

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.29/2002

Friday this, the 28th day of June, 2002.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER

E.Harry,
Assistant Conservator of Forests(Retired),
T.C.-8/1852,
"Soorya", Thirumala P.O.,
Thiruvananthapuram-6. .. Applicant

(By Advocate S/Shri O.V.Radhakrishnan, M.Shihabudin)

vs.

1. State of Kerala, represented by its Secretary,
Forests and Wild Life(F)Department,
Secretariat, Thiruvananthapuram-1.
2. Principal Chief Conservator of Forests(General),
Forest Head Quarters,
Vazhuthakkadu, Thiruvananthapuram-14.
3. Union of India, represented by its Secretary,
Ministry of Environment and Forests,
Paryavaran Bhavan, CGO Complex, Lodhi Road,
New Delhi-110003. ... Respondents

(By Advocate Sri Renjit.A., Govt. Pleader(R1-2)
Mr.P.M.M.Najeeb Khan, ACGSC(R3)

The Application having been heard on 6.6.02, the Tribunal on
28.6.2002 delivered the following:-

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant who retired from the Kerala State Forest Service after working as Assistant Conservator of Forests on 30.6.1999, has filed this application seeking the following reliefs:-

- i. to issue appropriate direction or order directing the respondents to arrange the convening of the Selection Committee set up under Regulation 3 of the IFS (Appointment by Promotion) Regulations, 1966 immediately and to prepare a select list for the vacancies of the years 1995 onwards allocated for Officers of the Kerala State Forest Service for appointment by promotion to Indian Forest

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Service and to make appointments to the IFS within a time-frame that may be fixed by this Honourable Tribunal;

ii. to issue appropriate direction or order directing the respondents to consider the applicant for selection for appointment by promotion to IFS by placing his name before the Selection Committee counting his service in the post of Assistant Conservator of Forests from 17.11.1984 which was followed by confirmation and to appoint him to the Indian Forest Service notwithstanding his retirement from State Forest Service in the light of the Orders/Judgment issued by the Honourable High Court in Anneexure A-9 to A-12 with all consequential benefits;

iii. to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case;

iv. to award costs to the applicants.


2. Shorn of details the material averments in the application are stated thus. The applicant was directly recruited as Ranger in the Kerala Forest Subordinate Service on 24.1.1968. After completion of probation while continuing as Ranger, his name was placed at Sl.No.2 in the Select List of officers for promotion against four vacancies of Assistant Conservator of Forests that arose in the year 1982 approved by the Government (Annexure A1). By order dated 17.11.84 the applicant was provisionally promoted as Assistant Conservator of Forests subject to the decision in O.P.No.7546/1984C on the file of the Hon'ble High Court of Kerala (A2). The said O.P. was disposed of by judgment dated 13.3.1985(A3) directing the respondents to finalise the provisional seniority list in the category of Ranger. Thereafter by order dated 22.11.90(A4), the satisfactory completion of probation of the applicant was declared with effect from 26.12.1986. In the final seniority list of State Forest Service Officers(Assistant Conservator of




Forests) as on 31.12.1985 (extract at Annexure A-5) the applicant was placed at Sl.No.63 with date of appointment to the post of Assistant Conservator of Forests on regular basis as 17.11.1984. The first respondent thereafter issued G.O.(Ms)No.17/94/F and WLD dated 5.4.1994 (Annexure A6) confirming the applicant as Assistant Conservator of Forests with effect from 1.9.1989 against the vacancy caused by the retirement of Sri M.M.Aboobacker on 31.8.1989. While so, the first respondent published the seniority list of Assistant Conservator of Forests as per G.O.(Rt) No.282/96/F and WLD dated 20.7.1996 as on 1.5.1978, 1.5.1979, 1.5.1980, 1.5.1981, 1.5.1982, 1.5.1983, 1.5.1984, 1.5.1985 and 1.5.1986. Although the applicant's name ought to have been in the seniority list as on 1.5.1985, his name was not included. Therefore the applicant filed O.P. No.13385/1996 in the Hon'ble High Court of Kerala seeking a direction to include his name in the seniority list on the basis of his regular appointment to the post with effect from 17.11.84. During the pendency of the O.P. the first respondent issued Annexure A7 order dated 27.9.96 cancelling the Government orders issued earlier confirming the Assistant Conservator of Forests with effect from 1.5.1978. The applicant was not given any notice proposing to recall his confirmation made by Annexure A-6 order. However the first respondent issued an order dated 28.4.1999 appending the final seniority list of State Forest Service Officers (Assistant Conservator of Forests) as on 1.5.1987 in which the date of appointment of the applicant to the post of Assistant Conservator of Forests was shown as 17.11.1984. During the pendency of the



O.P.No. 13385/1996 in the Hon'ble High Court of Kerala, the applicant retired on superannuation on 30.6.1999. The Hon'ble High Court of Kerala in CMP No.23645/1996 initially granted an interim order commanding the respondents 1 and 2 to refrain from granting respondents 3 to 7 in the O.P. any promotion or grade promotion until such benefits were given to the applicant. But thereafter the order was modified by order dated 20.10.1998 (copy at Annexure A9) directing the first respondent to consider the name of the applicant and all other eligible officers in the Kerala State Forest Service for appointment by promotion to I.F.S. strictly in accordance with the I.F.S.(Appointment by Promotion)Regulations. It was also directed that the case of the applicant be considered without reference to Annexure A7 order dated 27.9.86. The applicant filed CMP No.49087/99 in O.P. No.13385/96 seeking a direction to respondents 1 and 2 to consider him for promotion to Indian Forest Service without regard to his retirement from State Forest Service producing a D.O. letter dated 6.11.1999 of the Principal Chief Conservator of Forests(General) to the 1st respondent explaining the administrative crisis owing to inordinate delay in holding selection for promotion to the I.F.S. The Hon'ble High Court passed an order dated 3.12.1999 directing respondents 1 and 2 to consider the name of the applicant also for promotion to IFS cadre under Rule 9 of the I.F.S.(Cadre)Rules rejecting the contention of the Govt.Pleader that the applicant having retired from service, might not be eligible for consideration (Annexure A10). The learned Single Judge before whom the O.P. was placed passed




an order dated 23.3.2000 in CMP No.49087/1999 directing the respondents and the Government of India to consider the case of the applicant for selection to IFS despite the fact that he had already retired if the Review Committee meets for considering the review of select list for 1994-95 onwards and that any decision taken in that respect should be communicated to the Court(Annexure A11). O.P.No. 13385/96 was finally disposed of by judgment dated 11.7.2001 holding that whether there was a substantive vacancy to appoint the applicant in the quota allotted for promotees in 1984 and if so, whether the applicant would be entitled to higher rank in the seniority list, were matters to be looked into by the respondents and that if the applicant was entitled to higher ranking in seniority taking into account his appointment made on 17.11.1984 or any date subsequent as per the Supreme Court decision he would be entitled to all consequential benefits. According to Rule 5 of the Kerala State and Subordinate Service Rules while direct recruitment can be made against a substantive vacancy only, no restriction is provided for recruitment by transfer and the appointee by transfer/promotion can be adjusted against the subsequent vacancy ; the appointment of the applicant with effect from 17.11.84 was according to the rules. Producing a copy of the judgment in O.P.No.13385/96(Annexure A12) the applicant submitted a representation to respondents 1 and 2 (Annexure A14) requesting that the directions contained in the order be implemented without delay. The applicant was thereafter served with an order dated 17.10.2001(Annexure A15) informing him that there as no substantive vacancy in 1984



to accommodate him, that he would get a substantive vacancy in the quota allotted to promotees only on 1.8.1994 against the vacancy that arose due to retirement of Shri M.K.Abdul Karim on 31.7.94 and calling upon him to make his objection, if any. The applicant submitted a statement of objection. The applicant also received an order dated 28.11.2001(Annexure A17) confirming him as Assistant Conservator of Forests with effect from 31.12.1995. Even going by the confirmation given to the applicant with effect from 31.12.1995 the applicant is eligible for consideration for appointment to I.F.S. for the vacancies of 1995 onwards because he has been in continuous service as Assistant Conservator of Forests with effect from 17.11.84. The applicant is therefore entitled for selection against the vacancies which arose from 1996 onwards for appointment to I.F.S. Since preparation of yearwise select list is mandatory, the respondents ought to be directed to arrange convening of the DPC and to prepare select list for the vacancies of 1995 onwards and to consider the applicant for selection for appointment by promotion to I.F.S. placing his name before the selection committee counting his service in the post of Assistant Conservator of Forests from 17.11.84. The applicant has therefore filed this application for the reliefs as aforesaid as the respondents did not take any steps for convening of the Selection Committee.

3. The respondents resist the claim of the applicant for consideration for appointment by promotion to the I.F.S. against the vacancies of the year 1996 onwards on the ground that since the applicant was appointed against a regular



vacancy of Assistant Conservator of Forests only in the year 1995, he was not eligible to be considered against the vacancy of 1998 even because as on 1.1.98 he had a qualifying service of only 3 years , viz. 31.12.95 to 31.12.98. It is contended that the Government of India in their letter No.22012/50/2000-IFS II dated 22.10.2001 has clarified that ad hoc service in the feeder grade (Assistant Conservator of Forests) cannot be counted for the purpose of completion of minimum eligible service in such grade for being considered for promotion to IFS and therefore as the service of the applicant in the post of Assistant Conservator of Forests with effect from 17.11.84 was only adhoc, the applicant is not entitled to the reliefs sought in this application, contend the respondents.

4. We have carefully gone through the entire pleadings and all the materials brought on record.

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 1995 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

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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.


(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER


(A.V.HARIDASAN)
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures:

1. Annexure A-1 True copy of the Select List issued under Notification No.G.O.MS 321/84/AD dated 5.11.1984 and published in the Kerala Gazette,Extra Ordinary dated 5.11.1984.
2. Annexure A-2 True copy of the G.O.(Rt)2761/84/AD dated 17.11.1984 of the Under Secretary,Agriculture (Forest Special B) Department.
3. Annexure A-3 True copy of the judgment dated 13.3.1985 in O.P.No.7546/1984 of the Hon'ble High Court.
4. Annexure A-4 True copy of the G.O.(Rt)No. 480/90/F & WLD dated 22.11.1990 along with Appendix of the 1st respondent.
5. Annexure A5 True copy of the G.O.(P) No. 6/94/F and WLD dated 20.1.1994 extract of Final Seniority List of State Forest Service Officers (Assistant Conservator of Forests) as on 31.12.1985 of the 1st respondent.
6. Annexure A6 True copy of the G.O.(Ms)No.17/94/F and WLD dt. 5.4.1994 of the 1st respondent.
7. Annexure A7 True copy of the G.O.(Ms)No. 46/96/F & WLD dt. 27.9.1996 of the 1st respondent.
8. Annexure A8 True copy of the GO(Rt)No.173/99/F&WLD dt. 28.4.1999 extract of Final Seniority List of State Forest Service Officers as on 1.5.1997 of the 1st respondent.
9. Annexure A9 True copy of Order dt.20.10.1998 in C.M.P.Nos.30591/1998 and 23645/1996 in O.P.No.13385/1996 of the Hon'ble High Court of Kerala.
10. Annexure A10 True copy of the order dt. 3.12.1999 in C.M.P.No.49087/1999 in O.P.No. 13385/1996 of the Hon'ble High Court of Kerala.

11. Annexure A11 True copy of the order dt. 23.3.2000 in CMP No.49087/1999 in O.P.No.13385/96 of the Hon'ble Court of Kerala.
12. Annexure A12 True copy of the judgment dated 11.7.2001 in O.P.No.13385/1996 of the Hon'ble High Court of Kerala.
13. Annexure A13 True copy of the notification G.O. (P) No.100/87/F & WLD dt. 16.12.1987 published in the Kerala Gazette dt. 12.1.1988 of the 1st respondent.
14. Annexure A14 True copy of the representation dt. 19.7.2001 of the applicant to the respondents 1 & 2.
15. Annexure A15 True copy of the Government letter No.10090/F1/2001/F & WLD dt. 17.10.2001 of the 1st respondent.
16. Annexure A16 True copy of the representation dt. 30.10.2001 of the applicant to the 1st respondent.
17. Annexure A17 True copy of the GO(Rt) No.506/2001/F&WLD dt. 28.11.12001 along with Annexure -Statement showing conformation of Assistant Conservator of Forests of the 1st respondent.
18. Annexure A18 True copy of the Notification No. 14015/52/96-AIS (I)C Indian Forest Service(Appointment by Promotion) Amendment Regulations,1997 dated 31.12.1997.
19. Annexure A19 True copy of the Notification No. 11039/21/76-AIS(1)-C,dated 20.4.76 published in the Gazette of India dated 8.5.1976.
20. Annexure A20 True copy of the Notification No. 16019/1/75-AIS (iv)dt. 6.7.1976 published in the Gazette of India dated 24.7.1976.
21. Annexure A21 True copy of the letter No.D3-832/93 dt. 1.1.1994 of the Chief Conservator of Forests (Protection) Thiruvananthapuram.