

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 165 OF 2001

SHRI JUSTICE ASHOK AGARWAL. ... CHAIRMAN  
SMT. SHANTA SHAstry. ... MEMBER (A)

Date of Decision: 24.07.2001

Shri Murlidhar Anant Desai Applicant(s)

Shri G.K. Masand Advocate for Applicants

Versus

Union of India & 2others Respondents

Shri V.S. Masurkar Advocate for Respondent No.2  
Ms. H.P. Shah Advocate for Respondents 1 & 3

CORAM: HON'BLE JUSTICE ASHOK AGARWAL CHAIRMAN  
HON'BLE SMT. SHANTA SHAstry. MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

*Shanta* ✓  
(SHANTA SHAstry)  
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

CIRCUIT SITTING AT GOA

ORIGINAL APPLICATION NO. 165/2001

TUESDAY, THE 24TH DAY OF JULY, 2001

CORAM: HON'BLE JUSTICE ASHOK AGARWAL.  
HON'BLE SMT. SHANTA SHAstry.

CHAIRMAN  
MEMBER (A)

Muridhar Anant Desai,  
retired as Dy. Conservator Forests/  
General Manager of Goa Forest  
Development Corporation, Ponda Goa. ... Applicant

By Advocate Shri G.K. Masand.

Vs.

1. Union of India through  
the Secretary in the Ministry of  
Environment and Forest,  
Paryavaran Bhavan, CGO Complex,  
Lodhi Road, New Delhi-411 003.
2. Union Public Service Commission,  
Dholpur House,  
Shahajahan Road,  
New delhi.
3. State of Goa, through the  
Chief Secretary to the Government  
of Goa, Panji, Goa. ... Respondents

By Advocate Shri V.S. Masurkar for R2.  
Ms. H.P. Shah for R1 & 3

...2/-

O R D E R (ORAL)

Hon'ble Smt. Shanta Shastry. Member (A)

The grievance of the applicant is regarding non-induction of the applicant into Indian Forest Service in 1997.

2. The applicant belonged to the 1963-65 batch of Range Forest Officers recruited by the then Government of Union Territory of Goa, Daman and Diu. He was promoted to the post of Assistant Conservator of Forests on 16.7.82 and to the post of Deputy Conservator of Forests on 08.11.1991. He became entitled thereafter to be considered for induction into the Indian Forest Service under Indian Forest Service (IFS) (Appointment by Promotion) Regulation 1966.

3. The State Government had sent a proposal to the Union Public Service Commission for selection of State Government Forest Service officers for induction into the Indian Forest Service. The selection was held on 15th October, 1997. The applicant was considered and he was placed at Sl.No.2 of the select list. Only one vacancy was available and officer at Sl.No.1 one Shri O.V.R. Reddy was appointed and promoted to IFS vide notification dated 21.12.1997. With this, the only vacancy which was available, was filled up and therefore the selection list lapsed.

4. The applicant filed OA 168/98 in the Tribunal claiming seniority over Shri Reddy, who was inducted into the IFS. However, the same was dismissed on 9.10.98.

5. Thereafter, the applicant sent a representation to the State Govt. to induct him into IFS on the ground that the calculations made by the respondents regarding number of posts meant for promotion from the State Service was not done correctly. According to him, the number of posts should have been four. Thus, against the additional vacancy, the applicant could have been accommodated.

6. The applicant was advised to address his representation to the Govt. of India, Minstry of Environment & Forests. ~~Accordingly~~ he sent a representation on 11.12.2000 to the Inspector General of Forests, Ministry of Environment and Forests. The State Govt. also took up the case of the applicant, recommending his induction against the extra vacancy, with the Govt. of India, vide letter dated 12.12.2000. The applicant also submitted a further representation to Govt. of India on 24.1.2001, but of no avail. He finally retired on 31.1.2001 after getting an extension of one month beyond his age of superannuation.

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Chancery, on 10th May, 2001

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7. The contention of the applicant is that he having been included in the select list of 1997 he was entitled to be considered against a vacancy that had arisen due to increase in promotion quota by one. The Select List was valid as no further selection meeting was held till he retired. By notification dated 01.10.2000 the promotion quota for Goa was increased from 3 to 4 . Even the State Govt. of Goa had recommended to the Govt. of India to examine the applicant's case on merit.

8. The respondents submit that the applicant could not be inducted into the IFS for want of vacancy though it is not denied that he was at Sl.No.2 in the selection panel. The quota for promotion was increased from 3 to 4 only by notification issued on 10th May 2001 i.e. much later after the applicant had retired on 31.1.2001. Even the OA has been filed after retirement i.e. on 22.2.2001 when there was no scope to induct the applicant into IFS before he retired . Further, the life of select list is not indefinite. The moment the number of vacancies for which the select list is prepared have been filled up the list lapses. Otherwise the list is valid till the next selection is held. In the instant case the selection was for one vacancy. The same was filled in 1997, therefore the select list showing the applicant at Sl.No.2 in merit is no longer in force. In the circumstances, the applicant cannot <sup>get</sup> <sub>any</sub> benefit of the extra promotion quota made available in May, 2001.

9. We have given careful consideration <sup>to</sup> the pleadings and are of the considered view that the application is devoid of merit. The OA therefore fails and is dismissed.

No costs.

*Shanta S-*

(SMT. SHANTA SHAstry)  
MEMBER (A)

*ASHOK AGARWAL*  
(ASHOK AGARWAL)  
CHAIRMAN

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alt 24/7/01  
order/Judgement despatched  
to Applicant/Respondent(s)  
on 14/8/01

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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH: MUMBAI

REVIEW APPLICATION NO. 53/2002  
IN  
ORIGINAL APPLICATION NO. 165/01

THIS THE 3<sup>rd</sup> DAY OF JANUARY, 2005

CORAM: HON'BLE SHRI ANAND KUMAR BHATT. MEMBER (A)  
HON'BLE SHRI MUZAFFAR HUSAIN .. MEMBER (J)

Murlihat Anant Desai,  
retired as General Manager,  
of Goa Forest Development  
Corporation, Ponda, Goa. .. Petitioner

By Advocate Shri S.R. Gode Sawant

Versus

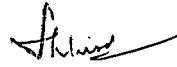
1. Union of India, through  
the Secretary in the Ministry of  
Environment and Forest,  
Paryavaran Bhawan, CGO Complex,  
Lodhi Road, New Delhi-110 003.
2. Union Public Service Commission,  
Dholpur House, Shahjahan Road,  
New Delhi-110 001.
3. State of Goa, through the  
Chief Secretary to the  
Government of Goa,  
Panaji, Goa. .. Respondents

By Advocate Smt. H.P. Shah.

O R D E R  
Hon'ble Shri Muzaffar Husain. Member (J)

The original applicant has filed this review petition to review the judgment and order dated 24.7.2001 passed in OA No.165/2001.

2. The grievance of the applicant in that OA was, non-induction of the applicant to Indian Forest Service even after his selection and despite there was a vacancy as evident from various documents annexed to the OA. The applicant was not inducted to the IFS and was



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compelled to retire on 31.01.2001 when he was legally entitled to remain in service till the age of 60 years. The Government of Goa failed to prevail upon the Government of India to issue proper notification for applicant's induction into IFS and to facilitate the same, the applicant was given extension of service for one month. The Tribunal after hearing both the parties, dismissed the OA on 24.7.2001.

3. In review petition the petitioner has stated that he has now learnt that after dismissal the respondents have inducted Shri V.T. Thomas into IFS, whose name was at Sl. No.3 in the same select list in which the petitioner was at Sl. No.2. The induction of Shri V.T. Thomas has been challenged by one Shri N.D.F. Carvalho by filing OA 851/01 in the Tribunal. In the affidavit in reply filed by the respondents in para 3.6 they have stated that "in terms of IFS (Appointment by Promotion) Regulations 1966 the select list shall remain in force till the 31st day of December of the year in which the meeting of the selection committee was held with a view to prepare the list under sub Regulation (i) of Regulation (5) or upto 60 days from the date of approval of the Select List by the Commission under sub-regulation (i) or as the case may be, finally approved under Regulation (2) whichever is later. It is further averred that this rule position implied that "Select List" is designed to meet the requirements of

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promotion against vacancies existing as on 01st January of the year of the Select List plus any vacancies arising during one year from the date of the meeting of the Selection Committee. In the same para the respondents have placed reliance on the case of Nepal Singh anwar Vs. Union of India and contended that as per the Apex Court's ruling if no further meeting of the selection committee was held than the officers included in the existing "Select List" can be appointed against the vacancies arising in the promotion quota even after a year. They have also placed reliance on the DOPT OM No.F.14015/10/99-AIS(1) dated 18.01.2000." The respondents in reply to OA 165/2001 filed by the petitioner before the Tribunal, the Government of India vide paragraph 4.2 of the affidavit dated 31st May, 2000 had with a view to oppose petitioner's claim in the said OA stated that the select list was no more in force. Whereas in OA 851/2001 filed by D.N.F.. Carvalho a diametrical opposite stand has been taken by the respondents. Therefore, the respondents have not come out with clean hand and had suppressed material fact from the Tribunal and by making representation which were not true, to defeat the claim of the applicant. In these circumstances, the petitioner is seeking review of the judgment and order dated 24.7.2001 passed in OA 165/01 on the basis of the material which has now come into possession of the petitioner as a result of the filing of the OA 851/01 by D.N.F.Carvalho. Therefore,

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the petitioner is seeking condonation of delay in filing the present review petition. Petitioner prayed to allow the OA 165/01 by directing the respondents to treat the petitioner as having been inducted to IFS and to permit the petitioner to superannuate on attaining the age of 60 years as permissible under the Central Government rules.

4. We have heard the learned counsel for the parties and perused the material placed on record.

5. The respondents in their reply have admitted the fact that on the basis of select list the following three officers namely S/Shri O.V.R. Reddy, M.A. Desai and V.T. Thomas drawn by the selection committee which was constituted under provisions of IFS (Appointment by Promotion) Regulations 1966 and approved by UPSC. It is also stated that again one reported vacancy due to superannuation, one promotee officer Shri O.V.R. Reddy was appointed by promotion to IFS in Goa Segment of AUGMUT on 31.12.1997. They have also stated that the petitioner could not be appointed as there was no vacancy. Fourth vacancy of Goa AUGMUT arose on 10th May, 2001, however, by that time the petitioner had already retired on 31.01.2001.

6. Learned counsel for the respondents stated that in terms of the IFS (Appointment by Promotion)

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Regulations, 1966 as amended vide notification dated 31.12.1997 the Select List shall remain in force till the 31st day of December of the year in which the meeting of the selection committee was held with a view to prepare the list under sub regulation (1) of regulation 5 or upto sixty days from the date of approval of the select list by the commission under sub regulation (1) or, as the case may be, finally approved under sub regulation (2) whichever is later. As per rule the "Select List" is designed to meet the requirements of promotion against vacancies existing as on 01st January of the year of the Select List. The Apex Court, in the matter of Nepal Singh Tanwar Vs. Union of India & Others (reported in 1998 (1) SCALE (SP) held that if no further meeting of the selection committee was held then the officers included in the existing "Select List" can be appointed against vacancies arising in the promotion quota even after a year. The Union Government in the Department of Personnel and Training amended the orders accordingly vide OM No.F 14015/10/99-AIS(I) dated 18.01.2000.

7. It is not disputed that the petitioner was at Sl. No.2 in the select list and Shri O.V.R. Reddy was appointed on 31.12.1997. The petitioner could not be appointed as was no vacancy. The notification of four vacancies was issued on 10th May, 2001 by that time the petitioner had retired on 31.01.2001. The notification

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of four vacancies was issued after retirement of the petitioner. The Tribunal considered the entire aspect in para 8 of the judgment observed as under:

"The respondents submit that the applicant could not be inducted into the IFS for want of vacancy though it is not denied that he was at S1. No.2 in the selection panel. The quota for promotion was increased from 3 to 4 only by notification issued on 10th May, 2001 i.e. much later / after the applicant had retired on 31.1.2001. Even the OA has been filed after retirement i.e. on 22.2.2001 when there was no scope to induct the applicant into IFS before he retired. Further, the life of select list is not indefinite. The moment the number of vacancies for which the select list is prepared have been filled up the list lapses. Otherwise the list is valid till the next selection is held. In the instant case the selection was for one vacancy. The same was filled in 1997, therefore the select list show the applicant at S1. No.2 in merit is no longer in force. In the circumstances, the applicant cannot get any benefit of the extra promotion quota made available in May, 2001."

8. Thus there appears no error apparent on the face of the record as provided under Rule 1 Order 47 CPC. The stand taken by the respondents in OA 851/01 does not help the petitioner as he was retired on 31.01.2001, at that time there was no vacancy and he could not be inducted for want of vacancy.

9. The scope of judicial review under Section 22(3)(f) of the Administrative Tribunals Act 1985 is very limited. It restricts only to the grounds mentioned under Order 47 Rule 1 CPC. It precludes the reassessment of fact and law for recalling earlier order passed on merit, unless there is a discovery of new and

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important matter or evidence which after exercise of due diligence was not within his knowledge or could not be brought by him at the time when the judgement was made, or on account of some error apparent on the face of the record or for any sufficient reason. The Hon'ble Apex Court in Ajit Kumar Rath V/s. State of Orissa & Ors 1999 (9) Supreme 321 has held:

"Section 22(3)(f) indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47 Rule I would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgement."

IN Union of India Vs. Tarit Ranjan Das 2004 (1) SCSLJ 47 the Apepx Court held -

Administrative Tribunals Act, 1985 - Section 22 - Review - Held the scope of review is very limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh and rehearing the matter to facilitate a change of opinion on merits.

In our view there is no error apparent on the face of record and there is no discovery of the new facts within the meaning of Order 47 Rule 1 CPC. The grounds stated in review petition do not come within the purview of Order 47 Rule 1 CPC. In the result Review Petition is dismissed. No order as to costs.

  
(MUZAFFAR HUSAIN)

MEMBER (J)

  
(ANAND KUMAR BHATT)

MEMBER (A)

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