

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 320 of 2004

Thursday, this the 22nd day of July, 2004

CORAM

**HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER**

1. M.I. Varghese,
S/o late M.L. Inasu,
Asst. Conservator of Forests (Retired),
residing at Mannuthy House,
Chembukavu, Thrissur - 680 020Applicant

[By Advocate Shri O.V. Radhakrishnan]

Versus

1. Union of India, represented by its Secretary,
Ministry of Environment and Forests,
Pariavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi - 110 003
2. Union Public Service Commission,
represented by its Chairman,
New Delhi.
3. State of Kerala, represented by its
Chief Secretary,
Secretariat,
Thiruvananthapuram - 695 001
4. Secretary,
Forest and Wild Life Department,
Secretariat,
Thiruvananthapuram.Respondents

[By Advocate Shri R. Prasanthkumar, ACGSC (R1 & R2)]
[By Advocate Shri Renjith A, GP (R3 & R4)]

The application having been heard on 22-7-2004, the
Tribunal on the same day delivered the following:

O R D E R

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

The applicant who retired from the State Forest Service on 30-9-2001 has filed this application for a direction to respondents 1 to 3 to make his appointment to the Indian Forest

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Service on the basis of his placement in the select list of the year 1999 with all consequential benefits. Facts necessary for disposal of this application can be briefly stated as follows:

2. The applicant commenced service as a Forest Ranger in the Forest Department of the State of Kerala in the year 1967. He was subsequently selected for appointment as Assistant Conservator of Forests by Annexure A2 order dated 28-12-1984. Satisfactory completion of the probation of the applicant as Assistant Conservator of Forests was declared by Annexure A3 order dated 3-10-1994 with effect from 2-1-1987. However, since the order confirming the applicant on the post of Assistant Conservator of Forests was not issued for a long time, the applicant filed OP.No.16014/2001, which was disposed of by the Hon'ble High Court of Kerala with a direction to the State Government to consider Exhibits P-2 and P-3 representations and pass orders thereon. Since the applicant was about to retire on 30-9-2001 and the order of confirmation was not made, the applicant filed OP.No.24596/2001 for a writ of mandamus or other appropriate writ or direction or order commanding the respondents to consider the petitioner/applicant for appointment to the Indian Forest Service notwithstanding his retirement from State Forest Service on 30-9-2001, if he is otherwise eligible and entitled. The above OP was disposed of by an order dated 23-8-2001 by the Hon'ble High Court of Kerala holding that the applicant is deemed to have been confirmed against a substantive vacancy of Assistant Conservator of Forests which arose in the year 1998 and directing the respondents to consider the applicant for appointment to the Indian Forest Service, despite his retirement on 30-9-2001 from the State Forest Service. Subsequently, an order dated 31-10-2002 was issued by the State of Kerala by which the applicant was confirmed in the post of Assistant Conservator of


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Forests with effect from 1-5-1998. The State of Kerala included the name of the applicant in the proposal for consideration for induction to the Indian Forest Service for the vacancies of the year 1999 and 2000. Accordingly, the Selection Committee which met on 11-8-2003 considered and included the name of the applicant at Sl.No.4 in the select list of the year 1999 unconditionally. The willingness of the applicant for appointment to the Indian Forest Service unconditionally was obtained on 7-11-2003. However, the matter did not progress thereafter and the applicant was not appointed although others were appointed. Under these circumstances, the applicant has filed this application seeking the reliefs as aforesaid.

3. Respondents 3 and 4 have filed a statement resisting the claim of the applicant on the ground that the applicant has already retired from service on 30-9-2001 and as per Section 8 of the Recruitment Rules for Indian Forest Service and Regulation 9 of the Indian Forest Service (Appointment by Promotion) Regulation, a member of the State Forest Service alone can be appointed by promotion and the applicant having retired is not entitled for the appointment.

4. Respondents 1 and 2 did not file any reply, but the learned counsel for respondents 1 and 2 stated that they adopt the contentions of the respondents 3 and 4.

5. We have heard the learned counsel on either side. The argument of the learned counsel for respondents that in terms of the scheme for appointment by promotion to the Indian Forest Service, as per the provisions of the Recruitment Rules and the IFS (Appointment by Promotion) Regulation, only members of the State Forest Service are to be appointed is normally



unexceptionable. However, in this case, the case of the applicant for inclusion in the select list was considered by the Committee under Regulation 5. The name of the applicant was included in the select list for the year 1999 unconditionally and his willingness for appointment to the Indian Forest Service has been obtained under Regulation 9(1). The applicant's name was considered despite the fact that he retired from the State Forest Service on the declaration by the Hon'ble High court in its order in OP.No.24596/2001, which was rendered before the retirement of the applicant, that despite retirement the applicant would be entitled to be considered. Had the meeting of the Committee for drawing up the select list for the year 1999 been convened at the appropriate time, there would not have been any impediment in considering the applicant and if included in the select list for his appointment. The question whether an officer who retired from the State Forest Service can be appointed to the Indian Forest Service has been considered by the Hon'ble High Court in Writ Petition (C) Nos. 10707 and 11425 of 2004 decided on 1-4-2004 arising out of OA.No.35/2003. Adverting to similar contentions the Hon'ble High Court in paragraphs 13 and 14 of the judgement observed thus:-

"13. Learned counsel for the petitioners contended that under Regulation 9 of the Indian Forest Service (Appointment by Promotion) Regulations, 1966, only a member of the State Forest Service can be appointed by promotion to the Indian Forest Service and since the applicant ceased to be a member of the State Forest Service on 31.3.2003, he cannot be appointed to the Indian Forest Service after 31.3.2003. There is no merit in this contention. The applicant was admittedly entitled to be included in the select list for the year 2002 and was entitled to be appointed to the Indian Forest Service in a vacancy of the year 2002. The delay in holding the meeting of the Selection Committee and in the preparation of the Select List for the year 2002 was not due to any fault of the applicant. Before he ceased to be a member of the State Forest Service, the applicant filed O.A.No.35/2003 and obtained an order directing the petitioners to hold the meeting of the Selection Committee and to prepare the Select List before 31.3.2003 and also directing that if for any

reason the Select List could not be prepared before 31.3.2003 such delay would not in any way affect the applicant's claim for appointment to the IFS for the reason that he retired from service on 31.3.2003. According to Regulation 5(1) of the I.F.S. (Appointment by Promotion) Regulations 1966, the Selection Committee shall ordinarily meet every year and prepare a list of such members of the State Forest Service as are held by them to be suitable for promotion to the service. Had the meeting of the Selection Committee been held in time to prepare the Select List for the year 2002 as provided in Regulation 5(1) of the Indian Forest Service (Appointment by Promotion) Regulations, 1966 the applicant would have been included in the Select List and would have been appointed to the Indian Forest Service while he was still a member of the State Forest Service with effect from 31.3.2003. In such circumstances, the petitioners cannot deny appointment to the applicant on the ground that he ceased to be a member of the State Forest Service on 31.3.2003.

14. An additional contention raised by the learned Government Pleader appearing for the State Government is that in view of Regulation 5(3) of the Indian Forest Service (Appointment by Promotion) Regulations, 1966 the Selection Committee could not have considered the name of the applicant for inclusion in the Select List for the year 2002 as he had attained the age of 54 years on the first day of January of the year in which it met. Learned counsel for the Union of India did not support such a contention. It is also pertinent that the Selection Committee did not find any such disqualification for the applicant and that the Committee did consider the applicant's name and included him in the Select List. At any rate, in our view also there is no merit in the said contention of the learned Government Pleader. Appointment by promotion to the IFS is governed by the Indian Forest Service (Appointment by Promotion) Regulations 1966. According to Regulation 5(1) of the said Regulations, the Committee constituted under Regulation 3 shall ordinarily meet every year and prepare a list of such members of the State Forest Service as are held by them to be suitable for promotion to the service. As per the First Proviso to Regulation 5(1), no meeting of the Committee shall be held and no list for the year in question shall be prepared when (a) there are no substantive vacancies, as on the first day of January of the year, in the posts available for the members of the State Forest Service under rule 9 of the Recruitment Rules; or (b) the Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies, as on the first day of January of the year, in the posts available for the members of the State Forest Service under Rule 9 of the Recruitment rules. As per the Second Proviso to Regulation 5(1), where no meeting of the Committee could be held during a year for any reason other than that provided for in the First Proviso, as and when the Committee meets again, the Select List shall be prepared separately for each year during which the Committee could not meet, as on the 31st December of each year. According to Regulation 5(3) of the Regulations, the Committee shall not consider the case

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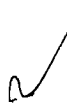
of the members of the State Forest Service who have attained the age of 54 years on the first day of January of the year for which the Select List is prepared. In this case the applicant was entitled to be considered for inclusion in the Select List for the year 2002. On the first day of January of the year 2002 the applicant had not attained the age of 54 years. Hence the provision in Regulation 5(3) did not stand in the way of the name of the applicant being considered for inclusion in the Select List for the year 2002. The contention of the learned Government Pleader appears to be based on the old provision in Regulation 5(3) which stated that the Committee shall not consider the case of the members of the State Forest Service who have attained the age of 54 years on the first day of January of the year in which it meets. The State Government and the learned Government Pleader appear to be unaware of the amendment to the Regulations. The existing provision contained in Regulation 5(3) states that the Committee shall not consider the case of the members of the State Forest Service who have attained the age of 54 years on the first day of January of the year for which the Select List is prepared. Clause 3 of the Regulation 3 is extracted hereunder:

"(3) The Committee shall not consider the case of the members of the State Forest Service who have attained the age of 54 years on the first day of January of the year for which the select list is prepared.

Provided that a member of the State Forest Service whose name appears in the select list in force immediately before the date of the meeting of the Committee and who has not been appointed to the Service only because he was included provisionally in the select list shall be considered for inclusion in the fresh list to be prepared by the Committee, even if he has in the meanwhile, attained the age of fifty four years:

Provided further that a member of the State Forest Service who has attained the age of 54 years on the first day of January of the year for which the select list is prepared shall be considered by the Committee, if he was eligible for consideration on the first day of January of the year or any of the years immediately preceding the year in which such meeting is held but could not be considered as no meetings of the Committee was held during such preceding year or years."

The above correct text of the Regulation was made available by the learned counsel for the Union of India. In the writ petition the State Government have wrongly quoted the Regulation and have wrongly disputed the applicant's claim on the ground that the applicant had attained the age of 54 years on the first day of January of the year in which the Committee met. But learned Government Pleader fairly conceded that as on 1.1.2002 the applicant had not attained the age of 54 years and hence he had not attained the age of 54 years on the first day of



January of the year for which the Select List was prepared. Therefore the applicant's name was rightly included in the Select List for the year 2002."

6. The facts and circumstances of this case being similar, we are of the considered view that the same principle would apply to this case also and on the basis of the placement of the applicant in the select list of the year 1999 the respondents are bound to issue order regarding appointment of the applicant as the respondents have no case that any other circumstances has intervened which would make the applicant ineligible or unsuitable for appointment to the Indian Forest Service.

7. In the light of what is stated above, we dispose of this Original Application directing the respondents to issue orders regarding appointment of the applicant to the Indian Forest Service on the basis of his placement at Sl.No.4 in the select list for the year 1999 with consequential benefits as expeditiously as possible, at any rate within a period of three weeks from the date of receipt of a copy of this order. No order as to costs.

Thursday, this the 22nd day of July, 2004

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H.P. DAS
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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