

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.227/2000.

Wednesday this the 8th day of January 2003.

CORAM:

HON^{BLE} MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON^{BLE} MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

M.R.Vijayasimhan,
S/o Rarappan,
Assistant Conservator of Forest
(Vigilance & Evaluation) Office of the
Chief Conservator of Forest,
(Vigilance) Thiruvananthapuram. Applicant

(By Advocate Shri P.V.Mohanan)

Vs..

1. The Union of India represented by its Secretary, Ministry of Environment and Forest, New Delhi.
2. The Union Public Service Commission represented by its Secretary, Shajahan Road, New Delhi.
3. The State of Kerala represented by its Chief Secretary to Government, Thiruvananthapuram.
4. The Principal Chief Conservator Forest (General) Kerala, Thiruvananthapuram. Respondents

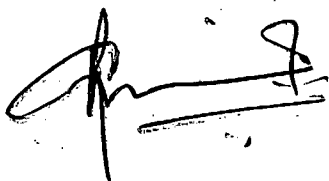
(By Advocate Shri K.Sri Hari Rao, ACGSC, (R.1&2)
(By Advocate Shri A.Renjith, G.P.(R.3&4)

The application having been heard on 8.1.2003, the Tribunal on the same day delivered the following:

O R D E R

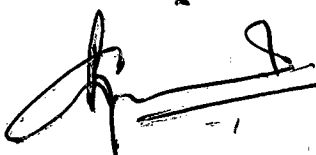
HON^{BLE} MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant commenced service as Ranger on 3.11.1970 in the Kerala State Forest Subordinate Service. He was selected and included as Rank No.7 in the Select List and was appointed as Assistant Conservator of Forest by A-1 and A-2 proceedings dated 18.12.95 and 19.12.1985 respectively. The applicant claimed that the total number of posts for promotion quota to be filled up to



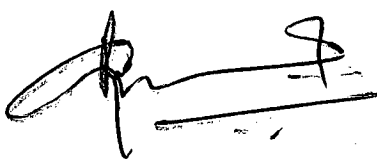
Indian Forest Officers as on 30.11.99 was 28. 11 persons were occupying the post and there were 17 substantive vacancies in the Indian Forest Service cadre against promotion quota remained vacant. He claimed that the Select Committee met on 29.3.1995 and the list prepared thereon had not been operated and no Select Committee met after 29.3.1995. He claimed that he was holding the post of Assistant Conservator of Forests in the regular cadre from 19.12.1995 and had completed 8 years of service on 20.12.1993 and therefore he was eligible to be considered in the IFS from 1994-95 onwards. Relying on the declaration issued by the Government of Kerala as a general issue that service whether notional or not would be deemed to be continuous service for the purpose of selection to Indian Police Service and submitting that Rule 5(2) of IFS Regulation was similar to Rule 5(2) of Indian Police Service (Appointment by Promotion) Regulation 1955 and finding that the State Government was not convening the Select Committee for consideration for appointment by promotion in the Indian Forest Service, the applicant filed this O.A. seeking the following reliefs.:

- i) To direct the respondents to convene the Select Committee for preparation of the list of suitable officers for selection to 17 Indian Forest Service cadre posts under the provisions of Indian forest Service (Appointment by Promotion) Regulations, Rules 1966.
- ii) To direct the respondent to consider and include the name of the applicant in the list of officers to be sent up to the Select Committee for selection to Indian Forest Service by treating the regular service of the applicant in the cadre of Assistant Conservator of Forest with effect from 19.12.1985 as qualified service under Rule 5 (2) of India Forest Service (Appointment by Promotion) Regulation 1966 and to consider the selection by the Select Committee forthwith.



- iii) To direct the respondents not to compulsorily retire the applicant from State Service (As Assistant Conservator of Forest) on 30.1.2000, till his name is considered by the Select Committee for selection to Indian Forest Service.
- iv) Any other appropriate order or direction as this Hon'ble Tribunal may deem fit in the interest of justice."

2. The 3rd respondent filed reply statement resisting the claim of the applicant. According to them the reliefs claimed by the applicant was to convene the Select Committee Meeting for promotion to the post of suitable officers for selection to 17 IFS Cadre posts and to direct to consider the name of the applicant for selection to IFS by treating the service of the applicant in the cadre of Assistant Conservator of Forest w.e.f.19.12.85 as qualified service and it was submitted that the promotion to Indian Forest Service was governed by Indian Forest Service (Appointment by Promotion) Regulations. The eligibility criteria for consideration for promotion to Indian Forest Service was that the officers should be substantive in the State Forest Service and should have completed not less than 8 years of continuance of service (whether officiating or substantive) in a post included in the State Forest Service and should not have crossed the age of 54 years on the first day of January of the year in which the Select Committee met. It was submitted that the total number of posts in the promotion quota for the year 1998 was 23, for 1999 was 25 and for 2000 it was 27 and that the promotion of the applicant as Assistant Conservator of Forest as per the proceedings dated 19.12.85 (A2) was not against a substantive vacancy in a permanent cadre post under the quota earmarked to promotee officers. He was promoted as Assistant Conservator of Forest on provisional basis as a stop gap arrangement in the quota earmarked for the direct recruits. The applicant retired from service on 30.5.2000 on attaining



superannuation. The applicant was not substantive in the State Forest Service and had not completed 8 years of continuous service and hence he was not eligible for consideration for appointment by promotion under the Indian Forest Service.

3. On behalf of the first respondent a counsel statement was filed.

4. Today when the O.A. was taken up for final hearing learned counsel for the applicant referring to the additional documents filed by him viz., the order of the Government of Kerala (A9) dated 23.9.2002 declaring the satisfactory completion of the probation of the applicant and other Assistant Conservators of Forest with effect from the dates noted against them and the order of confirmation of the Assistant Conservators of Forest of the State Forest Service dated 31.10.2002 (A-10), submitted that in the light of these developments and the case of the applicant being similar to that of the applicant in O.A.29/02 dated 28.6.2002 wherein certain directions had been given by this Tribunal, he would be satisfied if this O.A. is disposed of on similar lines.

5. Learned counsel for the 3rd respondent submitted that the applicant's eligibility for consideration for appointment by promotion to the Indian Forest Service would be governed as per the Regulation 5(2) of the Indian Forest Service (Appointment by Promotion) Regulation and he would be considered in his turn.

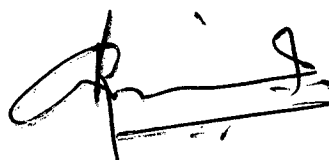
6. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival

A handwritten signature in black ink, appearing to be a stylized 'A' followed by a horizontal line and a small flourish.

pleadings and have also perused the documents brought on record.

7. We find that the applicant filed M.A.1167/02 on 3.12.2002 along with Annexure A-9 being a copy of the order passed by the Government of Kerala dated 23.9.2002. In this order the name of the applicant is appearing at Sl.No. 8 and the Government of Kerala by that order had declared sanction of satisfactory completion of probation of the applicant and other Assistant Conservators of Forest with effect from the dates noted against their names. From this document we find that a satisfactory completion of the applicant's probation had been declared with effect from 6.3.1988. A-10 filed by the applicant along with M.A.1167/02 is a copy of the order issued by the Government of Kerala from which we find that, the applicant had been confirmed as Assistant Conservator of Forests against a cadre post with effect from 1.5.1998. The respondents have not denied the existence of these two documents. On specifically being asked to the learned counsel for the 3rd respondent, he submitted that, he had no further instructions on these documents from the Government of Kerala. In the light of these documents we hold that the 3rd respondent's contention that the applicant is not a substantive member of the State Forest Service no longer survives.

8. We have also gone through the order of this Tribunal in O.A.29/02 dated 28.6.02 (Annexure A-11). From the details given in the said order as well as the details of the applicant as furnished in this O.A. we find that the case of the applicant in this O.A. and that of the applicant in O.A.29/02 are similar. This Tribunal in the order in O.A.29/2002 held as follows:

A handwritten signature in black ink, appearing to be a stylized 'R' followed by a horizontal line and a small flourish.

"5. The only question that arises for consideration is whether the applicant is entitled to be considered for placement in the select list for appointment to Indian Forest Service against the vacancies of the year 1995 onwards despite his retirement on 30.6.99. The averment in the application that the applicant was appointed as Assistant Conservator of Forests with effect from 17.11.84 and that he continued in that post without interruption is not disputed by the respondents, although it is contended that the applicant's confirmation in the post of Assistant Conservator of Forests with effect from 31.8.89 has been cancelled and that his confirmation was made only with effect from 31.12.95 by Annexure A17 order. However, there is no case for the respondents that the appointment of the applicant as Assistant Conservator of Forests with effect from 17.11.84 was a stop-gap arrangement. The contention is that the said service was adhoc. By virtue of the orders of the Hon'ble High Court of Kerala made in CMP Nos.30591/1998 and 23645/1996 in O.P.No.13385/1996 (Annexure A-9), in C.M.P. No.49087/1999 dated 3.12.1999 in O.P.No.13385/1996 (Annexure A10) in CMP No. 49087/1999 dated 23.3.2000 in O.P.No.13385/96(Annexure A11) and the final order in O.P.No.13385/96 (Annexure A12), the applicant was entitled to be considered for appointment to the IFS despite his retirement is not disputed by the respondents. However the only contention is that as the applicant was confirmed as Assistant Conservator of Forests only with effect from 31.12.95 by Annexure A17 order in accordance with the clarification given by the Government of India in their letter No.22012/50/2000-IFS II dated 22.10.2001, the ad hoc service in the feeder grade (ACF) cannot be counted for the purpose of computing minimum eligible service of 8 years for promotion to IFS and therefore the applicant is not entitled for being considered against the vacancies of the year 1996 onwards. It is necessary to consider Regulation 5(2) of I.F.S.(Appointment by Promotion)Regulations, 1966 to see whether the service prior to confirmation in the post of Assistant Conservator of Forests can be treated as qualifying service under Regulation 5.Sub-regulation 2 of I.F.S.(Appointment by Promotion)Regulations, 1966 reads as follows:-

(2) The Committee shall consider, for inclusion in the said list, the cases of members of the State Forest Service in the order of seniority in that service of a number which is equal to three times the number referred to in sub-regulation(1):

Provided that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three times the maximum permissible size of the Select List and in such a case the Committee shall consider all the eligible officers:



Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in sub-regulation(3) shall be excluded:

Provided also that the Committee shall not consider the case of a member of the State Forest Service unless, on the first of January of the year in which it meets, he is substantive in the State Forest Service and has completed not less than eight years of continuous service (whether officiating or substantive) in post(s) included in the State Forest Service.

A close reading of the last proviso extracted would make it clear that the requirement of eligibility for consideration for inclusion in the Select List is that the officer should be substantive in the State Forest Service on the 1st of January of the year in which the Committee meets and should have completed not less than 8 years of continuous service whether officiating or substantive. That the applicant has been officiating in the post of Assistant Conservator of Forests with effect from 17.11.84 is not disputed by the respondents, although as a result of certain litigations, the confirmation of the applicant with effect from the year 1989 was varied to 31.12.95. There is no dispute that the applicant has been continuously officiating in the post of ACF from 17.11.84. The applicant therefore qualifies for consideration for appointment to the I.F.S. for the vacancies of the year 1996 to 1998. The clarificatory letter dated 26th October, 2001 issued by the Government of India, Ministry of Environment and Forests, cannot supersede the provision of I.F.S.(Appointment by Promotion)Regulations which clearly makes officiating service qualifying for computation of the minimum service of 8 years. Therefore the contention of the respondents that the applicant is not eligible for consideration because he was confirmed only with effect from 31.12.95 and therefore does not have 8 years and therefore does not have regular qualifying service.

6. In the result, the application is allowed in part. The respondents are directed to arrange the convening of the selection committee under Regulation 3 of I.F.S.(Appointment by Promotion)Regulations, 1966 and to prepare a select list for the year 1996 onwards and to consider the applicant for appointment to the I.F.S. against the vacancies arising from 1996 onwards notwithstanding the fact that the applicant retired on superannuation from the State Forest Service on 30.6.99 within a period of three months from today and if the applicant's name is placed in the Select List for the vacancy of any year, to issue consequential orders regarding his appointment to the I.F.S. without any further delay and to give him the consequential benefits. There is no order as to costs."



9. In terms of Regulation 5(2) of the IFS (Appointment by Promotion) Regulation, in the light of the applicant's probation having been declared as satisfactorily completed w.e.f.6.3.88 (Annexure A-9) and the applicant having been confirmed as Assistant Conservator of Forest w.e.f.1.5.98 (Annexure A-10) the applicant has become eligible for consideration for promotion subject to coming within the zone of consideration depending on the number of vacancies as on 1.1.99 as he would be less than 54 years on that date, (as he has retired only on 30.5.2000). He would also be eligible for consideration depending on the number of vacancies during 2000 also. Thus, following the order of this Tribunal in O.A.29/02 we direct the respondents to arrange convening of the selection Committee under Regulation 3 of the IFS (Appointment by Promotion) Regulation 1966 and to prepare Select Lists for the years 1999 onwards and to consider the applicant for appointment to IFS if he comes within the zone of consideration as stated above notwithstanding the fact that he had retired on superannuation from the State Forest Service on 30.5.2000 , within a period of three months from the date of receipt of a copy of this order. If the applicant's name is placed in the Select List for the vacancy in any of the two years they would issue consequential orders regarding his appointment to IFS and grant consequential benefits.

10 O.A. stands disposed of as above with no order as to costs.

Dated the 8th January 2003.


K.V.SACHIDANANDAN
JUDICIAL MEMBER


G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the select list G.O.(MS) No.26/85/FE&WLD, dated 18.12.1985.
2. A-2: True copy of the order of appointment G.O (RT) 218/85/FE&WLD dated 19.12.1985.
3. A-3: True extract of final seniority list of Assistant Conservator of Forest as on 1.5.1997.
4. A-4: True copy of the order in O.A.No.402/99 dated 6.10.1999.
5. A-5: True copy of the D.O.letter No.D2/13907/99 dated 6.11.1999.
6. A-6: True copy of the letter D1.12340/98 dated 19.7.1999 by the Chief Conservator of Forest.
7. A-7: True copy of the Circular No.70895/A2/97/Home dated 10.11.1997.
8. A-8: True copy of the order in C.M.P.No.49087/99 in O.P.No.13385/96 and connected cases dated 23.3.2000 by the Hon'ble High Court of Kerala.
9. A-9: True copy of the G.O(Rt) No.313/2002/F and WLD dated 23.9.2002 issued by the 1st respondent.
10. A-10: True copy of the G.O (Rt) NO.365/2002/F and WLD dated 31.10.2002 issued by the 1st respondent.
11. A-11: True copy of the order in O.A.No.29/2000 dated 26.6.2002 by this Hon'ble Tribunal.

npp
30.1.03