

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 364/92
~~XXX~~

XXX

DATE OF DECISION 25.8.1992

T.M.Manoharan _____ Applicant (s)

Mr.O.V.Radhakrishnan _____ Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
Secretary, Department of Environment,
Paryavaran Bhavan, New Delhi-3 & another.

Mr.K.Prabhakaran (R. 1) _____ Advocate for the Respondent (s)
Mr.D.Sreekumar, (R. 2)

CORAM :

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. N.Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant is a directly recruited IFS Officer having his year of allotment as 1976. He is aggrieved by Annexures-XXIV & XXV orders passed by the Government pursuant to his earlier case, OAK 480/88 decided by this Tribunal as per Annexure-21 judgment dated 28.09.1989.

2. While the applicant was working as Deputy Conservator of Forests, Ranni, vide Annexure-I order dated 16.5.1984 he was appointed as Field Director, Project Tiger, Kottayam, a post created by the Government as per G.O.(MS) 14/78/GAD dated 10.1.1978 in the scale of Rs.1800-2000. It is equivalent in status and responsibilities to that of Conservator of Forests under Rule 9 of IFS Pay Rules 1968

as shown in Annexure-II. Necessary notification was also issued investing the applicant with authority under Rule 61 'C' of the Kerala Forest Act, 1961. According to the applicant, he was having the rank of Conservator of Forests in respect of the area under his control. Hence, he claimed promotion as Conservator of Forest with effect from 1.6.1984, the date on which he took charge as Field Director pursuant to Annexure-I. But the Government has promoted the applicant as Conservator of Forest regularly as per Annexure-XIII order dated 16.11.87. He has objected to the same and submitted representations. Ultimately he filed OAK 480/88. As per Annexure-XXI judgment the application was allowed with the following declaration contained in para 12:-

"12. So we declare that the petitioner is entitled to get the pay in the scale applicable to the Secretary, Central Forestry Commission in the Ministry of Agriculture and Irrigation for the xxxxxx xxxxxx xxx period from 1.6.84 to 8.1.86 and in the pay scale applicable to the Conservator of Forests from 9.1.86."

We further directed the respondents to pay the arrears to the applicant in terms of the above declaration. The operative portion of the judgment reads as follows:-

"15. In the conspectus of facts and circumstances, we allow the application to the extent of directing that the second respondent shall pay the arrears in terms of the declaration already made in para 12 above within a period of three months from the date of receipt of the judgment. The respondents are also directed to consider the applicant for regular promotion to the grade of Conservator without insisting on the qualifying period prescribed for promotion to the Selection Grade."

Regarding the contention that the applicant is eligible for promotion to the post of Conservator of Forests from 1.6.84 the operative portion of the judgment is as follows:-

"..... Accordingly the petitioner must be paid the pay of Conservator of Forests from the date he was appointed to posts equivalent to Conservator of Forests. He can be regularised only from the date subsequent to the date of promotion to that grade of his immediate senior (who was promoted in the normal course) in accordance with his seniority and merit."

Pursuant to the judgment the Government passed Annexure-XXII order. The relevant portion is extracted below:-

"2. Sri T.M.Manoharan, IFS, Deputy Conservator of Forests was posted as Field Director, Project Tiger, Kottayam as per the G.O. second read, and it was also ordered there on that the post will be on the grade of Deputy Conservator of Forests as long it was held by Sri. Manoharan.

3. As per the G.O. read third Sri. T.M.Manoharan was transferred and posted as Deputy Conservator of Forests, in charge of Conservator of Forests (Vested Forests) and Custodian, Kozhikode. As per the G.O. read with S/Shri Rajendra P. Sharma, IFS (1975) and T.M.Manoharan (1976) were promoted the grade of Conservator of Forests and allowed to continue in the posts held by them.

4. The Central Administrative Tribunal, Ernakulam Bench, in the order read fifth, has declared that Sri. T.M.Manoharan is entitled to get the pay in the scale applicable to the Secretary, Central Forestry Commission in the Ministry of Agricultural and Irrigation for the months during the period from 1.6.1984 to 8.1.1986 and in the pay scale applicable to the Conservator of Forests from 9.1.1986. In implementation of the direction of the Central Administrative Tribunal, Sri. T.M. Manoharan, IFS (1976) is sanctioned the pay arrears from 1.6.1984 to 15.11.1987 as above."

On the basis of the Government Order, Accountant General of Kerala issued pay slip, Annexure-XXIII to the applicant dated 19.3.1990 and he encashed the amount. Thereafter, on 5.3.90, the first impugned order, Annexure-XXIV was passed by the 2nd respondent. Though this order was patently irregular as well as against the direction in Annexure-XXI judgment, the applicant did not challenge it since financial relief was already granted to the applicant as per Annexure-XXII Government order. But on 8.1.1992 the second respondent issued the further order, Annexure-XXV holding that the pay of the applicant in the super time scale of IFS consequent on his promotion will be fixed with regard to the pay he would have drawn in the Senior scale of IFS in the grade of Deputy Conservator of Forests. Virtually, the 2nd respondent by order Annexure-XXV

cancelled the effect of financial benefit given to the applicant in terms of the direction of this Tribunal in Annexure-XXI judgment. Hence, he has filed this application under Section 19 of the Administrative Tribunals Act, 1985 for quashing orders at Annexures-XXIV and XXV. and for a declaration that he is eligible for promotion to the grade of Conservator of Forests from 1984 and grant him increment in the super time scale of IFS from 1.6.1984 under IFS (Pay) Second Amendment Rules, 1987 in the following manner:-

<u>"</u>	<u>Period</u>	<u>Basic Pay</u>
1.6.84	- 31.5.85	Rs.1800
1.6.85	- 31.12.85	Rs.1900
1.1.86	- 31.5.86	Rs.4500
1.6.86	- 31.5.87	Rs.4650
1.6.87	- 31.5.88	Rs.4800
1.6.88	- 31.5.89	Rs.4950
1.6.89	- 31.5.90	Rs.5100
1.6.90	- 31.5.91	Rs.5250
1.6.91	- 31.5.92	Rs.5400 "

3. The 2nd respondent filed a detailed reply statement and submitted that the applicant is not eligible for regular promotion in the grade of Conservator of Forests from 1.6.1984 under the then existing rules. He was given promotion as Conservator of Forests in his turn as per Government order, Annexure-XIII, with effect from 16.11.1987 along with his senior, Shri R.P.Sharma who is also an IFS Officer having year of allotment as 1975. The applicant's posting against the post of Field Officer, Project Tiger, Kottayam was as Deputy Conservator of Forests in the exigency of service on administrative considerations.

Shri R.P.Sharma and applicants were promoted as Conservator of Forests when they became eligible for promotion after following the prescribed procedure and screening by the Committee consisting of Chief Secretary to the Government, Agricultural Production Commissioner and Secretary (Forest) and Chief Conservator of Forests. This decision was approved by the Council of Ministers and it has become final. But pursuant to Annexure-XXI judgment the State Government issued Annexure-XXII order of payment of salary to the applicant in the grade of Conservator of Forests from 1.6.1984 to 15.11.1987 in obedience of the direction in the judgment. But later it was found that fixation of pay as if he was promoted as Conservator of Forests from 1.6.84 was not the intention of the Government because his senior who was promoted along with him was getting the benefit of promotion only from 16.11.1987. The applicant continued as Deputy Conservator of Forests till he was promoted as Conservator of Forests on 16.11.87. Hence he is entitled for increment in the grade of Deputy Conservator of Forests till 15.11.1987. However, the respondents submitted that the application is to be rejected. The applicant has also filed a rejoinder denying the statements contained in the reply statement filed by the 2nd respondent.

4. Having heard the arguments on both sides we are of the view that two questions arise for consideration viz. (i) whether the applicant is eligible for promotion as Conservator of Forests from the date of Annexure-I, and (ii) whether the applicant is entitled for the financial benefits granted to him on the basis of Annexure-XXII order of the Government passed in pursuance of Annexure-XXI judgment.

5. We will deal with the first question pertaining to the claim of promotion. Though the applicant was holding the post of Field Director pursuant to Annexure-I order from 1.6.84, a post equivalent to Conservator of Forests, he has been duly promoted as Conservator of Forests after complying with all statutory formalities as per Annexure-XIII order dated 16.11.1987. Assailing that order inter-alia with other reliefs he filed OAK 480/88. The applicant's claim for earlier promotion based on his duties as Field Director in addition to the normal duties of Deputy Conservator of Forests, we held that the petitioner must be paid the pay of Conservator from the date when he was appointed to the post of Field Director which is equivalent to Conservator of Forests. But he can be regularised in the post of Conservator of Forests "from the date subsequent to the date of promotion to the that grade of his immediate senior (who was promoted in the normal course) in accordance with his seniority and merit." There is an unequivocal declaration by this Tribunal that the applicant is entitled to regular promotion to the post of Conservator of Forests in his turn below his immediate senior, Shri R.P.Sharma. The applicant is bound by this declaration in Annexure-XXI judgment and he cannot re-agitate this question over and again, by filing this application in the light of a fresh order passed by the Government in this regard. Hence, his challenge against Annexure-XXIV is misconceived and is only to be rejected. We do so.

6. The only other relief that survives for consideration is the applicant's grievance against Annexure-XXV order of the Government dated 8.1.92 and the claim of fixation of salary with all attendant benefits as claimed by him in Ground (C) of the application.

7. This issue was also specifically considered by this Tribunal in the earlier case, OAK 480/88 filed by the applicant. In para 12 of the judgment we have declared that the applicant is entitled to get the pay in the scale applicable to the Secretary, Central Forestry Commission in the Ministry of Agricultural and Irrigation from 1.6.1984 to 8.1.86 and the pay scale applicable to Conservator of Forests from 9.1.1986. There is no specific direction for granting any other service benefits other than the financial claim arising on account of the discharge of the official duties of the applicant on the basis of Annexure-I order by which he was given the additional duty of Field Director in addition to the normal duties of Deputy Conservator of Forests. This direction was issued taking into consideration the special facts and circumstances arising in the case. The Government appointed the applicant as Field Director, Tiger Project, Kottayam in the exigency of service on administrative grounds. The post was also declared equivalent to that of Conservator of Forests because of the urgent necessity. Simply because the applicant has discharged the additional duties on account of the exigency of service, he cannot claim anything other than the financial benefits. That is why we have made the declaration in a specified manner and issued consequential direction in para 15 of the judgment. We only directed the 2nd respondent to pay the arrears in terms of the declaration made in para 12 within the specified time. Thus, from the judgment it is clear that the applicant can claim only the financial benefit as specified in the judgment. The Government considered the same and granted him this financial benefit as per Annexure-XXII. This cannot be taken away by the Government so long as the direction in the judgment Annexure-XXI stands.

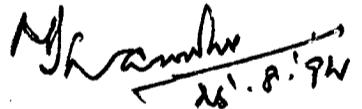
8. The financial benefit flowing from Annexure-XXI judgment is simply confined with regard to the direction. The Government is well within their power to restrict the benefit to the applicant with respect to the financial aspect alone. There is no direction in the judgment to fix the salary of the applicant from 1.6.84 treating him as if he has been promoted to the post of Conservator of Forests. As we have observed above, the applicant's right of promotion as Conservator of Forests was affirmed by the Government as per order Annexure-XIII dated 16.11.1987. This order, even now, remains unchallenged and final without any modification or alteration. The applicant cannot be granted any service benefit by pre-poning the date of promotion as Conservator of Forests as stated by the 2nd respondent. His right for increment upto 15.11.87 is confined to the grade of Deputy Conservator of Forests as stated by the 2nd respondent in the reply statement.

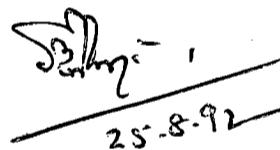
9. From the statement in the application that the applicant did not challenge Annexure-XXIV which was dated 5.3.90 till 8.1.92, Annexure-XXV order was passed it is clear that the applicant also understood the direction in the judgment as one limited to the financial benefits and not for retrospective promotion. In para 16 the applicant has stated "though Annexure-XXIV order was patently irregular as well as against the directions and spirit of Annexure XXI order, the applicant did not agitate over it since financial relief was granted to the applicant as per Annexure-XXII Government order and Annexure-XXIII pay slip." This statement shows that the applicant would

not have filed the second application but for the subsequent order Annexure-XXV passed by the 2nd respondent. As submitted by the applicant, the order at Annexure-XXV indirectly takes away what has been granted to the applicant as per order Annexure-XXII and pay slip of the Government in implementation of the direction in Annexure-XXI judgment. This order cannot be sustained.

10. In the light of the foregoing discussions, we are of the view that the 2nd respondent should not have passed Annexure-XXV order having the effect of cancelling the earlier order Annexure-XXII passed by the Government in terms of the directions contained in the judgment of this Tribunal dated 28.9.1989. In this view of the matter Annexure-XXV is illegal and cannot be sustained. We quash the same.

11. Accordingly, the application is partly allowed. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN