

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

**Original Application No. 413/2008**

This the 9<sup>th</sup> day of June, 2009

**Hon'ble Mr. M. Kanthaiah, Member (J)**

**Hon'ble Mr. A.K. Mishra, Member (A)**

M. Rama Prasad Rao son of late Sri M.N.M.Rao, aged about 46 years r/o D.F.O.compound, Post Amroha, District- Amroha (U.P.).

Applicant.

By Advocate: Sri Rajeev Singh

Versus

1. Union of India through the Secretary, Ministry of Environment and Forests, New Delhi
2. State of U.P., through the Chief Secretary, Civil Secretariat, Lucknow.
3. Principal Secretary, Department of Forests, Govt. of U.P., Civil Secretariat, U.P., Lucknow.
4. Union Public Service Commission, through Secretary, Shahjahan Road, New Delhi
5. Principal Chief Conservator of Forests, Department of Forests, U.P., Lucknow.

Respondents.

By Advocate: Sri S.P. Singh for Respondent No.1  
Sri Sudeep Seth for Respondents No. 2,3 and 5  
Sri Pankaj Awasthi for Sri A.K. Chaturvedi for respondent No.4.

**ORDER**

**By Hon'ble Mr. A.K. Mishra, Member (A)**

The applicant is seeking a direction for promoting him to the selection grade from the date, similarly circumstanced junior officers have been promoted in terms of IFS (Pay) Rules, 1968 and the circular No. 20019 of the Ministry of Environment and Forests dated 20.12.2000 and other relevant circulars issued by the Department of Personnel and Training, Govt. of India in the matter of promotion to the Selection grade. He has also prayed for being given consequential benefits including promotion on the posts of Conservator/Chief Conservator of Forests.

2. In the paragraph dealing with 'Relief sought' he has prayed for issue of a direction to the respondents to conduct review DPC for selection grade and for promotion on the post of Conservator/ Chief Conservator of Forests based on records available on 9.6.2008, when the departmental

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promotion committee considered his case without following the instructions of the Ministry as communicated in their letter dated 20.12.2000 and of the letters dated 9.10.1989, 6.10.2000 and 19.4.2000 of the Department of Personnel and Training, Govt. of India, as well as Rule 8 of All India Service (CR) Rules, 1970.

3. The brief facts of the case are as follows:-

The applicant was appointed to the Indian Forest Service in the year 1986 and was allotted the State cadre of Uttar Pradesh. He joined the service on 6.7.1987 and is entitled to promotion to the selection grade after completion of 13 years and further to the post of Conservator of Forests on completion of 14 years. He is due for promotion to the selection grade since 1999 but his promotion has been allegedly withheld arbitrarily all these years.

He filed a Writ Petition No. 14627/2006 with a prayer that the adverse entries for the years 1993-94, 1994-95, 1996-97, 1997-98 and 1999-2000 should not be taken into consideration and his prayer was allowed by the Hon'ble High Court in its order dated 9.3.2006. Even in spite of such direction, the promotion was denied to him; as a result, he filed Writ Petition No. 21365/2006 before the Hon'ble High Court which directed the respondents that the petitioner should be considered fairly and impartially by respondents within a period of 30 days after communication of the order of the High Court. At the same time, liberty was granted to the petitioner to approach the High Court again, if the order passed by the respondents was not in accordance with the directions of the High Court. This direction was issued on 21.4.2006. On service of this direction of the Hon'ble High Court, the respondents issued a fresh charge sheet on 3.5.2006, one day prior to the sitting of the DPC. This was again challenged before the High Court which deprecated the action of the State Govt. and stayed the departmental proceedings initiated in pursuance of the charge sheet issued on 3.5.2006. This direction was issued on 14.5.2006 in Writ Petition No. 26903/06.



4. The respondents held a meeting of the DPC on 9.6.2008 and on the recommendations of the DPC, the case of the applicant was kept in sealed cover as departmental proceedings were pending against him.

5. Although the applicant has not specifically impugned this recommendation dated 9.6.2008 of the DPC, but he has challenged the fact that he was not given promotion even spite of many directions given by the Hon'ble High Court to consider his case fairly and impartially.

6. The respondents have taken grounds that the recommendation of the DPC to keep his case in sealed cover was rightly given as departmental proceedings were pending against him on the date of consideration of his case. Further, no direction can be given without quashing the proceedings of the DPC dated 9.6.2008 for which no specific prayer has been made in the Original Application. The second legal ground taken by the respondents is that the applicant has alternative remedy as provided under Rule 16 of All India Services (Disciplinary and Appeal) Rules, 1969. Since the applicant is seeking promotion from the date his juniors have been promoted to the senior scale and also on the post of Conservator/Chief Conservator of Forests, he should have filed a regular appeal under Rule 16 of the aforesaid Rules. The next ground taken, objecting to maintainability of this application, is that the Hon'ble High Court had given him specific liberty to approach the High Court again if the order passed by the respondents is not in accordance with directions of the Court passed from time to time (vide order dated 21.4.2006 in W.P. 21365 of 2006). Since the applicant had gone to the High Court with identical prayer for promotion to the selection grade and other consequential benefits, which he is seeking in present application and the writ petitions No. 21365/06 and 26903/06 are pending on the file of the High Court and in view of the fact that his prayer is under consideration of the higher judicial forum, it would be improper for the Tribunal to consider the same issue and pass an order which might be in conflict with the eventual decision of the High Court on the subject.



7. The learned counsel for the applicant submitted that the sealed cover procedure in his case was not applicable as the respondents directed for appointment of the Inquiry Officer and initiation of inquiry proceedings which were stayed by this Tribunal in its order dated 7.2.2007 in O.A.No. 38/2004 in Nov. 2008 later in point of time. According to him, there was no inquiry pending at the time the DPC met on 9.6.2008.

8. Sri Rejeev Singh, learned counsel for the applicant took us through the statement enlisting the number of disciplinary cases started against the applicant appended at Annexure No.C-1 and stated that the punishment of censure mentioned at item No.1 was issued long back on 27.6.2000 and had no relevance in 2008. The disciplinary proceeding started on 15.12.2003 was set aside by the Tribunal in O.A. no. 38/2004 with liberty given to the respondents to revive it from the stage of inquiry. Such revival had not taken place till 20.8.2008, a date after the DPC was held. The third disciplinary proceeding initiated on 16.12.2002 was also closed by the respondents on 29.6.2006 pursuant to a direction from the Tribunal. The disciplinary proceeding started on 3.5.2006 was stayed by the Hon'ble High Court, as discussed earlier. The disciplinary proceeding initiated on 23.10.2003 was closed in 2003 itself with a warning; as such it had no relevance in 2008. The suspension order dated 3.7.2008 had also been stayed by this Tribunal in its order in O.A.no. 95/2008.

9. From an enumeration of pending disciplinary proceedings, it was specifically contended by the learned counsel for the applicant that as on 9.6.2008 when the DPC met, no disciplinary proceeding or suspension was pending against him. However, the learned counsel for the respondents highlighted that the penalty in the disciplinary proceedings which was set aside in O.A. No.38/2004 does not indicate that the proceedings had come to an end. On the other hand, liberty was given to the respondents to start it from the stage of inquiry. Pendency of disciplinary proceedings had to be reckoned from the date the charge sheet was issued. In the absence of quashing of the charge sheet, it has to be held that this disciplinary



proceeding initiated on 15.12.2003 was pending against the applicant and the respondent authorities took action for appointment of inquiry officer for starting the inquiry afresh as per the direction of the Tribunal. Similarly, though the disciplinary proceeding initiated on 3.5.2006 has been stayed by the Hon'ble High Court, it has to be held that the disciplinary proceeding, which was not quashed was still pending against him.

10. In the circumstances, it was contended that two disciplinary proceedings, one initiated on 15.12.2008 and the other on 3.5.2006 were pending against the applicant on 09.06.2008. Therefore, there was no infirmity in keeping the case of promotion of the applicant to selection grade and other higher posts in sealed cover. Such a decision is in consonance with the instructions issued by the government from time to time. If there is a delay in finalization of the disciplinary proceedings, the same can only be expedited through three monthly review.

11. In one case, no action can be taken until the stay order passed by the Hon'ble High Court is vacated. However, in respect of the charge sheet issued on 3.5.2006, the Hon'ble High Court has specifically deprecated the issue of such a charge sheet one day prior to the holding of the meeting of the DPC. Therefore, this disciplinary proceeding should not be taken into consideration as pending one in view of the observations of the Hon'ble High Court.

12. Similarly, the suspension order and order dated 9.11.2005 and the consequential disciplinary proceedings were stayed by this Tribunal in its order dated 14.3.2008 in O.A. No. 95/2008. Since on consideration of the prima facie case made out by the applicant and the fact that balance of convenience was in his favour, the stay order was issued, we would hold that this disciplinary proceeding and the suspension order cannot be held against the applicant to deny him the promotion or to put his case in sealed cover.


13. This leaves us with the disciplinary proceeding initiated on 15.12.2003. The learned counsel for the applicant has cited the decision of the Hon'ble High Court in **UOI and others Vs. Sangram Keshari Nayak reported at**



(2007) 6 Supreme Court Cases 704, in which it was held that sealed cover procedure would apply only if the charge sheet had been issued, not otherwise. In the present case charge sheet issued on 15.12.2003 has not been quashed. Therefore, it has to be held that the matter is pending finalization. Hence this judgment will not help the applicant in any way.

14. In the circumstances, we find that there was no infirmity in keeping the case of the applicant in sealed cover. As far as his prayer for promotion to the selection grade and other higher posts is concerned, it is seen that similar prayer has been made by him in the writ petitions filed before the Hon'ble High Court and he has been given the liberty to approach the court in the matter if their directions to the respondents have not been carried out in true letter and spirit. Since the issues are under adjudication of a superior judicial forum, it would be inappropriate for us to pass any judgment on the same very claims. As he has been given liberty by the Hon'ble High Court to approach them, we leave it to him to take up the issue in right earnest before the Hon'ble High Court.

15. In the result, O.A. is disposed of with the above observations. No costs.

  
Dr. A.K. Mishra  
Member (A)

09/06/09

  
(M. Kanthaiah)  
Member (J)

09-06-2009

HLS/-