

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 597 of 2002

Monday, this the 16th day of September, 2002

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. C. Balachandran Nair,
S/o K. Govindan Nambiar,
Deputy Conservator of Forests (on leave),
Fire Depot cum Training Centre, Trivandrum
Residing at House No.34/1506,
Social Forestry Complex,
Rajeev Gandhi Nagar, Trivandrum.Applicant

[By Advocate Mr. M.R. Rajendran Nair]

Versus

1. State of Kerala, represented by the
Chief Secretary to Government of Kerala,
Secretariat, Trivandrum.
2. Secretary,
Department of Forest and Wild Life,
Secretariat, Trivandrum.Respondents

[By Advocate Mr. Roy Chacko, SGP for Mr. Renjith A, GP]

The application having been heard on 16-9-2002, the
Tribunal on the same day delivered the following:

O R D E R

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

Sans the details which are not necessary, the facts can
be put in a nutshell as follows:

2. The applicant who is directly recruited to the State
Forest Service as Assistant Conservator of Forests being
successful in challenging the seniority list of Assistant
Conservator of Forests was finally appointed to the Indian
Forest Service with the year of allotment as 1984. He was
placed in the Junior Administrative Grade. However, he was
denied promotion as Conservator of Forests and in that regard,

he has filed OA No.966/2001, which is pending adjudication. However, he has been cleared for promotion to the post of Conservator of Forests. His present grievance is that by the impugned order dated 13-6-2002 (Annexure A5) his services have been placed at the disposal of the Department of Local Self Government (Rural Development) for being posted as Secretary, District Panchayat, Palakkad and that by order dated 5-8-2002 (Annexure A7) his application for earned leave was rejected and he was directed to join duty as Secretary, District Panchayat, Palakkad within 24 hours threatening disciplinary action for failure to do so. The applicant challenges these two orders mainly on the ground of violation of Rule 8(2) of the Indian Forest Service (Cadre) Rules, 1966, which prohibits posting of a cadre officer on an ex-cadre post in excess of the number specified in item No.5 of the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966. It is alleged in the Original Application that the deputation reserve for the 1st respondent being 14 and the same had already been exceeded, the posting of the applicant and others by Annexure A5 impugned order to hold ex-cadre posts in excess of the number specified is violative of sub-rule (2) of Rule 8 of the Indian Forest Service (Cadre) Rules, 1966. Therefore, the applicant seeks to set aside the impugned orders Annexure A5 and Annexure A7.

2. Respondents have filed a statement that the deputation of the applicant is in excess of the number specified for the State under item No.5 of the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966, is not disputed. It is also not disputed that prior approval of the Central Government is not taken for such deputation. However, the action is sought to be justified on the ground that as a matter of practice prior approval of the Central Government is

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not being taken and that the applicant who is appointed to a higher post need not bother about the post, i.e. whether it is a cadre post or an ex-cadre post, as wherever he is posted the deputation post is equated to that of the cadre post.

3. We have gone through the pleadings and have heard Shri M.R.Rajendran Nair, learned counsel of the applicant and Shri Roy Chacko, Senior Government Pleader for the respondents.

4. Shri M.R.Rajendran Nair, learned counsel of the applicant referring to Rule 8 of the Indian Forest Service (Cadre) Rules, 1966 argued that in sub-rule (2) there is a prohibition of a cadre officer holding an ex-cadre post in excess of the number specified for the concerned State under item No.5 of the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966. In the light of the admission by the respondents that the deputation of the applicant was in excess of the number specified in item No.5, the deputation and the posting is invalid and is required to be set aside, argued the counsel. He further argued that if for any valid reason such a deputation in excess of the number is felt necessary by the State Government, in accordance with the provisions contained in sub-rule (3) of Rule 8, it can be made only with the prior approval of the Central Government and during the approval alone the post would be deemed to be an addition to the cadre. Learned counsel argued that since the deputation of the applicant is illegal, the impugned order Annexure A7 requiring the applicant to join to the ex-cadre post is also illegal and is liable to be set aside.

5. Shri Roy Chacko, learned counsel for the State of Kerala argued that the word 'May' appearing in sub-rule (3) of Rule 8 of the Indian Forest Service (Cadre) Rules ^{1.5} ~~being~~ only

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directory and not mandatory, and therefore, even if prior approval of the Central Government is not taken, the State Government's action in deputing the applicant to the post of Secretary, District Panchayat, Palakkad cannot be said to be illegal requiring its quashment. In support of this argument, the learned counsel of the respondents referred us to the discussion in page 234 of Maxwell on Interpretation of Rules - 12th Edition, which reads as follows:-

"In ordinary usage, "may" is permissive and "must" is imperative, and, in accordance with such usage, the word "may" in a statute will not generally be held to be mandatory. In some cases, however, it has been held that expressions such as "may", or "shall have power," or "shall be lawful," have - to say the least - a compulsory force, and so their meaning has been modified by judicial exposition."

6. Learned counsel of the respondents further referred us to the ruling of the Apex Court in Shri Mohan Singh & Others etc. vs. International Airport Authority of India & Others [JT 1996 (10) SC 311], wherein it has been held as follows:-


"... May is a must for enabling compliance of provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes duty to exercise. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty. In "Craies on Statute Law" (7th Edn.), it is stated that the Court will, as a general rule, presume that the appropriate remedy by common law or mandamus for action was intended to apply. General rule of law is that where a general obligation is created by statute and statutory remedy is provided for violation, statutory remedy is mandatory."

7. We agree with the argument of the learned counsel for respondents that the word 'may' employed in sub-rule (3) of Rule 8 of the Indian Forest Service (Cadre) Rules, 1966 is only directory and not mandatory. In sub-rule (2) of Rule 8, there is a prohibition in a cadre officer holding an ex-cadre post in excess of the number specified for

the concerned State in item No.5 of the Schedule. However, to tide over certain special situations, the State Government is permitted by sub-rule (3) to appoint a cadre officer to hold an ex-cadre post in excess of the specified number. This provision is a permissive provision and it is only directory and not mandatory. The State Government is not under any statutory obligation to appoint any cadre officer in excess of the specified number to the ex-cadre post. The word "May", therefore, is only directory. However, a reading of sub-rule (2) and sub-rule (3) would clearly indicate that appointment of a cadre officer in an ex-cadre post in excess of the number specified can be made by the State Government only with the prior approval of the Central Government and the post thus held would be deemed to be an addition to the cadre only so long as the approval subsists. If the State Government has to avail of the permission granted in sub-rule (3), it is mandatory that the State Government should obtain the prior approval of the Central Government to do so. In this case, apparently and admittedly the 2nd respondent has not obtained the prior approval of the Central Government to appoint the applicant in the ex-cadre post in excess of the number specified in item No.5 of the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966. The stand taken in the reply statement that as a matter of practice prior approval is not being taken cannot be sustained in view of the fact that this amounts to violation of statutory provision. In K. Kuppusamy and Another vs. State of Tamil Nadu and Others [(1998) 8 SCC 469], it has been held as follows:-

"..... Statutory rules cannot be overridden by executive orders or executive practice."

Therefore, the justification sought on the ground of practice is not tenable.



8. In the light of what is stated above, we set aside the impugned orders Annexure A5 and Annexure A7. The State Government shall ^{now} post the applicant only on cadre post in accordance with law.

9. The Original Application stands allowed as above with no order as to costs.

Monday, this the 16th day of September, 2002



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the Order No.17013/09/99-IFS-II dated 20.12.2000.
2. A-2: True copy of the relevant portion of the Gradation list of IFS Officers of Kerala Cadre as on 1.7.2000.
3. A-3: True copy of the order dated 13.3.2002 in MA 111/2002 in OA 966/2001 of this Hon'ble Tribunal.
4. A-4(a): True copy of the GO(Rt.) 7982/2001/GAD dated 9.10.2001.
5. A-4(b): True copy of the GO (Rt.) 8630/2001/GAD dated 3.11.2001.
6. A-4(c): True copy of the GO (Rt.) 8764/2001/GAD dated 8.11.2001.
7. A-5: True copy of GO (Rt) 3676/2002/GAD dated 13.6.2002.
8. A-6: True copy of the representation dated 17.6.2002 submitted by the applicant to the Hon'ble Minister for Forest and Wild Life and the Chief Minister together with English Translation.
9. A-7: True copy of the Order 53563/Sp1C1/02/GAD dated 5.8.2002 issued by the 1st respondent.
10. A-8: True copy of the representation of the applicant dated 7.8.2002
11. A-9: True copy of the letter No.73387/Sp1.C1/2000/GAD dated 27.9.2001.
10. A-10: True copy of the gradation list of IAS Officer as on 1.1.2000.

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