

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

OA No. 787 of 2005

Date of order : 2nd

August
July, 2007

C O R A M

Hon'ble Ms. Sadhna Srivastava, Member[Judicial]

Hon'ble Mr. S.N.P.N.Sinha, Member[Admn.]

Arvind Kumar, IFS, working as Plan Officer, Patna son of Sri R.N.Prasad, resident of Gardanibagh, Patna.

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Applicant

Vrs.

1. The Union of India through the Secretary, Ministry of Env. & Forest, C.G.O. Complex, Lodhi Road, New Delhi.
2. The State of Bihar, through the Chief Secretary, Bihar Govt., Patna.
3. The Secretary, Env. & Forest Department, Bihar Govt. Patna.
4. The Principal Chief Conservator of Forest, Bihar Patna.

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Respondents.

Counsel for the applicant : Shri Arvind Kumar in person

Counsel for the respondents : Shri Shekhar Singh [State of Bihar]

Counsel for the respondents : Shri S.K.Tiwari [UOI]

O R D E R

S.N.P.N.Sinha, Member[Admn.] :-

The present application has been filed for issuance of direction to Respondents for the applicant's appointment to Selection Grade with effect

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from 1.1.1999 and to Super Time scale of Conservator with effect from 10.4.2003 when officers junior to him were so promoted with all consequential benefits. The applicant belongs to 1986 batch of Indian Forest Service. He was entitled for Selection Grade after 13 years of service that is from 1.1.1999 in accordance with sub Rule [3] of IFS Pay Rule that provides for such appointment to be made by selection on merit with due regard to seniority. It was further submitted that Departmental Promotion Committee meeting for promotion to various grades of service is to be convened every year on 1st May/June for filling vacancies arising during that year after preparing year-wise panel. In violation of rules one A.K.Pandey who is at Sl.No.21 in the seniority list [the applicant being at no.20] was appointed Conservator vide notification dated 10.4.2003 [in the super time scale]. The applicant filed O.A. No. 469 of 2003 which was disposed of by this Tribunal with direction to the State of Bihar to consider the applicant's case for promotion and pass reasoned and speaking order in accordance with law [order dated 29.5.2003]. CCPA No. 166 of 2003 was filed by the applicant. The State Govt. allegedly made a false averment in its reply that there was no vacancy in selection grade on 1.1.1999. In retaliatory and vindictive action, Govt. stopped the applicant's salary. He was suspended and departmental proceeding was started against him. The

applicant filed O.A. No. 406 of 2004. The Tribunal by order dated 56.11.2004 quashed the applicant's suspension on the ground that since the period of his suspension was not extended in accordance with service rules, hence it stood revoked automatically. The respondents were also directed to pass necessary order for payment of salary to the applicant as well as for completion of departmental proceeding within a period of six months. It was claimed that he had not been paid his salary yet [the O.A. was filed on 13.12.2005]. A.K.Pandey was appointed to selection grade with effect from 1.1.1999 vide notification dated 26.2.2005. The applicant was subsequently informed that his case was kept in sealed cover because of departmental proceeding. He made a representation stating that his retrospective promotion from 1999 could not be kept in sealed cover as no departmental proceeding was pending at that time. Meanwhile, promotee IFS officers of 1989 batch, much junior to the applicant were appointed to Selection grade vide notification dated 10.11.2005. Similarly Dr. Satyendra junior to the applicant was appointed to super time scale along with Bharat Jyoti. It was claimed that there was continuous vacancy in selection grade since 1991. A.K.Pandey, an officer junior to the applicant was appointed Conservator without convening DPC meeting . Similar was the case of Bharat Jyoti in August, 1984. For the applicant's case DPC was

not convened for years although vacancy existed in supertime scale of Conservator as on 10.4.2003. The order of the Apex Court in Jankiraman case [AIR 1991 SC 2010] along with Bank of India case [Bank of India vs. Degala Surya Narayan [Civil Appeal No. 3053-54-97] was cited on the applicant's behalf. It was held in the latter case that since no departmental proceeding was pending against the employee on due date of promotion, ^{Subsequent to} departmental proceeding and order of punishment can not deprive him benefits of promotion which has been earned earlier. A Similar decision was taken in Vinod Kumar vs. Union of India 1988 7 ATC 206 JAB and in S.V. Ranade vs. Union of India 1987 2 ATC 11 JAB.

2. It was submitted on behalf of the respondents that the applicant has been raising the same issue time and again knowing well that departmental proceeding is being conducted against him in which, as a matter of fact, enquiry report has been received in the department and that is under examination. His case was considered for promotion to selection grade on 24.7.2004 and it has been kept under sealed cover. The said grade could not be given to him earlier due to non-availability of post. In compliance with the order of this Tribunal dated 29.5.2003 in O.A. No. 469 of 2003, the applicant was heard on 26.8.2003 and order was passed by the Secretary of the Department on 26.8.2003. The applicant, however, chose to file

another O.A. No. 191 of 2004 thereafter as well as CCPA No. 166 of 2003. In the order dated 26.8.2003, it was mentioned that the applicant during his posting as DFO Afforestation Division, Giridih ~~he~~ was placed under suspension by order dated 20.6.1996 on grave charges of financial irregularities, embezzlement of government funds and violation of government orders. He filed O.A. No. 609 of 1996 before this Tribunal. By order dated 2.7.1997 the order of suspension and departmental proceeding was quashed on technical grounds followed by compliance by the department by order dated 3.1.1998. While the applicant was posted at Gaya, he was arrested on 13.6.2001 from his residence at Patna by Vigilance Department while taking a bribe of Rs. Fifty thousand and was sent to jail. He was placed under suspension by order dated 22.6.2001; the vigilance department sought sanction for his prosecution which was under consideration. He was reinstated by order dated 18.6.2002 ^{as} ~~which order of Suspension~~ was found to be defective as not in accordance with All India Services [Discipline and Appeal] Rules 1969. The said order was, therefore, cancelled on 11.6.2003. He was, however, asked to submit his explanation on 11.6.2003 on articles of charges relating to his period of posting in Giridih and Gaya. His explanation was not received till date of the order, While posted at Monghyr, he was found to be absent continuously, he did ²

not submit accounts to the Accountant General for months and disobeyed orders of higher authorities. He was, therefore, removed from Monghyr Division and attached to the office of Principal chief Conservator of Forests; he did not submit cash book, cheque book, acquittance roll etc. of the Division. Principal Chief Conservator of Forest recommended action against him which is under consideration. Similarly, when he was posted in Punpun Soil Conservation Division Aurangabad, a decision was taken to wind up the said division along with another one and to transfer hands working there to other places. Proposal was sought by the Department for working this out. The applicant treated himself as having been transferred. He was asked for clarification which, is under examination. On the issues raised by the applicant in the O.A. No. 469 of 2003 regarding retrospective promotion, it was mentioned in the order of the Secretary that for Selection Grade and Supertime Promotion, service of 13 and 14 years respectively and availability of post is necessary along with good service record of the concerned officer. It was further said that 21 posts were available in selection grade [20% of the total number of senior scale posts which were 105]. It was found in the meeting of the DPC held on 8.11.1999 that out of 21, 15 posts were vacant. One post was kept reserved for an officer namely Ram Pratap Singh, 17 names were thereafter considered for such

promotion. 13 officers were found fit and the cases of four were kept pending. Thus, there was no vacancy left as on 1.1.1999. In the said meeting of the DPC cases of officers senior to the applicant were considered and no name from 1986 batch of IFS [the applicant's batch] could be considered. For further promotion as Conservator, officers under selection grade have to be considered; since the applicant has not been promoted to selection grade, he cannot be promoted as Conservator. As for the case of A.K.Pandey referred to by the applicant, it was stated that he was given additional charge of Conservator Purnea as an adhoc measure, he was posted substantively as DFO, Purnea.

3. It was further submitted on behalf of the respondents that the Govt. of India accorded sanction for prosecution against the applicant vide order dated 9.8.2006. In the departmental inquiry, the report of the Inquiring Officer has since been considered and the proposal for award of punishment has been moved for approval of the competent authority. It was further stated that after the bifurcation of the State, some officers of IFS Cadre of Bihar have been erroneously promoted in selection grade with effect from the year 1999. The matter has been moved before the competent authority for correction of the date of promotion since no vacancies were available then. The orders of the Hon'ble High court Patna in CWJC No.



7258 of 2002 [Ram Keshwar Ram vs. State of Bihar & Others] was cited on the respondents' behalf. It was observed in the said order that the Apex Court in para 8 of the case of Union of India vs. K.V. Jankiraman [reported in AIR 1991 SC 2010] held that an employee has no right to be promoted to a higher post, his consideration to a selection post depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interest. In fact while considering an employee for promotion his whole record has to be taken into consideration. It will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. The Hon'ble High Court discussed the decision of the Apex Court in Bank of India vs. Degala Suryanarayana reported in 1999 5 SC 2407 and Delhi Jal Board vs. Mahinder Singh reported in AIR 2000 SC 2767. At the time when the DPC met in the first case, there was no departmental enquiry proceeding pending against the employee nor there was anything to show that he was ever awarded punishment and thus the Apex Court held that sealed cover procedure could not have been resorted to nor could the promotion in the

year 1986 - 87 be withheld for the D.E. Proceedings initiated at the fag end of the year 1991. In the case of Delhi Jal Board vs. Mahinder Singh [supra] the Apex Court while holding that sealed cover procedure permits the question of promotion to be kept in abeyance till the result of any pending disciplinary inquiry held that the findings of the disciplinary inquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges are framed. It was held that if the respondents had been found fit for promotion and if he was later exonerated in the disciplinary inquiry which was pending at the time when DPC met, the mere fact that by the time the disciplinary proceedings in the first inquiry ended in his favour and by the time the sealed cover was opened to give effect to it, another departmental inquiry was started by the Department, would not come in the way of giving him the benefit of the assessment by the first DPC in his favour in the anterior selection. In the said case there was nothing to show that the respondent was ever awarded punishment or there was anything pending against him.

4. In his rejoinder, it was submitted by the applicant that this Tribunal directed the respondents in O.A. No. 406 of 2004 to complete departmental proceeding against the applicant within six months which has not been completed yet. Similarly in O.A. No. 469 of 2003 direction was given for



passing reasoned order regarding the applicant's promotion to different grades within sixty days. Instead of complying with the order the respondents are making false averments before the Tribunal. The order of the Secretary of the Department dated 26.8.2003 is without jurisdiction as he is not competent to reject the applicant's claim without convening DPC meeting, no departmental proceeding has been initiated till date; the applicant was falsely implicated in a vigilance case by the Kendu Leaf Mafia. Officers junior to the applicant were promoted by notifications dated 26.2.2005 and 10.11.2005 with effect from 1.1.1999, so there were vacancies existing then.

5. This is the fifth case filed by the applicant before this Tribunal [others being O.A. No. 609 of 1996, No. 469 of 2003, CCPA No. 166 of 2003 O.A. No. 191 of 2004]. The relief sought by the applicant in the present case is selection grade and super time scale of IFS retrospectively with effect from 1999 and 2003 when officers junior to him are said to have been so promoted. It is claimed that in 1999 no departmental proceeding was pending against him, had DPC met then, he would have got promoted to selection grade [para 4.10 of the O.A.] as promotion due on a particular date cannot be denied for alleged misconduct committed on a subsequent date. It has been submitted on behalf of the respondents that DPC held its

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meeting on 8.11.1999 when names of batches senior to 1986 batch [the batch to which the applicant belonged] were considered [para 4 of Annexure-R/1 with the written statement filed on behalf of the respondents]. There were 15 vacancies in selection grade out of 21 posts in that grade. Out of these four cases were reserved and thirteen officers were recommended for promotion. All these belonged to batches senior to the applicant's batch. Thus, there were no further vacancies left. The fact regarding the meeting of the DPC on 8.11.1999 and consideration therein of officers senior to the applicant has not been controverted by the applicant. It has been claimed that subsequently in February and November 2005 officers junior to the applicant were promoted with effect from 1.1.1999. In the supplementary written statement filed on behalf of the respondents on 18.10.2006 it has been mentioned in para 6 that after the bifurcation of the State some officers have been promoted in selection grade with effect from 1999 erroneously; the matter has been examined and put up for orders of the competent authority for correction of date of promotion. The applicant was placed under suspension in the year 1996 [order dated 20.6.1996] and the order was quashed by this Tribunal in O.A. No. 609 of 1996. He was arrested by Vigilance Department on 13.6.2001 and was sent to jail and placed under suspension for the second



time. He was reinstated on 18.6.2002 as his case could not be reviewed within the prescribed time limit. Vigilance Department moved for sanction to prosecute the applicant which has since been accorded [para 3 of the supplementary written statement of the respondents filed on 18.10.2006]. In the departmental inquiry in which he was asked to submit his explanation by memo dated 11.6.2003 on certain articles of charges relating to his period of posting at Giridih and Gaya as mentioned in para no. above , the report of the enquiry officer has since been received and the matter has been put up for decision of the competent authority [para 4 of the supplementary written statement filed by the respondents on 18.10.2006]. The case of the applicant was again considered in DPC meeting held on 24.7.2004 in which it was decided to keep it in sealed cover. It may be worthwhile to reiterate here the observation of the Apex Court in Jankiraman case as discussed by the Hon'ble High Court, Patna in C.W.J.C. No. 7258 of 2002 that an employee has no right to be promoted to a higher post; his consideration to a selection post depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interest.

6. In view of the above and the discussion related in the foregoing paragraphs, the applicant has not been able to make out a convincing case. The application is, in the result, dismissed. No costs.


[S.N.P.N.Sinha]
Member[Admn.]


[Sadhna Srivastava]
Member [Judicial]

mps.