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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : BOMBAY BENCH  
AT NEW BOMBAY.

O.A. No. 602/1987

Date of the order: 27-6-1990.

Between

P.G. Parahatay

... APPLICANT

Versus

1. The Union of India,  
Min. of Environment & Forests,  
New Delhi.
2. The State of Maharashtra
3. Principal Chief Conservator  
of Forests, Nagpur.
4. Chief Secretary,  
Govt. of Maharashtra.

... RESPONDENTS

Appearance:

For the applicant	:	Party in person
For the Respondent-1	:	Shri Vinay S. Masurkar, Addl. Standing Counsel for the Central Govt.
For the Respondents 2-4	:	Shri S.M. Dixit, Counsel for the State Government.

CORAM:

The Hon'ble Mr. D. Surya Rao, Member (Judicial)

and

The Hon'ble Mr. P.S. Chaudhuri, Member (Administration)

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(JUDGMENT OF THE BENCH DELIVERED BY THE HON'BLE SHRI D.SURYA RAO, MEMBER (JUDICIAL)).

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The applicant was a member of the Maharashtra Forest Service, Class-I cadre from 3-3-1976. He filed the O.A. on 9-9-1987 claiming that he be declared as a fit officer for promotion to the Indian Forest Service and that the respondents may be directed to promote him to the said cadre. He also sought consequential reliefs. The applicant, after filing of the O.A., had retired from service. His first grievance is that in the year 1979 when a select-list of State Forest Service Officers was prepared for promotion to the Indian Forest Service, his name was not included, that he was superseded and that his junior Shri G.H.Mahalaha was included. Again in the select-list prepared in the year 1981, some of the seniors who had been overlooked in 1979 were included and promoted but the applicant's name was not included. He contended that a grave injustice was caused to him. He further contended that the third select-list was published in the year 1984 wherein, seven juniors to the applicant were promoted superseding the applicant. He specifically mentioned the name of Shri M.L.Deshpande who, according to him, was denied promotion continuously from 1976 to 1981 since his confidential reports were not good. The applicant alleged that inspite of adverse confidential reports, Shri Deshpande was included in the select-list of 1984. He further contended that at the end of the year 1986, another select-list had been finalised and submitted to the Government of India.

The applicant stated that his name was not included and he was superseded causing grave injustice to him. The applicant alleged that despite his service being good he was not promoted. He further alleged that no adverse remarks for the years 1979-80 to 1981-82 were communicated to him. He later came to know that there were adverse remarks mentioned in one consolidated letter. This was in the year 1984. The applicant immediately submitted a representation on 22-2-1985. The 2nd Respondent, after considering his representation, cancelled the adverse remarks for the year 1981-82, by his letter dated 3-2-1986. The remarks for the year 1980-81, however, were not expunged. The applicant made a further representation on 13-2-1986 asking why the remarks for the yearlier year were not expunged. He stated that he had not been given any reason therefor. Subsequently no adverse remarks were ever communicated to him. Apart from these grounds, he contended that he being a member of the Scheduled Tribes, he ought to have been given preference during the selection.

2. On behalf of the Government of India, the Respondent No.1, a counter has been filed. It is stated therein that the applicant should have preferred an appeal to the Central Government and that failure to do so was an impediment to the filing of the present application. In so far as non-selection of the applicant on various dates are concerned, the following particulars were furnished. In 1977 the applicant was considered for selection. His serial number was 35 in the list of eligible candidates, that only 15 officers upto serial number 30 were graded 'Very Good', that none beyond 31 to 50 were found 'outstanding' and as such the applicant was not eligible for promotion. In 1978, the applicant was assessed as 'Good'. He was superseded by an officer junior to

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him in the State Forest Service who was assessed as 'Very Good'. No officer junior to the applicant and given assessment 'Good' was included in the select-list. In 1980, <sup>a</sup> <sub>l</sub> select-list of eight officers was prepared and all of them were assessed either as 'Good' or 'Very Good'. All of them were seniors to the applicant who was not assessed as 'Very Good' or 'Outstanding'. In 1982 again, the applicant was assessed but was found unfit. Thirteen officers were included in the select-list of whom six were juniors to the applicant. In December 1983, the applicant was again considered but graded as 'unfit'. Six of his juniors were included in the select-list. In the meeting held on 6-12-1985, the applicant was considered and graded as 'unfit'. On 16-12-1986 the applicant was considered but not included in the select-list as he had crossed 54 years of age on the first day of January of that year and, therefore, could not be considered by the selection committee. In so far as the select-list prepared in the year 1985 is concerned, it was stated that he was duly considered but not included in the select-list and that he cannot sit in judgment in respect of committee's proceedings and assail the same on the ground that another officer Shri Deshpande was selected. In so far as the adverse remarks are concerned, it was contended that it is for the 2nd Respondent to reply <sup>as</sup> <sub>to</sub> for the same. In regard to giving preference to S.T. candidate and giving the applicant a higher grading on this ground, it was contended that there is no reservation for S/Ts for appointment by promotion and that there are no instructions in the matter by the Government of India.

3. A separate counter has been filed on behalf of the Respondents 2 and 4 viz. the State Government. An objection was taken that in regard to promotion to the I.F.S. from the State Forest Service, the Central Administrative Tribunal had no jurisdiction to entertain the O.A. It was further stated that the applicant ought to have preferred a representation or appeal to the State Government under the Maharashtra Civil Services (Discipline and Appeal) Rules. Since he had not filed this representation, the application was liable to be dismissed since Section 20 of the Administrative Tribunals Act is a bar. As in the counter of the Government of India, reference was given to the selection committee meetings held in 1979, 1981, 1983, ~~However~~ Contrary to and 1986. What was stated by the Government of India, it was stated that the applicant was considered by the Selection Committee on 16-12-1986 but not found fit. In regard to his non-selection in the year 1985 or in regard to the consideration of his adverse confidential reports for the years 1980-81 and 1981-82, the counter of the Respondents 2 and 4 is silent.

4. The applicant submitted a rejoinder to the written statements.

5. We have heard the applicant who argued his case in person and Shri Vinay S. Masurkar, Additional Standing Counsel for the Central Government, on behalf of the Respondent No.1 and Shri S.M. Dixit, Counsel for the State Government, on behalf of the Respondents 2 to 4.

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6. We will first deal with the preliminary objections raised by both the Central Government and the State Government. The objection of the Central Government is that if the applicant was not selected in any particular year he should have preferred an appeal to the Central Government. We find no substance in this contention. The Indian Forest Service (Appointment by Promotion) Regulations, 1966 do not provide for any appeal by an officer of the State Forest Service in the event of his not being selected. The contentions of the State Government are two fold. The first contention is that this Tribunal has no jurisdiction to entertain a claim for promotion to the Indian Forest Service from a member of the State Forest Service. The second objection is that the applicant ought to have preferred a representation or appeal to the State Government under the Maharashtra Civil Services (Discipline and Appeal) Rules. It is sought to be contended that Section 20 of the Administrative Tribunals Act, 1985 is a bar to the filing of the present application. Both these contentions, in our view, are wholly untenable and without substance. Section 14 of the Central Administrative Tribunals Act, 1985 confers jurisdiction on this Tribunal all the jurisdiction, powers and authority exercisable immediately before 1-11-1985 by all courts (except the Supreme Court) in relation to matters concerning recruitment to any All-India Services. In the instant case, the

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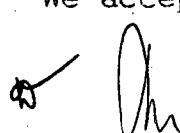
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appointment or selection which the applicant seeks to assail relates to recruitment by promotion from the State Forest Service to the Indian Forest Service under the Indian Forest Service (Appointment by Promotion) Regulations, 1966. It is obvious that the Tribunal, in view of the Section 14, has jurisdiction to entertain the Application. So far as the plea that the Applicant should have preferred an appeal to the State Government and that Section 20 is a bar to the filing of the application is concerned, we are of the view that this contention is wholly untenable. Section 20 of the Central Administrative Tribunals Act lays down that applications are not to be admitted unless an applicant has availed all the remedies available to him under the service rules as to redressal of his grievance. As already stated, in regard to the appointment to the Indian Forest Service, the service rules governing the said recruitment namely the Indian Forest Service (Appointment by Promotion) Regulations, 1966 do not provide for an appeal. Similarly, the Maharashtra Civil Services (Discipline and Appeal) Rules do not provide for an appeal to the State Government against a selection made by the Union Public Service Commission. Further in the instant case, the appointment is not by State Government to a post under State Government and as such the question of appeal against the applicant's non-selection by the Government of India on the recommendations of the U.P.S.C. <sup>to the</sup> ~~through~~ State Government does not arise. All these preliminary objections are wholly untenable and rejected.

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7. The applicant has assailed, in his application, the selection committee proceedings between the years 1979 to 1986. In so far as the selection committee proceedings for the years from 1979 to 1984 are concerned, the applicant had knowledge of the same prior to 1985 in that several of his juniors had been promoted to the Indian Forest Service. If he was aggrieved he ought to have filed the application within one year of the selection/appointment of his juniors viz. he should have filed his application at the latest by December 1986. Section 21 of the Administrative Tribunals Act provides that an employee aggrieved by an order should file the application within one year thereof. As the applicant has not questioned the orders appointing his juniors ~~as by~~ <sup>as</sup> ~~end of 1985~~ within one year, i.e. ~~in~~ <sup>by</sup> the year 1986, it is not open to assail the selections made prior to December 1985. In so far as the selection committee meeting held on 6-12-1985, the applicant could not have known the result of this meeting as it takes some time for the proceedings of the meeting to be considered by the State Government, recommendations to be made, consideration by U.P.S.C. and appointment by the Government of India. The applicant could have known about the selection committee proceedings and his non-inclusion only sometime in the year 1986. He has filed the application in the year 1987. Therefore, his application must be deemed to be within one year in so far as the selection committee proceedings held in December 1985 are concerned. In so far as the 1986 selection committee meeting is concerned, the State Government states that he was considered whereas the Government of India states that he was not considered since he had crossed the age of 54 years by then. We accept the version of the



Respondent No.1 as the selections were made by the Government of India, and not by the State Government. We would proceed on the basis that the applicant was not considered in the year 1986.

8. In so far as the selection committee proceedings held on 6-12-1985 are concerned, the short question is whether the adverse confidential report of the applicant for the year 1981-82 was considered by the selection committee. Shri Dixit, learned counsel for the State Government produced the selection committee proceedings. The proceedings disclose that the adverse confidential reports of the applicant for the years 1981-82 and 1983-84 were put up before the selection committee. The applicant objects to the committee having looked into these reports. The proceedings of the committee disclose that the committee did not take into consideration the adverse confidential reports of officers which were not communicated. The question is whether the adverse Confidential Reports for the year 1981-82 were communicated. The representation of the applicant dated 22-2-1985 (Annexure P.No.17) discloses that he was objecting to a consolidated letter, D.O.No.R/85/1982/F8 dated 24-9-1982 in regard to the adverse confidential reports for the years 1979-80, 1980-81 and 1981-82. This clearly shows that the adverse confidential reports <sup>in 1982</sup> had been communicated and it follows that the committee had taken into consideration the adverse confidential reports for the year ~~viz.~~ 1981-82 when it met in December 1985. Subsequently to the meeting of the committee, the letter dated 3-2-1986 (Annexure P.No.24) was received from the Under Secretary, Forest Department,

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Government of Maharashtra informing the applicant that the adverse confidential reports for the years 1979-80 and 1980-81 are not expunged but in so far as the adverse confidential report for the year 1981-82 is concerned the reply states that the duty period is only three months and therefore the adverse remarks are expunged. Thus, it is clear that the committee had before it an adverse remark which was the subject matter of representation when the committee had met in December 1985, that the committee took into consideration ~~these~~ adverse remarks and that the committee did not select the applicant. It is also clear that the adverse remarks were subsequently expunged. It is possible that the adverse remarks of 1981-82 could have influenced the committee in regard to the grading to be given to the applicant and his non-selection could be attributed to this factor. It is well established that taking into consideration adverse confidential reports which have been expunged vitiates the selection committee proceedings. The applicant has also contended that the adverse remarks for the year 1983-84 are really ~~no~~ adverse remarks and as such they could not be used against him. This is not a matter to be determined by this Tribunal. The applicant has made a representation in regard to these remarks and his representation was duly disposed of and the said remarks continued to be on record. The applicant has not taken any further steps to have the said remarks expunged by a competent court of jurisdiction. It is, therefore, not open to him now to contend that they should not be treated as adverse remarks.

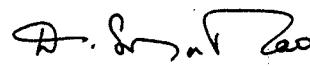
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9. The applicant has contended that being a member of the Scheduled Tribe, he should have been selected and appointed to the I.F.S. Admittedly there is no reservation for appointment to the All-India Services. This contention of applicant is, therefore, untenable and cannot be sustained.

10. To sum up, we hold that it is not open to the applicant to assail the select committee proceedings held prior to December 1985. In so far as the selection committee proceedings held on 6-12-1985 are concerned, since the selection committee has acted upon an adverse confidential report for the year 1981-82 which was later expunged, it would be proper that the selection committee should be re-convened to review its proceedings eschewing the said adverse remarks. The Committee is directed to be re-constituted by the Respondents within a period of six months from the date of receipt of this order. If the applicant is found fit by the Committee and included in the select-list and if he is sufficiently high up in the list to be eligible for promotion, he should be given promotion retrospectively from the date his immediate junior was promoted to the Indian Forest Service as a result of the selection committee proceedings held on 6-12-1985 as reviewed now. In the event of the applicant being included in the select-list but not coming within the zone of consideration for promotion, he would yet be eligible for consideration in the year 1986 despite his having crossed the age of 54 years.

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Such a right vests in him in the event of his inclusion in the list for the earlier year i.e. 1985 by virtue of the proviso to Rule 5(3) of the Indian Forest Service (Appointment by Promotion) Regulations, 1966. The Application is disposed of with the above directions. In the circumstances of the case, we direct the parties to bear their own costs.

  
(D. SURYA RAO)  
MEMBER(J)

  
(P.S. CHAUDHURI)  
MEMBER(A)

Dated: 27 th day of June, 1990.

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