

**Central Administrative Tribunal, Lucknow Bench, Lucknow**

**Original Application No. 28/2005**

This the 22nd day of February, 2010

**Hon'ble Mr. Justice A.K. Yog, Member-J**  
**Hon'ble Dr. A.K. Mishra, Member(A)**

Atul Kumar Agarwal, Aged about 40 years, S/o Sri L.D. Agarwal, R/o 569/135 C LDA Kanpur Road, Lucknow working as Deputy Conservator of Forest, O/o PCCF, U.P., Lucknow.

.....Applicant

By Advocate: Sri A. Moin

**Versus**

1. Union of India through Secretary, Ministry of Environment and Forest, New Delhi.
2. The State of U.P. through the Principal Secretary (Forest), U.P. Civil Secretariat, Lucknow.

.....Respondents

By Advocate: S/Sri S.P. Singh and Sudeep Seth

**ORDER**

**By Dr. A.K. Mishra, Member-A**

The applicant has challenged the order dated 19.1.2001 passed on behalf of the State of U.P. (respondent no.2) in which the penalty of withholding of three increments with cumulative effect had been imposed on him. He has also challenged the appellate order dated 29.10.2004 passed on behalf of Union of India (respondent no.1) in which his appeal was rejected. His prayer is for quashing of both these orders and for a direction to the respondent no.2 not to take into consideration the penalty imposed on him in the matter of his promotion to the post of Conservator of Forest.

2. The applicant is a member of Indian Forest Service (IFS). He was holding the charge of Behraich Forest Division from 1.5.1997 to 30.5.1998. Before that, he was posted as Divisional Forest Officer (DFO), East Behraich Division from 6.8.1995 to 30.4.1997. A chargesheet was issued to him under Rule 8 of All India Service (Discipline & Appeal) Rules 1969 on 5.12.1998 containing the

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allegations that during the period of his charge as DFO, Behraich, large scale of illegal felling of trees took place in Abdullahganj range of Nanpara Sub-division. A combing operation, which was conducted during June and July, 1998, revealed that 525 trees of different girths valued at Rs. 2052950/- had been felled. It was further alleged that as the DFO, he could not successfully control such illegal felling of trees, nor did he give any intimation in this regard to the higher authorities. Further, he did not exercise effective administrative control over his subordinate officers. His inability in this regard resulted in heavy loss of revenue to the Government. Therefore, on the basis of these allegations, he was charged with violation of Rule 3 of All Indian Conduct Rules to the extent of his failure to discharge his responsibilities with sincerity, devotion and integrity.

3. On denial of the charges, a formal inquiry was conducted by the Inquiry Officer (IO) who after taking into consideration the explanation submitted by the applicant and the evidence on record came to the conclusion that during the tenure of the applicant, large scale illegal fellings had taken place at Abdullahganj, Nimhara and Khairniya beats of Abdullahganj range and that the applicant had failed to take effective steps to prevent those illegal operations as well as in exercising appropriate administrative control over his subordinate staff in that regard. However, the IO mentioned that the applicant could not be held responsible for the entire loss of Rs. 20,52,950/- which was caused to the state revenue in view of the fact that some of the fellings could have taken place subsequent to his handing over charge.

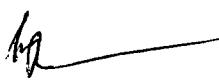
4. The applicant filed Appeal on following grounds:

(i) there was no conclusive proof that the fellings had taken place during his tenure ; on the other hand, such fellings were reported by his successor only on 10.6.1998; (ii) he was not associated with the team taking up the combing operation and as such the report of the team could not be utilized against him; (iii) no action had been taken against his juniors, and he had been singled out for the penalty; (iv) illegal felling was going on for many years in Behraich Division and he should not have been penalized for a

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perennial problem afflicting Behraich Division. We find that the appellate authority had duly considered all these grounds and rejected them in its speaking order. It says that ocular estimation is the only available method for assessing the period of felling and for counting the stumps/boots as well as ascertaining its condition. There was no denial of opportunity in not associating the charged officer in the combing operation. He was provided with all the documents required by him as well as the opportunity to cross examine the DFO, Behraich and any other person he wanted. The findings of the I.O. were on the basis of documentary evidence. The I.O. had, infact, taken into account the possibility that some felling could have taken place after he handed over charge. His successor was exonerated from the charges he was facing on the basis of merits of that case, which could not be cited as a precedent. Further, his citing of statistics was of no help to him as the inquiry established fellings during his tenure.

5. At the time of hearing, the learned counsel for the applicant highlighted the following grounds: that ocular estimation about illicit felling was not a fool proof method and the conclusion of the combing team that most of the fellings had taken place during the tenure of the applicant was made on unreliable basis. He drew our attention to the tour diary of his successor for the month of June, 1998. It does not speak of any illegal operation till 10.6.1998, which according to him goes to show that there was no illegal felling prior to 10.6.1998. He also placed reliance on the technical opinion given by the Forest Research Institute that it was not possible to know the actual date of felling of trees on the basis of the status of the stumps/boots; therefore, he assailed the inquiry report on the ground of having been reached through unreliable basis and submitted that the subsequent findings of the disciplinary authority as well as the appellate authority that the majority of the fellings had taken place during the tenure of the applicant could not be sustained. The fact remains that combing operation was ordered by the Conservator of Forest, Saryu Circle, Faizabad on 1.6.1998 the day after the applicant handed over charge. His allegations in the application that combing operation was conducted by his successor in order to grind his own axe are un-substantiated. The combing operation was taken up as per the order of Conservator of Forest of



the Circle. It shows that the reports of illegal operation in Abdullahganj range were already available with higher authorities from other sources. The operations were conducted during 16.6.1998 to 10.7.1998. It is contended by the respondents that there is no other method available with the officers to learn about the date of illegal fellings except through ocular estimation. In this case, estimation was made by a team, who on the basis of their inspection of the condition of stumps/boots of felled trees arrived at the period of felling through consensus. It is not that the operation was taken up after inordinate delay. On the other hand, it was quite proximate to the date of handing over charge of the applicant.

6. The learned counsel for the applicant argued that when both the applicant and his successor were charged with the same offence, his successor could not be let off while the applicant was subjected to the impugned penalty. Such action on the part of the respondents, according to him, smacks of invidious discrimination, which cannot be sustained in law. In this connection, he relied on the judgment of the Apex Court reported at 2001 (10) SCC 530 in which the action in singling out one amongst three, who were guilty of the same offence, for a severe penalty was adversely commented upon.

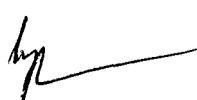
7. We went through the inquiry report in respect of disciplinary proceedings started against Sri Pankaj Mishra, the successor of the applicant. It is a very detailed one in which steps taken by Sri Mishra in mounting the combing operation and preventing illegal fellings in sensitive areas of Behraich have been narrated. It also mentions that Sri Mishra was conscious of his duties and his responsibilities. He was inspecting sensitive areas from time to time. The I.O. in that case came to the conclusion that Sri Mishra was a conscientious and dutiful worker, who had tried to bring about discipline in an otherwise mafia ridden difficult forest tract. The disciplinary authority concurred with the findings and dropped the disciplinary proceedings against Sri Mishra. There are no similarities between the case of the applicant and his successor; therefore, it is difficult to sustain the argument to extend the same benefits to him.

8. It was contended on behalf of the applicant that the disciplinary authority had not discussed the various issues raised by the applicant



in his representation filed before the respondent no.2. He placed reliance on the observations of the Supreme Court in the Case of Institute of Charted Accountant of India Vs. L.K. Ratna & Others (Civil Appeal no. 1911-12 of 1980) to the effect that there was a need to ensure proper observance of fundamental procedure in the original proceedings and to avoid treating an appeal as the substitute for the original proceedings. The learned counsel for the respondents replies that similar representations raising the same issues were made by the applicant before the IO, who had taken them into account while coming to his findings. There is no denial of natural justice as the IO had considered all the defence pleas of the applicant before giving his findings which were endorsed by the disciplinary authority. It is not as if the defence pleas were totally ignored. It was not necessary for the disciplinary authority to repeat all those arguments. In any case, the appellate authority again discussed all those grounds in a reasoned order.

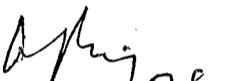
9. We find that the appellate authority has discussed all the important grounds raised by the applicant in the appeal. The disciplinary authority has concurred with the findings of the IO and has come to the conclusion that the applicant was guilty of not discharging his responsibilities to prevent illegal fellings and also to exercise effective administrative control over his subordinate officers with due sincerity. He has mentioned that after going through the representations dated 7.6.1999 of the applicant he could not find any reason to differ from the conclusion of the IO. The respondent authority had come to a tentative conclusion to withhold three increments of the applicant permanently and referred the matter to the Union Public Service Commission (UPSC) on 25.8.1999 for their advice. The UPSC after going through the case record agreed with the findings that the charges have been proved against the applicant except that the allegation relating to lack of integrity had not been established. They recommended that the penalty should be limited to withholding of three increments for three years with cumulative effect. Accepting the advice of the UPSC, the State Government imposed the impugned penalty. The appellate authority before finalizing its decision had consulted the UPSC again and took into account its advice communicated in the letter dated 19.10.2004. We do not see

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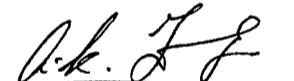
any infirmity either in the order of disciplinary authority or in the order of the appellate authority.

10. The learned counsel for the respondent no.2 submits that the scope of judicial review of decisions taken by the respondent-authorities in disciplinary proceedings is very limited. He cites the judgment of Supreme Court reported at 2010 (1) SCC 158 to the effect that the procedural aspect of the disciplinary proceedings could be examined in exercise of powers of judicial review, not the substantive part of the decision, unless it is established that the decision is based on no evidence, or is patently perverse. Keeping in view the limited scope of judicial review, he argues that in this case there is no allegation of denial of reasonable opportunity leading to violation of principles of natural justice, nor is it a case where the impugned orders have been passed on no evidence, or suffer from any <sup>patent</sup> <sub>h</sub> perversity. Therefore, he argues that there is no case for judicial interference in the matter.

11. In view of the foregoing discussions, we are of the view that there is no infirmity in the impugned orders which calls for any judicial interference. In the circumstances, the O.A. fails and is accordingly dismissed. No costs.

  
(Dr. A.K. Mishra)

Member-A

  
(Justice A.K. Yogi)  
Member-J

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