

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.354/2004

Tuesday, this the 20th day of July, 2004.

CORAM;

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

HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

K.J.Philip,
Assistant Conservator of Forests(Retired),
Residing at: Nedumchira House,
S.H.Mount P.O.
Kottayam-686 006.

- Applicant

By Advocate Mr OV Radhakrishnan

Vs

1. Union of India represented by
its Secretary,
Ministry of Environment & 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 & Wild Life Department,
Secretariat,
Thiruvananthapuram.

-Respondents

By Advocate Mr C.Rajendran, SCGSC(for R.1&2)

By Advocate Mr A.Renjith, G.P.(for R.3&4)

The application having been heard on 20.7.2004, the Tribunal
on the same day delivered the following:

O R D E R

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

The applicant, Shri K.J.Philip who commenced service as a Ranger in the Forest Department of Kerala was selected for appointed as Assistant Conservator of Forest(ACF for short) and was appointed by order dated 19.12.1985. Since even after expiry of the period of probation, his probation was not declared and he was not confirmed on the post of ACF, the applicant filed O.P.No.5854/2001. He also filed C.M.P. No.9754/2001 seeking an interim direction to the respondents to place his name before the selection committee for appointment for promotion to Indian Forest Service(IFS for short) without insisting on confirmation and a declaration that he be deemed to have completed probation and confirmation. The Hon'ble High Court declined to grant any interim order but observed that the petitioner would get the benefit in case the O.P. be allowed. During the pendency of the O.P. by an order dated 20.9.2001 (A-4) the Government declared his satisfactory completion of probation as A.C.F. The applicant was confirmed with effect from 1.5.1988, vide A-5 order dated 31.10.2002. Thereafter, O.P.No.5854/2001 was disposed of by order dated 15.11.2002 directing the selection committee which was to meet pursuant to the order passed by the C.A.T. in O.A.29/2002 to take up for consideration the case of the applicant also in the meeting. The respondents were also directed to place the name of the applicant for consideration before the selection committee. Accordingly the applicant's name was included in the proposal. The applicant's name was considered by the selection committee and

placed at Sl.No.1 against the select list of 2000 (A9) unconditionally as approved by the UPSC as also the Government of India. The applicant's willingness to be appointed to the IFS unconditionally was obtained on 7.11.2003. The grievance of the applicant is that even after all these exercise while others in the Select List (A9) have been appointed, he has not been given appointment to the IFS. Therefore the applicant has filed this application for a direction to the respondents 1 to 3 to issue appointment order to the applicant appointing him to IFS on the basis of his placement in A-9 select list of the year 2000 and to post him to a post in the IFS forthwith at any rate within a time frame stipulated by this Tribunal and order directing the respondents to grant him consequential service benefits by appointing him to IFS with effect from the date of his entitlement.

2. The respondents 3&4 have filed a statement contesting the claim made by the applicant on the ground that the applicant ceased to be a member of the Forest Service with effect from 30.4.2001 on his retirement on superannuation and therefore in accordance with the provisions of Rule 9 of Indian Forest Service(Appointment By Promotion) Regulation, 1966, the applicant is not entitled to be appointed to the IFS. On behalf of respondents 1&2, a counsel statement has been filed raising the same contention.

3. We have gone through the pleadings and material on record and heard the counsel for the parties. Shri O.V.Radhakrishnan, learned counsel for the applicant argued



that the applicant's name was forwarded by the State Government in A-8 proposal for being considered for appointment to IFS after the date of his superannuation from the State Forest Service obviously on the basis of the direction contained in the order of Hon'ble High Court of Kerala in O.P.No.5854/2001, that the Selection Committee considered the name of the applicant and found him eligible to be placed in the select list for 2000-2001, that the select list has been approved by the UPSC as also the Union Government, that his willingness for appointment to IFS unconditionally has been obtained by the Government and therefore, there is absolutely no justification in denying the appointment to the applicant to IFS. Since the High Court of Kerala has directed as late as on 15.11.2002 that the applicant's name should be considered by the Selection Committee despite the fact that the applicant had retired on superannuation on 30.4.2001 it is not open to the respondents now to contend that the applicant cannot be appointed on a plea that he ceased to be a member of the State Forest Service.

4. Shri Renjith, learned GP appearing for the State of Kerala and Shri C.Rajendran, Learned SCGSC argued that in view of the provision contained in Regulation 9 of the IFS (Appointment by Promotion) Regulations, 1966, appointment to the IFS can be made only from members of the State Forest Service, the applicant having ceased to be a member of the State Forest Service on 30.4.2001, he is not entitled to be appointed.



5. The argument of the learned counsel for the respondents that normally appointment to the IFS by promotion can be made only from among the members of the State Forest Service is unexceptionable. But in this case, because the meeting of the Committee was unduly delayed and the Hon'ble High Court of Kerala had in its order in OP 5854/2001 dated 15.11.2002 much after the retirement of the applicant from the State Forest Service directed the respondents to consider the name of the applicant for appointment to IFS and the applicant's name has been placed at Serial Number .1 in the list for the year 2000. The respondents cannot seriously contend that the appointment of the applicant cannot be made as he ceased to be a member of the State Forest Service. The question whether a person who has retired from service from the State Service can be appointed to IFS was considered by the Hon'ble High Court of Kerala in Writ Petition No.(C) 10707 and 11425 of 2004. Adverting to the identical contention raised as is raised in this case, the Hon'ble High Court in paragraph 13 and 14 of the judgement observed as follows:

"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

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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



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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 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:

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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."

The situation in this case is similar. Further, the applicant's name was forwarded by the State Government for consideration by the committee after his superannuation. Name of the applicant was placed in the select list and it was approved by the UPSC as also Government of India. The willingness of the applicant for unconditional appointment to IFS also stand obtained. All these took place after the superannuation of the applicant. In the circumstances, we are of the considered view that the respondents are not justified in denying the applicant appointment to the IFS. There is no contention that there is any other reason which has made the applicant unsuitable or ineligible for appointment to IFS.

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6. In the result, the O.A. is allowed. The respondents are directed to issue order appointing the applicant to the Indian Forest Service on the basis of his placement at Sl.No.1 in the select list A-9 of the year 2000 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. There is no order as to costs.

Dated, the 20th day of July, 2004.

16.6.2004
H.P.DAS
ADMINISTRATIVE MEMBER

A.V.HARIDASAN
A.V.HARIDASAN
VICE CHAIRMAN

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