

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHOA 182/05...FRIDAY.....this the 4th day of August, 2006CORAM

Hon'ble Mr. N. Ramakrishnan, Administrative Member
Hon'ble Mr. George Paracken, Judicial Member

P.K.Surendranathan Asari,
aged 60 years, S/o late K.K.Achari
(Principal Chief Conservator of Forests-Retired)
"Surasindhu", TC 9/2228, Kurups Lane,
Sasthamangalam,
Thiruvananthapuram.

....Applicant

(By Advocate Mr. P.V.Mohanan)

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- 1 Union of India, represented by
Secretary, Ministry of Environment and Forests,
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi.
- 2 State of Kerala represented by
Chief Secretary, Government of Kerala,
Government Secretariat,
Thiruvananthapuram.Respondents

(By Advocate Mr.TPM Ibrahim Khan, SCGSC for R.1
Advocate Mr.Raman C, Govt. Pleader for R.2)

The application having been finally heard on 20.7.2006, the Tribunal
on 4.8.2006 delivered the following:

ORDER

Hon'ble Mr. George Paracken, Judicial Member

The applicant retired on superannuation on 30.9.2004. as
the Principal Chief Conservator of Forests, Government of Kerala.

The then Chief Conservator of Forests Shri N.Madhavan Pillai, IFS and the applicant who was working as Field Director, Project Tiger, Kottayam were placed under suspension pending disciplinary proceedings vide the Annexure A1 common order dated 15.7.1988.

The allegation against them was that they had exceeded the financial powers delegated to them extensively in the purchase of Wireless Sets, Generator Sets and other equipments required for the Wild Life Wing of the State Forest Department. Later on Shri N.Madhavan Pillai was reinstated in service on 19.12.89 and by an order dated 26.7.97 treated the period of suspension from 15.7.88 to 19.12.89 as duty except for the purpose of pay and allowances which would be limited to subsistence allowance already paid to him. The Government has also ordered for the payment of difference between the salary due for the period and the substance allowance already drawn. The applicant was also reinstated in service but only from 7.12.1990. He was posted as Conservator of Forests, Agastivanam Biological Park. Thereafter, he had been requesting the respondents to regularize the period of his suspension for all purposes but without any useful result. Shri Madhavan Pillai approached this Tribunal vide OA 1601/97 against the aforesaid order dated 26.7.97 and this Tribunal quashed the same vide order dated 3.8.99 and directed the respondents to pay him the full pay and allowances for the period of suspension from 15.7.88 to 19.12.89. After the reinstatement of the applicant on 7.12.90, a vacancy of Chief Conservator of Forests had

arisen on 28.8.91 and according to the applicant, though he was legitimately entitled for promotion to the said post, he was not considered for the same. Again another vacancy arose on 1.1.92 for which also the applicant was not considered for promotion even though he was the only senior-most Conservator of Forests specialized in the wild life management available at that time. Later on vide Annexure.A7 order, the applicant was given the additional charge of Chief Conservator of Forests (Wildlife) from 28.3.92 and he continued as such till 23.7.94. Finally he was promoted to the Super Time Scale in the grade of Chief Conservator of Forests (Wild Life) on 23.7.94 (Annexure.A8). Even though, both Shri Madhavan Pillai and he were placed under suspension at the same time and by the same common order, Shri Madhavan Pillai was reinstated in service earlier and promoted to the higher post by creating an ex-cadre post of the Principal Chief Conservator of Forests.

2 Disciplinary action initiated against the applicant was dropped on 13.10.97 after keeping him under suspension for ten years. According to him, he should have been promoted at least after the charge was dropped against him on 13.10.97 as he was already due for promotion. As regards suspension period from 15.7.88 to 7.12.90 was concerned, the Government vide Annexure.A10 order dated 20.2.98 treated it as duty for all purposes except for pay and allowances limited to the subsistence allowance already paid to him. According to the applicant though he was

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similarly placed as Shri N.Madhavan Pilai and while Shri Pillai was allowed full pay and allowances for the suspension period under FR 54-B on the directions of this Tribunal in OA 1601/97 dated 26.7.97, the applicant should not have been discriminated in the matter. He has, therefore, submitted Annexure.A14 representation for regularization of the suspension period for all purposes of pay and allowances.

3 While working as Principal Chief Conservator of Forests (Development and Projects) the applicant was again placed under suspension with effect from 21.3.01 but he was reinstated in service vide order dated 7.7.01 when it was challenged before this Tribunal in OA 298/01. Later on, the respondents decided to drop the proceedings itself vide order dated 16.9.02 and thus the applicant was fully exonerated from the charges levelled against him. The applicant contended that he was unjustly kept under suspension from 21.3.01 to 7.7.01 and, therefore, he was entitled to have his service for the said period reckoned as duty for all purposes including pay, allowances and other attendant benefits. Seeking a direction to the respondents to reckon the aforesaid two spells of suspension periods from 15.7.88 to 7.12.90 and 21.3.01 to 7.7.01 as duty for all purposes including pay and allowances and pension etc., the applicant filed OA 299/04. During the pendency of the said OA, the respondents passed Annexures. A16 and A17 orders. By the Annexure. A16 order dated 20.10.2004, the period of suspension

from 21.3.01 to 6.7.01 was regularized as duty for all purposes including pay and allowances to which he would have been entitled had he not been suspended subject to adjustment in respect of the subsistence allowance already paid to him. But by the Annexure.A17 order dated 16.11.04, the respondents declared that the period of suspension from 15.9.88 to 7.12.90 shall be treated as duty for all purposes but the pay and allowances will be limited to the subsistence allowance already paid. It was also stated in the said Annexure.A17 order that the disciplinary proceedings against the applicant was dropped because the disciplinary action could not be proceeded further as the case records were lost and it would not render the suspension unjustifiable.

4 The applicant has submitted that he was discriminated vis-a-vis Shri Madhavan Pillai firstly because when Shri Madhavan Pillai was reinstated in service on 19.12.89 the applicant was reinstated only on 7.12.90 and secondly on his reinstatement, Shri Madhavan Pillai was promoted to an ex-cadre post of Principal Chief Conservator after the same was created but the applicant's promotion to the post of Chief Conservator of Forests was blocked for another three years despite existence of substantive vacancies.

The applicant, therefore, sought the following reliefs in this OA.

"(i) To call for the record leading to Annexure.A17 and set aside the same in so far as it does not count the periods from 15.7.1988 to 7.12.1990 for duty for all purposes including pay and allowances and terminal benefits.

(ii) To declare that the period of suspension from 15.7.1988 to 7.12.90 will be treated as duty for all purposes including pay and allowances and terminal benefits.

(iii) To direct the respondent to promote the applicant to the post of Chief Conservator of Forests with effect from 22.8.1991 with all other consequential benefits.

(iv) Any other appropriate order or direction this Hon'ble Tribunal may deem fit in the interest of justice.

(v) To award cost to the applicant."

5 The only contention of the Respondents was that in respect of Shri Madhavan Pillai, it was on the directions of this Tribunal in Original Application No. 1601/97, orders were passed to treat his suspension period from 15.7.88 to 19.12.89 as duty for all purposes including pay and allowance and paid the difference between salary due for the above period and subsistence allowance already paid. But in the case of the applicant the same relief was not granted stating that the suspension by itself does not become unjustifiable simply because the disciplinary action was later dropped. The suspension was only an interim measure taking into account prevailing circumstances at the relevant time and it was not imposed as a punitive measure. The exoneration of the applicant in the departmental proceedings was on account of factors totally extraneous to the case like non-availability of records and not on merits of the cases and according to the settled position, if the exoneration is for reasons other than merits of the case, then the suspension cannot be termed as totally unjustified and in such

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cases, the officers can have no legal claim to get full pay and allowances for the period of suspension. As regards the applicant's request to promote him to the post of Chief Conservator of Forests retrospectively with effect from 22.8.91 with all consequential benefits, the respondents have submitted that he was promoted to the Super Time Scale on adhoc basis with effect from 23.7.94 and later regularized in the said post.

6 The applicant has filed a rejoinder stating that when the respondents had admitted that the applicant and Shri N.Madhavan Pillai were similarly placed and both of them were suspended on similar set of facts by a common order and both of them were reinstated later and the proceedings against Shri Madhavan Pilali was also dropped on similar grounds treating the period of suspension as duty for all purposes including pay and allowances, denying the same benefits to the applicant is arbitrary. Whereas, when Shri Madavan Pillai was reinstated on 19.12.89 the respondents have created the post of Principal Chief Conservator of Forests to accommodate him and he was appointed against that post on 2.5.91, when the applicant was reinstated on 17.12.90, he was promoted to the Super Time Scale of Conservator of Forests only on 23.7.94 without considering him for promotion against the vacancies occurred earlier. The applicant sought to pre-pone his date of promotion to the post of Chief Conservator of Forests with effect from 22.8.91, ie., the date on which a substantive vacancy of Chief

Conservator of Forests was available, particularly when all his batch-mates namely, Shri T.K.Raghavan Nair, Shri K.Saidharan Nair and Shri M.Govindankutty were admitted promoted by Annexure A5 order dated 28.6.91 as Chief Conservator of Forests. In support of his claim he has relied upon the decision of the Hon'ble High Court of Kerala in 1981 *KLT 458* and 1991(2) *KLT 338*. Even though the applicant was holding the post of Chief Conservator of Forests (Wild Life) as additional charge, he was actually promoted only in 1995. He submits that he should have been promoted to the grade of Chief Conservator of Forests on the date on which the vacancy has arisen namely, on 22.8.91 and again on 1.1.92.

7 We have heard Advocate Shri P.V.Mohanan for the applicant and Shri TPM Ibrahim Khan, SCGSC for Respondent No.1 and Advocate Mr.Raman C, Government Pleader for R.2. We do not find any justification in the submission of the respondents for not counting the period of suspension from 15.7.1988 to 7.12.1990 as duty for all purposes including pay and allowances and terminal benefits when similar benefit was granted to Shri Madhavan Pillai, who was also placed under suspension by the very same common order on the very same set of facts. It is not the case of the respondents that the prevailing circumstances at the time of suspension of both of them were different in any manner. The respondents have also not given any reasons why the applicant could not have been considered for promotion to the post of Chief

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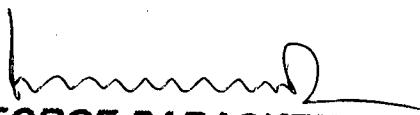
Conservator of Forests when it was due for him on 28.8.1991 and when the respondents themselves have reinstated him in service w.e.f. 7.12.1990. However, in the case of Shri Madhavan Pillai, the respondents have reinstated him at an earlier date and promoted him by creating an ex-cadre post. There is no explanation from the respondents as to why the applicant was denied his right of consideration for promotion to the higher post of Chief Conservator of Forests when it was due for him. Such discriminatory treatment of similarly placed persons are nothing short of arbitrariness. As the respondents have not denied the availability of the post of Chief Conservator of Forests as on 28.8.1991 and suitability/eligibility of the applicant for appointment to that post, we do not intend to direct the respondents to hold a DPC to assess his suitability as on 28.8.1991 at this late stage as the applicant has already retired from service on 30.9.2004,^{and} particularly when he was promoted as Chief Conservator of Forests on 23.7.1994 on the recommendation of the duly constituted DPC.

8 We, therefore, set aside the Annexure A17 order dated 16.11.2004 in so far as it does not count the period from 15.7.1988 to 7.12.1990 for duty for all purposes including pay and allowances and terminal benefits and direct the respondents to treat the said period of suspension as duty for all purposes including pay and allowances and terminal benefits. We also direct the respondents to treat the applicant as deemed to have been promoted as Chief Conservator of

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Forests for all purposes other than arrears of pay and allowances from 22.8.1991 to 23.7.1994. The respondents shall comply with the above directions within a period of three months from the date of receipt of this order. There shall be no order as to costs.

Dated this the 4th day of August, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

s.