

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 827/89

199

T.A. NO: ---

DATE OF DECISION 3-1-1992

V.K.Walke

Petitioner

Mr.S.R.Atre

Advocate for the Petitioners

Versus,
Union of India and three others.

Respondent

1. Mr.V.S.Masurkar for R.Nos. 1 & 2

2. Mr.G.K.Nilkanth for R.Nos. 3 & 4

Advocate for the Respondent(s)

CORAM:

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

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

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

mbm*


(U.C.SRIVASTAVA)

MD

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 827 | 89

(10)

V.K.Walke,
C/o.S.R.Atre,
Advocate,
Block No.15, 1st Flr.,
Pehalajrai Building,
Lohar Lane, Chendani,
Thane. .. Applicant

vs.

1. Union of India
through
The Secretary,
Ministry of Environment
and Forest,
Department of Forest and
Wild Life,
Govt. of India,
New Delhi.
2. The Secretary,
Department of Personnel,
Administrative Reforms,
Govt. of India,
New Delhi.
3. The Chief Secretary,
Govt. of Maharashtra,
Mantralaya,
Bombay - 400 032.
4. The Secretary(Forest)
Revenue & Forest Dept.,
Government of Maharashtra,
Mantralaya,
Bombay - 400 032. .. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman.

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

Appearances:

1. Mr.S.R.Atre
Advocate for the
Applicant.
2. Mr.V.S.Masurkar
for Respondents No.1 & 2
3. Mr.G.K.Nilkanth
for respondents No.3 & 4

ORAL JUDGMENT:
(Per U.C.Srivastava, Vice-Chairman)

Date: 3-1-1992

In view of the objections raised by the counsel for the State of Maharashtra, counsel for the applicant stated that he is confined to only prayer mentioned at 8(b) of the application and will not advance arguments in respect of prayer contained in para 8(a).

2. The applicant who is a member of the Maharashtra State Forest service feeling aggrieved for non inclusion of his name in the select list and for promotion in the Forest service to which according to him he was entitled long ago ultimately has approached this Tribunal ~~the~~ with a prayer that the respondents be directed ^{ed} to include his name into the Indian Forest Service by exercising powers conferred on the respondents by sub-rule 1 of rule 8 of the Indian Forest Service(Recruitment)Rules of 1966 ~~read with~~ r.w. Sub-Regulation 1 of Regulation 9 of the Indian Forest Service(Appointment by promotion)Regulation,1966 and an order be passed directing the respondents to include the ~~xxx~~ name of the applicant in the notification dated 28th December,1988 appointing him to the IFS under the said provisions.

3. Before hearing the case as preliminary counsel for objection has been raised by State of Maharashtra that relief no.1 which has been claimed by the applicant is directed against State of Maharashtra and this Tribunal is not competent to grant the relief. Counsel for the applicant stated that he is confined only to relief No.(2) i.e. ~~direction~~ to pass an order directing the respondents to include the name of the applicant in the notification dated 28th December,1988 appointing the applicant to the IFS under the said provisions.

4. The applicant who completed his probationary period was expecting his confirmation in the Maharashtra State Forest Service in the year 1970 but he was not confirmed in that year and was confirmed ~~in~~ only ~~in the year~~ on 12-3-84 though in between certain other officers who were juniors to the applicant were confirmed. The applicant was promoted as Assistant Conservator of Forest in the

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year 1966 and he completed 8 years of service in March, 1974 and according to the applicant since then he became eligible to be considered for the purpose of being inducted in the Indian Forest Service but he was not inducted in the same. A memorandum was issued to him on 9-3-1984 proposing to hold an inquiry against him under Maharashtra Civil Service (D&A) Rule 1979. In the meantime vide order dtd. 12th August, 1987 the applicant was confirmed in the post of Asstt. Conservator of Forest with effect from 1st March, 1984 when he was holding the post of Deputy Forest Officer. The charges against the applicant were dropped only on 9-1-1987. But even thereafter his name was not included in the IFS although he made several representations ~~as~~ against it.

5. The respondents have opposed the claim of the applicant. Although counsel for the State of Maharashtra today prayed for some more time for filing written statement but as the concerned contesting parties has filed its reply and there is no justification for allowing time to file reply which it has not filed so far, we rejected the prayer and allowed the counsel to argue the case without it. It has been stated in the reply that after the confirmation in the State Forest Service the applicant was considered for inclusion in select lists for appointment to the IFS twice in the meetings of the Selection Committee held on 31st December, 1987 at New Delhi and 31st December, 1988 at Bombay. When the meeting was held on 31-12-1987 the enquiry proceedings against the applicant had already been dropped. In the minutes of the meeting it has been stated

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that the applicant was graded 'good' and was included at Sr.No.3 in the select list. However, assuming that departmental enquiries were contemplated against the officer, the inclusion of his name in the select list was treated as purely provisional, subject to clearance from the contemplated enquiries against him. That is why he was not promoted to the Indian Forest Service even though an officer included in a lower position in the same select list was promoted. Nevertheless a vacancy in the promotion quota was kept reserved for the applicant for utilisation in the event of his clearance from the pending enquiries but this vacancy could not be utilised on account of non-completion of enquiries till the period of validity of select list expired.

6. In the meeting held on 31st December, 1988 the applicant was not selected as compared to others who were graded 'very good' and the applicant was graded only 'good' his name could not be included. However, his name was placed below those who were categorised as outstanding and his name in the select list was included provisionally subject to ~~his~~ his clearance from the enquiries pending against him. He was placed below 6 officers who were junior to him. The result of meeting held on 29th/30th December, 1989 is awaited.

7. On behalf of the applicant it was contended that there were no proceedings pending against him when the meeting took place on 31-12-1987 and no proceedings were in contemplation either and he was wrongly deprived ~~of~~ from his right for inclusion of his name in the select list. The contention appears to be correct. As the proceedings against the applicant were already dropped obviously the

name of the applicant could not be excluded. Even otherwise in the one vacancy for the year 1988 he was to be considered against that vacancy but he was not promoted in that vacancy. Incidentally vacancies were bundled together in subsequent selection and applicant was graded along with candidates of 1989. The applicant's name ought to have been included in the list prepared by DPC which met in 1987 and non inclusion of his name was not legal. His name should have been included in the list which was prepared by the DPC which met on 31-12-88 in respect of the one vacancy which was kept unfilled.

8. Accordingly this application is allowed to that extent and the respondents are directed to include the name of the applicant in the selection of 1988 for which DPC met on 31-12-1987 and his position may also be shown above those selected for 1989 in the selection committee meeting held on 31-12-1988. The applicant may also be granted consequential benefits if any. Let it be done within three months from the date of communication of this order.

M.Y.PRIOLKAR

(M.Y.PRIOLKAR)
Member(A)

U.C.SRIVASTAVA

(U.C.SRIVASTAVA)
Vice-Chairman

MD