

**Central Administrative Tribunal
Lucknow Bench**

OA No.111/2009

Lucknow this the 18th day of March, 2009.

Hon'ble Mr. Shanker Raju, Member (J)

Hon'ble Dr. (Mrs.) Veena Chhotray, Member (A)

Abhinandan Kumar Jain aged about 50 years S/o late Sri P.C. Jain, R/o 1/126 Virma Khand, Gomti Nagar, Lucknow.

-Applicant

(By Advocate Shri A. Moin)

-Versus-

1. Union of India through Secretary, Ministry of Environment & Forests, CGO Complex, Lodhi Road, New Delhi.
2. State of UP through Principal Secretary, Department of Forest, UP Govt., Bapur Bhawan, Civil Secretariat, Lucknow.
3. The Principal Chief Conservator Forest, 27, Rana Pratap Marg, Lucknow.

-Respondents

(By Advocates Shri S. Seth and Shri K.K. Shukla for Dr. Neelam Shukla, Advocate)


O R D E R (ORAL)

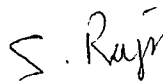
Mr. Shanker Raju, Member (J):

It is trite that consideration for promotion on fair and equitable basis is a Fundamental Right guaranteed under the Constitution of India to a government servant. The laid down methodology, which has equal application in Indian Forest Service Rules, do not stipulate otherwise in an event when an officer is considered either for selection grade or for promotion and is facing disciplinary proceedings to pass over his case and keep the consideration in abeyance till the final outcome of the proceedings is known to the department. For this methodology of putting the

promotion of a person and the result thereof under sealed cover is evolved by the DoP&T, which is followed uniformly. Unfortunately, in the present case no consideration worth in law was made for considering the claim of applicant, as he was facing disciplinary proceedings.

2. In the above view of the matter, we are of the considered view that principle of relation back would apply in the instant case. Having failed to adopt the sealed cover, right of applicant on exoneration in the disciplinary proceedings would relate back to the date when his juniors have been considered for the selection grade. Accordingly, the respondents are directed to hold a review DPC to consider the claim of applicant for selection grade and in case of his fitness as per rules he shall be placed with all benefits at par with his juniors. It is also transpired that his juniors had already been promoted as Conservator of Forests but the applicant was not considered because of pendency of the disciplinary proceedings. This claim of applicant shall also be considered in the wake of his exoneration in the disciplinary proceedings by a review DPC. This exercise shall be completed by the respondents within a period of three months from the date of receipt of a copy of this order and such promotion would be accorded to the applicant on his fitness as per rules from the date juniors have been given with all consequential benefits. These directions are limited only to the claim of the applicant. No costs.


(Dr. Veena Chhotray)
Member (A)


(Shanker Raju)
Member (J)

‘San.’