

(21)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 808/89.
T.A. No.

198

DATE OF DECISION 2-6-1992.Arvind Balkrishna Bhangare PetitionerShri G.K.Masand, Advocate. Advocate for the Petitioner(s)

Versus

Union of India and ors. RespondentS/Shri V.S.Masurkar and G.K. Neelkanth. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Vice Chairman, Shri U.C.Srivastava

The Hon'ble Mr. M.Y.Priolkar, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *M*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *M*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *M*

(22)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PREScot ROAD; BOMBAY-1

O.A. 808/89

ARVIND BALKRISHNA BHANGARE
Deputy Conservator of Forests
Dahanu
At & Post Talq. Dahanu
Dist. Thane- 401601

..Applicant

V/s.

1. Union of India
through Department of Environment,
Forests & Wild Life;
Ministry of Environment;
Forests & Wild Life;
'Paryavaran Bhavan'
CGO Complex; Lodhi Road;
New Delhi 110003.
2. Department of Personnel &
Training; Ministry of
Personnel; Govt. of India
Public Grievances & Pension;
New Delhi 110001
3. State of Maharashtra
through Secretary Revenue & Forests;
Mantralaya; Bombay 400032 & 8086. ..Respondents

Coram: Hon. Shri Justice U C Srivastava, V.C.
Hon. Shri M Y Priolkar, Member (A)

APPEARANCE:

Mr. G K Masand
Advocate for the
Applicant

Mr. V S Masurkar
Counsel for
Respondent no.1&2

Mr. G K Neelkanth
Counsel for
Respondent no.3

JUDGMENT:

DATED: 2-6-1992

(PER: U.C. Srivastava, Vice Chairman)

The applicant who is a member of Indian Forest Service has approached this Tribunal praying for setting aside the Select List of 1989 in pursuant to which the orders dated 3.11.1989 and 30.8.1990 have been issued promoting Respondents nos. 4 to 11 to the post of Conservator of Forests for which prayer for quashing has also been made. In the alternative it has been prayed that the respondents 1, 2 and 3 i.e., the Union of India, The Department of Personnel and Training and the State of Maharashtra be directed to include the name of the applicant in the select list of 1985 and 1989, above respondent no. 6 and to consider him for promotion to the post of Conservator of Forests, from the date his immediate junior viz, Respondent no. 6 was promoted. In the alternative to the first prayer it has also been prayed that the respondents nos. 1, 2 and 3 be ordered to include the name of the applicant in the select list of 1985 and grant him all the consequential reliefs retrospectively on his promotion to the post of Conservator of forests with effect from May 1985 or from the date on which one Shri K. Subramaniam was promoted as Conservator of Forests. He has also prayed for expungement of adverse remarks in his confidential reports for the year 1988-89.

2. The applicant who is a member of Scheduled Tribe community after passing M.Sc. examination appeared in the competitive examination in which he topped and stood first in the merit list of State Forest Service examination conducted by Maharashtra Public Service Commission. There after as required under the rules he was required to undergo two years Forestry Training course from 1.3.1972 to 28.2.1974 at the Forest Research Institute and College,

Dehradun, where he was placed at 7th in the merit list out of 28 candidates.

While undergoing the said training course the applicant applied through proper channel for permission to appear in the Indian Forest Service (IFS) examination 1973 conducted by the Union Public Service Commission which was allowed. The applicant succeeded in the IFS examination and thereafter as directed by the Government of Maharashtra he resigned from the State Forest Service and joined the Indian Forest Service on 1.3.1974, immediately after completion of two years training course. The training course for the State Forest Service and the Indian Forest Service being common he was not required to undergo the course again, he was sent to the National Academy of Administration (LBSNAA) Mussoorie for foundation course, which he successfully completed and his merit was 7 amongst the 13 candidates. Applicant was allotted Maharashtra cadre from 1.7.1974 and 1974 was also given as year of allotment. After completing the probationary period of one year June 1974 to July 1975 the applicant also passed a departmental examination and was granted two advance increments. Along with the applicant one K Subramaniam, IFS who belongs to 1975 also completed the one year's probationary period. Under rule 3(iii & iv) of IFS probation rules 1956 every officer is to complete two years of Forestry course and thereafter complete one year of probation period and pass the departmental examination. The applicant was confirmed in the IFS cadre along with the said K. Subramaniam. While confirming the applicant, he was given the benefit of two years training which he took as a member of State Forest Service.

3. Under IFS (Pay) Rules, Rules 8, 9 and 11 provide 20% of total number of senior posts in State cadre in Selection grade. The qualifying service for appointment to the selection grade is 13 years under 3(3) of IFS (Pay) Rules. The period of two years training has to be included while calculating the period of qualifying years of service.

4. According to the applicant thus taking into account the two years of training into consideration, applicant became eligible in the year 1985 for being considered to the selection grade, but the State of Maharashtra did not consider him for that grade in the year 1985 and upto the year 1989.

The Ministry of Environment and Forests issued notification No. 20019-1-83/IFS.II dated 22nd July 1984 and 20019-2/84-IFS.II dated 14th July 1985 by which the qualifying service for appointment to Super-time scale was relaxed from 13 years to 11 years.

The applicant states that even if the 2 year period is excluded, the applicant has completed 11 years of service of IFS in year 1985 and completed the orientation course in 1985-86 and he became eligible for consideration to the post of Super time scale in 1985 yet he was not considered in that year. The policy of relaxation and the qualifying number of years of service for consideration of promotion to the grade of Super Time scale were followed in the IFS cadres in other states from 1985-85, but in the case of Bombay state the same was not considered although the batchmate of the applicant Mr. B K Singh who rendered service in

Defence department ~~prior to 1974~~ was considered for fixing of seniority and also for calculating the qualifying service for promotion to the post of CFS in October 1984. The respondents 6 to 8 who were given allotment year 1975 and they were appointed and ~~they were~~ appointed in October 1974 who were his juniors were considered for promotion and on 3.11.1989 without completing the qualifying service of 13 years in IFS. In the case of applicant the same was not done. In the year 1985 the said K. Subramaniam was also promoted and there were several vacancies and the DPC did not meet from 1986 till 1988 for selecting suitable candidates although there was one ~~vacancy~~ in the year 1986; 5 in 1987 and 7 in 1989 apart from 5 in the year 1985. The yearwise selection did not take place and the bunching of officer; was done with the result the respondents ~~6 and 7~~ were not within the zone of consideration were considered. In case the yearwise selection was conducted the persons who had completed 13 years of service would have been considered and promoted. The applicant's case is that the selection was not held separately for each year.

5. The applicant has contended that his record has really been good and he has earned various commendations and has successfully countered initiated

and completed various schemes and has also done other services which were appreciated. Before the DPC it appears that the relevant record in letters of appreciation, medals and awards etc., earned by him and the meritorious service were not placed. According to the applicant no adverse entry whatever was communicated to him and for the first time adverse remarks were communicated to him for the year 1988-89, more than one year after the holding of the Selection Committee meeting and the remarks were communicated to him after filing of the contempt petition. According to the applicant the adverse remarks are such contradictory in as much as at one stage the remarks and at another stage it reflects his degradation. The applicant was selected in the Indian Police Service in the year 1980 preferred to remain in I.P.S. only with the hope that he will be appointed as Conservator of Forests in 1985 and did not join the I.P.S. as per his contention, has been dealt with very badly by the Department in as much as he has not been given due promotions and instead without any basis adverse remarks have been given to him and that too at a very crucial point yet communicated still later so that the applicant may be deprived of making a representation and getting it expunged at the appropriate stage itself

v/s

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6. On behalf of Respondent No.2 written statement has been filed. It has been pointed out that the relevant portion of memorandum No.22011/5/86 ESTD. dated 13.5.1989 is not applicable to the applicant as the applicant has claimed the benefit of the said notification pleading that he being a member of the Scheduled Tribe he was entitled to be promoted in view of the notification issued by the Government. It was admitted that barring one junior to the applicant four of his juniors have been promoted to the higher posts. The applicant [redacted] along with the other candidates was considered for the higher post but was not found suitable for the same. As a matter of fact he could not reach the level of suitability for promotion to the higher post on the basis of his adverse remarks.

The State of Maharashtra in its written statement stated that there is no reservation for backward classes in I.F.S. and the applicant was not appointed as Conservator of Forest because he was not found suitable or fit for promotion. The number of vacancies of Conservators of Forest was 5 in 1985 and 7 in 1987. The Department of Personnel, Govt. of India in its written statement apart from technical objections have refuted the allegations of favouritism and partiality. No extraneous consideration weighed with the Departmental Promotion Committee and from the Confidential record of the applicant which was

taken into account it was found that he was not reached the level of suitability for promotion to the higher post. There is no denial either by the State of Maharashtra and the Government of India that adverse remarks were not communicated to the applicant and that the same were conveyed more than one year after holding of the selection Committee meeting and that adverse remarks were before the Selection Committee.

In the case of Gurdial Singh Fiji vs. State of Punjab and others A.I.R. 1979 S.C. page 1622 which was a case of an Indian Administrative Service Officer it was observed an adverse report in a confidential roll cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report, such an opportunity is not empty formality, its object basically being to enable the superior authorities to decide on a consideration of the explanation offered by the person concerned whether the adverse report is justified. In the case of Brij Mohan Singh Chopra vs. State of Punjab. A.I.R. 1987 S.C. 948 which was a case of compulsory retirement, it was held that adverse entries should be communicated to the affected Government servant and his representation against such entries should be disposed of before taking into account the entries with a view to form any opinion against him. In the case of State of M.P. vs. Bani Singh A.I.R. 1990 S.C. 1308 it was observed that the adverse remarks against which

representation were pending were not final so as to enable the screening committee to take the same into consideration. In the case of Vijay Kumar, I.A.S vs. State of Maharashtra and others (AIR 1988 S C 2060)

it was a case of an I.A.S. Officer in the cadre of Maharashtra Government, the State Government Maharashtra gave senior time scale to his juniors while denying the same to him and it was observed that denial of senior time scale to the appellant, in any event was wholly unjustified, as Confidential report relied on for the purpose not sent to delinquent officer by registered post and there was no evidence to indicate that it was received by officer. In the case of Amar Kant Chaudhary versus State of Bihar and others (1984 SCC(L&S) 173 which was a case of police officer, whose promotion to ex cadre was not considered due to adverse remarks which were not communicated to him, it was observed that the result which was vitiated in Amar Kant Chaudhary's case, the court suggested that the decision of the Selection Committee recorded at its meetings in which the case of the appellant was considered are vitiated by reason of reliance being placed on the adverse remarks which were later on expunged.

Thus, non selection of the applicant because of the adverse remarks which was not communicated to him is vitiated. We have already observed that the applicant who had completed 11 years of service and 13 years of training period was entitled for consideration for

his case was not considered earlier. It is because of existence of uncommunicated adverse remarks which were communicated to him later on against which his representation is pending, his name was not included in the select list and he was not included in the select list and he was not promoted and his juniors were promoted. The legal position, thus, being not clear, the name ought to have been considered. Uncommunicated adverse remarks should not have been taken into account for superseding or passing over his name. The supersession of the applicant, in these circumstances, was unwarranted. Accordingly this application deserves to be allowed on this ground and it will not be necessary to enter into other grounds raised by the applicant. The respondents are directed to convene a review D.P.C. and consider the name of the applicant again without taking into consideration the adverse remarks of the year 1989 or of earlier years, if any, and in case, like others, who have been selected, he also comes within that category, his name may be placed in the select list and he may be promoted with effect from the date his juniors were promoted. It is expected that his representation against the adverse remarks will be disposed of. In case his representation is allowed, there will be not much change in the position and in case it is rejected, the law will take its own course even if the promotion, in the mean time is granted to him. With these observations the application is disposed of. No order as to costs.



A.M.



V.C.

Dated: 26 1992.