

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 610/91
T.A. No. _____

199

DATE OF DECISION 31.12.91

C.J.Paul _____ Applicant (s)

Mr.M.R.Rajendran Nair _____ Advocate for the Applicant (s)

Versus
State of Kerala, represented by
Chief Secretary to Govt. of Kerala, Respondent (s)
Secretariat, Trivandrum and another

Mr.V.Ajith Narayanan,ACGSC _____ Advocate for the Respondent (s)
Mr.T.V.George ~~Mr.Gout.~~ Pleader.

CORAM:

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N.DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 17.4.1991 filed under Section 19 of the Administrative Tribunals Act, the applicant an Assistant Conservator of Forests belonging to the State Forest Service of Kerala has prayed that by virtue of the inclusion of his name in the Select List of 1989 for promotion to the Kerala Cadre of the Indian Forest Service, he should be declared to be entitled to be appointed to the Indian Forest Service with effect from the date of occurrence of the vacancy in his turn and direct the respondents to grant him an appointment under Rule 8 or 9 of the Indian Forest Service (Appointment by Promotion) Regulations (wrongly cited as Rules in the application).

2. During the course of the argument, the learned counsel for the applicant stated that the applicant has since been given temporary appointment to a Cadre post under the Indian Forest Service (Appointment by Promotion) ^{Rules} ~~Regulations~~ and that the applicant would therefore confine

-the relief of
the application to his regular promotion to the Indian Forest Service. The brief facts of the case are as follows.

3. With 14 years of service as Assistant Conservator of Forests the applicant was considered for inclusion in the Select List of 1987 but he was superseded. He was, however, included in the Select List of 1989 prepared by the I.F.S. Selection Committee which met on 23.12.89. The applicant was placed at Sl.No.5 in the list which reads as follows:-

- 1. Shri B.Krishnan
- 2. Shri G.Janardhanan Pillai
- 3. Shri T.V.Balaraman
- 4. Shri P.K.Zachariah
- 5. Shri C.J.Paul and
- 6. Shri N.Sasidharan."

4. The Government of Kerala has stated that the list was prepared for appointment against the three vacancies to be filled up in the promotion quota of I.F.S during 1990. However, since disciplinary action has been pending or initiated against the five Select List officers at Sl.Nos. 1 to 4 and Sl.No.6 in the select list except the applicant who is at Sl.No.5 in the select list, none of them could be appointed to the I.F.S. They have further stated that Shri Janardhanan Pillai who is at Sl.No.2 in the select list retired on 28.2.1990. However, in accordance with the direction of the High Court of Kerala on a writ petition filed by him, he has to be considered for promotion to the I.F.S cadre by the State Govt. despite his retirement. The disciplinary proceedings against Shri Pillai have been disposed of and the question of his appointment to the I.F.S is under consideration. They have further stated that a 4th vacancy in the promotion quota has arisen on 1.6.91 when one Shri K.G.George retired on superannuation on 31.5.1991. The question of accommodating the applicant temporarily in a Cadre post under Rule 9 of the I.F.S ((Cadre) Rules, had been referred to the Central Government.

5. In the counter affidavit filed by the Union of India it

has been argued that inclusion in the Select List does not confer any right for appointment to the I.F.S. They have, however, conceded that no meeting of the Selection Committee has been held after 23.12.89 and that a Cadre post cannot be held in abeyance for a period exceeding six months in terms of Rule 10 of the Cadre Rules.

6. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicant being 5th in the Select List he can be appointed to the I.F.S only if there are five vacancies. The State Govt. have accounted for four vacancies including that due to ^{the} superannuation of Shri K.G.George. It is true that Shri Janardhanan Pillai who is at Sl.No.2 in the Select List retired from the State Forest Service on 28.2.1990 at the age of 55 years, but under the direction of the High Court, the State Govt. of Kerala ^{is} ~~was~~ still considering the question of his appointment to the I.F.S even though he has retired. The disciplinary proceedings against him have been closed. If the State Govt. decides to appoint him in the I.F.S, he will have to be retained in service till he attains the age of 58 years ⁱⁿ 1993. Accordingly, his retirement from the State Forest Service on 28.2.1990 has not created any clear vacancy in addition to the four, referred to above. In these circumstances, the applicant's plea to be appointed to the Indian Forest Service, cannot be accepted. He has already been given temporary appointment to a Cadre post under Rule 9 of the I.F.S(Cadre)Rules and is enjoying the pay scale of the Indian Forest Service. In N.M.Siddique vs. Union of India, AIR 1978 SC 386, it has been held by the Supreme Court that inclusion of a name in the Select List does not confer a right for appointment. A similar view was expressed by the Supreme Court in Jitendra Kumar vs. State of Punjab, AIR 1984 SC 1850 , in which it was observed that the process of selection and selection for purpose of recruitment against the anticipated vacancies, does not create a right to be appointed to the post which can be enforced by a mandamus.

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7. In the facts and circumstances we do not see any force in the application and dismiss the same. We however hope that in the interest of maintaining the morale of the Service and to avoid protracted continuation of the state of suspense, the State Govt. must be taking expeditious action to finalise the cases of the four officers who are placed above the applicant in the Select List of 1989, so that the case of the applicant for appointment to the I.F.S is also finalised without undue delay.

N.Dharmadan

31.12.91

(N.DHARMADAN)
JUDICIAL MEMBER

S.P.M.

31-XII-91

(S.P.MUKERJI)
VICE CHAIRMAN

n.j.j