

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
B A N G A L O R E.

DATED THIS THE TWENTY SEVENTH DAY OF APRIL, 1987.

Coram: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman,
and
Hon'ble Shri L.H.A. Rego, Member (A).

Application No. 1669/86

H.P. Mallikarjuna,
Deputy Conservator of Forests,
Plan Monitoring Cell,
Rural Fuel Wood Plantation Scheme,
Bangalore.Applicant.

(Shri S.R. Jois, Advocate)

vs.

1. The Govt. of India,
rep. by Ministry of Home Affairs,
D.P.A.R.,
(Services-I),
New Delhi.
 2. The State of Karnataka,
rep. by Secretary,
Personnel & Administrative Reforms
(Services-I),
Vidhan Soudha, Bangalore.
 3. Shri S. Syamsunder,
Chief Conservator of Forests (General),
Aranya Bhavan,
Bangalore.
 4. Shri G.L. Huller,
Dy. Conservator of Forests,
Haliyal Divn.,
Haliyal - N.K.Respondents.
- (Shri M.S. Padmarajaiah, Sr. CGSC)

/2/

The application having come up for hearing today, Hon'ble the Vice-Chairman made the following:-

O R D E R

This is a transferred application and is received from the High Court of Karnataka under Section 29 of the Administrative Tribunals Act, 1985.

2. *Shri* H.P. Mallikarjuna, the applicant before us, joined service on 20.4.1968 as an Assistant Conservator of Forests ('ACF') in the Karnataka State Forests Service ('KSFS'), and he has been confirmed in that post from 1.1.1978 by Government of Karnataka ('GK').

3. Under the Indian Forest Service (Appointment by Promotion) Regulations, 1966 ('the Regulations'), framed by Government of India ('GOI') under Rule 8 of Indian Forest Service (Recruitment) Rules, 1966 ('the Rules'), framed under the All India Services Act, 1951 (Central Act No. LXI of 1951), an ACF of State Forest Service with 8 years of continuous service and is substantive, is eligible for selection to the Indian Forest Service Senior Scale ('IFS'). A selection

5

/11/

case, and in any event, within a period of four months from the date of receipt of this order.

14. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.

15. Let this order be communicated to the parties within fifteen days from this day.

MS. Suresh Kumar
VICE CHAIRMAN *27/4/1987*

[Signature]
MEMBER (A) *27.4.87*

dms.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCHAPPLICATION No. 1669/86(T)

(WP.NO. 4333/84)

COMMERCIAL COMPLEX, (BDA)
INDIRANAGAR,
BANGALORE-560 038.

DATED: 28 MAY 1987

APPLICANT

Shri H.P. Mallikarjuna

TO

Vs

RESPONDENTS

The GOI rep by M/o of Home Affairs & 3 Ors

1. Shri H.P. Mallikarjuna
C/o Shri S. Ranganatha Jois
Advocate
36, 'Vagdevi'
Shankara Park Road
Shankarapura
Bangalore - 560 004

2. Shri S. Ranganatha Jois
Advocate
36, 'Vagdevi'
Shankara Park Road
Shankarapura
Bangalore - 560 004

3. The Ministry of Home Affairs
Department of Personnel & Administrative
Reforms (Services-I)
North Block
New Delhi-110001

4. The Secretary, Govt. of Karnataka
Department of Personnel and
Administrative Reforms (Services-I)
Vidhana Soudha
Bangalore - 560 001

5. Shri S. Syamsunder
Chief Conservator of Forests
(General)

Aranya Bhavan
Bangalore

6. Shri G.L. Hullur
Deputy Conservator of Forests
Haliyal Division
Haliyal
North Kanara

7. Shri M.S. Padmarajaiah
Senior Central Govt. Stng Counsel
High Court Buildings, Bangalore-1

8. The Government Advocate
Karnataka Administrative Tribunal
Indiranagar, Bangalore-38

SUBJECT: SENDING COPIES OF ORDER PASSED BY THE
BENCH IN APPLICATION NO. 1669/86(T)

....

Please find enclosed herewith the copy of the Order
passed by this Tribunal in the above said Application on

27-4-87

ENCL: As above.

DEPUTY REGISTRAR
(JUDICIAL)

committee constituted by GOI under Regulation 3 of the Regulations makes selections and those selected are then appointed by the President of India on probation.


4. On 18.12.1978, 21.10.1980, 19.12.1981 and 9.12.1983, a selection committee constituted by GOI considered the cases of eligible officers of KSFS to IFS and made its recommendations, and accepting them, the President of India appointed respondent No.4 and others on different dates. But in all those selections and appointments, the applicant had not been selected to the IFS. Hence on 28.2.1984, the applicant approached the High Court in W.P. No. 4333/84 challenging his non-selection and the selection of others to IFS, which on transfer has been registered as Application No. 1669 of 1986.

5. In its Notification No. FFD/282/FEG/79 dated 10.12.1979 (Annexure-A), GK had confirmed the applicant as an ACF from 1.1.1978. Without challenging that notification either in whole or in part, and claiming that he should have been confirmed from any earlier date or from 1.1.1975, he had asserted that he should have been confirmed from 1.1.1975. But at the hearing,


the applicant did not pursue the same and pursued his case as rightly confirmed from 1.1.1978. On this very basis, he has urged that the non-consideration of his case for selection to IFS on 18.12.1978 was illegal. He has also urged that his supersessions on 21.10.1980, 19.12.1981 and 9.12.1983 were also illegal.

6. In its statement of objections, respondent No.1 - Government of India - had asserted that the case of the applicant for selection to IFS as on 18.12.1978 was not considered as his name was not included by GK in the list of eligible officers, on the ground that he had not been confirmed by then, but was done only on 10.12.1979. Respondent No.2 - Government of Karnataka - had asserted that the case of the applicant was duly considered and he was not found suitable for selection to IFS.

7. Shri S. Ranganath Jois, learned counsel for the applicant, contends that on the confirmation of his client from 1.1.1978, he became eligible for selection to IFS from that date, both in law and fact, and the non-consideration of his case for selection as on 18.12.1978 was illegal and the same should now be done as on that date, totally ignoring his non-selection as on 21.10.1980, 19.12.1981 and 9.12.1983.




that a member of a State Forest Service who is substantive or confirmed as on the first day of January of that year, and had completed not less than 8 years of continuous service, whether officiating or substantive, should and must alone, be considered for selection by the selection committee constituted by Government. But the proviso or any other provision of the Regulations, the Rules or the Act nowhere expressly provide for dealing with a situation, as has now arisen before us. If so, then we must only read the same as to give effect to the confirmation made with retrospective effect. We need hardly say that such a construction, besides achieving the purposes and objects of the Regulations, the Rules and the Act, does no violence to the languages of the proviso also. But more than all this, the too literal a construction suggested for the respondents, would deny the guarantee of equality of opportunity guaranteed in Articles 14 and 16 of the Constitution, every sound principle of justice, fair-play and equity also. After all, the proviso cannot be read as to undo what had been done, or to postpone the date of confirmation also. For all these reasons,



we have no hesitation in rejecting the contention urged for the respondents.

12. On the foregoing discussion, we hold that the case of the applicant must and should necessarily be considered for selection as on 18.12.1978. When so done, and in any case even before that is done, its result cannot be predicted by anybody. The result can be known only after consideration and not before that. If that should be fair and really meaningful, then anything done thereafter must be excluded and should not really stand in the way of earlier selection at all. For this purpose atleast, we must undo what had been done against the applicant in all later selections. On this short ground, we must undo all the later supersessions of the applicant, which we do so. But in so doing, we need hardly say that if the applicant is selected as on 18.12.1978, then the question of considering his case on all the later occasions will not arise. But if he is not selected on that occasion, then it is necessary to consider his case on all the later occasions also afresh.



/10/


13. In the light of our above discussion, we make the following orders and directions:

(a) We declare that the applicant was eligible for selection as on 18.12.1978 to IFS Senior Scale;

(b) we quash the non-selection of the applicant to IFS Senior Scale ^{last} on 21.10.1980, 19.12.1981 and 9.12.1983;


(c) we direct respondents 1 and 2, and the appropriate selection committee to be constituted by GOI for that purpose to consider the case of the applicant for selection to IFS Senior Scale as on 18.12.1978 and make a fresh selection as on that date, if necessary by deleting any one of his juniors also. If in the event of the applicant not being selected on that date, then his case for selection as on 21.10.1980, 19.12.1981 and 9.12.1983 shall then be considered by them afresh, in accordance with law, and the observations made in this order; and

(d) we direct respondents 1 and 2 to make selection as on all the dates with all such expedition as is possible in the circumstances of the



8. Shri M.S. Padmarajaiah, learned Senior Central Government Standing Counsel, appearing for respondent No.1, and Shri S.V. Narasimhan, learned Government Advocate, appearing for respondent No.2, contend that notwithstanding the confirmation of the applicant from 1.1.1978, the non-consideration of his case on 18.12.1978 was in conformity with the last proviso^{to} Rule 5(2) of the Regulations and the same was legal and valid.


9. As on 18.12.1978, the case of the applicant was not considered for selection on the ground that he had not been confirmed as on 1.1.1978 by GK is not in dispute. ^{It is fact that} But, GK, in its notification dated 10.12.1979 (Annexure-A) confirmed the applicant and 32 others from 1.1.1978 is also not in dispute. The effect of this confirmation was that, in law and fact, the applicant had become a confirmed or substantive ACF as on 1.1.1978. If that then is the position, then the same should also be made effective for all other purposes, including selection to the IFS also. If that is not done, then the retrospective confirmation from 1.1.1978 will become meaningless and will even stand postponed. We cannot on any principle place such a construction at



all. On this short ground itself, we must direct the consideration of the case of the applicant as on 18.12.1978. Whether this is impermissible under the last proviso of Regulation 5(2) of the Regulations as urged by the respondents is the next question that calls for our examination.

10. In interpreting the last proviso, one of the well-settled rules of construction of statutes, now generally called as progressive construction of statutes has been admirably explained by Bhagwati, J (as His Lordship then was) in K.P. VARGHESE vs. ITO, ERNAKULAM & ANOTHER (A.I.R. 1981 SC 1922). Therein, the learned Judge, quoting with approval a classic passage of Learned Hand, had expressed the same in these inimitable words:

"xxxxx. The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed out by Lord Denning, it would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity". We can do no better than repeat the famous words of Judge Learned Hand when he said: ".....it is true that the words used, ~~xxx~~ even in their literal sense, are the primary and



ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning". We must not adopt a strictly literal interpretation of Section 52 sub-section (2) but we must construe its language having regard to the object and purpose which the legislature had in view in enacting that provision and in the context of the setting in which it occurs. We cannot ignore the context and the collocation of the provisions in which Section 52 sub-section (2) appears, because, as pointed out by Judge Learned Hand, in most felicitous language: ".....the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create".

Bearing these principles, we must ascertain the true scope and ambit of the last proviso to Regulation 5(2) relied on by respondents 1 and 2.

11. The last proviso of Regulation 5(2) which is material, reads thus:

" Provided also that the Committee shall not consider the case of a member of the State Forest Service unless, on the first day of January of the year in which it meets, he is substantive in the State Forest Service and has completed not less than eight years of continuous service (whether officiating or substantive) in ~~post~~(s) included in the State Forest Service."

This proviso, with the construction of which only we are concerned, and not ~~upon~~ its validity, provides