

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Original Application No. 78 of 1986

Shri Uttamrao Balkrishna Patil,
201, Gulmohar Flats,
Tilak Nagar,
Naopur-10

... Applicant

V/s.

1. Union of India,
through
Secretary to Govt. of India,
Ministry of Forest & Wildlife,
Shastri Bhavan,
New Delhi.
2. State of Maharashtra,
through Secretary to the
Govt. of Maharashtra,
Revenue and Forest Department,
Mantralaya,
Bombay-400 032
3. Shri D.V. Narurkar,
Director,
Social Forestry,
New PMT Building,
3rd floor,
"Swargate,"
Pune - 411 042.
4. Shri S.B. Kulkarni,
Chief Conservator of
Forests (Conservation),
Central Building,
Pune - 411 001.
5. Shri V.K. Prabhu,
Chief Conservator of Forests,
(Production),
Central Building,
Pune - 411 001.

... Respondents.

Coram: Hon'ble Vice-Chairman, B.C. Gadgil.

Hon'ble Member (A), J.G. Rajadhyaksha.

Appearance:

- 1) Mr. R.S. Padhye,
Advocate for the applicant.
- 2) Mr. J.D. Desai (for Mr. M.I. Sethna)
for respondent No. 1.
- 3) Mr. Dixit, Counsel
for respondent No. 2.

ORAL JUDGMENT:-

Date: 24.4.1987

(Per B.C. Gadgil, Vice Chairman)

The applicant is a member of the Indian Forest Service

and since before 1985 he has been working as Additional Chief Conservator of Forests in-charge of the Nature Conservation, Maharashtra State at Nagpur. Promotion from the post of Additional Chief Conservator of Forests is to the post of Chief Conservator of Forests. In March, 1985 there were 4 posts of Chief Conservator of Forests which were required to be filled in. The Establishment Board of the State Government considered the case of the deserving candidates including the applicant on 14.3.1985. The said Board, however, kept its recommendations about applicant in a sealed cover. Consequently no decision either to promote or not to promote the applicant on the basis of that report was taken. The Respondents Nos. 3, 4 and 5 are junior to the applicant and they have been promoted to the posts of Chief Conservators of Forests.

2. It appears that the Establishment Board followed the " sealed cover procedure " as on 14.3.1985 a departmental enquiry was contemplated against the applicant. Though the applicant states that the allegations that have been made against him in connection with the contemplated departmental enquiry are false, it is not necessary to state them inasmuch as this application can be decided on a short point.

3. The applicant was considered for the post of Chief Conservator of Forests yet no action on the basis of the report of the Establishment Board has been taken as the said report has been kept in a sealed cover. In fact, the reply of the respondents on page 6 specifically states that the recommendations of the Establishment Board have been kept in a sealed cover as the departmental proceedings were proposed to be initiated against the applicant.

4. The question is as to whether this action of the respondents is legal and proper ? The matter is now concluded in view of the decision dated the 2nd March, 1987 of the Three Member Bench of the Central Administrative Tribunal, ~~Hyderabad Bench of Madras~~. A number of cases were placed before the that Bench and the main question was as to whether the sealed cover procedure is legal and proper, and if so how it should be followed. The Bench held that the sealed cover procedure is legal. However, it also came to the conclusion that the said procedure should be followed in accordance with the directions given in the judgment. That Bench concluded that the sealed cover procedure can be resorted to only after a charge memo was served on the concerned official or a charge sheet was filed in a Criminal Court, and not before. In the earlier part of the judgment the Bench has also observed that it is well established that the date of initiation of proceedings is when the charge memo is issued or a charge sheet is filed before the Court.

5. We have already observed that the Establishment Board held its meeting on 14.3.1985. It is not in dispute that the charge memo for the departmental enquiry was prepared on 13.5.1985. This necessarily means that at the time when the Establishment Board considered the promotions in question, there was no departmental proceedings pending against the applicant. In view of this position it will be very difficult for the respondents to contend that they had acted in a correct manner when they kept the recommendations of the Establishment Board in a sealed cover without

giving any effect to it. Consequently this action of the respondents will have to be set aside, in view of this position, Mr. Padhye did argue other points. The result is that the application succeeds and we pass the following order:

O R D E R

The recommendations of the Establishment Board arrived at in the meeting dtd. 14.3.1985 and which have been kept in the sealed cover should not be allowed to be kept in such sealed cover. The respondents are directed to give effect to the recommendations that have been kept in the sealed cover. It is needless to say that in case the Establishment Board has recommended the promotion of the applicant, he would get promotion from the date the Respondent No. 3 is promoted, with all the consequential reliefs. As far as the departmental enquiry that is pending against the applicant is concerned, we direct that the respondents are at liberty to proceed with the enquiry and to take appropriate decision on the basis of the said enquiry. Of course, the applicant will be at liberty to challenge the said decision, if it goes against him. No order as to costs.

B.C. Gadgil
(B.C. GADGIL)
VICE-CHAIRMAN.

J.G. Rajadhyaksha
(J.G. RAJADHYAKSHA)
MEMBER (A).