IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 285/85, OA 448/86 and OA 229/87

1. OA 285/85

B Muraleedharan : Applicant

Mr Cyriac Joseph : Advocate for applicant

Vs.

1 Union of India rep. by the Secretary to the Govt. of India Ministry of Environment & Forests, Krishi Bhavan, New Delhi.

2 The State of Kerala rep. by the Chief Secretary to Government, Secretariat, Trivandrum.

3 The Secretary to Government, Agriculture (Forest) Department, Secretariat, Trivandrum.

4 Babuji A. George Divisional Forest Officer, Trichur.

5 KG George Divisional Forest Officer Kallarvalley Teak Plantation Division, Achancoil P.O. Quilon District.

6 PT Joseph, Divisional Forest Officer, Flying Squad Division, Kothamangalam.

7 VR Parameswaran Nair Divisional Forest Officer Flying Squad Division, Ernakulam : Respondents

Mr NN Sugunapalan, Sr CGSC : Advocate for R 1
Mr PV Mohanan : Advocate for R 2 & 3
Mr Mathews P Mathews : Advocate for R 4 & 5
Mr CS Rajan : Advocate for R 6 & 7

Contd.1(a)

2. OA 448/86

B Krishnan : Applicant

Mr MR Rajendran Nair : Advocate for Applicant

Vs

1 Union of India rep. by the Secretary to Govt. of India Ministry of Environment & Forests Krishi Bhavan, New Delhi.

2 The State of Kerala rep. by its Chief Secretary to Government. Secretariat, Trivandrum.

3 The Secretary to Government, Agriculture (Forest) Department, Secretariat, Trivandrum.

4 Babuji A George, Divisional Forest Officer, Trichur.

5 KG George, Divisional Forest Officer, Kallarvally Teak Plantation Division, Achancoil P.O. Quilon District. : Respondents.

Mr NN Sugunapalan, SCGSC : Advocate for R 1
Mr PV Mohanan : Advocate for R 2 & 3
Mr Mathews P Mathews : Advocate for R 4 & 5

3. OA 229/87

C Balachandran Nair : Applicant

Mr MR Rajendran Nair : Advocate for Applicant

Vs

1. Union of India rep. by the Secretary to Govt. of India, Ministry of Environment & Forests, Krishi Bhavan, New Delhi

2. The State of Kerala rep. by its Chief Secretary to Government, Secretariat, Trivandrum. : Respondents

Mr NN Sugunapalan, SCGSC : Advocate for R 1
Mr PV Mohanan : Advocate for R 2

DATE OF DECISION 18-1-1991

CORAM

Hon'ble Shri N.V.Krishnan, Administrative Member

&

Hon'ble Shri 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?
3. Whether their Lordships wish to see the fair copy of the judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

N.V.Krishnan, AM

These three applications relate to the claim of the applicants for being considered for appointment to the Indian Forest Service (IFS, for short) in accordance with IFS (Appointment by Promotion) Regulations 1966--Regulations, for short. As all the applications deal with similar issues they have been heard together and are being disposed of by this common order.

2. OA 285/85 filed by Shri B.Muraleedharan is perhaps, the oldest application pending in this Bench. In view of certain later developments he was permitted to file an amended application, which he did on 14.3.88. As this application raised all the issues for consideration, it is being examined in detail after setting out the relevant facts and the applicant's grievance.

3 The applicant belongs to the cadre of Assistant Conservators of Forests (ACF, for short) having been appointed to the Kerala Forest Service w.e.f. 1.5.78. This was preceded by his selection for this purpose by the Kerala Public Service Commission on 31.5.76 and he was deputed to undergo a Diploma course in Forestry for 2 years in the State Forest Service College, Burnihat, Assam, which is an affiliate of the Indian Forest Research Institute, Dehra-Dun. His appointment as ACF was regularised w.e.f. 1.5.78 and a declaration of satisfactory completion of probation was given on 1.5.81 vide Annexure-I order dated 2.8.83. ~~[illegible]~~

4 The applicant has raised two important contentions:(i) The regulations provide that a State Forest Service Officer can be considered for appointment to the IFS only if he has completed 8 years service. The applicant contends that for this purpose, the period of 2 years spent in the State Forest Service College, Burnihat during 1976-78 should be taken as approved qualifying service. (ii) The applicant has been confirmed as ACF from 30.4.84 by the Annexure VII order dated 18.4.87. However, he contends that in accordance with Rule 27(c) of the Kerala State &

Subordinate Service Rules, KSSR for short- he can count his seniority in the cadre of ACF from the commencement of training on 31.5.76, from which date he should be deemed to be confirmed, because the Rules provide that only substantive vacancies shall be filled up by direct recruitment.

5 He contends on this basis that he is senior to Respondents 4 & 5 who have been confirmed as ACF from 1.11.82 and 1.3.83 respectively by the Annexure-II order and is senior to the 6th and 7th respondents who have also been so confirmed from 10.12.80 and 1.12.83 respectively by the Annexure -VII order. Respondents 4 to 7 have been promoted as ACF from the rank of Rangers.

6 Despite this relative seniority position, the applicant complains that the 4th respondent was appointed to the Indian Forest Service by the Annexure VI order dated 22nd May, 85 of the Government of India (Respondent-1) and the 5th respondent was appointed temporarily to an IFS cadre post by the Annexure VIII order dated 7.4.86 of the Govt. of Kerala, Respondent-2. He was later appointed to the IFS on 13.8.86, though the applicant does not refer to it as is clear from the second prayer made by him.

7 It is in this background that the applicant has made the following prayers:

"(i) call for the records leading to Annexure VI Notification appointing the 4th Respondent Shri Babuji A George to the Indian Forest Service and to quash the same;

(ii) to restrain respondents 1 to 3 from appointing the 5th respondent Shri KG George to the Indian Forest Service earlier than the applicant;

(iii) to declare that the applicant is eligible to be considered for appointment to the Indian Forest Service from June, 1984;

(iv) to issue a direction or order compelling the respondents 1 to 3 to consider the name of the applicant for appointing him to the Indian Forest Service during the next selection;

(v) to set aside Annexure VIII order appointing the 5th respondent to Indian Forest Service and quash the entire proceedings of the Selection Committee met on 13.12.85 and direct respondents 1 to 3 to include the applicant for selection for appointment to Indian Forest Service by promotion for the year 1985 and subsequent years and conduct selection afresh."

8 The 1st respondent, the Union of India filed a reply to the earlier unamended application urging that the main question relates to the inter-se seniority between the applicant and the party respondents as ACF in the State Forest Service and that this is the concern of the Government of Kerala. It was however, admitted that under Explanation 2 below Regulation 5(2) of the Regulations, the 2 years training of the applicant at the State Forest Service College, Burnihat can be counted to reckon the qualifying period of 8 years service. It is

submitted that Respondent-1 has not taken any action which is contrary to the provisions of law.

9 The second and third respondents viz. The State of Kerala represented its Chief Secretary and the Secretary to the Govt. of Agriculture (Forest Department), — State Government, for short, have filed two replies to the amended OA. The first reply dated 12.9.88 is filed by the second respondent in the connected case OA 229/87 and the learned counsel for the respondents 2 & 3 stated on 1.11.89 that this reply can also be read as a reply to OA 285/85 and OA 448/86. The second reply dated 5.12.89 is common to this application as well as OA 229/87 and OA 448/86. In addition, the learned counsel for the State Government has also submitted a statement on 23.1.90.

10 The main contention of the State Government is that the rules relied upon by the applicant are capable of different interpretation. Thus, the note under Rule 5 of KSSR clarifies that even temporary vacancies shall be deemed to be substantive vacancies and therefore, the applicant cannot claim that he was appointed substantively as ACF on 31.5.76. It is also contended that under Rule 8 of the Special Rules for Kerala Forest Service, the applicant can count his seniority on

ACF only from the date of his appointment as probationary ACF from 1.5.78. The only point that is admitted is that the period of training in the State Forest Service College, Burnihat will be counted and included in compu-ting the period of 8 years' service in the State Forest Service needed for consideration under Regulation 5(2)(ii) of the Regulations. Having said that, the State Government contends that matters relating to the commencement of his service as ACF, the inter-se seniority vis-a-vis promotees and confirmation, fall within the sphere of the State Government under their State Rules and, as such, they cannot be considered by this Tribunal. The High Court of Kerala had given a direction to the State Government in OP 6400 of 1984-F filed by the applicant to publish a gradation list of ACFs' as on 1.3. 83(Annexure-V). That list was published by the State Government of Kerala as an annexure to their order dated 27.2.1987 (Annexure IX). It is stated that the seniority list as on 1.3.83 (Annexure to the order dated 27.2.87 at Annexure IX) has been challenged by the applicant before the High Court of Kerala in OP No.5238/87 and it is still pending and that the disputed issues will stand resolved when ~~xxxxx~~ judgment is

delivered in that petition. It is also asserted that all action taken by the State Government so far are in accordance with law. In these circumstances, it is claimed that the applicant is not entitled to any relief.

11 Respondents 4 & 5 and Respondents 6 & 7 have filed 2 separate replies to the amended application. Their contention is that their initial promotion as ACF is not a fortutious promotion, but has been made after proper selection against regular vacancies and hence they are entitled to count for seniority purposes their services as ACF from the date of their first promotion i.e., 22.12.74, 5.12.74, 7.2.75 and 3.9.77 respectively. They contend that they are all senior to the applicant who was appointed as ACF only on 1-5-78 - Earlier, in May 76, he was only deputed for the Diploma Course and was not appointed as ACF. Hence, the applicant has no case for prior consideration for appointment to IFS.

12 We have heard the counsel of the parties. We notice that under Section 14 of the Administrative Tribunals Act, this Tribunal has jurisdiction in relation to recruitment and matters concerning recruitments to any All India Service, which includes the IFS. The appointment of State Forest Service

Officers to the IFS is governed by the IFS (Appointment by Promotion) Regulations, 1966. Broadly speaking, a Selection Committee, presided over by the Chairman of the UPSC or a Member of the UPSC, meets every year to prepare a select list of officers who can then be appointed to the IFS, depending on the occurrence of vacancies. The size of the select list is twice the number of vacancies to be filled by promotion or 5% of the senior duty posts in the cadre, whichever is more. The number of officers to be considered (zone of consideration) is thrice the number to be included in the Select List. Their names will be considered on the basis of the seniority list prepared by the State Government. The question whether an ACF, other-wise eligible for consideration, falls within the zone of consideration depends on his position in the seniority list.

13 Having heard the parties we are of the view that the basic questions raised-viz (i) whether the selection of the applicant by the State PSC in 1976 is for appointment as ACF or only for deputation for Diploma Course to the State Forest Service College, Burnihat (ii) whether he can count his seniority

from May, 1976 or only from 1.5.78 when he was appointed as a probationary ACF (iii) whether respondents 4 to 7 have been regularly appointed as ACF earlier than him (iv) whether the applicant stands confirmed as ACF only from 30.4.84 (Ann. VII) or from any earlier date and (v) whether the place of respondents 4 to 7 in the seniority list has to be determined on the principle of the quota-rota rule applicable to a cadre where appointment is made by direct recruitment and promotion--are all matters which squarely fall within the jurisdiction of the State Government as integral part of service conditions of a State Service. These are, therefore, outside the purview of this Tribunal, as rightly contended by the State Government. As the disputed issues regarding inter-se seniority are still pending before the High Court of Kerala in OP.No. 5238/87, we cannot, at present, consider the reliefs at Sl.No. (i), (ii), (iii) and (v) referred to in para 7.

14. In view of this limitation, we are of the view that there is only a very narrow area to be dealt with while disposing of this application. There are 3 circumstances which necessitate reconsideration of the applicant's case, by a Review DPC, which has to reappraise the proceedings held for filling up the vacancies of 1985 and 1986:

(i) It is admitted by the Government of India and by the State Government that the period of training in the State Forest Service College, Burnihat, Assam is eligible to be counted for computing the minimum period of 8 years of service which is a pre-requisite under Regulation 5(2) of the Regulations for consideration for appointment to the IFS.

(ii) A fresh seniority list as on 1.3.83 has been prepared by the Annexure-IX order dated 27.2.87.

(iii) The applicant has been confirmed from 30.4.84 by the Annexure-VII order dated 18.4.87.

Admittedly, the applicant was not considered in the years 1984-1987 for one or more of the following reasons, viz.,

(a) He has not completed 8 years service

(b) He has not yet been confirmed

(c) He is not senior enough to fall in the zone of consideration.

All these matters will require reconsideration in the light of the aforesaid three circumstances at the hands of the DPC.

15. However, in this regard, the stand of the State Government is that there was only one vacancy each in 1985 and 1986 and hence a select list of only 2 persons each was to be prepared by considering the cases of 6 officers who fall in the zone of consideration.

They contend that in accordance with the seniority list published by them, which now holds the field, though it is under challenge before the High Court of Kerala, the applicant is too junior to fall in the zone of consideration for both years. This position will not change unless the High Court of Kerala sets aside or modifies the seniority list.

16. This view of the State Government may, for ought we know, be correct. We are, however, of the view that as the applicant has challenged the earlier actions of the State Government and as new facts not considered by the earlier DPC have now come to light, it is only fair that these new circumstances be considered by a Review DPC to examine whether the decisions taken earlier need reconsideration.

17. We, therefore, direct the Union of India (Respondent-1) and the State of Kerala (Respondent-2) to convene a Review DPC meeting to consider the case of the applicant in the light of the change of ~~the~~ circumstances as mentioned in para 14 above. We, however, leave it to these respondents to determine whether such a Review DPC should be held now or later after the High Court of Kerala disposes of OP 5238/87.

18 We also direct that if for any reason, the applicant is found eligible for consideration by any Selection Committee on the basis of the Review DPC and found fit for inclusion in the Select List and for appointment to cadre posts and thereafter for appointment to the IFS, his claim for such appointment and for getting consequential benefits shall not be denied to him by Respondent 1-3 merely on the ground that during the relevant period other persons like the respondents had already been appointed to such cadre posts or to the IFS against the vacancies then existed. We make it clear that if necessary, the applicants should be given relief by the creation of temporary cadre posts.

19 OA 448/86 has been filed by Shri B Krishnan. He has impleaded Shri Babuji George and KG George who are Respondents 4 & 5 in OA 285/85. The prayers made in this application are similar to those made in OA 285/85. The directions / orders given in OA 285/85 will apply mutatis- mutandis to this application also.

20 OA 229/87 has been filed by Shri C Balachandran Nair. The prayers made by him are as follows:

(i) Declare that applicant is eligible to be considered for appointment to Indian Forest Service by promotion with effect from 1.1.1986, and to issue appropriate direction compelling respondents to sponsor the name of the applicant for selection to the Indian Forest Service by promotion against the vacancies which arose on or after 1.1.86 in the quota for promotion.

(ii) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant, and

(iii) Grant the cost of this application on the following among other.

21 The main complaint of the applicant in this case is that while others have been confirmed as ACF vide the Annexure III order dated 18.11.86, he has not been confirmed. As confirmation as ACF is a pre-requisite for consideration for appointment to the IFS, the Respondents 1 to 3 cannot be faulted on this ground. If the applicant has any grievance that he has unjustly been left out in the matter of confirmation as ACF, that is a matter which is outside the purview of this Tribunal and he may take recourse to such action under law as may be advised.

22 However, in OA 285/85, we have referred to a contention of the applicant therein that, being advised by the State PSC in May 1976 itself should be

treated as a substantive appointment. If this issue is decided in favour of the applicant in OA 285/85, that benefit will also be available to the applicant in OA 229/87 and thereafter the Review DP C will reconsider his case on that basis.

23. The applicant's general grievance against the seniority list showing the position of direct recruits and promotees has already been dealt with in OA 285/85.

24. These three applications are disposed of with the aforesaid directions and orders. There will be no order as to costs.

18/1/91.

(N.Dharmadan)
Judicial Member

18/1/91

(N.V.Krishnan)
Administrative Member