

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

O.A. 465/89.

Shri R.L.Choudhury	<u>Applicant.</u>
-versus-	
The Secretary, Ministry of Environment, Forests, New Delhi and others ...	<u>Respondents.</u>

P R E S E N T :

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman.

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

For the applicant- Shri S.R.Atre, Advocate.

For the respondents- Shri Masurkar, for respondent No.1
Shri G.K.Masand, for respondents 2 and 3
None for respondent No.4.

Date of hearing - 30.8.90.

Date of Judgment and Order - 31.8.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

Can a member of the Indian Forest Service on promotion to the grade of Chief Conservator of Forests claim appointment to a particular post ? is the question that arises in this application wherein the applicant who was an Additional Chief Conservator of Forests (Nature Conservation), Maharashtra State, Nagpur, was promoted to the grade of Chief Conservator of Forests and was posted as Chief Conservator of Forests (Conservation), Maharashtra State, Nagpur, by the order dated 30.6.1989. His grievance is against the promotion of the 4th respondent who was only a Conservator of Forests, to the grade of Chief Conservator of Forests, and his appointment to the post of Director, Social Forestry, Maharashtra State, Pune.

2. It is urged that as the applicant was considered along with the 4th respondent, who was junior to him in the service, for promotion to the post of Chief Conservator of Forests, the action of the respondents 1 to 3 is violative of Articles

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14 and 16 of the Constitution of India. There is the further plea that since the 4th respondent was promoted to the grade of Chief Conservator of Forests bypassing the intermediary grade of Additional Chief Conservator of Forests, there has been violation of the settled principles regarding promotion. Thirdly, it is stated that the post of Director of Social Forestry being an independent post carrying more responsibilities, by appointing the 4th respondent to that post and by appointing the applicant to the post of Chief Conservator of Forests (Conservation), the applicant has actually been reduced in rank.

3. It is prayed that the order dated 30.6.89 be quashed so far as it concerns the promotion of the 4th respondent, and declaration be allowed that the applicant is entitled to be posted against that post.

4. In the reply filed by the respondents 2 and 3, it is stated that any member of the Indian Forest Service can be considered for promotion to the grade of Chief Conservator of Forests after he has completed 16 years of service and as the fourth respondent had the requisite service, his promotion to the grade of Chief Conservator of Forests cannot be questioned. It is further stated that there is no convention to post the seniormost Chief Conservator of Forests as the Director of Social Forestry, or as the Managing Director of the Forest Development Corporation, Maharashtra. It is pointed out that the present incumbent of the post of Managing Director, Forest Development Corporation was fourth in the seniority for promotion to the post of Chief Conservator of Forests, at the time of his appointment to that post. It is contended that the post of Director, Social Forestry, is equal in status to that of the Chief Conservator of Forests.

5. Though the first respondent has not filed written reply, counsel of the first respondent has also opposed the relief claimed by the applicant.

6. The first point that was pressed by Shri S.R.Atre, counsel of the applicant was that the consideration of the 4th respondent alongwith the applicant for promotion to the grade of Chief Conservator of Forests was vitiated as they were unequal, since the applicant was holding the grade of Additional Chief Conservator of Forests while the 4th respondent was only in the grade of Conservator of Forests. We are not able to find any merit in this submission. It was not disputed that the eligibility for consideration for promotion to the post of Chief Conservator of Forests is only 16 years' service in the Indian Forest Service. So long as there is no particular feeder category prescribed for the purpose of promotion to the grade of Chief Conservator of Forests, not only the officers who are in the grade of Additional Chief Conservator of Forests, but also ~~as well as~~ the officers in the lower grade in the Conservator of Forests can be considered, provided the requisite qualifying service is there.

7. In this context, the respondents 2 and 3 have pointed out in their reply that in the past Shri Oak as well as Shri L.H.A.Rego were promoted from the post of Conservator of Forests directly to the post of Conservator of Forests.

8. The second ground of attack was that since the fourth respondent was considered alongwith the applicant for the purpose of promotion, the applicant was posted as Chief Conservator of Forests (Conservatioⁿ) while the 4th respondent was appointed to the post of Director, Social Forestry. It was urged that the latter post carries higher responsibilities and commands higher status.

9. Evidently, the basic complaint of the applicant is not with respect to the promotion of the 4th respondent to the grade of Chief Conservator of Forests, but against his posting on such

promotion as the Director, Social Forestry. Such posting made by the executive can be successfully assailed only if it is established that it has been done in violation of prescribed norms, or is vitiated by mala fides. Admittedly, the post of Director, Social Forestry, is to be filled up by one of the Chief Conservator of Forests. So long as there is no prescription that the seniormost Chief Conservator of Forests has to be appointed against the post of Director, Social Forestry, it is left to the executive to appoint one among the Chief Conservators, having regard to the exigencies of service. It is to be noted that the applicant was working as Additional Chief Conservator of Forests (Nature Conservation) and on promotion he was posted as Chief Conservator of Forests (Conservation). Even judged by the standard of status attached to the post, it is clear from the Resolution of the Government of Maharashtra dated 31.1.84 that the Chief Conservator of Forests (Conservation) has been declared as the Head of the Department. As such, the submission of the counsel of the applicant that the Director, Social Forestry, has the powers of a Head of the Department, cannot have any relevance. Reliance was placed by the counsel of the applicant on the decision of the Supreme Court in Vice Chancellor, L.N.Mithila University v. Dayananda Jha, (1986 ATC 42), where the judgment of the High Court of Patna quashing the order of transfer of a Principal of a College to the post of Reader in another College was upheld by the Supreme Court. It was held there that the true criterion for equivalence is the status and the nature and responsibilities of the duties attached to the two posts and not merely the scale of pay. As there is no material on record to hold that the post of Director, Social Forestry, has higher status and responsibilities, the decision is of no assistance to the applicant. That apart, we are not concerned with the transfer from one post to another, but this is a case where both the applicant and the 4th respondent were promoted to the grade of Chief Conservator of Forests by the same order and were posted against the post of Chief Conservator of Forests (Conservation) and Director, Social Forestry, respectively, and, as such, as stated

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earlier, the scope of judicial review is very little and can be exercised only if the postings are in violation of the prescribed norms, or are tainted with mala fides.

10. It follows that the application has to fail. It is accordingly dismissed. While doing so, we would make it clear that the posting of the 4th respondent in the post of Director, Social Forestry, shall not be treated as conferring any weightage on him in preference to the applicant while considering for the next higher post of Principal Chief Conservator of Forests.

11. The application is disposed of as above.

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30.8.90
(M.Y. Friolkar)

Member(Admn)

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31-8-1990
(G.Sreedharan Nair)

Vice Chairman.

S.P. Singh
30.8.90.

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