

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.337/94

Friday, this the 1st day of July, 1994.

CORAM:

HON'BLE SHRI JP SHARMA(J)

HON'BLE SHRI S KASIPANDIAN(A)

L Soma Roy,
Amala Cottage,
T.C.12/498, Thekkumoodu,
Thiruvananthapuram-37.

- Applicant

By Advocate Mrs VP Seemanthini

Vs.

1. Union of India represented by
Secretary to Government,
Ministry of Environment and Forest,
New Delhi.
2. State of Kerala represented by
Chief Secretary to Government,
Government Secretariat,
Thiruvananthapuram.
3. The Secretary to Government of Kerala,
Ministry of Forest and
Wild Life(F) Department,
Thiruvananthapuram.
4. P Alavikutty
S/o Koya Ummen, Aged 55 years,
M.6, K.S.H.B.Colony,
Malaparamba,
Calicut.
5. The Secretary to Government of India,
Ministry of Personnel, Public Grievances & Pension,
Department of Personnel & Training,
New Delhi. - Respondents

By Advocate Mr George Joseph, ACGSC(for R.1&5)

By Advocate Mr D Sreekumar(G.P) for R.2&3

By Advocate Mr ND Premachandran for R-4

O R D E R

S KASIPANDIAN(A)

The applicant retired from State Forest Service as Forest Publicity Officer on 31.3.1993. He was one of the aspirants to be included in the Indian Forest Service cadre of Kerala State. The learned counsel for the applicant argued that the last Triennial Review of the cadre was conducted on 2.1.1987 and the notification of the

same was published on 15.5.1987 as may be seen from AnnexureA2. The applicant had earlier approached this Hon'ble Tribunal by filing O.A1601/92 in which he obtained a judgement, the operative portion of which is furnished below:

"11. In the light of the aforesaid discussion and ruling, we are fully convinced that the applicant has a vested right to claim the benefits of the triennial review by virtue of inclusion of his name in the Select List of 1992. The fact that the respondents were remiss in discharging the statutory obligation of mandatory triennial cadre review under Rule 4(2) of the IFS(Cadre) Rules cannot be a ground for denying the applicant his legitimate expectations. The second respondent has to send their proposals for triennial cadre review as on the expiry of three years from the last cadre review to respondent No.1 and the proposals of cadre review have to be finalised and notified effective from the date of expiry of three years from the date of notification of the last cadre review. If, as a result of such a cadre review, there is any additional vacancies in the promotion quota, the applicant should be appointed to one of these vacancies in accordance with his position in the Select List of 1992 with effect from the date of notification of the cadre review."

2. In pursuance of this judgement, the Review Committee met on 23.9.1993 to conduct the Triennial Review of cadre strength as on 1.1.1990 and on 1.1.1993 together. The committee found that as on 1.1.1990, no additional cadre post was to be sanctioned. It also found that as on 1.1.1993, six additional cadre posts were to be sanctioned, out of which two would go to the promotees as may be seen from AnnexureA4 and AnnexureA4(A). These notifications were published by the Central Government on 4.11.1993 and by the State Government on 7.12.1993. It was made clear in the notification that the revision would take effect from the date of the publication in the official gazette.

3. The learned counsel for the applicant argued that the review committee was wrong in concluding that there was no need to create additional cadre post as on 1.1.1990. If an additional cadre post had been created as on 1.1.1990, the applicant would have got that post as his name was included in the panel prepared for the year 1992. The learned counsel for the applicant also argued that if there had been no delay in publication of the notifications, the applicant would have eligible for appointment against one of the additional cadre posts as on 1.1.1993, since his name was also included in the panel prepared

for the year 1993. The learned counsel for the applicant therefore alleged malafide against the respondents in not having created additional cadre post as on 1.1.1990 and having delayed in conducting the Triennial Review as on 1.1.1990 and on 1.1.1993 and also delaying the publication of the notification for the same. The learned counsel for the applicant, besides relying on the judgement of this Tribunal dated 22.3.1992 in OAL601/92 also relied upon the precedent set by Annexure A3 judgement of this Tribunal dated 19.3.1992 in O.A138/91, wherein a case of an I.P.S. Officer was considered to have got a vested right to claim that the cadre review is to be conducted on the due dates.

4. The learned counsel for the second respondent argued that the State Government can send proposals for a cadre review in cases of urgency even once in a year without waiting for the Triennial Review. On the proposal of the State Government, the Government of India takes up the review and the result of the review can be acted upon only when a notification is issued to that effect. The last review in 1987 was notified on 15.5.1987. He denied the contention of the applicant that all the posts which were encumbered by the 1993 Triennial Review Committee held on 23.9.1993 were not in existence prior to 1990. He confirmed that out of ~~of~~ additional posts encumbered by ^{the} review committee, only one post at the level of Chief Conservator of Forest existed from 12.2.1987 and all the other posts came into existence only from October 1990 and subsequent dates. Therefore, there is no question of the applicant being considered for a post that arose before 1990 as there was no promotion quota for I.F.S. consequent on the cadre review for 1990. Even with regard to the two posts that were created as a result of the cadre review for 1993, the applicant and respondent⁴ could not lay claim to those posts as they retired from service on 31.3.1993 before these two posts were notified. The inclusion of the applicant's name in 1992 select list was subject to the outcome of the enquiries pending against the applicant. The applicant's name was included in the 1993 panel unconditionally only on 31.3.1993, the date of his superannuation. An officer who retired from service cannot have a retrospective claim over the posts created subsequent to his

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superannuation.

5. The learned counsel for respondents 1&5 referred to the rule position that the select list for 1992 in which the applicant's name was included, subject to clearance of disciplinary proceedings against him, remained valid only upto 30th March 1993, when a committee met in the subsequent year for drawal of a fresh list. The fresh list drawn by the committee on 30.3.1993 was approved by the U.P.S.C. on 26.5.1993 by which time the applicant had already retired. According to the normal administrative procedure, the additional cadre posts come into existence as a result of the cadre review only/a notification for ^{when} same ~~for the~~ is issued.

6. After having heard the learned counsel on both sides, it is clear that they were labouring on the point about the sanctity or otherwise of the date of review and the date of vesting of the right for appointment to a newly created post. Rule 4(2) of the I.F.S. Cadre Rules 1966 reads as hereunder:

"The Central Government shall, at the interval of every three years, re-examine the strength and composition of each such cadre in consultation with the State Government concerned and may make such alterations therein as it deems fit."

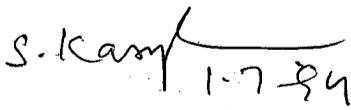
It is nowhere stated in these Rules that this Triennial Cadre Review should necessarily be undertaken as on first January of the concerned ^{that} year, nor is it mentioned that the review should necessarily result in creation of additional posts. It is also not mentioned anywhere that the D.P.C. should consider the claims of the officers for such posts as on first January of every year. As it has been pointed out by the learned counsel for the second respondent, it is open to the State Government to propose a cadre review even once in a year if it is warranted by the exigencies of administrative needs. In that case, if it is left to the claimant officers or even the State Government to determine the date of creation of posts by way of addition to the cadre strength, the date of obtaining of approval by the Government of India to the proposal of the State Government and issuing a notification thereon

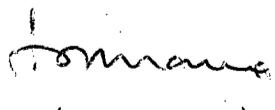
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would have no meaning. The question of judicial interference to deem the notification to take retrospective effect from a prior date will arise, if at all it could ^{be} done, only if malafide is proved against the respondents, either in delaying the cadre review deliberately or in issuing the notification belatedly. It is true in this case the learned counsel for the applicant has alleged malafide against the respondents in not having undertaken the Triennial Cadre Review for the year 1990 in time and also for having delayed the publication of the notification of the Cadre Review conducted on 23.9.1993. It is not as if these delays were ^{caused} deliberately with a view to shut out the applicant from being considered for appointment to the additional post. It is clear from 1990 review that there was no additional post meant for promotees. Even though the name of the applicant had been included in the select list for 1992, it was only subject to the outcome of the disciplinary proceedings pending against him. Moreover, he was seventh in the list of panel and there were seniors to him waiting for appointment. As such no malafide could be attributed to the respondents. Even with regard to the select list for 1993, despite the fact that the applicant was retiring on 31.3.1993, the respondents have prepared the select list on 31.3.1993 itself and have also included the applicant in the select list. As such, here again no malafides could be attributed to the respondents. As seen from the file, it is clear that the review has been done in the normal course in pursuance of the judgement OA-1601/92 of this Tribunal/ and by following all the relevant procedures.

7. In the facts and circumstances of the case, we therefore hold that there is no merit in the application and as such it deserves to be dismissed, as devoid of merit. We accordingly do so. There will be no order as to costs.

Dated, this the 1st July, 1994.


1.7.94
(S KASIPANDIAN)
MEMBER(A)


(JP SHARMA)
MEMBER(J)

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