

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 87/2003

Wednesday, this the 7th day of December, 2005.

C O R A M :

**HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

G. Rennensen,
S/o. M.T. Gopalan,
Deputy Conservator of Forests,
Social Forestry Headquarters,
Trivandrum,
Residing at Flat No. CF6/8-329,
P.T. Chacko Nagar,
Medical College P.O.,
Trivandrum.

.... **Applicant.**

(By Advocate Mr. M.R. Hariraj)

V e r s u s

1. State of Kerala represented by its Chief Secretary, Secretariat, Trivandrum.
2. The Principal Chief Conservator of Forests, Trivandrum.
3. Om Prakesh Kaler,
S/o. Kabal Ram Kaler,
Working as Conservator of Forests,
Biodiversity Cell, Forest Headquarters,
Thiruvananthapuram,
Residing at Harikrishna,
Chitra Nagar, Vattiyorkavu,
Trivandrum.

.... **Respondents.**

(By Advocate Mr. A. Rengith, Govt. Pleader (R1 & 2)

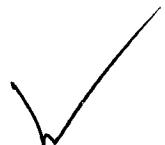
O R D E R
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant, an IFS officer in Kerala Circle cadre is aggrieved by the inordinate delay in granting him appointment by promotion to the grade of Conservator of Forests at least with effect from 25.3.2000, i.e., the date on which his junior Mr. Bhardaraj with 1985 year of allotment was promoted. He has filed this OA praying for following main reliefs:

"To declare that the applicant is entitled to get the posting in the grade of Conservator of Forest in the super time scale of pay Rs. 16400-450-20000 with effect from the date of occurrence of vacancy in which his junior was promoted i.e., 25.3.2000, and

To direct the respondents to promote the applicant as Conservator of Forest accordingly with consequential benefits including arrears of pay and allowances."

2. The applicant commenced his services as Assistant Conservator of Forest in the Kerala Forest Service with effect from 1.11.1980. Prior to this appointment, he underwent 2 years training at State Foresters College, Burnihat and thus became eligible to be considered for appointment to the Indian Forest Service (IFS, for short) with effect from 1.1.1987. Since the seniority list of Assistant Conservator of Forest was wrongly prepared, his appointment to IFS was not considered in his due turn. The seniority was finally settled in favour of the applicant and similarly situated others by judgement of Hon'ble Supreme Court in Civil Appeal No. 11527/95 dated



1.9.1998. Thereafter, as per review DPC recommendations, applicant was granted appointment by transfer into IFS with effect from 14.2.1990 and he was granted 1984 year of allotment (A/1). The applicant was cleared by the Screening Committee for promotion to the grade of Conservator of Forest and by letter dated 2.2.2002 (A/2), the first respondent requested the 2nd respondent to forward necessary proposal for his promotion to the grade of Conservator of Forest. As a matter of fact, the applicant should have been granted promotion as Conservator of Forest with effect from 25.3.2000 with consequential benefits by reverting the junior next in position. But this was not done. The third respondent is the junior most Conservator of Forest now in position. The applicant is entitled to be promoted as Conservator of Forest by reverting him because he was not entitled to be promoted when the applicant was not promoted. The applicant made representations A/4 and A/5 before the 2nd and 1st respondents respectively, which were not responded to. Hence this O.A.

3. The respondents 1 & 2 have filed a detailed reply statement contending that the applicant is not entitled to any reliefs as prayed for. The applicant has been given promotion to the grade of Conservator of Forest with effect from 25.3.2000 on proforma basis as per the Government Order dated 22.2.2003. It was contended that an officer becomes a cadre officer only from the date of his appointment as notified by the Government of India. Hence the Government restricts his arrears

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from the date of appointment to the service as per the formal Government of India Notification in this respect. The post of Conservator of Forest is a functional post and retrospective promotion and arrears of pay are not allowable to functional post. The O.A. being devoid of any merit is liable to be dismissed.

4. We have heard Mr. H.R. Hariraj, learned counsel for the applicant and Mr. A. Renjith, learned Government Pleader for respondents 1 & 2.

5. Learned counsel on both sides took us through various pleadings, evidence and the material placed on record. Learned counsel for the applicant argued that the applicant is entitled to be promoted as Conservator of Forest with effect from 25.3.2000, the date on which his junior was promoted. Learned counsel for the respondents on the other hand, persuasively argued that the promotion of the applicant was only on proforma basis and that an officer became a cadre officer only from the date of his appointment as notified by the Government of India. Therefore, he is not entitled to any relief.

6. We have given due consideration to the arguments advanced by the learned counsel for the parties. It is borne out from the records that the applicant was promoted subsequently vide A/1 proceedings. The applicant's grievance is that he is entitled to be posted as Conservator of

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Forest with effect from 25.3.2000 on which date his immediate junior was promoted to the said post.

7. It is true that the seniority of the applicant and similarly situated persons were settled by the judgement of Hon'ble Supreme Court dated 1.9.1998 in Civil Appeal No. 11527/95 and as per Review DPC recommendations, the applicant was granted appointment to IFS with effect from 14.2.1990 and he was granted 1984 as year of allotment. The applicant was cleared by the Screening Committee for promotion to the grade of Conservator of Forest and a request was made by the 1st respondent vide his letter dated 2.2.2002 to the 2nd respondent to forward proposal for applicant's promotion as Conservator of Forest. The applicant was shown at Sl. No. 4 in the placement as per A/1 order, placing him below one Shri B. Krishnan, SFS of 1984. As per this modification, the applicant should have given the posting as Conservator of Forest after the said B. Krishnan. A/1 order is dated 20.12.2000. This order gives an indication regarding re-determination of year of allotment and seniority of the applicant and other 3 officers in terms of provisions of Rules 3(2) (a), 3 (2)(c) and 4(4) of the Indian Forest Service (Regulation of Seniority) Rules, 1968. This order is not disputed by the respondents. But the fact remains that his junior was promoted much earlier than the applicant. Here, it is profitable to quote Para 23.2 of Government of India, Ministry of Environmental Forest letter dated 22.12.2000, which provides that "If

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the officers placed juniors to the above said officers have been promoted, the latter should be promoted immediately and if there is no vacancy, the junior most person officiating in the higher grade should be reverted to accommodate him." It is quite evident that when the post of the Registrar, Kerala Agriculture University was lying vacant, the applicant, by pointing out the fact that since his senior officer has not joined the said post, requested for a posting to the said post. But the applicant was made to work in the lower post continuously due to ignorance of his request by the respondents thereby violating the guidelines issued by the Government of India too. We find some force in this argument of the learned counsel for the applicant. The claim of the applicant is that at least he should be considered for promotion to the higher scale from the date when his junior was promoted to the post of Conservator of Forest. Though he has been subsequently promoted, he is seeking the benefits retrospectively when his junior was given the benefits. We are of the view that the applicant is entitled to the benefits since for no fault of his, he was not promoted to the post of Conservator of Forest.

8. In an identical matter, this Tribunal in OA No. 966/2201 in the case of S/Shri B. Muraleedharan and C. Balachandran Nair had granted the benefits. Learned counsel for the applicant also invited our attention to the judgements of Hon'ble High Court of Kerala reported in KLT 1984

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141, Rajappan Nair vs. State of Kerala and Ors., and also 2003 (1) KLT 60 wherein it was held that "*if a Government servant not promoted in time for no fault of his and later promoted with retrospective effect, he is entitled to restoration of the benefits like arrears of pay and allowances.*"

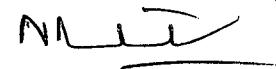
9. Considering all the facts and circumstances of the case and the rulings discussed above, we are of the considered view that the applicant was denied timely promotion and the respondents have failed in giving any substantial reason for such denial promotion to the applicant. As already stated, in an identical matter, this Tribunal granted the reliefs to the applicants therein and since nothing has been found new in this case, we are of the view that the O.A. deserves to be allowed.

10. In the light of what is stated above, we declare that applicant is entitled to get posting in the grade of Conservator of Forest in the super time scale of pay 16400-450-20000 with effect from the date of occurrence of vacancy, i.e. 25.3.2000, in which his junior was promoted. Accordingly, we direct the respondents to pass appropriate orders in terms of the observations made above and also make available to the applicant the arrears of pay and allowances consequent on his promotion in the super time scale of Rs. 16400-450-20000 with effect from 25.3.2000.

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11. The O.A. is allowed as indicated above. No order as to costs.

(Dated, this the 7th day of December, 2005.)



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.V. SACHIDANANDAN
JUDICIAL MEMBER

CVR.