.e.f. the date of effect of select list) cannot be acceded to for the following reasons:

- (i) Since they have not worked on the post of IFS from the date of their retirement from State Forest Service on attaining the age of superannuation till the date of joining as IFS, there shall be no pay for no work. Therefore, such officers shall be entitled for fixation of their pay with effect from the date of joining as members of IFS and not from the date of inclusion of their names in the select list or from the date of their retirement from SFS.
- (ii) The intervening period from the date of retirement from SFS on attaining the age of superannuation to the date of assuming charge as IFS officer after issue of orders of their appointment is treated as dies non.
- (iii) The period they have not worked in the service will not count towards service and hence cannot be regularised.”

The State Government vide Annexure A-18 impugned order dated 15.1.2007, informed the applicant that his request for appointment to IFS with retrospective effect from the date of effect of the Select List with all consequential benefits and for regularising the period which he was not in service was considered along with

✓

similar requests from S/Shri M.I. Varghese IFS (Retired), Patric Gomez IFS and P Muraleedharan Nair IFS (Retired), but the Government of India has not agreed to it. Thereafter, the Accounts Officer, Indian Audit Department, Thiruvananthapuram vide Annexure A-20 dated 8.3.2007 referring to the Annexure A-18 letter dated 15.1.2007 informed the applicant that his pay as on 26.10.2004 has been refixed as Rs.14,550/- . Along with the said letter, the pay slip dated 8.3.2007 (Annexure A-21) reducing his pay to Rs.31,323/- from Rs.33,328/- was also served on the applicant.

2.8 The applicant has, therefore, filed the present O.A seeking the following reliefs:

- i) To call for the records leading to Annexure A-18 GO dated 15.1.2007, Annexure A-19 Government of India letter dated 9.11.2006, Annexure A-20 dated 12.3.2007 and Annexure A-21 dated 8.3.2007 and to set aside the same.
- ii) To issue appropriate direction or order directing the respondents to assign 1.1.1999 as the date of appointment of the applicant to Indian forest Service having been appointed from the Select List of the year, 1999 and to grant him fixation of pay in the Indian Forest Service reckoning his service from 1.1.1999 and to make available the arrears of pay and allowances with interest within a time frame that may be fixed by this Tribunal.
- iii) To issue appropriate direction or order directing the respondents to assign year of allotment reckoning his service in the Indian Forest Service from 1.1.1999 in terms of Rule 3 of the IFS (Regulation of Seniority) Rules, 1997.
- iv) To issue appropriate direction or order directing the respondents to regularise the period of absence from 31.5.2002 to 26.10.2004 as duty in the Indian Forest Service for all purposes and to grant him arrears of pay and allowances with interest within a period that may be fixed by this Tribunal.
- v) To issue appropriate direction or order directing the respondents to promote the applicant in the Junior Administrative Grade with effect

from the date of his entitlement as determined on assigning the year of allotment in terms of Annexure A-14 guidelines and to make available the arrears of pay and allowances that would become due to him on his promotion to Junior Administrative Grade with interest within a period that may be limited by this Tribunal and to expeditious steps for preparation of and completion of pension papers and to forward the same to the Accounts Officer in terms of the provisions of Rules 56 to 61 of the CCS (Pension) rules.

Facts in O.A.595/2006

3. The applicant belongs to the Kerala State Forest Subordinate Service. He was included in the select list to be promoted to IFS for the years 1995-96 and 1996-97. He was at Sl.No.6 in the select list for the year 1995-96 and at Sl.No.2 in the select list for the year 1996-97 (Annexure-A1). Since he was not given the promotion in time, he was made to retire from the State Forest Service with effect from 31.10.2000 on attainment of 55 years. The Selection Committee met only on 11.8.2003 for preparation of yearwise select list from 1995-96 to 2001-02. As the applicant was not appointed to the IFS on the basis of the inclusion of his name in the select list as aforesaid, he filed O.A.No.747/2004 before this Tribunal seeking a direction to appoint him to IFS with all consequential benefits. During the pendency of the aforesaid O.A., the respondents have appointed him to IFS as per notification dated 31.1.2005 (Annexure A-2) and he was allocated to Kerala cadre of IFS. Consequently, vide Annexure A-3 order dated 29.3.2005, the State Government posted him as Deputy Conservator of Forest in the IFS cadre. Finally, he retired on superannuation on 31.10.2005 from IFS while holding the post of Deputy Conservator to Forest (Social Forestry).

3.1 Applicant submitted that under Rule 3, sub rules (2) to (4) of the IFS

(Regulation of Seniority) Rules, 1997, every officer shall be assigned an year of allotment. Therefore, he contented that he ought to have been promoted from the date of occurrence of vacancy against which he was appointed from the select list of 1996-97. He has also stated that the failure on the part of the Select committee to hold yearly meetings shall not visit him with any adverse civil consequences. His further contention was that he was kept out of service unlawfully from 1.11.2000 till he was allowed to join the IFS on 29.3.2005 on the basis of the appointment to the IFS made from the select list of the years 1996-97 and therefore, his absence from the State Forest Service shall not constitute break in service for the obvious reason that he was entitled to be appointed by promotion to IFS from the select list of the years 1996-97 and he should be deemed to have appointed to IFS with effect from the date of occurrence of the vacancy during 1996-97 to which he was selected, the retirement from the State Forest Service notwithstanding. He has, therefore, submitted Annexure A-6 representation dated 10.5.2005 pointing out that he was unjustly denied appointment by promotion to IFS inspite of his inclusion in the Select List of the years 1996-97 and inspite of the existence of vacancies to accommodate him. The said representation was followed up by Annexure A-7 reminders dated 19.10.2005, Annexure A-8 representation dated 1.2.2006, Annexure A-9 representation dated 11.7.2006 and Annexure A-10 representation dated 11.7.2006. According to the applicant, his representations were forwarded by the 1st respondent to the 3rd respondent on 25.10.2005 and followed it up by reminders dated 20.12.2005 and 22.5.2006 but there was no response.

3.2 On the other hand, the first respondent vide Annexure A-12 G.O(Rt) No.4081/06/Fin dated 31.5.2006 accorded him sanction for payment of pensionary benefits taking only 32 years of qualifying service into consideration as against the total qualifying service of 37 years on attaining the age of 60

✓

years as on 31.10.2005. He was also served with Annexure A-13 pension payment order dated 19.7.2006 granting him Rs.10,072/- as pension with effect from 1.11.2005 and the Annexure A-14 salary slip dated 31.5.2005. The 1st respondent has also issued Annexure A-18 G.O(Rt) No.388/07/GAD dated 15.1.2006 stating that the Government of India (3rd respondent) has issued a letter dated 9.11.2006 (Annexure A-19) clarifying that his request to grant retrospective appointment with effect from the date of select list cannot be acceded to, for the reasons that (i) since SFS officers have not worked on the post of IFS from the date of their retirement from SFS on attaining the age of superannuation till the date of joining as IFS, there shall be no pay for no work and, therefore, such officers shall be entitled for fixation of their pay with effect from the date of joining as members of IFS and not from the date of inclusion of their names in the select list or from the date of their retirement from SFS, (ii) the intervening period from the date of retirement from SFS on attaining the age of superannuation to the date of assuming charge as IFS officer after issue of orders of their appointment is treated as *diés non* and (iii) the period the officers have not worked in the service will not be counted towards service and hence cannot be regularised. Accordingly, vide Annexure A-20 dated 8.2.2007 the Accounts Officer refixed his pay as on 30.3.2005 and the pensionary benefits have also been revised accordingly.

3.3 Applicant challenged the Annexure A-12 G.O. dated 31.5.2006, Annexure A-13 Pension Payment Order dated 19.7.2006, Annexure A-14 Pay Slip dated 31.5.2005, Annexure A-18 G.O. dated 15.1.2007, Annexure A-19 letter dated 9.11.2006 and the consequential Annexure A-20 order dated 8.3.2007 in this O.A stating that they are patently illegal, arbitrary and violative of Articles 14 and 16 (1) of the Constitution of India.



Case Laws

3.4 The applicants have relied upon the order of this Tribunal in O.A.1045/1996 dated 5.2.1997 – **N.P.Balakrishnan v. Union of India & others**. The applicant therein was a Superintendent of Police under the Government of Kerala. He was entitled to be considered for appointment to IPS against the 3rd vacancy of the select list year 1993-94. Due to delay in his appointment to IPS he had to retire from State service with effect from 31.7.1995. Pursuant to the directions of this Tribunal, he was promoted to IPS from 27.3.1997. Therefore, he retired on 30.4.1997. Thus there was a break from 1.8.1995 to 26.3.1997. On his representation, the Government of Kerala vide G.O.(Rt) No.2643/98/GAD dated 6.4.1998, fixed his pay with effect from 1.11.1999 and all consequential benefits including pay and allowances for the entire period from 1.11.1993 to 30.4.1997 (Annexure A-23 in O.A.589/2006).

3.5 The applicant has also relied upon the order of the Tribunal in O.A.153/1997 dated 3.3.1999 – **P.K.Lambodharan Nair v. Union of India and others**. The applicant therein was also a Police Officer of the Kerala State inducted into the IPS after a gap from 2.1.1996 to 30.4.1999. The Tribunal directed the respondents to grant all consequential benefits to the applicant as in the case of the N.P.Balakrishnan (supra).

3.6 Similarly, in O.A.38/2003 – **K.J.Thomas v. The State of Kerala & another** decided on 7.7.2005 (Annexure A-22 in O.A.589/2006) relying on the orders of this Tribunal in the cases of N.P.Balakrishnan (supra) and P.K.Lambodharan Nair (supra), the Tribunal ordered the respondents to make payment of salary and allowances due to the applicant for the period from 11.3.1998 to 26.11.1998 during which he was out of service due to non-consideration of his case for

✓

appointment to IPS under promotion quota in terms of Regulation 5(1) of Indian Police Service (Appointment by Promotion) Regulations, 1955. In the said order, the Tribunal has also followed the following judgments:

(i) **Rajappan Nair v. State of Kerala** [1984 KLT 141] in which the Hon'ble High Court of Kerala considered the question whether a Government servant not promoted in time for no fault of his and later promoted with retrospective effect is entitled to restoration of his all benefits due to him or not and held as under:

"It is quite often happens that a Government servant does not get his due promotion on the date he ought to have got it, but later it is given to him with retrospective effect from an earlier date. If for no fault of his, promotion to a Government servant is delayed was due, the Government servant is naturally entitled to restoration of the benefits which he has lost not on account of his conduct or laches. It is only proper that the Government should restore to him all that is lost by way of salary or other emoluments. This is a principle stated by our learned brother Khalad J, in *Narayana Menon v. State of Kerala*, 1978 KLT 29, a principle concerning which we could not see how any exception could be taken. Since the question has been elaborately considered by our learned brother with which we are in respectful agreement we do not think we should go into this any further."

(ii) **Nelson Edward v. KSRTC** [ILR 1991 (3) Kerala 98] in which the Hon'ble High court of Kerala has held as under:

"This attitude cannot be approved, since this court has repeatedly said that when on a particular day or for a promotion with effect from a particular date and for no fault of his, the same was denied, he is entitled to all the benefits, as if he has been appointed on the day on which he has been appointed."

(iii) **Soman v. State of Kerala** [1992(1) KLT 83] in which also the High Court of Kerala has had the same view and observed that it was only proper that Government should restore all that is lost by way of salary or other emoluments

"5. The essential principle to be borne in mind is that a Government Officer cannot be penalised for no fault attributed to him. It is against all legal principles and fair pay for any Government to take the stand that a mistake committed by the Government should remain eternally detrimental to the interests of the Government servant. It is indeed difficult to hold that a Government servant has forfeited his claim for arrears of salary when he did not get his due promotion for no fault attributable to him. In *Narayana Menon v. State of Kerala* (1978KLT 29) this Court held that a Government servant does not forfeit his claim for arrears of salary when he did not get his due promotion by a mistake of the Government. The above decision was approved by a Division Bench of this Court in *Rajappan Nair v. State of Kerala* (1984 KLT 141). This Court held that it is only proper that the Government should restore to the officer all that was lost by way of salary or other emoluments."

4. We have heard Shri O.V.Radhakrishnan, senior counsel for applicant, Shri TPM Ibrahim Khan, SCGSC for R. 3 & 4 and Shri R Prem Shanker, G.P for R.1 2 & 5 respectively. Shri O.V.Radhakrishnan submitted that the issue involved in this O.A are no longer *re integra*. We fully agree with the submissions made by Shri Radhakrishnan. No doubt, the applicants in these O.As are similarly placed as N.P.Balakrishnan(*supra*), P.K.Lambodharan *Nair* (*supra*), K.J. Thomas (*supra*) and therefore, they are entitled for similar reliefs.

5. We, therefore, allow both these O.As and pass the following orders:

The Annexure A-19 letter dated 9.11.2006 of the respondent No.3 and the consequential Annexure A-18 order No.GO(Ft) No.388/2007/GAD dated 15.1.2007 of the respondent No.1 rejecting the request of the applicant in O.A.589/2006 to grant him retrospective appointment to IFS (i.e. with effect from the date of effect of select list), are quashed and set aside. The consequentially the Annexure A-20 letter dated 8.3.2007 and Annexure A-21 pay slip dated 8.3.2007 are also quashed and set aside. Similarly, the Annexure A-12 oder dated 31.5.2007, Annexure A-13 order date 19.7.2006, Annexure A-14 pay slip dated 31.5.2005 and the Annexure A-20 letter dated 8.3.2007 in O.A.595/2006 are quashed and set aside. The respondent No.4. Viz, the Union of India, represented by its Secretary, Ministry of

Environment & Forests, Paryavaran Bhavan, New Delhi is directed to assign the year of allotment to the applicant in O.A.595/2006 to IFS from 1996-1997 and to the applicant in O.A.589/2006 from 1.1.1999 in terms Rule 3 of the IFS (Regulation of Seniority) Rules, 1997 to IFS having been appointed from the select list for the year 1996-97 and from the select list for the year 1997 respectively. Respondent No.4, the State of Kerala is represented by its Chief Secretary is directed to regularise the period of absence of the applicant in O.A. 589/2006 from 31.5.2002 to 26.10.2004 and that of the applicant in O.A.595/2006 from 31.10.2002 to 29.3.2005 as duty in the IFS for all purposes and to grant them arrears of pay and allowances. Respondents are also directed to consider the applicants for promotion to the Junior Administrative Grade with effect from the date of their entitlement as determined on assigning the year of allotment in terms of Annexure A-14 guidelines and to pay him arrears of pay and allowances that would become due to him on such promotion. Their pensionary benefits shall also to be revised accordingly. The aforesaid directions shall be carried out within three months from the date of receipt of this order.

6. There shall be no order as to costs.



DR K.S. SUGATHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

trs