

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.209/05

Friday this the 12th day of January, 2007

CORAM

***HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER***

N.Sasidharan, IFS
Conservator of Forests,
Social Forestry, Northern Region,
Kozhikode.Applicant

(By Advocate Mr.C.P.Sudhakara Prasad (Senior)
and Mr.P.N.Santhosh

V.

- 1 State of Kerala, represented by the Chief Secretary to Government, Government Secretariat, Thiruvananthapuram.
- 2 The Screening Committee for selection to the post of Chief Conservator of Forests, represented by its Chairman and Convenor, Chief Secretary to government, Government of Kerala, Thiruvananthapuram.
- 3 Union of India, represented by the Secretary, Ministry of Environments & Forests, New Delhi.Respondents

(By Advocate Mr.K.Thavamony, Govt. Pleader (R.1&2)
Mr. Thomas Mathew Nellimootil for R.3)

The application having been finally heard on 12th January, 2007 the Tribunal on the same day delivered the following:

ORDER

Hon'ble Mrs. Sathi Nair, Vice Chairman

The applicant is working as Conservator of Forests. He was promoted to IFS Cadre with allotment year 1983 was charged with Annexure.A2 Memorandum alleging certain irregularities while he was holding the post of Divisional Forest Officer, Kottayam vide Annexure.A2

dated 21.12.2002. It is submitted that the Government by communication dated 12.9.2001 asked a report from the Principal Chief Conservator of Forests who had in turn sent a report to the Government stating that the applicant had assumed charge only on 18.6.99 as Divisional Forest Officer, Kottayam and that the irregularities alleged was in respect of preliminary work undertaken earlier for which the applicant cannot be held responsible. However, the proceedings after the issue of the charge memo did not progress further and the Government did not pass any final order. The screening committee for considering promotion to the category of Chief Conservator of Forests met in January, 2005 and it is understood by the Applicant that he was considered but his case was kept in sealed cover. Thereafter the applicant's juniors have been included in the select list for promotion but the applicant is being denied promotion on account of the fact that the proceedings against him are not concluded. According to the Applicant the Government has not proceeded with the charge memo against him presumably because of the report of the Principal Chief Conservator of Forests and that the Government was satisfied about the applicant's innocence in the matter. In this context the applicant has prayed for the following reliefs:

- (i) issue a direction to the 1st respondent to finalize the disciplinary proceedings initiated against the applicant under Annexure.A2 taking into account the explanation given by him by Annexure.A3 and also Annexure.A4 communication sent by the Principal Chief Conservator of Forests immediately and till that time not to make any promotion to the category of Chief Conservator of Forests of the juniors of the Applicant in the category of Conservator of Forests in preference to him.
- (ii) Issue a direction to respondents 1&2 to open the sealed cover in which the applicant's suitability was assessed on the finalization of the disciplinary proceedings and include his name in the select list for promotion to the category of Chief Conservator of Forests in preference to his juniors at the appropriate place.
- (iii) Issue a declaration that the Applicant is entitled to get promotion to the category of Chief Conservator of Forests

on the basis of the merit discernible from the confidential records without reference to the disciplinary proceedings initiated against him under Annexure.A2.

(iv)And grant such other and further reliefs as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case with costs."

2 The State Government initially filed a reply stating that the documents relating to the Applicant had been forwarded to the Director of Vigilance and Anti Corruption Bureau since the case had been taken up by the vigilance for further investigation and the Vigilance Case No.8/2002 was registered in the matter. In the light of the G.O (P) No.65/92/Vig dated 12.5.1992 issued by the State Government that parallel departmental inquiry/investigation should not be conducted if the matter is under inquiry/investigation, the proceedings against the applicant were kept pending. They also admitted that the applicant was considered for promotion to the grade of Chief Conservator of Forests when all the officers of 1982 and 1983 batches were considered for promotion and sealed cover procedure was adopted. However the same procedure will have to continue till the disciplinary case or criminal proceedings against the officer is concluded.

3 The applicant contended in his rejoinder that the State Government have issued order fixing time limits for inquiry/investigations and the time limit fixed for vigilance inquiry is only three months and the non-completion of disciplinary proceedings is due to the registration of the vigilance case and the delay caused is a clear case of harassment to the applicant and it should not affect the applicant's legitimate right for promotion to the higher scale.

4 The State Government filed two replies afterwards. In the first reply they reiterated the same position and in the additional reply filed on behalf of the Director of Vigilance and Anti Corruption Bureau dated 3.12.2006,

they submitted as follows:

"3 It is also submitted that the investigation of the case is already completed and the scrutiny of the factual report is also completed. Therefore, it is decided to prosecute the accused Nos.2,3,4,5,78,9,10,11,13,15 & 16 and proposed departmental action against A6 and A12 and no proposal action against A14.

4 Shri N.Sasidharan, IFS, the applicant is A4 in the case. It is also submitted that now the Vigilance and Anti-Corruption Bureau has to obtain the sanction for the prosecution from Government of India, New Delhi after furnishing the memo or charges and relevant records to the Government of India. The above said press is being pursued."

5 We have heard the learned counsel on either side when the matter came up today. The State Government pleader also produced a copy of the Circular No.122280/E3/01/Vig. Dated 25.1.2005 regarding parallel departmental inquiry proceedings. It is also admitted that the charges in the departmental proceedings and vigilance investigation are relating to the same events.

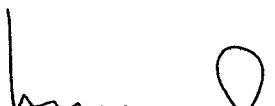
6 From the totality of the facts before us, now it is clear that the applicant along with others was facing vigilance investigation which has been concluded now and it has been decided to prosecute all the accused including the Applicant and action for getting the sanction for the prosecution from the Government of India after furnishing relevant records is being pursued. Hence the position regarding the promotion of the applicant as a sealed cover case, remains unchanged. In fact it has been further strengthened by the Vigilance Investigation. It is no doubt ~~but~~ true that the disciplinary case was initiated in the year 2002 and there was a delay of more than three years as a parallel vigilance investigation was undertaken and considerable time has been taken for completion of the

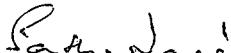
vigilance inquiry. The applicant has invited our attention to the instruction of the State Government dated 5.4.97 (Annexure. A6) in which time limits laid down for completion of the "vigilance inquiry" is three months and "investigation in other cases" is six months. Even if this is taken to be a case coming under the latter category, the inquiry should have been concluded within six months. It cannot be denied that it had been dragged on unnecessarily jeopardizing the promotional prospects of the applicant.

7 When the matter was heard today, learned counsel for the applicant submitted that he is restricting his plea for a direction to the respondents to complete the disciplinary proceedings expeditiously and within the limits prescribed in the rules so that his promotion shall not get delayed any further. We are of the view that this prayer has merit in the context of the inordinate delay already taken place in the Vigilance Department dragging on the matter for months together. We would, therefore, in the interest of justice direct the first respondent to ensure that the proceedings against the applicant after completion of vigilance investigation as stated in the reply affidavit are concluded expeditiously and in any case not later than six months from the date of receipt of this order. It is also directed that the applicant shall cooperate with the inquiry.

8 With the above direction, the O.A is allowed. There is no order as to costs.

Dated this the 12th day of January, 2007


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN